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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 27.08.2025***
Judgment pronounced on: 12.12.2025
Judgment uploaded on: 12.12.2025

\+ FAO(OS) 88/2025, CM APPL. 47877/2025 & CM APPL. 47880/2025

MSA GLOBAL LLC OMAN .....Appellant
Through: Mr. Rajiv Nayar, Sr. Adv. with Mr. Kirat Singh Nagra, Mr. Kartik Yadav, Mr. Pranav Vyas, Ms. Sumedha Chadha and Mr. Sankalp Singh, Advs.

versus

ENGINEERING PROJECTS INDIA LTD .....Respondents
Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Ajit Warrier, Mr. Angad Kochhar, Mr. Himanshu Setia, Mr. Vedant Kashyap, Mr. Sumer Dev Seth, Ms. Riya Kumar, and Ms. Richa Khare, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through this Appeal, the Defendant/Appellant herein assails the correctness of the Order passed on 25.07.2025 by the learned Single

Judge [hereinafter referred to as '**Impugned Order**'], while injuncting continuation of arbitration proceeding in an anti-arbitration suit.

2. The grant of injunction is predicated predominantly on the ground that Mr. Andre Yeap [hereinafter referred to as '**Mr. Yeap**'], a member of the Arbitral Tribunal [hereinafter referred to as '**Tribunal**'], failed to make disclosure about his prior involvement in an arbitration proceeding involving the Defendant and Mr. Manbhupinder Singh Atwal [hereinafter referred to as '**Mr. Atwal**'], who happens to be the MD, Chairman, and Promoter of the Defendant. This then led the learned Single Judge to *prima facie* conclude that if allowed to continue, it would result in the proceedings which are oppressive and vexatious to the Plaintiff/Respondent. With respect to the objections, to the said effect, as raised by the Plaintiff/Respondent herein, the said Arbitrator/member of the Tribunal submitted the following explanation for his non-disclosure and continued non-disclosure by stating as follows:

> *"...Had I made the disclosure, the possibility of the Respondent seeking to challenge my impartiality could not be discounted."*

3. The International Court of Arbitration of the International Chamber of Commerce [hereinafter referred to as '**ICC Court**'] found that there was a non-disclosure on the part of Mr. Yeap, and held that such non-disclosure was ***"regrettable"***, but permitted the continuance of the proceedings with the presence of Mr. Yeap, in respect of whom, the Plaintiff/Respondent had expressed serious reservations.

4. Herein, the parties shall be referred to by their status and rank in the suit, i.e., CS (OS) No. 243/2025.

FACTUAL MATRIX

5. In order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed.

6. The Defendant is a military and security systems integrator company based in Oman, whereas the Plaintiff is a public sector enterprise under the Ministry of Heavy Industries and Public Enterprises (Department of Heavy Industry), Government of India, having its registered office at New Delhi. On 29.06.2015, the Ministry of Defence, Oman, entered into an agreement with the Plaintiff and appointed it as the main contractor for a supply and build project at the Oman-Yemen border. Thereafter, on 21.09.2015, the Plaintiff entered into a sub-contract agreement [hereinafter referred to as '**the Agreement**'] with the Defendant for design, supply, installation, integration, and commissioning of Border Security System for the Engineer-3 Project Section 3 and 4 on the Oman-Yemen border.

7. It may be noted here that the Agreement includes an arbitration clause, i.e., Article 19, which stipulates that all disputes arising between the parties shall be resolved by way of arbitration before a duly constituted Tribunal. It further provides that the jurisdiction in respect of the Contract Agreement shall vest exclusively with the Courts at New Delhi, India, whereas the place of arbitration shall be determined through mutual agreement between the parties. The said Article also mandates that any reference to arbitration shall be

governed by, and conducted in accordance with, the Rules of Arbitration of the International Chamber of Commerce, 2021 [hereinafter referred to as '**ICC Rules**'].

8. Thereafter, a dispute appears to have arisen *inter se* the parties, concerning delays in the performance of contractual obligations under the Agreement. Pursuant thereto, the Defendant invoked the arbitration clause and on 12.04.2023, through its Counsel, filed a request for Arbitration under the ICC Rules and nominated Mr. Yeap as its co-arbitrator.

9. Pursuant to the same, the Secretariat of the International Chamber of Commerce [hereinafter referred to as '**ICC**'] required Mr. Yeap to submit a signed Statement of Acceptance, Availability, Impartiality and Independence in terms of Article 11(2) of the ICC Rules. On 19.04.2023, Mr. Yeap submitted the signed statement of Acceptance, wherein it was stated that '*he had nothing to disclose'*.

10. Thereafter, *vide* letter dated 13.07.2023, the ICC Court fixed Singapore as the place of arbitration. The same is reproduced hereunder:

> *"On 13 July 2023, the International Court of Arbitration of the International Chamber of Commerce ("Court"):*
> *- fixed Singapore as the place of the arbitration (Article 18(1)).*
> *- confirmed Andre Yeap as co-arbitrator upon Claimant's nomination (Article 13(1)).*
> *- confirmed Arjan Kumar Sikri as co-arbitrator upon Respondent's nomination (Article 13(1)).*
> *- fixed the advance on costs at US$ 515 000, subject to later readjustments (Article 37(2)).."*

11. Thereon, from 19.04.2023 to 16.01.2025, the arbitration proceeding continued, and a First Partial Award dated 19.06.2024 was

issued, which burdened the Plaintiff with financial liability to the tune of Rs. 30 crores (approximately).

12. On 17.01.2025, while preparing for the evidential hearings in the ICC Arbitration, the Counsel for Plaintiff learned of a judgment passed by the High Court of Gujarat on 05.07.2024 in ***Neeraj Kumarpal Shah v. Manbhupinder Singh Atwal***[1], wherein, at the very outset, it was noticed that Mr. Yeap failed to disclose his prior professional engagement with the Defendant and his Counsel. On studying the aforesaid judgment, the Counsel became aware that in November 2018, the Defendant and Mr. Manbhupinder Singh Atwal nominated Mr. Andre Yeap, Senior Counsel from Singapore, as a co-arbitrator in the Tribunal in the aforesaid arbitration proceeding. Mr. Kirat Singh Nagra was communicating on behalf of the Defendant herein. In the aforesaid arbitration proceeding, the evidential hearings took place from 13.02.2018 to 18.02.2018, and the Arbitral Award was passed on 16.04.2021 in favour of Mr. Atwal. However, the said Arbitral Award was set aside by the Gujarat High Court *vide* order dated 05.07.2024.

13. Consequently, the Plaintiff, on 19.01.2025, while alleging a lack of disclosure and thereby raising doubts over the independence, neutrality, and impartiality of Mr. Yeap, filed a Challenge Application before the ICC Court under Article 14(1) of the ICC Rules. On 20.01.2025, the Tribunal adjourned the evidential hearing fixed in January 2025 in view of the fact that the Challenge Application was filed. On the same day, the ICC Secretariat requested the Arbitrator

[1] C/ARBI.P/23/2023

and the Defendant to submit their comments on the Challenge Application.

14. Pursuant thereto, on 23.01.2025, Mr. Yeap, in response to the Challenge Application under Article 14(1) of the ICC Rules, provided his explanation in respect of the non-disclosure. He stated that although he became aware of the conflict in October 2024, he did not disclose it, stating, *inter alia*, that "*had I made the disclosure, the possibility of the Respondent seeking to challenge my impartiality could not be discounted.*"

15. Thereafter, on 28.02.2025, the ICC Secretariat informed that on 27.02.2025, the ICC Court: (a) decided that the challenge filed against Mr. Yeap is admissible; (b) rejected the challenge on merit; and (c) decided to communicate reasons for its decision subsequently, once it is finalized.

16. Pursuant to this, on 14.03.2025, the ICC communicated its reasons in support of its decision dated 27.02.2025 for rejecting the Challenge Application [hereinafter referred to as '**ICC Reasons**']. While the ICC Court acknowledged that the non-disclosure by Mr. Yeap was regrettable, it was of the view that the circumstances did not establish justifiable doubts with respect to Mr. Yeap's impartiality and independence.

17. In the interregnum, the Plaintiff objected to the continuance of the arbitration proceeding; however, the Tribunal, on 12.03.2025, communicated its intention to fix the evidential hearings in Singapore from 26.05.2025 to 31.05.2025, while granting liberty to the parties to

seek variation on seven days' notice, should there be a change in circumstances.

18. Meanwhile, on 13.11.2024, the Plaintiff partially challenged the First Partial Award before the Singapore High Court [hereinafter referred to as '**SGHC**'] by filing OA 1185/2024. Thereafter, on 31.01.2025, the Plaintiff approached the SGHC seeking leave to amend OA 1185/2024 to introduce a new ground alleging bias on the part of Mr. Yeap as an additional basis for setting aside the Partial Award. Pursuant thereto, on 03.02.2025, the SGHC granted the Plaintiff permission to file an application seeking the proposed amendment, and accordingly, the Plaintiff filed the relevant application in OA 1185/2024 on 05.02.2025. The abovementioned application was rejected by the SGHC on 27.03.2025. Thereafter, on 10.04.2025, the Grounds of Decision were rendered by the SGHC *vide* judgment titled as ***DLS v. DLT***[2].

19. Parallelly, on or around 11.03.2025, the Defendant filed a petition under Sections 44, 46, 47, and 49 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as '**A&C Act**'], seeking the enforcement and execution of the First Partial Award.

20. Pursuant thereto, on 27.03.2025, the Plaintiff preferred an application before the SGHC under Article 13(3) of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration [hereinafter referred to as '**Model Law**'], read with Section 3(1) of the

[2] [2025] SGHC 61

International Arbitration Act of Singapore, 1994 [hereinafter referred to as '**SG Arbitration Act**'], seeking termination of Mr. Yeap's mandate to continue as a co-arbitrator on the Tribunal.

21. Further, on 28.03.2025, the Plaintiff once again approached the SGHC by way of an application under Sections 3 and 8 of the SG Arbitration Act, read with Articles 6, 12, 13, and 15 of the Model Law, thereby seeking an order for the mandate of Mr. Yeap to be terminated.

22. Meanwhile, on 02.04.2025, during the pendency of the Article 13(3) Challenge Application, the Defendant filed an application before the ICC Court seeking recovery of purported wasted cost for the cancelled evidential hearings in January 2025, which was acknowledged by the Tribunal on 03.04.2025 while granting 14 days period for the Plaintiff to respond, and the Defendant was granted opportunity to file reply within seven days thereafter.

23. Furthermore, on 07.04.2025, the Plaintiff objected to the Tribunal's direction and requested a deferment of further proceedings in the ICC Arbitration, including the Wasted Costs Application, on account of expanding the Article 13(3) challenge, which was rejected by the Tribunal on 08.04.2025. Thereafter, on 15.04.2025, the Plaintiff filed a suit bearing CS (OS) No. 243/2025, seeking declaration and injunctive relief, which was listed before this Court on 17.04.2025, wherein the learned Single Judge directed the Registry to verify the suit and record and submit a note confirming whether the filing was

completed in all respects, while directing that the suit be listed on 21.04.2025.

24. On the next date of hearing, i.e., 21.04.2025, the Defendant entered appearance and objected to the maintainability of the suit. Learned Single Judge left the question of maintainability to be decided on the next date, but issued notice in the application seeking interim reliefs with liberty to the Defendant to file a reply. However, the Tribunal, on 25.04.2025, despite being informed of the pendency of the suit, informed the parties of its decision to proceed with the evidential hearings scheduled for the week commencing on 26.05.2025.

25. On 06.05.2025, the Defendant, apart from objecting to the maintainability of the suit, also objected to the maintainability of a simultaneous proceeding before the learned Single Judge of this Court and the SGHC. Consequently, a statement was made by the Plaintiff that it would consider withdrawing the Article 13(3) Challenge Application filed before the SGHC, which resulted in the adjournment of the hearing to 19.05.2025. On 13.05.2025, the Plaintiff's Counsel issued a letter to the Defendant's Counsel seeking the Defendant's consent to file a joint application before the SGHC for withdrawal of the Article 13(3) Challenge Application, however, there was no response received from the Defendant.

26. Subsequently, on 16.05.2025, the Plaintiff filed a Discontinuance Application before the SGHC, and on 19.05.2025, the learned Single Judge was informed that the Discontinuance

Application for the withdrawal of Article 13(3) challenge had been filed before the SGHC, and summons were directed to be issued, but no order had been passed on this Discontinuance Application. Consequently, the learned Single Judge adjourned the hearing to 26.05.2025.

27. Shortly after the hearing on 19.05.2025, at 12:59 PM, the Defendant executed an agreement with Maxwell Chambers (the designated venue for the evidential hearing). On the same day, at 01:30 PM IST, the Plaintiff's Counsel issued an email to the Tribunal informing that the evidential hearing was set to commence on the same day as the suit was next listed, i.e., 26.05.2025, and submitted that it would be impractical for the Plaintiff to participate in the evidential hearing. Thereafter, at 01:35 PM IST, the Defendant's Counsel issued an email to the Tribunal stating that the learned Single Judge has not granted relief to the Plaintiff despite the Plaintiff pressing for an injunction. Again at 01:57 PM IST, in a subsequent email, the Defendant's Counsel proposed a schedule for the evidential hearings with the Tribunal. Pursuant thereto, at 08:49 PM IST, the Tribunal responded while observing that the Defendant has not addressed the Plaintiff's application, and thereafter invited both parties to respond to a proposal for conducting the hearings remotely. At 10:46 PM IST, the Defendant's Counsel issued another e-mail, insisting on proceeding with the evidential hearing.

28. Subsequently, on 20.05.2025, the Tribunal decided that the evidential hearing would proceed in Singapore as planned, thereafter, Plaintiff issued a letter to the Registrar, Supreme Court, Singapore, to

advance the hearing on the Discontinuance Application. Pursuant thereto, the Registrar issued the summons and fixed the hearing on the said application on 23.05.2025.

29. On 21.05.2025, the Defendant's Counsel issued an e-mail calling upon the Plaintiff to pay fees for the venue of the evidential hearing, i.e., Maxwell Chambers. Thereafter, on 21.05.2025, at 04:21 PM (IST), the Plaintiff formally objected to the Tribunal's decision to proceed with the evidential hearing, which was responded to by the Tribunal, in which the response of the Defendant was sought within 24 hours. On the same day, the Defendant filed a motion for an injunction before the SGHC in the Challenge Application to prevent the Plaintiff from proceeding with the suit.

30. Further, on 22.05.2025, the Defendant's Counsel issued an email to apprise the Plaintiff of its intention to mention the motion for injunction before the Duty Registrar for the said motion to be listed before the SGHC on 23.05.2025. On the same day at 10:22 AM (IST), the Defendant issued an email to the Tribunal and insisted on proceeding with the evidential hearings. At 03:39 PM (IST), the Tribunal apprised the parties, stating that the evidential hearings will commence on 26.05.2025.

31. On the same day, at 10:30 PM (IST), the Plaintiff's Counsel mentioned the matter before the Judge-in-Charge (Original Side) of the SGHC for listing of an urgent application to restrain the Defendant from proceeding with the motion for injunction pending hearing in the suit, which was allowed. However, at 02:42 PM, the Defendant

withdrew the motion for injunction petition as it was inappropriately filed in the pending Article 13(3) Challenge Application, and the Defendant's Counsel informed that a fresh motion for injunction [hereinafter referred to as '**OA 519**'] before the SGHC has been filed by them.

32. Further, on 23.05.2025, at 09:47 AM, the Plaintiff's Counsel was informed that OA 519 was fixed for hearing before the SGHC on 23.05.2025 at 02:30 PM (SGT), and on the same day, the SGHC granted an injunction to the following effect:

> *"(i) granted the injunction prayed for by the Appellant, restraining the Respondent from continuing the suit and initiating or continuing civil proceedings against the Appellant in other jurisdictions.*
> *(ii) did not pass any order in the Discontinuance Application and indicated that it would hear the same at a later date."*

33. Pursuant thereto, on the same day at 03:53 PM (IST), Defendants' Counsel informed the Tribunal about the developments in the SGHC, and also issued a letter stating that Defendant opposes the Discontinuance Application. At 09:56 PM (IST), Defendant's Counsel once again issued an email to the Tribunal enclosing copies of OA 519, summons, and supporting affidavit. Further, the Tribunal sought an explanation concerning the venue and transcription arrangements made for the evidential hearing, which was confirmed by the Defendant on 23.05.2025

34. Thereafter, on 24.05.2025, the Tribunal issued an email to the parties, stating that it awaits developments, while suggesting that the Defendants make all their witnesses and experts available for the evidential hearing on 26.05.2025.

35. On the other hand, *vide* Order dated 07.07.2025, the SGHC rejected the Article 13(3) application & on 24.07.2025, gave its Grounds of Decision in support of the decision dated 07.07.2025.

36. Further, on 26.05.2025, the learned Single Judge started hearing the matter and continued on a day-to-day basis. During the hearing, the Tribunal issued an email to the parties informing them that the evidential hearing had taken place and was now closed, and that they should serve written closing submissions on 31.07.2025. Further, on 16.07.2025, the learned Single Judge recorded that the Defendant pointed out certain other factual aspects that had transpired after the last date of hearing when the judgment was reserved.

37. Upon appreciation of pleadings, *vide* Order dated 25.07.2025, the injunction was granted by the learned Single Judge for the following reasons:

i. The judicial authority of the Civil Courts under Section 9 of the Code of Civil Procedure [hereinafter referred to as 'CPC'] and its inherent powers under Section 151 of the CPC remain preserved to safeguard against the misuse of the arbitral process, unless expressly barred by the statute, which is not the case herein.

ii. In instances where the Tribunal acts contrary to the fundamental tenets of judicial procedure or the governing statute, the Civil Courts shall retain jurisdiction.

iii. The concept of anti-arbitration injunction is not alien to other prominent jurisdictions. However, the power is to be exercised sparingly.

iv. Arbitration proceedings could be injuncted, wherein the attending circumstances would render the continuation of the arbitration proceeding oppressive or unconscionable.

v. The test under Article 11 of the ICC Rules is a pre-emptive and precautionary one. The arbitrator cannot withhold disclosure on the ground that, in his or her view, the fact or association is benign or too remote to influence impartiality.

vi. The conduct of the Defendant therein, when examined holistically, demonstrates a clear pattern of abuse of process intended not to resolve disputes in good faith, but rather to subject the plaintiff therein to procedural hardship and jurisdictional entanglement.

vii. The three essential ingredients of the remedy contemplated in Order XXXIX, Rules 1 & 2 of the CPC, i.e., existence of a *prima facie* case, the balance of convenience in favor of the Applicant, and the likelihood of irreparable injury that cannot be compensated in monetary terms if the interim relief is denied, are satisfied in the present case.

CONTENTIONS OF THE PARTIES:

38. Heard learned Senior Counsel for the parties at length and, with their able assistance, perused the paper book. Learned Senior Counsel have also filed their written submissions, which are on record.

39. Learned Senior Counsel representing the Defendant/Appellant has submitted as follows:

i. Learned Single Judge has ignored that the seat of arbitration was fixed to be Singapore by the ICC Court and the General Division of the SGHC is the supervisory court. Thus, Indian Courts do not have jurisdiction, and the Impugned Order is *per incuriam* in light of settled judicial precedents in relation to foreign seated arbitration and principles for the grant of an anti- arbitration injunction.

ii. In support of his submission, the learned Senior Counsel representing the Defendant relies upon ***Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc. & Ors.***[3] *(‘**BALCO**’)*; ***Mankastu Impex Pvt. Ltd. vs. Air Visual Ltd.***[4]; ***BGS SGS Soma, JV vs. NHPC Ltd.***[5]; and ***Hindustan Construction Company vs. NHPC Ltd.***[6]

iii. The Indian Courts have no jurisdiction to issue an injunction qua the Tribunal at the interim stage.

iv. The Impugned Order, passed by the learned Single Judge of this High Court is in the teeth of an anti-suit injunction order passed by the SGHC, after the Plaintiff failed to obtain a favourable order from the SGHC.

v. The dispute emanates from the agreement executed on 21.05.2025, which was to be performed entirely in Oman. The Defendant is a company registered in Oman, and Singapore is the seat of the ICC Arbitration. Hence, Singapore is *lex fori*. Moreover,

[3] (2016) 4 SCC 126
[4] (2020) 5 SCC 399
[5] (2020) 4 SCC 234
[6] (2020) 4 SCC 310

the Plaintiff initiated four different proceedings in Singapore, including a challenge to the First Partial Award and a challenge to the appointment of a co-arbitrator. The learned Single Judge passed an injunction order despite there being an anti-suit injunction order dated 23.05.2025, passed by the SGHC.

vi. The Civil Suit is not maintainable in the facts of law by virtue of the doctrine of *res judicata* and the doctrine of *estoppel*. Since the issue of bias against the co-arbitrator was already adjudicated on three occasions: namely, (a) at the stage of partial setting aside of First Partial Award; (b) setting aside of First Partial Award on additional grounds of bias; and, (c) the challenge before the SGHC, which was against the ICC Court's decision and Plaintiff's appeal before the Singapore Court of Appeal.

vii. While submitting that the Plaintiff has approached the supervisory court, i.e., the Singapore Court, at the first instance, it was contended that the Plaintiff has indulged in forum shopping.

viii. While calling upon the Court to exercise judicial comity, a prayer was made to set aside the order.

ix. The Plaintiff's conduct was claimed to be vexatious and oppressive by resorting to forum shopping and violating the anti-suit injunction passed by the SGHC.

40. *Per contra*, learned Senior Counsel representing the Plaintiff/Respondent has made the following submissions:

i. The scope of interference in a miscellaneous appeal against the order granting an interim injunction is extremely narrow, and the Defendant has failed to show any perversity.

ii. As per the agreement, Indian Law is applicable and the Plaintiff was forced to file urgent declaratory and an injunctive suit against the insistence of the Defendant to continue with ICC Arbitration No. 27726HTG/YMK with the present coram and the constitution of the Tribunal in the backdrop of admitted and deliberate non-disclosure by nominee Arbitrator of the Appellant (Mr. Yeap) both at the time of appointment and thereafter.

iii. It was also contended that an anti-arbitration suit was filed by the Plaintiff while contending that ICC Arbitration is vexatious, oppressive, and unconscionable, which is quite distinct from a simpliciter application for an injunction; hence, the remedy of filing the suit is maintainable.

iv. Moreover, the Defendant has failed to provide any precedent that such an anti-arbitration suit cannot lie before the Indian Courts, and it has been correctly found that the suit is, *prima facie,* maintainable.

v. The Defendants are yet to file pleadings, and non-disclosure is *per se* fatal. Under Indian law, non-disclosure under Section 12 of the A&C Act, *per se,* vitiates the arbitral proceeding. There is no substance in the argument of the Defendant regarding *res judicata*, estoppel, and the doctrine of election. Moreover, the conduct of the Defendant was far from fair.

41. No other submissions have been made by the learned Senior

Counsel representing the parties.

ANALYSIS & FINDINGS:

42. At the outset, it would be relevant to extract Article 19, which has been presented to us for our consideration:

> ***Article 19***
>
> ***LAW AND ARBITRATION***
>
> *19.1 Disputes if any, arising out of or related to or in any way connected with this agreement shall be resolved amicably in the First instance or otherwise through arbitration in accordance with the Rules of Arbitration of the International Chamber or Commerce.* ***The jurisdiction of the Contract Agreement shall lie with the Courts at New Delhi, India.***
>
> *19.2 This Agreement shall be governed by, construed and take effect in all respects according to the Laws and Regulations of the Sultanate of Oman.*
>
> *19.3 Any dispute or difference of opinion between the parties hereto arising out of this Agreement or as to its interpretation or construction shall be referred to arbitration. The Arbitration Panel shall consist of three Arbitrators, one Arbitrator to be appointed by each party and the third Arbitrator being appointed by the two Arbitrators already appointed, or in the event that the two arbitrators cannot agree upon the third Arbitrator, third Arbitrator shall be appointed by the International Chamber of Commerce. The place of the Arbitration shall be mutually discussed and agreed.*
>
> *19.4 The decision of the Arbitration Panel shall be final and binding upon the parties."*
>
> ***(Emphasis supplied.)***

43. Based on the contentions of the parties and the assertions advanced by them, we are of the opinion that the following issues fall for our determination:

A. Whether Article 19 of the Agreement which encapsulates the Dispute Resolution, as it presents itself, determines the "Seat" of

the Arbitration, or the substantive law governing the Agreement, to be Indian law or the law of Singapore and its effect thereof?

B. Whether the non-disclosure by Mr. Yeap, the learned Arbitrator, is of such significance that it would warrant the exceptional grant of an Anti-Arbitration injunction by Indian Courts?

44. Put differently, our examination would involve the determination as to the effect of Article 19 in the Agreement and as to whether, under the said article, the substantive law of the Agreement would be Indian law. A determination of the seat would also have a bearing on the effect of non-disclosure and the standards in respect of independence and impartiality of an Arbitrator.

45. An analysis of the same would also deal with the applicability of the Judgment of the Singapore Courts as well as the ICC Court.

46. The "Seat of arbitration" carries significant legal implications for the applicability of the A&C Act. The seat of arbitration denotes the juridical home of the proceedings. It would also determine the Courts which would have the jurisdiction to supervise the arbitral proceedings.

47. The "Seat of arbitration" is usually contrasted with the "Venue of arbitration" as the Venue would only refer to the physical location where hearings or meetings are held for convenience and does not.

48. Under Section 20 of the A&C Act, the parties are at liberty to agree upon any place for conducting sittings or for recording

evidence, however, such logistical arrangements do not, by themselves, alter the juridical seat of arbitration. The said provision is set out below:

> *"**20. Place of arbitration.**—(1) The parties are free to agree on the place of arbitration.*
>
> *(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.*
>
> *(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property."*

49. As already noted above, broadly, Article 19 explicitly states that the disputes will be resolved through a Tribunal, while stipulating that the jurisdiction of the substantive disputes arising from or in connection with the agreement shall lie with the courts at New Delhi, India, whereas the place of arbitration shall be mutually discussed and agreed by the parties. It further provides that any reference to arbitration shall be governed by, and conducted in accordance with, the ICC Rules. Furthermore, as already noted above, based on the choices of venue presented, the ICC Court fixed the place to be Singapore.

50. Dissecting Article 19 set out hereinabove, we are of the *prima facie* view that, the said Article is comprised of four parts and which, when read contextually, delineate the applicable law, the jurisdiction clause, and the workflow of arbitral process. While so dissecting and analysing the Article, we are also mindful of the fact that it would be

the sum total of the whole which would finally determine our *prima facie* finding in this respect.

51. The first half of Article 19.1, which reads thus, "*19.1 Disputes if any, arising out of or related to or any way connected with this agreement shall be resolved amicably in the First instance or otherwise through arbitration in accordance with Rules of Arbitration of the International Chamber of Commerce."*, is comprised of two parts with the first part commending the parties to resolve their disputes amicably and the second part providing for Arbitration by the ICC Rules in the event of a failure to resolve the disputes amicably. *Prima facie*, this part would lend itself to the interpretation that the ICC Rules are to form the curial/ procedural law for the Arbitration.

52. Turning now to the latter half of Article 19.1 which incorporates a specific stipulation that "*The jurisdiction of the Contract Agreement shall lie with the Courts at New Delhi, India.*" To our mind, this singular stipulation in the latter half which is prefaced and preceded by the opening words of the first half, which deals expressly with Disputes as between the parties indicates the parties' intention to confer upon Courts in New Delhi, India, the jurisdiction in respect of the matrix of Dispute Resolution.

53. On a holistic reading of Article 19.1, it becomes evident that it not only identifies the institutional rules governing the arbitration procedure but also clarifies the judicial forum vested with jurisdiction over substantive disputes arising from or in connection with the agreement.

54. Proceeding further to Article 19.2, which is the next "part" of Article 19. This Clause stipulates that the Agreement shall be governed by, and shall take effect in accordance with, the laws and regulations of the Sultanate of Oman. At first glance, it would appear that Article 19.1, which stipulates that the jurisdiction of the Contract Agreement would be New Delhi, is at variance with Article 19.2 which postulates that the Agreement would be "*…governed by, construed and take effect in all respects according to the Laws and Regulations of the Sultanate of Oman.*" However, we are of the opinion that the effect of Article 19.2 would be in respect of the actual working of the terms of the agreement in the context of the regulatory and legal framework concerning the execution of the works and would not concern itself with the Dispute Resolution which we believe is encapsulated in Article 19.1.

55. To our mind, the said part is confined to the substantive legal framework governing the operation and performance of the contract within Oman, such as compliance with local labour laws, regulatory permissions, and other obligations necessary for the execution of the contractual works. This clause is concerned with identifying the law to be referred for the operation and performance of the contract and does not, by its terms, extend to the law regulating the arbitral process. The clause is directed towards the substantive legal regime governing the performance and administration of contractual obligations in Oman, such as compliance with local labour law requirements, regulatory approvals, and other operational norms relevant to the execution of the works. Its scope is therefore confined to the performance and

compliance issues under the agreement and does not, in any manner, alter or supersede the law governing the dispute resolution or the determination of the juridical seat.

56. Additionally, in the present case, Article 19.2 cannot be construed as an indicator of the seat because the clause does not mention arbitration, arbitral procedure, or the courts supervising arbitration. Its subject matter is limited to the contractual obligations and regulatory requirements binding the parties in Oman. It relates to permissions, statutory compliance, and enforcement of contractual duties within that jurisdiction. Consequently, the provision has no bearing on identifying the juridical seat and does not establish any contrary intention to the clear stipulation conferring exclusive jurisdiction upon the Courts at New Delhi, India.

57. This provision is thus limited to the law applicable for governing the operation and performance of the contract and does not, in any manner, extend to or displace Article 19.1, which is determinative of the law governing the Dispute Resolution.

58. Turning now to Article 19.3, which provides that disputes shall be referred to a three-member Arbitral Tribunal. It stipulates that one arbitrator is to be appointed by each party and the presiding arbitrator is to be appointed by the two arbitrators or, failing their agreement, by the ICC. The same clause states, "*The place of the Arbitration shall be mutually discussed and agreed.*" However, the parties did not mutually agree upon any place of arbitration. Accordingly, the ICC Court fixed Singapore as the place of arbitration. This then, for the

purposes of the present determination, would constitute the fourth part.

59. Article 19.4 makes the award of the Tribunal final and binding.

60. To elaborate and at the cost of re-iteration, *prima facie*, this Court is of the view that the Article and its various parts would require us to harmoniously construe the Article as each sub-Article or their respective parts cannot be read disjunctively, as doing so would lead to considerable consternation. Our interpretation, as expressed hereinbefore and re-iterated hereinafter, is based on the harmonious cadence decipherable by us. The explicit stipulation that the "jurisdiction" of the Contract Agreement shall lie with the Courts at New Delhi, India, is determinative of the intent of the parties in conferring exclusive jurisdiction on the courts of New Delhi in respect of all substantive disputes arising from or in connection with the agreement. When such exclusive jurisdiction is coupled with an agreement to arbitrate disputes under an institutional regime, it ordinarily denotes the choice of the juridical seat, unless the contract clearly indicates a different intention. However, in the present case, and as discussed hereinbefore, Article 19.1 is comprised of 3 parts and the reference of the ICC Rules is only determinative of the procedural law applicable to the Arbitration.

61. The mere reference to the "place" of arbitration in Article 19.3 cannot, by itself, override the clear expression in Article 19.1. It is well-established in arbitration jurisprudence, including by the Supreme Court in ***BGS SGS Soma JV*** *(supra)*, that when parties

specify a court of exclusive jurisdiction, such designation ordinarily guides the determination of the seat in the absence of contrary indicators.

62. As already expressed hereinbefore, the first part of Article 19.1 states that arbitration shall be conducted in accordance with the ICC Rules. These rules govern the procedure for administering the arbitration, including the appointment of arbitrators and procedural timelines. Therefore, the reference to ICC Rules does not, in itself, determine the juridical seat of arbitration. However, significantly, the second part of Article 19.1 vests the jurisdiction of the disputes arising from the Agreement with the courts at New Delhi, India. Therefore, on a conjoint reading of both parts of this Article, it becomes evident that the ICC rules have been referred for the purposes of governing the procedural aspect of the arbitration and is not directed towards deciding the substantive disputes arising from the contract and thus, it cannot be referred for the determination of the seat. In such circumstances, it would lead us to conclude that the parties intended New Delhi to be the juridical seat.

63. Article 19.3 states that the "place" of arbitration shall be mutually discussed and agreed upon by the parties. Herein, *first*, the clause refers to "place" and not "seat". In modern arbitration drafting, especially when coupled with an exclusive jurisdiction clause, the reference to a "place" ordinarily denotes the venue for hearings. *Second*, the Supreme Court in ***Brahmani River Pellets Ltd. v.***

Kamachi Industries Ltd.[7], and, ***BGS SGS Soma JV*** *(supra)* has clarified that the words "place", "venue", and "seat" are to be construed in the context of the arbitration clause. When the clause indicates that the place is to be mutually discussed, such language inherently conveys flexibility and administrative convenience, which is characteristic of a venue, not a seat. When parties intend the Tribunal or an institution to determine the seat, they do so expressly. The absence of such an express delegation is fatal to the Appellant's argument. The designation of "place" by the ICC Court is not determinative of the juridical seat, especially when Article 19.1 confers exclusive jurisdiction upon courts of New Delhi, India. The "Seat of Arbitration" cannot, in light of the facts and the express provisions in the present case, be relegated to the status of being indeterminate. Let us assume that the ICC had determined that the place for arbitration would be at some remote place of the world, would that then have become the Seat, especially in view of the express consent having been accorded to the Courts of New Delhi to have jurisdiction over the Contract Agreement?

64. Further, the parties expressly deferred the determination of the place of arbitration, leaving it to be mutually discussed and finalised at a later stage. This deliberate postponement is significant. At the time of drafting the arbitration clause, the parties simultaneously incorporated two other critical elements: *first*, they unequivocally vested exclusive jurisdiction over all disputes arising out of the arbitration agreement in the Courts at New Delhi, India; and *second*,

[7] (2020) 5 SCC 462

they selected the ICC Rules to govern the arbitral proceedings. These carefully chosen stipulations demonstrate that the parties were fully conscious of the structural components of the arbitral framework, even though they intentionally left the designation of the place of arbitration undecided.

65. When Article 19 is read holistically, contextually and harmoniously, it becomes clear that the omission to specify the place/venue of arbitration was not inadvertent but intentional. The parties, while settling other essential elements of the arbitral architecture, consciously refrained from fixing the place of arbitration at the time of execution. Such an omission, when viewed against the backdrop of the clause conferring exclusive jurisdiction on the Courts at New Delhi and the selection of the Institutional Rules, indicates a deliberate choice to avoid attributing any juridical significance to the place/venue of arbitration at that stage.

66. Had the parties intended that the place of arbitration would function as the juridical seat and thereby the supervisory jurisdiction, it is reasonable to expect that they would have expressly identified such a place in the agreement. The fact that the place of arbitration was left open for later decision, and ultimately fixed by the ICC Court only due to the failure of the parties to agree, strongly suggests that the parties never contemplated that the designated place, Singapore, would acquire the status of the seat.

67. Accordingly, when this conscious omission is considered alongside the clear inapplicability of complete party autonomy in the

subsequent fixation of the place of arbitration, and when Article 19 is assessed in its entirety, it becomes evident that the parties did not intend for the subsequently determined place of arbitration to operate as the juridical seat. The parties, by design, reserved jurisdiction in favour of the Courts at New Delhi and did not intend the place fixed by the ICC Court to govern the substantive rights and obligations arising from the arbitral agreement.

68. Further, the ICC Court's decision to designate Singapore as the place of arbitration is an administrative determination made in light of Article 19.3. In the absence of mutual agreement between the parties, the institution has fixed a particular location perhaps based on convenience of situs of the Arbitrators themselves. This designation of the place of arbitration does not alter the juridical seat, which flows from the contractual intention, not from the administrative convenience.

69. Hence, a harmonious and holistic construction of Articles 19.1, 19.2, and 19.3 leads to the following conclusions:

(a) Article 19.1 confers exclusive jurisdiction on courts at New Delhi. Such a conferral typically identifies the juridical seat.

(b) Article 19 also provides for the Arbitration to be conducted under the ICC Rules for Arbitration. The reference to ICC Rules designates procedural and administrative aspects of the arbitration, not the seat.

(c) Article 19.2 is confined to the substantive legal framework governing the operation and performance of the contract within Oman.

(d) Article 19.3 provides a mechanism for fixing the venue, not the seat.

70. The intention of the parties, therefore, is unmistakable. The juridical supervision over the arbitration lies in the courts at New Delhi, India. The arbitration may be conducted elsewhere as a matter of convenience, but the seat remains India.

71. In view of the foregoing analysis, this Court is of the *prima facie* view that:

i. The exclusive jurisdiction clause in Article 19.1, read in conjunction with the arbitration agreement, constitutes a clear expression of the parties' intention to designate New Delhi, India, as the juridical seat of arbitration.

ii. Article 19.3 refers to the venue for the conduct of arbitral proceedings and cannot be construed as an agreement on the juridical seat.

iii. The ICC Court's administrative fixation of Singapore as the "place" of arbitration is to be understood as a fixation of the venue and does not alter the juridical seat.

72. Therefore, the argument of the learned Senior Counsel representing the Defendant, based upon the doctrine of *lex fori*, lacks substance for the following reasons:

i. The seat of the arbitration is Indian Law.

ii. The jurisdiction of the Civil Court in India, being plenary, is excluded only by specific and categorical exclusion, which is not the case of the Defendant.

iii. The principles enshrined in Section 42 of the A&C Act do not apply to an independent civil suit.

iv. Given that Indian Courts have jurisdiction, the resistance in this respect *qua* the maintainability of the Anti- Arbitration Suit, would clearly not survive.

73. The first question would thus stand answered. This Court shall now proceed to examine Question No. (ii). It is trite law that the jurisdiction of the civil courts under Section 9 of the CPC is plenary, and unless specifically excluded, the civil courts have jurisdiction to try and decide all civil disputes. In the landmark judgment passed by the five-judge Bench of the Supreme Court in ***Dhulabhai v. State of Madhya Pradesh***[8]**,** the Apex Court identified the extent of the civil courts' jurisdiction. The relevant part of the judgment is reproduced hereunder:

> *"(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.*
>
> *(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.*

[8] 1968 SCC OnLine SC 40

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

74. Since there exists no specific bar excluding the jurisdiction of the civil courts in the present matter, the civil courts in India have the jurisdiction to try and decide the present dispute. Hence, the jurisdiction of the civil courts is not *prima facie* barred in the present case.

75. We have, *prima facie,* held that as per Article 19, the seat of the arbitration shall lie with the Courts at New Delhi, India. The attention

of the Court has not been drawn to the statutory provision which excludes the jurisdiction of the civil court.

76. The reliance placed by the learned Senior Counsel representing the Defendant on ***BALCO*** *(supra)* to assail the maintainability of the suit is wholly misplaced. Perusal of the judgment revealed that the arbitration proceedings were held in England, and the Tribunal made two Awards on 10.11.2002 and 12.11.2002 in England. Thereafter, applications under Section 34 of the A&C Act for setting aside the aforesaid two Awards were filed in the Court of the District Judge, Bilaspur, which was dismissed. The High Court also confirmed the same. Thereafter, the jurisdiction of the Supreme Court was invoked in view of a difference of opinion on the correctness of two decisions of the Supreme Court in ***Bhatia International*** *(supra)*, which was followed in ***Venture Global Engineering v. Satyam Computers Service Ltd.***[9]. The matter was referred to a three-Judge Bench, it was in that context the judgment came to be passed, which is not the case herein.

77. Likewise, the reliance placed on the ***Hindustan Constructions Services Ltd.*** *(supra)* to contend that the jurisdiction of the civil courts at Delhi is excluded, does not have substance because this judgment examined the jurisdiction of the Court to entertain an application under Section 34 of the A&C Act for setting aside an Arbitral Award, based on the seat of arbitration, as opposed to on the basis of cause of action. It was held that once the seat of the arbitration is designated, the same operates to have exclusive jurisdiction in view of Section 42

[9] (2008) 4 SCC 190

of the A&C Act.

78. The next reliance of learned Senior Counsel representing the Defendant is on the judgment of the Supreme Court in ***Mankastu Impex Pvt. Ltd.*** *(supra),* which basically examined the concept of seat of arbitration in the context of an application under Section 11(6) of the A&C Act. The Court held that the parties have chosen Hong Kong as the place of Arbitration, and under its laws, the Indian Courts have no jurisdiction to appoint an Arbitrator. Further, the arbitration clause in this case contained other clauses indicating significant *contrary indicium* to the contrary intention in the favour of administering Institution Rules.

79. The next reliance is on the judgment passed by the Supreme Court in ***BGS SGS Soma*** *(supra),* where the Court examined the scope of appeal under section 37 of the A&C Act. The issue examined in this judgment by the Supreme Court is not relevant to the present case because the case was primarily decided on the concept of the seat of arbitration while distinguishing it from a venue of arbitration.

80. The next reliance of learned Senior Counsel representing the Defendant is upon the judgment of the Supreme Court in ***HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad***[10]. In this judgment, learned Senior Counsel has referred to Paragraph Nos. 50, 51, and 52 of the judgment. On a careful study of this judgment, it becomes evident that the Supreme Court was hearing an appeal against the judgment passed on 31.01.2024 by the High Court of Judicature at Bombay, wherein

[10] (2024) SCC OnLine SC 3190

the petition filed under Section 11(6) of the A&C Act was allowed. In Paragraph No. 31, the Court identified the issues that required adjudication. All the issues identified are in the context of Section 11(6) of the A&C Act, which does not apply to the facts of the present case. In Paragraph Nos. 50, 51, and 52, the effect of withdrawal of the previous petition was examined in the context of principles enshrined under Order XXIII Rule 1 of the CPC.

81. The next reliance is on the judgment in ***Shiju Jacob Varghese & Anr. v. Tower Vision Ltd. & Ors.***[11]. In this case, the learned Single Judge was deciding various applications, namely under Order XXXIX Rule 4, Sections 16 to 19, and Order VII Rule 11 of the CPC. In this judgment, learned Senior Counsel representing the Defendant wishes to rely upon the observations made in Paragraph No. 49 while examining the Doctrine of Comity of Courts. It was observed that Section 13 of the CPC also gives due regard to this doctrine, and there is a presumption of conclusiveness attached to any foreign judgment being pronounced by the court of competent jurisdiction unless the contrary is on record. The aforesaid observations are made in the peculiar facts of the case. It was not a case where there were allegations of suppression of information or failure to make proper disclosure by a member of the Tribunal.

82. The next argument of the learned Senior Counsel representing the Defendant that the learned Single Judge has not complied with the ratio in his own judgment in ***Porto Emporios Shipping Inc. v. Indian***

[11] 2012 SCC OnLine Del 5728

Oil Corporation Ltd[12], wherein after perusing the legislative scheme of the A&C Act, this Court held that the plea of waiver of the arbitration clause falls within the domain of the Tribunal and the courts should not interfere in it. This Court is of the considered view that the conclusion arrived by the learned Single Judge is correct, which is extracted here as follows:

> *"55. Though there is no doubt over the legal position enumerated in the above-noted decisions, however, none of the cases cited above puts an unblemished embargo that the Civil Courts cannot, in any manner whatsoever, entertain a suit seeking anti-arbitration injunction. Ordinarily, when the claim before the Court does not disclose any circumstance which is indicative of any oppressive or unjust consequences for the plaintiff, the general principles of arbitral autonomy and minimum interference govern the field However, when it is seen that denial of relief may result in grave, unjust and oppressive outcomes for one party before the Arbitral Tribunal, the legal position is conditioned differently. Thus, the legal position is more nuanced than what is projected to be by the defendant herein, as the following discussion shall reveal."*

83. Hence, the abovementioned judgments are distinguishable and not applicable to the peculiar facts in the present matter. Moreover, a strong presumption in favour of the jurisdiction of the civil courts exists. Wherever the court finds that the provisions of a particular statute, which exclude the jurisdiction of the civil courts, have not been complied with or the Tribunal has not acted in conformity with the fundamental principles of judicial procedure, the jurisdiction of the civil courts is not ousted.

84. As already noted above, *vide* Arbitration and Conciliation (Amendment) Act, 2015 [hereinafter referred to as '**2015**

[12] (2025) SCC OnLine Del 3288

Amendment'], a proviso to Section 2(2) of the A&C Act was added, which reads as follows:

> *"(2) This Part shall apply where the place of arbitration is in India:*
>
> *Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act."*

85. By virtue of the aforesaid amendment, the courts in India have been enabled to apply Sections 9, 27, and 37(1)(a) and 37(3) of the A&C Act to international commercial arbitration, even if the place of arbitration is outside India.

86. *Vide* this amendment in Section 2(2) of the A&C Act, the intention of the Parliament is clear to the effect that even in the case of international commercial arbitrations, where the place of arbitration is outside India, the jurisdiction of the court is not excluded, rather it adds to the jurisdiction of the Indian civil courts. Hence, the argument of the learned Senior Counsel representing the Defendant that, herein, the Indian courts do not have any jurisdiction lacks substance.

87. Keeping in view the foregoing discussions, it stands established that the jurisdiction of the Courts in India is not excluded, and that the seat of arbitration, in the case at hand, lies with the Courts at New Delhi, India.

88. Similarly, the argument based upon the principle enshrined in Section 42 of the A&C Act is not substantiated because the suit for

declaration and injunction is not founded on the premise of the A&C Act, but is an independent suit filed by the Plaintiff under the provisions of Specific Relief Act, 1963 [hereinafter referred to as '**SRA 1963**'], wherein the civil suit for declaration is maintainable under Section 34 of SRA 1963, whereas the suit for injunctions are specified in Section 39 of SRA 1963.

89. It is further submitted by the learned Senior Counsel representing the Defendant that, in terms of Article 5 of Chapter I of the Model Law, no court shall intervene except where expressly permitted therein. This contention, however, is misplaced. Article 5 of Chapter I of the Model Law operates only within jurisdictions where the Model Law has been formally adopted as the governing arbitral framework. In the present case, it stands conclusively determined that the juridical seat of the arbitration is situated in India, and consequently, the provisions of the A&C Act govern the arbitral process. As such, Article 5 of Chapter I of the Model Law has no application, and the limitations on judicial intervention prescribed therein cannot be invoked to curtail the jurisdiction of Indian courts in the present proceedings.

90. At this juncture, it is pertinent to note that it is a settled principle of arbitration jurisprudence that the law of seat of arbitration constitutes the foundational legal framework governing the validity, supervision, and integrity of the arbitral process. Therefore, questions concerning the impartiality and independence of arbitrators fall squarely within this supervisory domain. As these standards form part of the public-law safeguards of the seat of arbitration, they cannot be

displaced or diluted by any procedural rules agreed upon by the parties or adopted from institutional frameworks. To permit the procedural law to override the *lex arbitri* would erode the very public policy considerations that the seat State has embedded in its statutory regime to ensure fairness, transparency, and legitimacy in arbitration.

91. The primacy of the law of the seat is further underscored by the consequences that flow from non-compliance with the standards of the seat State. An award rendered in violation of the seat's statutory standards of impartiality is liable to be set aside by the courts at the seat, thereby undermining the finality and enforceability of the award. International commercial arbitration requires a predictable and coherent supervisory structure. Such predictability would be compromised if procedural rules are allowed to dictate or modify the substantive test of impartiality.

92. Further, the doctrinal distinction between procedural rules and the law of the seat must be respected. Procedural rules regulate the conduct of the proceedings, whereas the law of the seat prescribes the mandatory norms that safeguard the fairness of the adjudicatory framework itself. Standards of impartiality comprising both the objective perception of bias and the subjective duties of disclosure are matters that belong to the latter category. It is the law of the seat that determines the threshold for a valid challenge, the nature of disclosures required, and the legal consequences of any breach. Where any procedural rule appears inconsistent with these mandatory requirements, the procedural rule must yield; it cannot reinterpret the protections enacted by the law of the seat.

93. For these reasons, this Court is of the opinion that the statutory regime of the law of the seat must govern the assessment of impartiality, and it necessarily prevails over any procedural stipulations to the contrary. Arbitrators must conform to, and courts must apply, the standard prescribed by the law of the seat when adjudicating challenges to independence or bias.

94. Accordingly, by natural corollary, Indian law shall govern the present proceedings, and it therefore becomes incumbent upon this Court to examine the contours and scope of the principles governing the neutrality of arbitrators under Indian law.

95. A Tribunal consisting of independent and impartial individual(s) is, in essence, a forum chosen by the parties to adjudicate their disputes while avoiding long proceedings in the regular civil courts. Before the codification of laws, such disputes used to be resolved by Panch Parmeshwars/Salas/Umpires/Panchayats consisting of independent and highly reputed individuals who were known for their integrity and fair approach. Even after codification of the Arbitration laws, the forum, i.e., the Tribunal, in substance, is a result of a contract subject to the provisions of the statute.

96. Section 12 of the A&C Act serves as the cornerstone of this principle within the Indian legal framework. While the original A&C Act was modeled closely on the Model Law, the subsequent 2015 Amendment, fundamentally overhauled Section 12 of the A&C Act by introducing strict, mandatory requirements. The same is reproduced hereunder:

*"**12. Grounds for challenge.—(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances**,—*

***(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality**; and*

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation1.—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.—The disclosure shall be made by such person in the form specified in the Sixth Schedule.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing."

(Emphasis supplied.)

97. Section 12 of the A&C Act casts twin obligations upon an arbitrator, namely the duties of independence and impartiality. Section 12(1) of the A&C Act mandates that a prospective arbitrator must disclose any direct or indirect circumstances that may be "likely to give rise to justifiable doubts as to his independence or impartiality". Section 12(2) of the A&C Act further provides that this obligation is continuous in nature and extends from the time of the arbitrator's appointment until the conclusion of the arbitral proceedings. Should any new circumstance arise, or come to the arbitrator's notice during the pendency of the arbitration, which may bear upon their neutrality, such facts must be immediately disclosed to the parties in writing.

98. Additionally, the 2015 Amendment introduced the Fifth Schedule, which sets out an illustrative catalogue of relationships or situations deemed capable of generating "justifiable doubts", thereby delineating the contours of the disclosure duty under Section 12(1) of the A&C Act. The Fifth Schedule clarifies that such circumstances may include past or existing connections with a party, counsel, or the subject matter of the dispute, and may extend to financial, business, professional, or other relevant interests. The following grounds, as stipulated under the Fifth Schedule, give rise to justifiable doubts as to the impartiality of the arbitrator in the present case:

> *"**Arbitrator's relationship with the parties or counsel***
> *1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.*
>
> ***
>
> ***Previous services for one of the parties or other involvement in the case***
> *20. The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or*

has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship.

21. The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter.

22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties."

99. The threshold of impartiality under the Indian legal framework is anchored in the principle that justice must not only be done but must manifestly appear to be done. As already noted above, Section 12 of the A&C Act establishes a dual test that requires an arbitrator to be free from both actual bias and circumstances that give rise to justifiable doubts about their independence or impartiality. This "justifiable doubt" standard is an objective one. It is assessed from the standpoint of a reasonable and informed third party, rather than from the subjective apprehension of either disputant. By adopting this standard, the Indian statute ensures that the legitimacy of the Tribunal rests not merely on the personal integrity of the arbitrator but on the structural perception of neutrality that surrounds their appointment and conduct.

100. This threshold has been further crystallised through the introduction of the Fifth and Seventh Schedules by the 2015 Amendments, which codify the types of relationships and circumstances that may compromise, or conclusively negate, an arbitrator's eligibility. The Seventh Schedule creates a strict, non-derogable bar. If any circumstance listed therein exists, the arbitrator

is deemed legally ineligible regardless of consent or subsequent disclosures. The Fifth Schedule supplements this by providing an illustrative set of situations where justifiable doubts may arise, thereby guiding courts and parties in applying the threshold. Taken together, these provisions transform impartiality from a general expectation into a clearly delineated statutory safeguard, thereby ensuring both the integrity of the Tribunal's constitution and the confidence of the parties in the fairness of the adjudicatory process.

101. Further, the standard of impartiality under the A&C Act is not a mere procedural formality but a substantive safeguard integral to the legitimacy of the arbitral process. It is pertinent to note that neutrality is a condition precedent to the validity of the Tribunal's constitution, and defects in this regard strike at the root of jurisdiction.

102. In the facts of the present case, it is to be noted that on 12.04.2023, a request for arbitration was forwarded while disclosing the details of the Defendant and its Counsel, which are extracted as under:

> *"9. The claimant is engaged in the business of designing, integrating, and commissioning security systems and solutions, both off-the-shelf and customized for government and private sector clients. MSA is a company incorporated under the laws of Oman. MSA's address is:*
> *P.O. BOX: 1372,*
> *Postal Code : 130, Azaiba*
> *Muscat,*
> *Sultanate of Oman*
>
> *Email:* ***a.atwal@msa-global.com***
> ***ms.atwal@msa-global.com***

10. MSA is represented in this arbitration by its authorized counsel:
Mr. Kirat Singh Nagra
Mr. Kartik Yadav
Mr. Pranav Vyas
Mr. Manhar Singh Saini
Ms. Sumedha Chadha
Mr. Tushar Nagar

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103. Pursuant thereto, the Defendant nominated Mr. Andre Yeap, Senior Counsel from Singapore, as its co-arbitrator in November 2018 in a separate matter, which involved Mr. Atwal, who happens to be the MD, Chairman, and Promoter of the MSA Global LLC (Oman). Since, the ICC Rules are applicable, the proposed arbitrator is required to give his comments/acceptance, while making the following declaration:

"2017 & 2021 RULES – ICC ARBITRATOR STATEMENT ACCEPTANCE, AVAILABILITY, IMPARTIALITY AND INDEPENDENCE

Clause 3 - Independence and Impartiality

In deciding which box to tick, you should take into account, having regard to Article 11(2) of the Rules, whether there exists any past or present relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the parties, their lawyers or other representatives, or related entities and individuals. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific,

identifying inter alia relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information. In deciding which box to tick and as the case may be in preparing your disclosure, you should also consult with care the relevant sections to the Note.

- ***Nothing to disclose**: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties, and no circumstances that could give rise to reasonable doubts as to my impartiality.*

- ***Acceptance with disclosure**: I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet."*

104. On a bare perusal of the judgment passed by the Gujarat High Court, it becomes evident that there was reference to MSA Global, and it was highlighted that the Defendant is in the business of design, supply, installation, integration, and commission of border security systems for the Border Security Projects. In the aforesaid arbitral proceeding, on 16.04.2021, the Tribunal pronounced the Award, which was the subject matter of challenge before the Gujarat High Court in the case captioned ***Neeraj Kumarpal Shah vs. Manbhupinder Singh Atwal*** *(supra)*. It is to be noted here that, in fact, MSA is an abbreviated form of Manbhupinder Singh Atwal.

105. Further, as per Mr. Yeap's response, he became aware of the conflict in October 2024, however, he failed to disclose the same. Even when the application was filed by the Plaintiff challenging the impartiality and independence of Mr. Yeap, he did not recuse but gave

a specious explanation for his disclosure, which has already been reproduced.

106. Hence, the Court is required to ascertain whether the impartiality disclosure meets the statutory threshold mandated under the law of the seat, i.e., Indian law.

107. The material placed on record establishes that the proposed arbitrator was privy to a prior professional engagement involving Mr. Atwal, whose association is integrally linked with MSA Global, and that such a relationship falls squarely within the categories delineated in the Fifth Schedule appended to the A&C Act as circumstances capable of giving rise to justifiable doubts concerning impartiality arise.

108. This Court is of the considered view that the omission to disclose the aforesaid prior professional involvement constitutes a material non-disclosure within the contemplation of the Fifth Schedule appended of the A&C Act, and is sufficient to induce a justifiable doubt in the mind of a fair-minded and objective person.

109. Further, despite having become aware of this conflict in October 2024, the arbitrator did not adhere to the continuous and mandatory duty of disclosure under Section 12(1) and 12(2) of the A&C Act, and thereafter, upon being challenged, tendered an explanation, which to our mind, is not only specious, but also a clear admission on the part of Mr. Yeap, that he was well aware of the consequences of the said disclosure and that such disclosure could vitiate the entire process. Tested against the objective standard of a

reasonably informed and fair-minded third party, such omission undermines the necessity of neutrality and detracts from the integrity of the arbitral process. Consequently, the safeguards envisaged under Section 12 of the A&C Act stand breached.

110. In any case, even if the non-disclosure is seen in light of Clause 27 of the Note to the Parties and Tribunals on the Conduct of the Arbitration under the ICC Rules published on 01.01.2021 [hereinafter referred to as '**Note of Conduct**'], there is a list of relevant circumstances for the arbitrator or the prospective arbitrator to consider. The same has been reproduced hereunder, however, the circumstances are not limited to the following:

> *"27.* ***Each arbitrator or prospective arbitrator must assess what circumstances, if any, are such as to call into question his or her independence in the eyes of the parties or give rise to reasonable doubts as to his or her impartiality. In making such an assessment, an arbitrator or prospective arbitrator should consider all potentially relevant circumstances, including but not limited to the following:***
>
> *• The arbitrator or prospective arbitrator or his or her law firm represents or advises, or has represented or advised, one of the parties or one of its affiliates.*
>
> *• The arbitrator or prospective arbitrator or his or her law firm acts or has acted against one of the parties or one of its affiliates.*
>
> *• The arbitrator or prospective arbitrator or his or her law firm has a business relationship with one of the parties or one of its affiliates, or a personal interest of any nature in the outcome of the dispute.*
>
> *• The arbitrator or prospective arbitrator or his or her law firm acts or has acted on behalf of one of the parties or one of its affiliates as director, board member, officer, or otherwise.*
>
> *• The arbitrator or prospective arbitrator or his or her law firm is or has been involved in the dispute, or has expressed a view on the dispute in a manner that might affect his or her impartiality.*

> *• The arbitrator or prospective arbitrator has a professional or close personal relationship with counsel to one of the parties or the counsel's law firm.*
>
> *• The arbitrator or prospective arbitrator acts or has acted as arbitrator in a case involving one of the parties or one of its affiliates.*
>
> *• The arbitrator or prospective arbitrator acts or has acted as arbitrator in a related case.*
>
> *• **The arbitrator or prospective arbitrator has in the past been appointed as arbitrator by one of the parties or one of its affiliates, or by counsel to one of the parties or the counsel's law firm.***
>
> *In assessing whether a disclosure should be made, an arbitrator or prospective arbitrator should consider relationships with non-parties having an interest in the outcome of the arbitration, such as third-party funders as well as relationships with other members of the Tribunal, as well as experts or witnesses in the case."*
>
> ***(Emphasis supplied.)***

111. On a bare perusal of the hereinabove reproduced Clause 27, it is already crystallized that each arbitrator or prospective arbitrator is required to assess what circumstances, if any, are such as **to call into question his or her independence 'in the eyes of the parties'** or give rise to reasonable doubts as to his or her impartiality. Therefore, it becomes evident that the Arbitrator/Proposed Arbitrator is required to disclose his prior involvement with any of the parties, which is likely to give rise to his impartiality from the perspective of the parties. The emphasis is on the requirement to disclose from the perspective of the parties and not from a member of the Tribunal.

112. In this case, *prima facie*, even if at the initial stage, the Arbitrator/Proposed Arbitrator is given the benefit of doubt that the failure to disclose the requisite information has occurred *bona fidely*, still, in October 2024, when the Arbitrator became aware, he again

failed to make proper disclosure. From the perspective of the Plaintiff, there are chances of doubting the impartiality of the co-arbitrator, which is not unfounded or baseless. Impartiality and integrity of any Adjudicating Authority is the foundation, as the constitution of the Tribunal is based upon agreement between the parties, except where the Court appoints the Arbitrator. The Arbitrator ought not to be concerned about the likely challenge. Here again, we emphasise that Mr. Yeap, admittedly, not only made such an assessment, but was conscious enough to understand the consequences of his non-disclosure, post such assessment, and deliberately conducted himself in a manner, which to our mind, under no circumstances, can inspire even a figment of reliability.

113. Further, the question is not of exclusion as provided under the Orange List as defined under IBA Guidelines on Conflicts of Interest in International Arbitration, 2024, but failure of a member of a Tribunal, cautiously or incautiously, to make factually correct disclosure. In such circumstances, particularly when the contract provides for the applicability of Indian law, *prima facie*, the jurisdiction of the civil courts is not excluded.

114. Further, the arguments of the learned Senior Counsel representing the Defendant on the doctrine of estoppel and *res judicata* are not applicable because neither is there any prior suit involving the same issue which has been finally decided, nor the proceedings before the Tribunal and challenge before ICC Court, which in fact is not a court, or the SGHC, affects the maintainability of the suit.

115. The doctrine of estoppel is provided in Chapter VIII of the Bharatiya Sakshya Adhiniyam, 2023[13] [hereinafter referred to as '**BSA 2023**']. The pre-requisites of Section 121 of BSA 2023[14] are required to be met before the doctrine of estoppel can be applied. It has not been shown as to when the Plaintiff has, by his declaration, act or omission, caused or permitted the Defendant to believe that he will never file a civil suit. It is also not proved that the Defendant has acted upon such a belief and changed his position.

116. Further, the foreign anti-suit injunction granted by the SGHC, being a decision emanating from the arbitration venue jurisdiction, does not attain the status of *res judicata* before a civil court in India, which, in the present case, constitutes the designated arbitration seat jurisdiction.

117. At the outset, it is necessary to advert to the doctrinal framework underlying Section 11 of the CPC, which encapsulates the rule of *res judicata*. The said provision is reproduced hereinbelow:

> *"**11. Res judicata.—**No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*
>
> *Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.*
>
> *Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*

[13] Chapter VIII of the Indian Evidence Act, 1872
[14] Section 115 of Indian Evidence Act, 1872

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

118. Section 11 of the CPC mandates that no Court shall try any suit or issue in which the matter directly and substantially in issue has been adjudicated upon in a former proceeding by a Court of competent jurisdiction. The essential requirements for the application of Section 11 of the CPC include: *(i)* identity of parties; *(ii)* identity of issues directly and substantially in question; *(iii)* a final adjudication on merits; and most critically, *(iv)* the adjudication by a Court of competent jurisdiction.

119. It is this latter requirement of competent jurisdiction that assumes determinative significance in the factual matrix of the present case. A judgment or order, including one rendered by a foreign court, can operate as *res judicata* before an Indian court only if the foreign forum possessed the requisite jurisdictional competence as understood under Section 11 of the CPC read with Section 13 of the CPC.

120. Examining the present facts in the light of the above statutory essentials, it becomes evident that the anti-suit injunction issued by the courts at Singapore, although emanating from the venue jurisdiction, does not fulfil the statutory threshold of "competent jurisdiction".

121. The parties have, by agreement, designated India as the juridical seat of arbitration. Consequently, the courts at Singapore, being merely the venue courts with no supervisory authority in terms of the seat doctrine, cannot be regarded as "courts of competent jurisdiction" for the purposes of Section 11 of the CPC. The foreign anti-suit injunction, therefore, fails to meet the jurisdictional pre-requisite that is indispensable for the invocation of *res judicata* under Indian law.

122. This non-conclusiveness further arises from the inability of the foreign anti-suit injunction to satisfy the mandatory statutory pre-requisites for recognition and enforcement under Indian law, specifically the exceptions enumerated under Section 13 of the CPC. The said provision is reproduced hereinbelow:

> *"**13. When foreign judgment not conclusive.**—A foreign judgment shall be conclusive as to any matter thereby directly adjudicated*

upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in India."

123. It may be noted that a foreign anti-suit injunction is ordinarily rendered non-conclusive in India owing to its failure to satisfy the fundamental statutory tests laid down in Section 13(a) of the CPC, i.e., it does not qualify as a judgment delivered by a "court of competent jurisdiction" in relation to the supervisory functions vested exclusively in the seat court.

124. Section 13(a) of the CPC mandates that the foreign court issuing the judgment must possess competence not merely in terms of *in personam* jurisdiction over the parties, but also with respect to the subject matter, as understood under internationally recognised jurisdictional norms. In the absence of such subject-matter competence, the foreign judgment stands vitiated and is rendered null and void for purposes of recognition in India.

125. In the context of international commercial arbitration, the juridical seat (India, in the case at hand) vests exclusive supervisory jurisdiction in the courts of that seat over all aspects of the curial

process. An anti-suit injunction issued by a non-seat forum, such as a mere venue jurisdiction, purporting to restrain a party from approaching Indian seat courts for statutory relief under the A&C Act raises grave concerns as to the foreign court's subject-matter authority. When a foreign court arrogates unto itself the power to regulate or impede the supervisory processes of the designated Indian seat, such conduct amounts to the foreign court acting "manifestly in excess of jurisdiction". This jurisdictional transgression directly attracts the application of Section 13(a) of the CPC, thereby rendering the foreign anti-suit injunction non-conclusive, irrespective of whether the foreign forum possessed personal jurisdiction over the parties. The guiding principle remains that although a foreign court may exercise authority over the person, it lacks authority over the subject matter that lies exclusively within the domain of the seat court's supervisory jurisdiction.

126. In view of the foregoing analysis, this Court is of the considered view that the juridical seat of arbitration being India confers exclusive supervisory jurisdiction upon the Indian courts, and consequently, any anti-suit injunction issued by the Singapore court acting merely as the venue jurisdiction cannot attain conclusive effect so as to operate as *res judicata* before the seat court. The foreign anti-suit injunction, though enforceable within its own territorial limits, cannot be elevated to a status that undermines or circumscribes the prerogative of the Indian courts under the A&C Act. While a party may seek to rely upon such an injunction to plead the bar of *res judicata*, the same cannot be sustained in law, as the foreign judgment fails to satisfy the

statutory threshold under Sections 11 and 13(a) of the CPC. Accordingly, the anti-suit injunction issued by the SGHC, being one rendered by a forum lacking subject-matter competence, cannot preclude or restrain the Indian seat court from exercising its rightful supervisory jurisdiction over the arbitration.

127. Moreover, the Plaintiff filed a suit on 15.04.2025 seeking declaration and permanent injunction before the Delhi High Court, whereas the Defendant filed a motion before the SGHC on 21.05.2025 in the ICC Courts' order challenge proceedings seeking restraint against the Plaintiff. Thus, the suit was filed prior to the motion for injunction filed by the Defendant in the SGHC. In this case, the conduct of the Defendant, which has been noticed by the learned Single Judge, leads the Court to *prima facie* conclude a clear pattern of abuse of process on the part of the Defendant, while subjecting the Plaintiff to procedural hardship and jurisdictional entanglement. The Defendant has not only opposed the Plaintiffs' Discontinuance Application before the SGHC, but also filed its own fresh motion seeking an anti-suit injunction. In these circumstances, interference in the exercise of extremely limited jurisdiction in the Impugned Order of injunction is not called for.

128. It is also evident that before the SGHC took any decision on the Challenge Application, the Plaintiff not only filed the suit and sought an injunction in which notice stood issued, but also filed an application for withdrawing its challenge from the SGHC. Hence, the argument of learned Senior Counsel representing the Defendant that the Plaintiff has indulged in 'forum shopping' or 'elected remedy' is

prima facie incorrect.

129. Additionally, the Plaintiff, in fact, filed the Civil Suit on 15.04.2025, whereas the SGHC rejected the application on 07.07.2025, whereas the reasons were uploaded only on 24.07.2025. This was just a day prior to the Impugned Order passed by the learned Single Judge on 25.07.2025. Hence, the argument of learned Senior Counsel representing the Defendant with respect to the election of remedy and the Plaintiff indulging in 'forum shopping' is found without substance, and hence rejected.

130. The second part of the submission of learned Senior Counsel representing the Defendant is with respect to the anti-suit injunction order passed by the SGHC. Learned Single Judge has elaborately considered this aspect under the caption *'Vexatiousness Discernible from the Conduct of the Defendant'*, which is extracted as under:

> ***"Vexatiousness Discernible from the Conduct of the Defendant***
>
> *92. In the present case, as soon as the ICC Court rejected the plaintiff's challenge to Mr. Yeap's appointment, the defendant started pressing for the evidentiary hearing before the Tribunal. Even after the intimation by the plaintiff that they were in the process of filing an appeal against the ICC's decision, the defendant still pressed for the evidentiary hearing before the Tribunal. Despite the plaintiff's objection, the Tribunal fixed the hearing on 12.03.2025.*
>
> *93. On the same day, the defendant filed an enforcement petition seeking enforcement of the First Partial Award before this Court. Thereafter, on 17.03.2025, the Tribunal, despite the objections of the plaintiff, directed that the evidential hearing would take place in Singapore from 26.05.2025 to 31.05.2025. Parallelly, on 01.04.2025, the defendant issued an email to the ICC and communicated its intention to file an application for seeking a Partial Final Award on purported wasted costs on account of adjournment of the evidential hearings in the month of January,*

2025. On 03.04.2025, the ICC responded to the request for information lodged by the defendant and informed that (i) the defendant's request for the fees and expenses disbursed by the ICC to the members of the Tribunal towards the cancelled hearings in January, 2025 stands rejected, and (ii) ICC will fix the costs of the arbitration upon conclusion of the arbitration.

94. However, still on 02.04.2025, the defendant moved a wasted costs application before the Tribunal. On 07.04.2025, the plaintiff requested the Tribunal to defer the arbitration proceedings, including the wasted costs application. Thereafter, on 10.04.2025, the High Court of Singapore rendered the grounds of the decision of the challenge to the First Partial Award, and on 15.04.2025, the plaintiff filed the instant suit. While defending the said suit before this Court, the defendant wrote to the Tribunal seeking to close the Plaintiff's right to file a reply to the wasted costs application, since it failed to file reply within the stipulated time.

95. Thereafter, on 23.04.2025 the plaintiff issued a letter through its Singapore Counsel, expressing its intent to withdraw its appeal by 07.05.2025, before Supreme Court at Singapore against the First Partial Award decision by the High Court of Singapore. Meanwhile, consequent to the defendant's request, the Tribunal observed that despite giving multiple opportunities to the plaintiff for purpose of filing its substantive response to the wasted costs application, the plaintiff has failed to do so. The Tribunal further observed that it will consider the wasted costs application, either during or after the evidential hearing.

96. On 05.05.2025, the plaintiff filed a Notice of withdrawal before the Supreme Court at Singapore thereby seeking to withdraw the appeal unconditionally. On 16.05.2025, the plaintiff also filed an application before the High Court of Singapore seeking withdrawal of the challenge to the ICC Court's decision. On 19.05.2025, the plaintiff requested the Tribunal for the deferment of the evidentiary hearing on the ground of pendency of this suit. However, when the Tribunal asked for the defendant's consent, the defendant vide email dated 19.05.2025 stated that the evidential hearing should proceed as planned physically. Consequently, on 20.05.2025, the Tribunal wrote to both the parties observing that the evidential hearing will proceed as planned in Singapore.

97. Interestingly, on 21.05.2025, defendant filed a motion before the Singapore High Court in the ICC Court's order challenge proceedings seeking restraint against the plaintiff from maintaining and/or continuing with the captioned suit. On the same day, the defendant wrote to the Tribunal to press for the evidential hearing and moreover, when the plaintiff again requested the Tribunal for deferment of the hearing, thereafter defendant vide email dated

22.05.2025, again pressed for the evidential hearing, citing that this Court has not stayed the same. Consequently, on 22.05.2025, the Tribunal directed that the evidential hearing would commence from 26.05.2025.

98. Meanwhile, on 23.05.2025, the High Court of Singapore granted an ex-parte interim anti-suit injunction against the plaintiff restraining it from continuing with the captioned suit and also rejected the plaintiff's withdrawal application. On 26.05.2025, the evidentiary hearing continued before the Tribunal and on 27.05.2025 it concluded while closing the evidentiary hearing in the arbitration proceedings.

99. A bare perusal of the sequence of events that have transpired during the course of the present proceedings unmistakably reveals a concerted and calculated attempt by the defendant to entangle the plaintiff in vexatious, coercive and strategically manipulative litigation. The conduct of the defendant, when examined holistically, demonstrates a clear pattern of abuse of process intended not to resolve disputes in good faith, but rather to subject the plaintiff to procedural hardship and jurisdictional entanglement. Quite apparently, the defendant has been unrelenting in pressing for the continuation of arbitral proceedings before the Tribunal, despite having full knowledge of the pending challenges both before the High Court of Singapore and before this Court. Such persistence, in the face of concurrent judicial scrutiny by competent fora, reflects a wilful disregard for judicial comity and procedural fairness.

100. Simultaneously, the defendant went further to oppose the plaintiff's application for withdrawal before the High Court of Singapore, thereby obstructing an attempt at disengagement from the arbitral process. It was coupled with the defendant's own fresh motion seeking an anti-suit injunction, yet another tactical step designed not to resolve the underlying dispute, but to suppress the plaintiff's recourse to legal remedies and to preclude judicial examination of the legitimacy of the arbitral process. The totality of this conduct unequivocally suggests a mala fide and oppressive litigation strategy, one which is intended to exhaust, delay, coerce and manoeuvre the plaintiff by compelling it to defend itself across multiple legal forums simultaneously, irrespective of the merits of the dispute. Alongside, it is intended to prevent the plaintiff from pursuing any legitimate claim before the judicial fora despite the plaintiff having legitimate apprehensions qua the ongoing arbitration proceeding.

101. Such tactics, which are neither fair nor in consonance with the objectives of arbitration or civil litigation, amount to a weaponisation of the judicial process for collateral purposes. The

evident abuse of legal machinery to harass the plaintiff and frustrate its access to justice cannot be countenanced by a Court of law. For, the Courts in this country are not passive observers; they are duty-bound to intervene when a party is subjected to sustained harassment and procedural manipulation under the guise of lawful process. To allow the defendant to continue with such vexatious proceedings would be to permit the very erosion of judicial integrity and to allow civil process to become an instrument of oppression. This Court, therefore, cannot remain a silent spectator where one litigant has clearly been subjected to undue procedural torment by another under the pretext of arbitration, that too when the arbitration proceeding in question is itself based on the foundation of a grave and incurable error of non-disclosure giving rise to legitimate doubts in the mind of the plaintiff qua the fairness, impartiality and independence of the entire arbitration proceedings.

102. In the present case, the only impediment which is highlighted by the defendant is the existence of an arbitration mechanism. The arbitration mechanism is agreed upon between the parties, and, therefore, needs to be respected. However, what is more important is whether the proceedings of arbitration have turned vexatious and oppressive, and if the answer to this question is in the affirmative, this Court cannot shy away from its duty to intervene in the exercise of its civil jurisdiction. The non intervention by this Court would not only amount to perpetuating a wrong at the hands of the Court but would also compel the plaintiff to participate in a dead wood exercise, as no just and sustainable outcome could result from an adjudicatory exercise whose fairness itself is under question.

103. So long as the plaintiff does not desist from participating in the arbitration proceedings as per the arbitration mechanism, subject to the same being in accordance with the fundamental principle of fairness, there is no question of entertaining any grievance pertaining to the arbitration mechanism. However, in cases where the plaintiff reasonably establishes that the arbitration proceedings are vexatious and oppressive, the Courts in India are not powerless to interdict such proceedings and to protect the litigant from victimisation.

104. In view of the aforesaid and in the peculiar facts and circumstances of the case, it is crystal clear that the suit for grant of an anti-arbitration injunction is maintainable before this Court as the arbitration proceedings are prima facie vexatious and oppressive in nature."

131. Additionally, as already established above by the learned Single Judge that the proceedings before the Tribunal are *prima facie* vexatious and oppressive in nature, and the Court has analysed all three factors for the grant of an injunction, namely, *prima facie* case, balance of convenience, and irreparable injury, which the Plaintiff is likely to suffer if the injunction is not granted. It is also observed that the Plaintiff cannot be compelled to participate in an arbitral proceeding before the Tribunal whose impartiality is in serious doubt.

132. Similarly, the submission of learned Senior Counsel representing the Defendant to the effect that the Plaintiff, after invoking the jurisdiction of the SGHC on three occasions and one occasion in the Singapore Court of Appeal, cannot file the present suit, lacks substance because it is evident that the Plaintiff at the first instance challenged the correctness of the First Partial Award before the SGHC. During its pendency, an application for permission to introduce apparent bias as a new basis for setting aside the First Partial Award was filed, which was dismissed on 10.04.2025, but thereafter the Plaintiff filed an interim proceeding against the decision of ICC Court dated 14.03.2025. Before the decision, a Discontinuance Application for permitting its withdrawal was filed, which was opposed. Ultimately, the SGHC passed the order dated 07.07.2025, whereas the Ground of Decision in support of the decision was supplied only on 24.07.2025. Both these events took place during the pendency of the suit, which was filed on 15.04.2025. Hence, the entertainment of the suit by the learned Single Judge in the peculiar facts of the case was not *prima facie* incorrect, particularly in view of

the doubt about the impartiality and integrity of the Tribunal and vexatious and oppressive conduct of the Defendant.

133. While deciding the injunction application, the Court is required to make *prima facie* observations, however, the learned Single Judge has made a strong *prima facie* observation bordering on an expression of final opinion, which, as far as possible, should be avoided at the stage of decision of the application for tampering with an injunction. But this case falls in the rarest of rare cases, and this Bench is of the considered view that the conclusion arrived at by the learned Single Judge requires no interference.

CONCLUSION:

134. Consequently, with the caveat that the present adjudication, having been rendered in respect of an injunction, only constitutes as *prima facie* opinion, purely for the purposes of deciding the present *lis*, the appeal is dismissed with the observations that the Impugned Order shall not be construed as a final expression on the merits of the case, and the suit will be decided independently, uninfluenced by the observations made in the Impugned Order.

135. Keeping in view the aforesaid discussion, it is evident that the Appeal lacks merit and is hence dismissed.

136. The preparation of this judgment has benefited substantially from the valuable contribution of my learned Brother Judge, which I acknowledge and appreciate.

137. The present Appeal, along with the pending applications, is disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

DECEMBER 12, 2025
sp/shah/va