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Rajat Taimni, partner in the Mumbai office of Tuli & Co is referred to for his role as briefing counsel in Venture Global's efforts before the Supreme Court of India.

Satyam vs Venture Global back in the Supreme Court: Salve and KKV in this key arbitration dispute

The Andhra Pradesh High Court has allowed Satyam's plea that the subsequent developments relating to the confession of its former chairman Ramalinga Raju and the investigation by various agencies are not relevant and cannot be introduced to challenge a foreign arbitral award in favour of Satyam.

The dispute arises out of a joint venture between Satyam Computer Services (Satyam) and Venture Global Engineering (Venture) on account of which the parties went for arbitration. The London Court of International Arbitration by an award dated April 4, 2006 ruled in favour of Satyam and held that Satyam was entitled to buy out Venture's share in the joint venture company holding at the contractually stipulated price. Venture unsuccessfully challenged the award before the US Courts. Satyam also enforced the award in US Courts. The district court had appointed Vikramaditya S. Khanna, Professor at Michigan Law School to give expert evidence on Indian law. Brad Ruskin, co-Chair of the Litigation & Dispute Resolution Department and Litigation Partner, Matthew Triggs at Proskauer Rose led the team for Satyam.

Venture filed a suit before the Indian Court challenging the foreign arbitral award. Both the Civil Court and the High court rejected Venture's suit on the ground that a foreign award cannot be challenged by a suit and therefore the suit is not maintainable. In appeal, the Supreme Court in a very controversial decision in *Venture Global v. Satyam Computer Services Ltd*, [(2008) 4 SCC 190] had held that even a foreign award can be challenged under Section 34 of the Arbitration & Conciliation Act, although Section 34 deals with challenge to a domestic award.

The Supreme Court decision has been criticized and has now been referred to a larger bench. Foreign law firms such as White & Case and Vinson & Elkins, have referred to this decision as a major setback for arbitration in India. Senior Advocates K.K. Venugopal, Gaurav Banerjee and P.P. Rao represented Venture who were briefed by Partner Rajat Taimni of Tuli & Co. Senior Advocate Rohinton Nariman represented Satyam.

Pursuant to the Supreme Court judgment, the matter was remanded to the Hyderabad Civil Court. While the matter was pending before the Hyderabad Civil court, the Chairman of Satyam, Ramalinga Raju confessed to a major fraud by his January 7, 2009 letter. Later, Tech Mahindra bid for Satyam and was rebranded as Mahindra Satyam. Venture then moved a petition before the Civil Court seeking to bring on record various documents and pleadings regarding the fraud arising out of the Ramalinga Raju's letter and sought to challenge the foreign arbitral award on the basis of Raju's letter.

The Civil Court allowed Venture's petition. Mahindra Satyam filed an appeal before the High Court. The Division Bench of the A.P. High Court speaking through Justice V.V.S. Rao in a detailed judgment held that the statement made by Ramalinga Raju and the subsequent details

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of investigation have no nexus whatsoever with the foreign arbitral award and are therefore irrelevant for evaluating the validity of the foreign arbitral award in favour of Satyam.

The High Court also held that Venture's application was time barred. The Arbitration Act gives a party only 90 days to file a petition to challenge an Award. Venture had filed a petition almost three years after the Award was delivered. The Court held that a party challenging the Arbitral Award cannot file an amendment or introduce fresh facts on record after the time limit for challenging the Award has expired. The High Court also held that the party is precluded from raising fresh grounds in the challenge proceedings before the Civil Court, which were not raised before the Arbitrator.

Mahindra Satyam was represented by father son duo, Senior Counsel Ramakrishna Reddy and K. Vivek Reddy. Senior Counsel Prakash Reddy along with Advocate S. Niranjana Reddy represented Venture.

The matter has now reached the Supreme Court with Venture appealing the High Court verdict. Senior Counsels Harish Salve and Ramakrishna Reddy briefed by Vivek Reddy are representing Satyam. Senior Counsel K.K Venugopal is back to defending Venture.

This High Court judgment has thrown light on the grey area of law. After this judgment, the 90-day limit prescribed by the Arbitration Act for setting aside the Arbitral Award will apply not only for a petition to challenge the Award, but also for amendment to the petition. In other words all grounds to challenge the Award must be raised within a period of 90 days.

To see the full details, please visit:

www.barandbench.com/userfiles/files/File/petn_no.5712_of_2009.htm

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