



## **ENGLISH COMMERCIAL COURT DISMISSES GOVERNMENT OF INDIA'S CHALLENGES TO ARBITRATION AWARD**

*Union of India v Reliance Industries Ltd [2022] EWHC 1407 (Comm)*

### **Introduction**

By a judgment handed down on 9 June 2022, the Commercial Court handed down judgment in *Union of India v Reliance Industries Ltd [2022] EWHC 1407 (Comm)* in which it dismissed the Government of India's challenges to an arbitration award handed down in the long running proceedings against Reliance Industries.

### **Background**

The underlying arbitration in this matter related to two production sharing contracts concerning offshore oil and gas fields in India. While the contracts were governed by Indian law, the seat of the arbitration was stated to be London. The arbitration proceedings are still ongoing, but to date, the arbitral tribunal has issued eight substantive partial awards.

The award at issue in the present proceedings was handed down in January 2021, and found in favour of the claimants in a further amount of approximately US\$111 million.

The Government of India challenged this award under Sections 68 and 69 of the Arbitration Act 1996.

The Section 69 challenge was brought on the basis of whether the arbitral tribunal was correct to decide an issue of *res judicata* according to English law because the seat of the arbitration was in London (and in particular, the *Henderson v Henderson* principle that a party is precluded from raising in subsequent proceedings matters which were not but could and should have been raised in the earlier proceedings). The matters which the Government of India were precluded from raising were threshold matters and objections relating to, in the main, Indian constitutional law principles.

The Section 68 challenge was that there had been a serious irregularity causing substantial injustice in the award through the failure of the arbitral tribunal to apply those principles of Indian constitutional law.

### **Judgment**

The Commercial Court (Sir Ross Cranston) refused the applications.

On the Section 69 challenge:

- Relying on the decisions of Lord Sumption in the Supreme Court decisions of *Virgin Atlantic Airways Limited v Zodiac Seats UK Limited* [2013] UKSC 46 and *Takhar v Gracefield Developments Ltd* [2019] UKSC 13, it was clear that the principle in *Henderson v Henderson* is a procedural power, rather than a matter of substantive law. As a procedural rule, in the case of an arbitration, the seat (in this case England) governed its exercise, regardless of the law of the contract.
- It was clear that the *Henderson* principle applied to both litigation and arbitration proceedings, as in both sets of proceedings there was a need for a procedural power to guard against abusive and duplicative proceedings (albeit that in arbitration there may be some limits to the principle). Furthermore, there was substantial judicial support for the proposition that the *Henderson v Henderson* principle can apply to all stages of the same proceedings, to defences as well as claims.
- In relation to the Government's threshold matters/objections the Tribunal exercised a procedural power. In doing so it applied English law, not Indian law. It was not obviously wrong, nor was it open to serious doubt for the Tribunal to do this.
- It was noted that prior to the 2021 award, the arbitral tribunal had applied the *Henderson v Henderson* principle, including where the Government of India used it to defeat Reliance/BG's residual upside case. It would be inappropriate for the Court to allow the Government to take an inconsistent approach to that it had advanced in the arbitration.

At the hearing, the Section 68 challenge was explained to be based on s.68(2)(a) , unfairness; s.68(2)(d) , the Tribunal's failure to deal with issues; and s.68(2)(g) , the 2021 award was contrary to Indian public policy. This challenge was dismissed in its entirety, there having been no serious irregularity which could have led to a substantial injustice.

### **Concluding Observation**

The decision underlines the touchstone of 'finality' which is seen as a vital virtue in any jurisdiction seeking to establish itself as an international arbitration seat.