

Indian and East Asian companies battle it out

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Coal power plant (Credit: istock.com/kamilpetran)

UPDATED. A Korean state-owned power company has filed a SIAC claim against its Indian partner in the construction of a coal-based power plant – prompting a US\$600 million counterclaim – while a dispute between Indian and Japanese parties that was heard under ICC rules has reached the end of the road in India.

GAR understands that Korean South East Power Company, a subsidiary of the state-run Korea Electric Power Corporation, filed for SIAC arbitration in late December, seeking to recover US\$7.5 million it claims it is owed under the agreement to build and operate the power plant. It has nominated Singaporean **Sean Yu Chou** of Wong Partnership as its arbitrator in the Singapore-seated case.

India's Jinbhuvish Power Generations has responded with a US\$600 million counterclaim citing a failure by Korean South-East to adequately invest in the project, as provided for in the contract. It has nominated former SIAC chair **Michael Pryles**, who is Australian, as its arbitrator.

The chair of the tribunal has yet to be appointed.

The plant project at the centre of the dispute is located in the Indian province of Maharashtra, close to Mumbai. According to a report in [The Hindu Business Line](#), Korean South East paid US\$230 million to Jinbhuvish in January 2014 to

acquire a 40% stake in the project, with the Korean company also agreeing to provide technical support to the plant.

The project was divided into two phases with completion scheduled for 2016. It is unclear how it progressed.

Jinbhuvish is represented by a former partner at Nishith Desai in Mumbai, **Prateek Bagaria**, who has recently set up his own international law boutique in the city, Singularity Legal. The Indian company is also relying on Drew & Napier partner **Cavinder Bull SC** in Singapore.

Korean South East has instructed Indian law firm Shardul Amarchand Mangaldas in Mumbai. Neither side wished to comment on the dispute.

Meanwhile, the Indian Supreme Court today rejected an appeal by Indian brothers Malvinder and Shivender Mohan Singh in which they sought to overturn the enforcement of a US\$550 million ICC award won by Japanese drugmaker Daiichi Sankyo in a dispute over its purchase of the brothers 63% stake in Indian pharmaceutical company Ranbaxy Laboratories.

At the time of the purchase, Ranbaxy was under investigation by the US Food and Drug Administration and Department of Justice and a Singapore-seated ICC tribunal composed of **Lawrence Boo** of Singapore, **Karyl Nairn QC** and former Indian chief justice **Aziz Mushabber Ahmadi** upheld allegations that the brothers had concealed and misrepresented critical information relating to the investigation, with Ahmadi issuing a dissent. This finding was based on a damaging self-admission document provided by a whistleblower and in possession of the US authorities.

The award was [enforced](#) in January by the Delhi High Court in January, which held it was in line with Indian public policy. However, the court prevented Daiichi Sankyo from pursuing the assets of the Singhs' children, which it described as “shockingly disproportionate”.

In a decision today, a Supreme Court bench composed of **Justices Gogoi** and **Banumathi** ruled that the Singhs petition for special leave to review that decision was without merit – clearing the way for Daiichi Sankyo to proceed with enforcement against the brothers' companies, including Indian hospital chain Fortis Healthcare and Delhi-based financial services group Religare.

The court said the case was not fit to be reviewed under Article 136 of the Indian constitution; that the reasoning of the arbitral tribunal cannot be interfered with or faulted; and that Daiichi Sankyo should be able to recover the full amount awarded plus interest.

The Supreme Court had previously intervened in the case to prevent the Singhs from selling their interest in Fortis, ordering the brothers to maintain the status quo until the issue of enforcement had been decided.

A representative of P&A Law Offices in Delhi, which represented Daiichi Sankyo in court alongside **Gopal Subramaniam** and other senior advocates, says this is "a big win" for the Japanese company and brings an end to "landmark" arbitration proceedings in India, "with no further recourse left to the Singh brothers". It also paves the way for Daiichi Sankyo's recovery of the money awarded.

P&A also acted in the original arbitration, with Simpson Thacher & Bartlett and Stamford Law Corporation (which withdrew before the final award). Other prestigious recent instructions for the firm include defending India against two investment claims, brought by Japanese carmaker Nissan and a United Arab Emirates investment authority based in Ras-al-Khaimah.

In the Daiichi Sankyo case, set-aside proceedings are still pending at the seat of arbitration, Singapore. Indian counsel have been allowed to appear in the case to argue Indian law issues.

Korean South East Power Company v Jinbhuvish Power Generations

Tribunal

- **Sean Yu Chou** (Singapore) (appointed by Korean South East)
- **Michael Pryles** (Australia) (appointed by Jinbhuvish)

Counsel to Korean South East

- Shardul Amarchand Mangaldas

Counsel to Jinbhuvish Power Generations

- Singularity Legal

Prateek Bagaria

- Drew & Napier

Partner **Cavinder Bull SC** in Singapore

Daiichi Sankyo Company v Malvinder Mohan Singh and others

In the Indian Supreme Court

Bench

- **Justice Gogoi**
- **Justice Banumathi**

Counsel to Singh brothers

Senior Advocates **Harish Salve** and **Dushyant Dave**

Counsel to Daiichi Sankyo

Senior Advocates **Gopal Subramaniam, Arvind Datar, Mukul Rohatgi and Krishnan Venugopal**

P&A Law Offices

Managing partner **Anand Pathak**, partner **Amit Kumar Mishra**, principal associate **Akshat Hansaria**, senior associates **Abhijeet Sinha** and **Mohit Singh** and associates **Akshay Puri, Samridhi Hota, Shivam Pandey** and **Shruti Arora** in Delhi

In the Indian High Court

Bench

- Judge Jayant Nath

Counsel to Daiichi Sankyo

Senior advocates **Gopal Subramaniam, Arvind Nigam, and Arun Kathpalia**

P&A Law Offices

Managing partner **Anand Pathak**, partner **Amit Kumar Mishra**, principal associate **Akshat Hansaria**, senior associates **Abhijeet Sinha** and **Mohit Singh** and associates **Akshay Puri** and **Samridhi Hota** in Delhi

Counsel to the Singh brothers and their companies

Senior advocates **Harish Salve SA, Sandeep Sethi, Neeraj Kishan Kaul and Rajeev Nayyar** with advocates **Anuradha Dutt, Fereshte Sethna, Vijaylakshmi Menon, Ekta Kapil, Neeharika Aggarwal, Akansha Banerjee, Anirudh Bakhru and Chaitanya Kaushik, Siddharth Aggarwal, Rohit Chaudhary, Varun Mishra and Preeti Kohli**

Daiichi Sankyo v RHC Holding Pvt Ltd, Oscar Investments Ltd and others (ICC arbitration)

Tribunal

- Laurence Boo (Singapore) (Chair)
- Karyl Nairn QC (UK) (appointed by Daiichi Sankyo)
- Aziz Mushabber Ahmadi (India) (appointed by the Mohan Singh group)

Counsel to Daiichi Sankyo

- Simpson Thacher & Bartlett

Partners **Robert Smit, Noah Leibowitz and Hank Gutman**, and associates **Katherine Helm, Joshua Slocum, Jordan Botjer, Robert Arnay, Emma Lindsay* and Jeffery Ding**** in New York; partner **Tyler Robinson** in London

- P&A Law Offices in Delhi

*Now counsel at Bryan Cave

****Left Simpson Thacher Bartlett in December 2015**

- Stamford Law Corporation*

Tan Chuan Thye** and Timothy Cooke

** Stamford Law ceased to be involved in the case before the final award. The firm has since merged with Morgan Lewis*

*** Moved to Rajah & Tann in April 2015*

Counsel to the Mohan Singh group (the sellers)

- Paul Hastings

Partner Eric Sussman and counsel Terra Reynolds in Chicago

- Drew & Napier

Directors Davinder Singh and Jaikanth Shankar in Singapore

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