Analysis

Tata-Doceomo Judgment: Limiting RBI's Role in Contractual Disputes

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The recent Delhi High Court's judgment in the Tata-Doceomo case is a positive development from the perspective of the wider investor community, particularly foreign investors looking to enforce contractual arrangements against Indian counterparties.

Introduction

The Delhi High Court's recent judgment in the Tata-Doceomo matter represents the culmination of a long-running and high-profile dispute which has garnered considerable press coverage. In this judgment, the Court allowed the enforcement of an arbitral award arising out of a fixed-price put option clause, despite the Reserve Bank of India (RBI) seeking to enjoin its enforcement on regulatory grounds.

Brief Facts

In 2009, NTT Doceomo Inc. (Doceomo), Tata Sons Ltd. (Tata) and Tata Teleservices Ltd. (TTSL) entered into a shareholders' agreement. Under the agreement, Tata was required to find a buyer for Doceomo's shares in TTSL, in the event that TTSL failed to meet certain performance parameters. The sale price was required to be the higher of (i) the fair value of the shares; or (ii) 50% of the price at which Doceomo had purchased the shares. The clause was intended to give Doceomo downside protection on its investment.

In 2014, Doceomo exercised this right and called upon Tata to find a buyer for its shares in TTSL. Tata argued that it was not under an unconditional obligation, and that it had the option to decide whether to find a buyer or to buy the shares itself. Having chosen to buy the shares itself, the 'special permission' of the RBI was required, since the value of the shares had fallen. Tata argued that since the 'special permission' of the RBI was not forthcoming, it was not liable to purchase the shares under the contract.

In a unanimous award, a three-member arbitral tribunal rejected this argument and held that Tata was under an unqualified obligation to perform. It held that the impediment to Tata's performance was factual rather than legal, and that the contract could be performed even without the special permission of the RBI. The tribunal then proceeded to award damages to Doceomo to the extent of USD 1.17 billion along with interest and costs. The amount of damages represented the amount that Doceomo would have received had Tata performed the contract.

Since Tata did not pay the amounts awarded, Doceomo filed an enforcement petition in the Delhi High Court. While Tata
resisted the enforcement initially, the parties ultimately reached a compromise, and filed consent terms with the Court, essentially giving effect to the award. During the course of the proceedings, the RBI impleaded itself in these proceedings, and argued that neither the award nor the consent terms should be given effect since it would lead to a violation of foreign exchange regulations.

**Delhi High Court's Decision**

The Court rejected the RBI's application, and held that it had no locus to intervene in the enforcement of an arbitral award to which it was not a party.

It also held that the RBI does not have the locus to challenge the decision of a court / arbitral tribunal interpreting Indian regulations in a contractual dispute. Thus, for instance, if an arbitral tribunal determined that the RBI's permission was not required for a particular payment, it was not open to the RBI to challenge such determination.

The Court then went on to examine the validity of the arbitral award. It agreed with the interpretation of the tribunal in holding that Tata's obligations were capable of performance without the special permission of the RBI. It also held that the tribunal's interpretation of FEMA was not improbable, and did not violate Indian public policy.

Lastly, the Court examined the validity of the compromise terms agreed between the parties, and held that they were enforceable as well. In coming to this finding, the Court placed considerable emphasis on the importance of giving effect to contracts entered into by Indian entities while attracting international investors and building goodwill in the international arena.

**Analysis & Conclusion**

The decision should not be interpreted as an approval of fixed-price put option clauses *per se* since a significant part of the reasoning hinged on how that clause in the shareholder's agreement had been worded. In this case, the clause offered downside protection to Docomo, and did not offer it an assured return on its investment. Additionally, the fact that the award was in the nature of damages (and not specific performance requiring purchase of shares), and that the two parties had ultimately reached a compromise, were factors which weighed on the court's reasoning as well.

The decision is however a positive development from an investor's perspective for several reasons. In the past, Indian counterparties would often argue that authorities like the RBI and FIPB should be heard in contractual disputes involving an interpretation of foreign exchange regulations. Such tactics (even if ultimately unsuccessful) would end-up delaying the arbitration process. By clearly stating that the RBI cannot be made a party to arbitration proceedings at any stage, the Court has effectively come out against such actions.

The decision also curbs post-award enforcement delays. Previously, even after a foreign party had obtained a favourable award, enforcement could get stalled if the RBI objected to the award sums being remitted. By making the RBI bound by an arbitral / court decision, the Court has effectively limited the RBI's role.

At a broader level, the decision represents a continuation of a recent trend, where courts are making it increasingly difficult for Indian parties to use FEMA as a defence for resisting contractual obligations. The decision explicitly recognises that while adjudicating public policy concerns, courts should factor-in the importance of holding Indian parties to their contractual commitments, and the role this plays in building a favourable foreign investment climate. For this reason alone, the decision of the Delhi High Court is quite laudable.