# A NEW DAWN FOR INDIA- REDUCING COURT INTERVENTION IN ENFORCEMENT OF FOREIGN AWARDS

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## I. Introduction

*"Public Policy is an unruly horse, and when you get astride it you never know where it will carry you."*[1]

The doctrine of public policy has truly been an unruly horse for international arbitration in India. It had become an established practice to challenge the enforcement of any international arbitration award in India under the guise that the award breached "public policy".[2] This was mainly due to the fact that the Supreme Court of India's judgments in *Bhatia International* v. *Bulk Trading SA* ("Bhatia International")[3] and in *Venture Global* v. *Satyam Computer Services Ltd. & Anr.* ("Venture Global")[4], held that the public policy exception of Section 34 of the Arbitration and Conciliation Act, 1996 ("the 1996 Act") also applies to foreign arbitrations. This was rectified in the seminal decision of *BALCO* v. *Kaiser Aluminum* ("BALCO")[5] where the Supreme Court held that the Part I of the 1996 Act does not apply to foreign seated arbitrations.

However, there still remained ambiguity as to whether under Section 48 of the 1996 Act (Enforcement of a foreign award under the Convention on the Enforcement of Foreign Arbitral Awards, 1958 ("the New York Convention") the expanded the scope of the

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[1] Mr Justice Burrough noted "Public Policy is an unruly horse, and when you get astride it you never know where it will carry you. It may lead you from sound law. It is never argued at all but when other points fail" Richardson v Mellish (1824) 2 Bing 228.

[2] *See* Bharat Aluminium Company v. M/s Trafigura, (Interim order, High Court of Chattisgarh, Writ Petition No 4633 of 2008, Aug. 28, 2008) (India).

[3] (2002) 4 SCC 105.

[4] Venture Global v. Satyam Computers Services Ltd. and Anr. A.I.R. 2008 SC 1061 (India).

[5] 2012 (8) SCALE 333 (India).

public policy doctrine would be applicable as it was in *Phulchand Exports Ltd* v. *OOO Patriot.*[6]

In the recent case of *Shri Lal Mahal Ltd* v. *Progetto Grano Spa* ("Shri Lal Mahalal case")[7], the Supreme Court has finally narrowed the scope of the defence of public policy and reinforced the pro-enforcement policy of the Indian Courts as evidenced in *BALCO*.

Before delving into the *Shri Lal Mahal* case, it is important to discuss the history of the application of public policy as an exception to enforcement of an award in Indian courts.

**History of the Public Policy Doctrine**

Section 23 of the Indian Contract Act, 1872 encapsulates the concept of public policy.[8] It states *"The consideration or object of an agreement is lawful, unless it is forbidden by law; or is such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent; or involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement, of which the object or consideration is unlawful, is void".*

The 1996 Act is by and large an integrated version of The Arbitration Act, 1940 which governed the domestic arbitration, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Award (Recognition and Enforcement) Act, 1961, which governed international arbitral awards.

The Arbitration Act, 1940 did not contain any reference to the term "public policy". The Foreign Award (Recognition and Enforcement) Act, 1961("the 1961 Act"), which was an Act to give effect to the New York convention, incorporated the term "public policy". Section 7(1)(b)(ii) of the 1961 Act held that *"A foreign award may not be enforced under this Act- ... (b) if the court dealing with the case is satisfied that-... (ii) the enforcement of the award will be contrary to public policy."*

The 1996 Act consists two parts, Part I and Part II. Part I of the 1996 Act applies to all arbitrations where the place of arbitration is India. Part II of the 1996 Act applies to the

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[6] (2011) 10 SCC 300 (India).
[7] (Civil Appeal No. 5085 of 2013 arising from SLP(c) No. 13721 of 2012).
[8] O.P MALHOTRA, THE LAW AND PRACTICE OF ARBITRATION AND CONCILIATION 788 (2002).

enforcement of foreign awards. The term 'public policy' has been used twice in the 1996 Act. An award can be set aside under Section 34 of the 1996 Act (Part I) if the award is in conflict with the public policy of India. Further, a foreign award may be refused enforcement under Section 48 of the 1996 Act (Part II of the 1996 Act) if the award is contrary to the public policy of India.

Section 34 of the 1996 Act (similar to Article 34 of the UNCITRAL Model Law) states:

*"(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub- section (2) and subsection (3).*

*(2) An arbitral award may be set aside by the Court only if-*

*(b) The Court finds that-*

*(i) The subject- matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*

*(ii) The arbitral award is in conflict with the public policy of India.*

*Explanation.- Without prejudice to the generality of sub clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.*"

Section 48 of the 1996 Act sets out the conditions for enforcement of foreign awards under the New York Convention:

*(2) Enforcement of an arbitral award may also be refused if the Court finds that-*

*(a)The subject- matter of the difference is not capable of settlement by arbitration under the law of India; or*

*(b) The enforcement of the award would be contrary to the public policy of India.*

*Explanation - Without prejudice to the generality of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption."*

The first time the question of public policy arose as an exception for enforcement of a foreign arbitral award was in the case of *Renusagar Power Electric co* v. *General Electric Co*

("Renusagar")[9], which involved enforcement of an ICC Award. This was the pre-1996 Act case and the award was being enforced under the 1961 Act.

The Supreme Court held that the expression "public policy" in Section 7(1)(b)(ii) of the 1961 Act meant the public policy as applied by the Indian courts. It recognised that:

*"Public policy connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or the public interest or what is injurious or harmful to the public good or public interest has varied from time to time."*

The Supreme Court held that the expression "public policy" could be construed widely or narrowly and adopted a narrow view in reference to the enforcement of a foreign award. The Court stated that the term "public policy" "*has been used in a narrower sense and in order to attract to the bar of public policy the enforcement of the award must invoke something more than the violation of the law of India..... Applying the said criteria it must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to:*

*(i) Fundamental policy of Indian law; or*

*(ii) The interests of India; or*

*(iii) Justice or morality."*

The defence of public policy to set aside an award under Section 34 of the 1996 Act then arose in the case of *Oil and Natural Gas Corporation* v. *Saw Pipes Ltd*[10] case ("Saw Pipes case"). The issue was whether an award made in India could be set aside on the ground of public policy; that the arbitral tribunal had incorrectly applied the law of liquidated damages.

Despite the *Renusagar* precedent, the Supreme Court held that any arbitral award which violates Indian statutory provisions is "patently illegal" and contrary to public policy. The court in *Saw Pipes* differentiated the case from that of *Renusagar* on the ground that the question in the latter case was related to an execution of an award which had attained

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[9] AIR 1994 SC 860 (India).
[10] (2003) 5 SCC 705 (India).

finality under the 1961 Act. By contrast, in *Saw Pipes,* the validity of the award was in question. The argument accepted by the court was that the foreign award could be set aside under the relevant law by the competent authority where it was being enforced. Thus, in the *Saw Pipes* case the domestic award would be supervised by Indian courts as they were the primary courts. Further, it held that if a narrow meaning was given to the term "public policy," some of the provisions under the 1996 Act would become inapplicable. Therefore, the Supreme Court interpreted Section 34 (2)(b)(ii) of the 1996 Act to include the additional ground of "patent illegality"[11]. The illegality must go to the "*root of the matter*" and must not be of a trivial nature. In another case, the Supreme Court held that an award that is contrary to the specific terms of the contract is patently illegal and can be thus set aside on public policy grounds.[12]

The Supreme Court in *Saw Pipes* quoted the opinion of Late Sr. Advocate Nani Palkhiwala[13] who stated that *"The new arbitration law has been brought in parity with statutes in other countries, though I wish that the Indian law had a provision similar to Section 68 of the English Arbitration Act, 1996 which gives power to the court to correct errors of law in the award. I particularly endorse your comment that courts of law may intervene to permit challenge to an arbitral award which is based on an irregularity of a kind which has caused substantial injustice. If the arbitral tribunal does not dispense justice, it cannot truly be reflective of an alternate dispute resolution mechanism. Hence, if the award has resulted in an injustice, a court would be well within its right in upholding the challenge to the award on the ground that it is in conflict with the public policy of India"*. The court justified the insertion of "patent illegality" on the grounds that it considered that the Indian

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[11] *Id.* ¶30-31. The court referred, *inter alia*, to Section 28 of the Act, which provides for the rules applicable to the substance of the dispute. Section 28(1) refers to the substantive law to be applied in domestic arbitrations and international commercial arbitrations. Section 28(3), which applies to both domestic and international arbitrations, provides that: "*In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction*." On this basis, the court held that an award contrary to the substantive law to be applied to the dispute, the Act or the terms of the contract could be patently illegal.

[12] Hindustan Zinc Ltd v Friends Coal Carbonization, [2006] 4 SCC 445 (India).

[13] *See* JUSTICE DR. B.P. SARAF AND JUSTICE S.M. JHUNJHUNUWALA, LAW OF ARBITRATION AND CONCILIATION (2012)

arbitration Act should contain a provision similar to the "errors of law" under the English Arbitration Act of 1996[14].

This additional ground for setting aside an award expanded the scope for judicial intervention. By equating "patent illegality" to an "error of law", the Supreme Court effectively paved the way for losing parties to apply in Indian courts on the basis of any alleged contraventions of Indian law.[15]

**Public policy doctrine in England**

One of the reasons as to why the Supreme Court of India expanded the scope of the term "public policy" in the *Saw Pipes* case was to bring parity with the English Arbitration Act, 1996. It would therefore be interesting to analyse as to how the public policy doctrine is applicable in England.

Section 68 of the English Arbitration Act 1996 provides that an award can be set aside in whole or in part on the ground of serious irregularity. Section 68(2)(g) states that "*Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant*: ...(g)*the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy*."

Setting aside an award under Section 68(2)(g) of the English Arbitration Act, 1996 has a higher threshold than under Article 34(b) (ii) of the Model Law[16]. This was highlighted by the House of Lords in *Lesotho Developments* v. *Impregilo Spa*[17]. The Court of Appeal in *Deutsche Schachtbau* v. *National Oil*[18], held that to establish public policy *"It has to be shown that there is some element of illegality or that the enforcement of the award could be clearly injurious to public good or, possibly, that enforcement would be wholly offensive to the ordinary, reasonable and fully*

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[14] Section 68 of the English Arbitration Act allows challenges to an award due to serious irregularity and Section 69 allows an appeal to the court on a question of law.
[15] *See* Aloke Ray and Dipen Sabharwal, *What Next for Indian Arbitration?,* The Economic Times, Aug. 29, 2006.
[16] Section 34 (2)(b(ii) of the 1996 Act is similar.
[17] [2006] 1 AC 221(India). The court referred to the Departmental Advisory Committee on Arbitration (DAC) explanation that Section 68 "*is really designed as a long stop, only available in extreme cases, where the tribunal has gone so wrong in its conduct of the arbitration in one of the respects listed in the section that justice calls out for it to be corrected".*
[18] [1987] 3 WLR 0123.

*informed member of the public on whose behalf the powers of the State are exercised*. "Section 103(3) of the English Arbitration Act, 1996 provides that the recognition and enforcement of a New York Convention award may be refused if it "*would be contrary to public policy to recognise or enforce the award*".

In England, the pro-enforcement bias under the New York Convention has been faithfully and consistently observed.[19] The national courts in England are reluctant to excuse an award from enforcement on grounds of public policy and interpret it restrictively[20].

In *Soleimany* v. *Soleimany*[21], the case involved smuggling of carpets out of Iran. The English court refused enforcement as it held that it is contrary to public policy to give effect to an agreement to carry out an illegal act.

In *Westacre Investments Inc.* v. *Jugoimport*[22], the Court of Appeal did not refuse enforcement of an award where there was an allegation of bribery to the Kuwaiti officials. The Court held that as the arbitral tribunal rejected the allegations and that the substantive law of the dispute was Swiss law it would respect the decision of the tribunal. Further, it acknowledged that there was a need to maintain a balance between public policy considerations of discouraging illegality and principles of comity in not enforcing awards made in violation of other States' laws and against the policy of giving effect of finality of awards. The Court suggested that unless the contract contained universally condemned activities; or corruption or fraud in international commerce, the public policy exception would not be attracted to contracts which are not performed in England.

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[19] NIGEL BLACKABY, CONSTANTINE PARTASIDES ET AL., REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION 656 (2009).
[20] CRAIG TEVENDALE AND ANDREW CANNON, CHAPTER 26- ENFORCEMENT OF AWARDS IN ARBITRATION IN ENGLAND WITH CHAPTERS ON SCOTLAND AND IRELAND 580 (Julian Lew QC, et al., eds., 2013).
[21] [1999] QB 785.
[22] [2000] QB 288.

The English courts adopt a restrictive approach in the challenges to an award, which mirrors the dual principles of party autonomy and finality of the award on which the English Arbitration Act, 1996 is based[23].

**Abuse of the doctrine in India after *Bhatia International* and *Satyam* Judgments**

The Supreme Court of India gave a narrow interpretation to 'public policy' in *Renusagar* and a broader interpretation in the *Saw Pipes* case. In effect, this means that there existed different interpretations to the term 'public policy' for refusing to set aside an arbitral award due to public policy on one hand and for refusing to enforce a foreign award due to public policy on the other hand. This however changed after the ruling of the Supreme Court in *Bhatia International* and *Venture Global*.

In *Bhatia International*, the court categorically erased the distinction between Part I & Part II of the Act, stating that provisions of Part I would apply to all arbitrations and all related proceedings. For arbitrations held in India, the provisions would be compulsorily applicable and only the derogable provisions of Part I could be deviated from. In international commercial arbitrations, held outside India, the provisions of Part I would apply by default unless the parties expressly or impliedly, excluded all or any of its provisions[24].

The Supreme Court in *Satyam* went further and applied the expanded view of public policy for setting aside a foreign arbitral award. In this case Satyam Computer Services Limited ("*SCS*"), entered into an agreement with Venture Global Engineering ("*VGE*") to create a joint venture company -Satyam Venture Engineering Services Ltd. Another agreement was executed between the same parties, the shareholder agreement ("*SHA*"), wherein an arbitration clause was inserted. The arbitration clause provided that the state law of Michigan would be the governing law of the contract.[25]

SCS alleged that VGE had committed an event of default under the SHA and thus exercised its option of purchasing VGE's joint venture shares at its book value. On

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[23] ANDREW TWEEDDALE AND KEREN TWEEDDALE, ARBITRATION OF COMMERCIAL DISPUTES – INTERNATIONAL AND ENGLISH LAW AND PRACTICE 766 (2005).
[24] *See* HARSH SETHI AND ARPAN KR GUPTA, INTERNATIONAL COMMERCIAL ARBITRATION AND ITS INDIAN PERSPECTIVE 279 (2011).
[25] *Id.*

arbitration, the arbitrator directed VGE to transfer the shares to SCS and consequently, SCS filed for enforcement of the award before the US District Court, Michigan. VGE objected to the enforcement, arguing that it was in violation of FEMA regulations in India.

After the *Bhatia International* decision, Part I of the Act was applicable to all arbitrations. Even though in the *Satyam* case, the award was not a domestic award, the Supreme Court held that the award can be set aside under the public policy exception in Section 34(2)(b)(ii) of the Act. The court further held that this would not be inconsistent with Section 48 of the 1996 Act, or any other provision of Part II of the 1996 Act. Moreover, it remarked that as the award, its enforcement, the concerned companies and the entire transaction had a "close nexus" with India, SCS could not evade the laws of India by taking the award to foreign courts.

Both these judgments were widely criticized and they led to a situation where as soon as a foreign award was issued, parties often strategically challenged the arbitration award in Indian courts on the grounds of public policy. This went against the basic principle of mutual recognition and enforcement of arbitral awards expressed in the New York Convention. Recognition of an international arbitration award is of paramount importance. Unless parties can be sure that at the end of the arbitration proceedings, if not complied with voluntarily, they will be able to enforce the award, an award in their favour will only be a pyrrhic victory.[26] The only practical solution was that the parties routinely agreed in their arbitration clauses that Part I of the Act was not applicable[27]. Party autonomy is a key feature in international arbitration and Indian courts were forced to give effect to the parties' agreement. Around this time in 2002, International Law Association ("ILA") Committee on International Commercial Arbitration presented a

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[26] JULIAN D LEW, LOUKAS MISTELIS AND STEFAN KROLL, COMPARATIVE INTERNATIONAL COMMERCIAL ARBITRATION 688 (2003).
[27] *Following* Bhatia International v. Bulk Trading (2002) 4 SCC 105 (India).

Final Report and Recommendations on Public Policy as a Ground for Refusing Recognition or Enforcement of International Arbitration Awards.[28]

The ILA Report and Recommendations addressed the public policy concerns under the New York Convention, which provides that under Article V(2)(b), recognition and enforcement of an award may be refused if it would be "*contrary to the public policy of that country*". The ILA Committee stated in its Interim Report that: "*The public policy exception to enforcement is an acknowledgement of the right of the State and its courts to exercise ultimate control over the arbitral process. There is a tension, however, which the legislature and courts must resolve between: on the one hand, not wishing to lend the State's authority to enforcement of awards which contravene domestic laws and values; and, on the other hand, the desire to respect the finality of foreign awards. In seeking to resolve this tension, some legislatures and courts have decided that a narrower concept of public policy should apply to foreign awards than is applied to domestic awards. This narrower concept is often referred to as international public policy (or ordre public international*)."

Thus, the ILA recommended that international public policy should be construed in a narrow and restricted manner. International public policy should include " *(i) fundamental principles, pertaining to justice or morality, that the State wishes to protect even when it is not directly concerned (ii) rules designed to serve the essential political, social or economic interests of the State, these being known as "lois de police" or "public policy rules" and (iii) the duty of the State to respect its obligations towards other States or international organisations*." [29]

It was not all gloom everywhere in India. In January 2011, the Delhi High Court in *Penn Racquet Sports* v. *Mayor International Ltd*[30] applied the restrictive approach of *Renusagar* and ruled that a mere violation of Indian law would not be considered as a violation of the public policy of India. The Delhi High Court held that the term "public policy" in the context of enforcement of a foreign award under Section 48 of the 1996 Act is to be construed more narrowly than in the context of setting aside under Section 34. It

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[28] *Available at* http://www.ila-hq.org/en/Others/document-summary.cfm/docid/BD0F9192-2E98-4B17-8D56FFE03B80B3EA . It was preceded by an Interim Report in 2002. *See* [2003] 19 Arbitration International 213.
[29] ILA Recommendation 1 (d), supra at (fn. 28).
[30] 2011 (122) DRJ 117 (India).

distinguished *Venture Global* on the basis that the award before it did not suffer from any patent illegality. The court held:

"*As held by the Supreme Court, the recognition and enforcement of a foreign award cannot be denied merely because the award is in contravention of the law of India. The award should be contrary to the fundamental policy of Indian law for the Courts in India to deny recognition and enforcement of a foreign award. The other grounds recognized by the Supreme Court to refuse recognition and enforcement of a foreign award are that the award is contrary to the interests of India, or justice or morality. Merely because a monetary award has been made against an Indian entity on account of its commercial dealings, would not make the award either contrary to the interests of India or justice or morality*."

However, the Supreme Court decision in *Phulchand Exports Ltd v OOO Patriot*[31] brought back the concerns. In this case, the Indian company challenged an award in favour of the Russian company rendered by the International Court of Commercial Arbitration at the Chamber of Commerce and Industry of the Russian Federation, Moscow. This was after the Russian company applied for enforcement proceedings under Section 47 and 48 of the 1996 Act. The Indian company claimed that the award should be set aside as it was "patently illegal" and therefore violative of public policy of India. The question before the court was whether under Section 48(2) of the 1996 Act, the term "public policy" would include a wider meaning as it did in the case of *Saw Pipes* case.

The court held that there was no distinction between the interpretation of the term "public policy" in setting aside under Section 34 of the 1996 Act and enforcement of a foreign award under Section 48 of the 1996 Act. The court held that a foreign award can be set aside under Section 48(2)(b) of the Act "if it is patently illegal". The court then conducted an extensive review of the merits of the case and then found that the award did not violate the public policy in India.

This decision caused considerable apprehension amongst commercial parties as the reopening of a case on merits at the time of an enforcement proceeding would lead to much uncertainty.

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[31] (2011) 10 SCC 300 (India).

**Opportunity missed in BALCO v Kaiser Aluminum**

The long anticipated decision of *BALCO* finally made a distinction between Part I and Part II of the 1996 Act. The Supreme Court overruled *Bhatia International* on the basis that the 1996 Act reinforced the territoriality principle and held that the Part I of the 1996 Act would not be applicable to an arbitration not seated in India. Therefore a foreign seated arbitration award can no longer be challenged under Section 34 of the 1996 Act. This decision was one of the most eagerly awaited in recent years and finally helped restoring the confidence of the foreign parties by restricting the intervention of Indian courts in foreign arbitrations.

However even after *BALCO*, the issue as to whether the recognition of a foreign award under Section 48 of the 1996 Act will be refused on the ground of patent illegality (as the Supreme Court held in the case of *Phulchand Exports Ltd* v. *OOO Patriot*) is unresolved. This has now been finally rectified in *Shri Lal Mahal Ltd.*[32]

**Facts of Shri Lal Mahal v Progetto Grana SpA**

This case concerned a dispute between an Indian supplier and an Italian buyer in a contract for the supply of Indian origin durum wheat. The seller relied on a certificate of quality provided by a certifying agency C.G.S. India at the port of loading in India. The buyer then sent the certificate to C.G.S. Geneva for issuing another certificate for a further sale to a third party. C.G.S. Geneva certificate showed that the wheat was a soft common wheat and not durum wheat as was required by the contract. The buyer considered that the suppliers were in breach of the contract for shipping non-contractual goods and asked for damages.

The dispute was heard by an arbitral tribunal constituted under the Grain and Feed Trade Association ("GAFTA") contract, seated in London. Another arbitration claim was made by the buyer after the supplier had filed a petition in Delhi High Court for a declaration that no arbitration existed between the parties, for breach of arbitration agreement. Both awards found in favour of the buyer and awarded damages against the supplier. These awards were further appealed (under the GAFTA Arbitration Rules) to

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[32] (Civil Appeal No. 5085 of 2013 arising from SLP(c) No. 13721 of 2012).

the Board of Appeal where they were dismissed. An appeal under Section 68 of the English Arbitration Act, 1996by the supplier before the High Court of Justice in London to set aside the award was also rejected.

The buyer instituted a suit for enforcement of both the awards in the Delhi High Court. The Delhi High Court found in favour of the buyer and rejected the challenges of the seller. The seller subsequently filed a Special Leave Petition to the Supreme Court to challenge the enforcement of the awards on the ground that the awards are contrary to the public policy of India.

**Decision of the Supreme Court**

The Supreme Court (sitting as a 3 member bench) rejected the argument that the wider meaning given to the expression "public policy" in *Saw Pipes* case would be applicable in the case of enforcement under Section 48 of the 1996 Act. The court applied the decision of *Renusgar,* and held that for the purposes of Section 48(2)(b) of the 1996 Act, the expression "public policy of India" must be given a narrow meaning[33].

The court also referred to *Phulchand Exports* where the Supreme Court (sitting as a 2 member bench) had previously held that the meaning given to term "public policy" under Section 34 of the 1996 Act must be same as that given under Section 48 of the 1996 Act and must include the ground of "patent illegality" to refuse enforcement. The court overruled *Phulchand Exports* on the ground that it does not lay down the correct law and applied the decision of *Renusagar* to apply a narrow approach to the term "public policy" for enforcement of foreign awards. Section 48(2)(b) of the 1996 Act would not include additional ground of patent illegality. Ironically, Justice Lodha who was in the bench of *Phulchand* case was also a member of the three member bench of *Shri Lal Mahal.*

**Conclusion**

After the Supreme Court of India's decision in *BALCO* and *Shri Lal Mahal*, the Indian courts have come a long way from a decade long of interventionist approach in international arbitrations. Although the Supreme Court in *Shri Lal Mahal* endorses a

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[33] An award will be against the public policy of India if such enforcement would be contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality."

narrow construction of the term "public policy", which includes "*the interests of India*" within its definition, this might however be still considered quite broad.

Still, the aforementioned decisions along with other decisions of the Supreme Court and other High Courts, have demonstrated that the Indian courts are now pro-arbitration and would not intervene in the arbitration process unnecessarily[34]. There has also been tendency of the Indian courts where the decision of *BALCO* is not applicable, to not apply Part I of the Arbitration Agreement by differentiating *Bhatia International*[35].

These decisions indicate the importance placed by Indian courts on enforcing arbitration agreements and not allowing interference from Indian courts. This would also reduce the tactical challenges attempted by the losing party to an arbitration award in the Indian courts. The international arbitration carriage of India is ready to reach its potential after finally reigning in the unruly horse of public policy!

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[34] *See* Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd 2013 STPL (Web) (India); *See also* Indiabulls Financial Services Limited (India) v.Amaprop Limited (Cayman Islands) &Anr (Delhi High Court, O.M.P. 287 of 2011, May 18, 2012).

[35] *See* Videocon Industries Ltd. v. Union of India, (2011) 6 SCC 161 (India).