



Reaching Across Borders – The Hague Convention of 18th March, 1970 on The Taking of Evidence Abroad in Civil or Commercial Matters

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The Hague Evidence Convention – A prologue:

The Convention of 18th March, 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, also known as the Hague Evidence Convention aims to provide effective means reconciling differences between various legal systems and assists and improves judicial cooperation between member countries for collection of evidence in civil and commercial matters and it mentions in non-mandatory terms that it is intended to 'facilitate' discovery and to 'improve mutual judicial co-operation'. India ratified the convention on 7th February, 2007.

The Hague Evidence route is resorted to in cases where a witness who is not party to a civil proceeding is located in a foreign jurisdiction such as India and evidence / deposition is to be collected from the witness for the civil proceeding pending in an overseas jurisdiction such as USA. The standard practice under this convention is for the concerned court of the Requesting State (sender) to address a letters rogatory to the Central Authority of the Requested State (The Ministry of Law and Justice, Deptt. of Legal Affairs for e.g. India) with a copy marked to the Registrar General of the concerned High Court within whose jurisdiction the concerned witness is located. The letters rogatory should also specify the various questions and/or documents or evidence that the witnesses require to answer and produce.

As the above process is through the diplomatic channel and is time consuming, a novel way of expediting the proceeding was developed. In this route, once a copy of the letters rogatory issued by the requesting state is received by the Plaintiffs, they then file an appropriate petition before the concerned High Court invoking the relevant provisions of the Indian Code of Civil Procedure, 1908 whilst highlighting the India's obligation under the Hague Evidence Convention. This mechanism has proved to be extremely fast and productive and has been successfully implemented in various cases and the Indian Courts have passed detailed orders in this regard.

Indian Judiciary & the Hague Evidence Convention:

In Pfizer Inc. and Ors. Vs. Unimark Remedies Limited; Misc. Petition (L) No. 56 of 2016 the Bombay



High Court passed an order dated 04.05.2016 allowing a Hague Petition and appointing a Commissioner to record the evidence that was required in a civil and commercial proceeding pending before the US District Court, Delaware whilst holding that not allowing such a petition would not only be most improper but would possibly be in direct contravention of the country's treaty obligations under the Hague Convention. As the evidence to be collected was technical / scientific in nature, the court appointed a scientist and a retired Head of the Chemistry Dept. of a prestigious Indian Institute as the Commissioner. The Court in this case set up a confidentiality club to protect the interests of all parties including the witnesses. The Court also set a deadline for the deposition and collation of evidence and thereafter directed the Commissioner to submit the deposition and evidence collected with the Registrar General of the Bombay High Court, who in turn was requested to forward the same to the Requesting Court.

Similar orders have also been passed by various other Indian courts where the Requesting Court was a USA district court and the witness was located in India. The details of some of such orders are given below:

- Order dt. 12.03.2019 passed by the High Court for the State of Telangana in Teva Pharmaceuticals International GmbH & Ors; Vs. Orbicular Pharmaceuticals Technologies Pvt. Ltd.; O.P. No. 1 of 2019
- Order dt. 01.07.2009 of the Punjab and Haryana High Court in Aventis Pharmaceuticals Inc. & Anr. Vs. Barr Laboratories, Inc. & Ors.; Civil Original Petition No.2 of 2008
- Order dt. 08.12.2008 of the High Court of Andhra Pradesh in Aventis Pharmaceuticals Inc. Vs. Dr. Reddy's Laboratories Inc.; 2009(1)ALT362
- Order dt. 14.03.2011 of the Division Bench of the Andhra Pradesh High Court in Dr. Reddy Laboratories, Inc. & Anr. Vs. Aventis Pharmaceuticals Inc. & Anr.; Original Side Appeal No. 24 of 2008.
- Order dt. 21.6.2019 of the Bombay High Court in Thompson Coburn LLP & Ors. v. Maharashtra Hybrid Seed Company Ltd.; Misc. Petition (L) No.64 of 2019

Voluntary Evidence – A deviation from the Hague route:

There have been various cases where the witness located in India had agreed to give evidence voluntarily and without going through the Hague route. These proceedings have also been successful. In a recent proceeding, the witness located in India had agreed to voluntarily depose and subject herself to cross-examination in relation to a proceeding pending before the US Bankruptcy Court for the Eastern District of Texas, Sherman Division. The deposition of the witness was conducted and the same was extremely successful resulting in the debtor agreeing to have their claims dismissed before the US Court. However, some disadvantages with voluntary deposition is that the witness may not answer certain questions, may intentionally give incorrect answers as he/she is not under an oath to give correct statements, the witness may prolong the proceedings.

Conclusion:



Collection of evidence through the Hague route should always be preferred as the same is time bound and will always be conducted under the aegis of the concerned High Court in India giving the best results. Also, the witnesses giving evidence under this route will be under an oath to give correct statements and will also not be able to delay the proceedings by making excuses of non-availability, evidence cannot be produced due to its confidentiality etc. The concerned court can device systems such as time bound orders, setting up of confidentiality clubs, having the evidence sent directly to the Requesting Court etc. to ensure that the proceedings are conducted rapidly and in a productive manner, whilst ensuring that the rights and interests all concerned parties are safeguarded. Therefore, with the intervention of the Indian Courts, the Hague Evidence Convention Route has streamlined the collection of evidence in cross-border cases.



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