

Reserved On : 06/04/2026

Pronounced On : 08/05/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4277 of 2026****FOR APPROVAL AND SIGNATURE:**

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL
and
HONOURABLE MR.JUSTICE D.N.RAY

Approved for Reporting		
Yes	No	
✓		

=====

KIRLOSKAR PNEUMATIC COMPANY LIMITED

Versus

OIL AND NATURAL GAS CORPORATIN LIMITED

=====

Appearance:

MR. MIHIR THAKORE, SR. ADV. WITH KHYATI PRAVIN JHA WITH HELLY PARIKH(9450) WITH MR. NIRAG N. PATHAK for the Petitioner(s) No. 1
 MS. MANISHA LUVKUMAR, SR. ADV. WITH MR. ROHAN LUVKUMAR WITH MR. AADITYA DAVE WITH MS. PANCHAM JHALA WITH MR. AADITYA KARNAVAT for the Respondent(s) No. 1

=====

CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and

HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

Heard Mr. Mihir Thakor, the learned Senior Advocate assisted by Mr. Nirag N. Pathk for the petitioner and Ms. Manisha Luvkumar, the learned Senior Advocate assisted by the learned advocate Mr. Rohan Luvkumar for the respondent.

2. The short question which arose for our consideration in the present petition is as to the seat of arbitration, as agreed between the parties in the initial agreement, and the change of seat, if any, agreed between them during the course of arbitration proceedings conferring exclusive jurisdiction to the Court at the place of arbitration. In other words, the question is as to whether the seat of arbitration shall remain static at 'Ankleshwar' as agreed in the written agreement, or would shift to 'Ahmedabad' as alleged to have been agreed between the parties during the course of arbitration proceedings, held at Ahmedabad.

3. The undisputed facts of the case are :-

(i) A written contract dated 17.10.2018 for "Design, Engineering, Supply, Installation and Commissioning of 3 Nos. x 2.5 LSCMD GAS COMPRESSION OF FACILITIES AT CTF-ANKLESHWAR ON LSTK BASIS" was executed between the parties namely the Oil and Natural Gas Company (the respondent herein) having its registered office at New Delhi and one of its work center at Ankleshwar Asset, Ankleshwar, District Bharuch, Gujarat and M/s. Kirloskar Pneumatic Co. Ltd., the petitioner.

(ii) At the outset, the terms and conditions of the contract signed by the parties relevant for our purposes in Clause No. 1.2.6, 1.3.1 and 1.3.2(11) of the General conditions of the contract contained in Annxure-A, are set out as under :-

"1.2.6 Amendment to the Contract

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract and is signed by a duly authorised representative of each party hereto.

1.3.1 Applicable Laws

All questions, disputes or differences arising under, out of or in connection with this Contract shall be settled in accordance with laws of India (both procedural and substantive) from time to time in force and to the exclusive jurisdiction of the Courts at the place where the CONTRACT is signed in India, subject to the provisions of clause 1.3.2.

1.3.2 Arbitration

1.3.2(11) The seat of the arbitration shall be the place from where the LOA/NOA has been issued. For the sake of convenience, parties may agree to hold the proceedings at any other venue. The arbitration shall be conducted in the English language. Insofar as practicable, the Parties shall continue to implement the terms of the Contract notwithstanding the initiation of Arbitration Proceedings.”

(iii) On a dispute arose between the parties in the year 2021 emanating from the contract, a three member Arbitral Tribunal was constituted on 01.10.2021 with the consensus of the parties. On a notice dated 01.10.2021 issued by the learned Presiding Arbitrator, the preliminary meeting was held on 07.10.2021. The Arbitral Tribunal rendered its award on 13.03.2023, and a clarificatory order dated 15.04.2023 was passed on the application under Section 33(1) of the Arbitration and Conciliation Act, 1996 (in short as ‘the Act, 1996).

(vi) The respondent ONGC filed application under Section 34 of the Act, 1996 before the Court at Ankleshwar, Gujarat challenging the award as well as the clarificatory order.

(vii) On the first returnable date, the petitioner herein raised a preliminary objection as to the jurisdiction of the Commercial Court at Ankleshwar based on the minutes of the preliminary meeting dated 07.10.2021 recorded by the learned Presiding Arbitrator, asserting that the learned Presiding Arbitrator had recorded therein the mutual agreement of the parties to the arbitration to

have the seat of arbitration at Ahmedabad,

(viii) It is the case of the petitioner that in reply to the said objection, the respondent ONGC had admitted that the parties have consented to have a jurisdictional seat of the arbitration at Ahmedabad.

(ix) The respondent ONGC, thus, has admitted that the parties consented to have the jurisdictional seat of the arbitration at Ahmedabad in light of the minutes of the preliminary meeting dated 07.10.2021.

(x) On 28.08.2025, the respondent ONGC filed application under Section 36(2) of the Act, 1996 before the Additional District Judge, Bharuch at Ankleshwar seeking stay of the operation of the Award.

(xi) On 14.11.2025, the respondent ONGC filed application below Exh., 16 to convert the proceedings of Regular CMA No. 38 of 2023 (Section 34 Application) under the Commercial CMA and for transfer of the said application to the Commercial Court at Ankleshwar. Under the order dated 06.01.2026 passed by the Additional District Judge, Bharuch at Ankleshwar Section 34 application was transferred to the Commercial Court of Commercial Division at Ankleshwar.

(xii) The respondent ONGC filed Special Civil Application No. 209 of 2026 before this Court *inter alia* seeking directions to decide the Section 34 application as well as the stay application within time bound period. However, without serving the notice upon the petitioner herein, the said petition has been decided by an order dated 09.01.2026 directing the Commercial Court at Ankleshwar

to decide the Section 34 application as well as the stay application expeditiously, preferably within a period of six weeks from the date of receipt of the copy of the said order.

(xiii) The petitioner preferred a Misc. Civil Application No.1 of 2026, before this Court seeking clarification of the order dated 09.01.2026 which was also decided vide order dated 23.02.2026 clarifying that :-

“8. In this scenario, we clarify the order dated 09.01.2026, as under:-

- i. The Court concerned shall decide the pending application under Section 36 (2) as well as application under Section 34 of the Arbitration and Conciliation Act, 1996, both by dealing with the preliminary objections as to the territorial jurisdiction raised by the respondent/applicant herein as well as on merits, in case, issue raising preliminary objection goes against the respondent objector.
- ii. As to the pendency of the execution application before the other Court, we find it fit and proper to say that any directions contained in the order dated 09.01.2026 or in the present order will have no bearing in the said proceedings.”

(xiv) Thereafter, preliminary objections filed by the petitioner as to the jurisdiction of the Commercial Court at Ankleshwar were heard on various dates and on 18.03.2026, the Commercial Court passed the impugned order rejecting the objections of the petitioners holding that :-

“15. Considering the applicability of the judgment of videocon Industries Limited (supra), as discussed in Inox Renewables Ltd. (supra), the distinguishing facts as argued by opponents does not transpire to be helpful to the opponent, as the crux transpire that, when written agreement as to Seat is there, which provides that terms of agreement can be amended only by written agreement,

then seat can be changed by written agreement only. In present case there is written agreement, as per which seat is at Ankleshwar, and the said agreement provides that amendment or other variation of the Contract shall be effective only when it is in writing, is dated, expressly refers to the Contract and is signed by a duly authorised representative of each party hereto.

15.1 The law laid down by the above judgments do not provide for amendment in seat of arbitration by consent/waiver of agreement. Hence, judgments relied on by the opponent in this regard are not helpful to the opponent.

16. Opponent have relied on the averments made by the applicant in reply, however on reading the entire reply, the alleged admission is not clear, and legal position cannot change on the admission of either side, and hence the said arguments of the opponent are not accepted.

17. In view of the legal position laid down by the judgment of the Videocon (supra), and considering the clause 1.2.6, 1.3.1, & 1.3.2 (11) of the agreement between the parties, and in absence of any amendment in writing to the initial agreement between the parties, the mention in the minutes of meetings and the arbitral award, as to seat of arbitration being Ahmedabad, does not changes the seat of arbitration and the seat of arbitration in view of the initial agreement between the parties, remains at Ankleshwar, and so this court has jurisdiction to entertain the application u/s.34 of the arbitration & conciliation act. Hence, the following order.

ORDER

-Application exh.9 is hereby rejected.

-No order as to costs.”

(xv) The petitioner thereafter preferred application seeking for stay of the operation and implementation of the said order dated 18.03.2026 for a period of two weeks, alongwith the request that the proceedings in Section 34 application be not proceeded with during the said period so that the petitioner can avail appropriate remedies under law to challenge the impugned order dated 18.03.2026. However, the said application has also been rejected vide order of the same date, i.e. 18.03.2026 referring to the

directions of this Court in the judgment and order dated 09.01.2026 passed in Special Civil Application No. 209 of 2026.

4. Both the impugned orders dated 18.03.2026 are subject matter of challenge in the present petition seeking invocation of the extraordinary supervisory jurisdiction of the Court under Article 227 of the Constitution of India, wherein the above noted issues have arisen for examination.

5. At the outset, Ms. Manisha Luvkumar, the learned senior advocate assisted by the learned advocate Mr. Rohan Luvkumar, for the respondent No.1 would raise a preliminary objection as to the maintainability of the present petition referring to Section 8 of the Commercial Courts Act, 2015, which reads as under :-

“8. Bar against revision application or petition against an interlocutory order - Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.”

6. The submission is that the present petition may not be entertained being directed against the interlocutory order of the Commercial Court on the issue of jurisdiction, inasmuch as, such challenge can very well be raised in an appeal against the order under Section 34 of the Act, 1996, if it finally goes against the petitioner herein.

7. At the first blush, we were convinced by the submissions of the learned senior advocate appearing for the respondent No.1, but on an elaborate hearing on the issue, we find that under Article 227

of the Constitution, the power of superintendence of the Constitutional Court, which has been conferred with an object to keep inferior Courts and Tribunals within the limits of their authority, considering the nature of challenge herein, cannot be circumscribed by statutory limits of Section 8 of the Commercial Courts Act. We are conscious that though no hurdle can be put against the exercise of constitutional powers of the High Court, however, if parties have available statutory remedies, the High Court should direct them to avail such remedies before they resort to the constitutional remedy and the petition under Article 227 of the Constitution may not be entertained. However, this is a self imposed rule of discipline devised by the Court that the supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the persons aggrieved. **(Reference : Surya Dev Rai v. Ram Chander Rai¹).**

8. Having given thoughtful consideration to the facts and circumstances of the present case and the nature of challenge, noticing that the issue of jurisdiction of the Commercial Court at Ankleshwar has been raised in light of exclusive jurisdiction clause and the arbitration clause of the written contract, whereunder the award has been rendered by the learned Arbitrator; and that the issue as to the seat of arbitration conferring exclusive jurisdiction to the Principal Civil Court of original jurisdiction in a District within the meaning of Section 2(1)(e)(i) read with Section 20 of the Act, 1996 has arisen; which is fundamental to sustaining the challenge to the arbitral award under Section 34 of the Act, 1996, we do not find it just and proper to reject the present petition under Article 227 of the Constitution leaving it open for the

1 [(2003) 6 SCC 675]

petitioner to raise the issue in an appeal under Section 37, where the challenge to the award can be sustained.

9. In our considered opinion, being the supervisory jurisdictional High Court, looking to the nature of controversy at hand, which may arise at the stage of Section 37 appeal, we find it fit and proper to adjudicate the issue at this stage for two reasons, firstly, (i) that the issue is purely legal in nature and secondly, (ii) to render a decision as a guiding principles to the District Courts under the supervisory jurisdiction of the High Court.

10. Besides that, the object of the Commercial Courts Act, 2015 enacted for the Constitution of the Commercial Courts, Commercial Appellate Courts and Commercial Appellate Division in the High Court for adjudicating commercial disputes of specified value and the matters connected therewith, is to provide for speedy disposal of high value commercial disputes to accelerate economic growth, improve the international image of the Indian Justice delivery system and the faith of the investor world in the legal culture of the Nation. The Commercial Courts Act, 2015 not only provides for constitution of the Commercial Courts as a special designated Court to adjudicate commercial disputes of specified value, but also restricts the remedies of appeal and revision in various provisions contained in Section 8, 11, 12 and Section 13(2), by providing specific provisions by amendment of the Code of Civil Procedure, 1908 in the manner specified in the Schedule (as per Section 16 of the Act, 2015, for early resolution of the commercial dispute.

11. By virtue of Section 10 of the Commercial Courts Act, 2015 the jurisdiction in respect of arbitration matters other than an

international commercial arbitration where the subject matter of arbitration is a commercial dispute of specified value, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996, shall be adjudicated by the Commercial Court exercising territorial jurisdiction over such arbitration where such commercial court has been constituted. By virtue of Section 10(3) of the Commercial Courts Act, 2015, the word 'Court' as defined in Section 2(1)(e)(i) of the Arbitration and Conciliation Act, 1996 shall be the designated Commercial Court exercising territorial jurisdiction over such arbitration, where such Commercial Court has been constituted, to adjudicate commercial dispute of specified value.

12. Thus, the territorial jurisdiction of the designated Commercial Court dealing with arbitration matters, where the subject matter of arbitration is a commercial dispute of specified value, is governed by Section 10(3) of the Commercial Courts Act, 2015.

13. However, the fact remains that, in the instant case, we are not concerned with the territorial jurisdiction of the Commercial Court in terms of Section 10(3) of the Commercial Courts Act, 2015 at Ankleshwar, inasmuch as, Section 34 application herein has been filed under the Act, 1996 before a designated Commercial Court having territorial jurisdiction over the subject matter of arbitration falling in its territory, and also where the cause of action is located.

14. The question before us is about the fixation of the seat of arbitration with the consent of the parties to the agreement within the meaning of Section 20 of the Arbitration and Conciliation Act,

1996, which would confer exclusive jurisdiction to the Court defined in Section 2(1)(e)(i) of the Act, 1996. In our considered opinion, the jurisdictional issue raised before us in the present petition is distinct from “the issue of jurisdiction” as conceived under Section 8 of the Commercial Courts Act, 2015.

15. Suffice it to say that by virtue of Section 10(3) of the Commercial Courts Act, 2015, though the jurisdiction to deal with the subject matter of arbitration, where it is a Commercial dispute of specified value though has been conferred upon the Commercial Court designated under the Act, 2015 within its territory, but in the proceedings under Section 34, any issue raised about seat of arbitration conferring exclusive jurisdiction, would be guided and circumscribed by the Act, 1996, which is a complete code in itself. The question of fixation of seat so as to confer exclusive jurisdiction to the Court dealing with the challenge to the arbitral award is central to entertaining the application under Section 34 of the Act, 1996, if raised before such Court.

16. In view of the above, the preliminary objection as to the maintainability of the present petition under Article 227 of the Constitution of India arising out of the proceedings under the Arbitration and Conciliation Act, 1996, in light of the provisions of Section 8 of the Commercial Courts Act, 2015 based on the decision of the Delhi High Court in **Black Diamond Trackparts Pvt. Ltd. And Others v/s. Black Diamond Motors Pvt. Ltd.**², are hereby rejected.

17. Proceeding to answer the question posed by us hereinabove, we may record the submissions of the learned senior counsels

2 (2021 SCC OnLine Delhi 3946)

appearing for the rival parties.

18. Mr. Mihir Thakore, the learned senior counsel for the petitioner, at the outset, invited attention of the Court to page No. '104' of the minutes of the preliminary arbitral meeting held on 07.10.2021 by video conferencing. Much emphasis has been laid to the contents of paragraph No.'5' of the said minutes which reads as under :-

“With the consent of learned Counsel/Advocates for the parties, it was decided that the seat of Arbitration shall be at Ahmedabad and that arbitral proceedings shall be conducted in English and in accordance with the provisions of the Act or any statutory modification thereof.”

19. Based on the statement made therein, it was vehemently argued that after constitution of the tribunal on 01.10.2021, in the preliminary arbitral meeting dated 07.10.2021, after notice was issued to the parties, the learned advocates for the parties had appeared before the learned Presiding Arbitrator for settling the issues. While it was agreed by the learned advocates and representatives, at the outset, that they have no objection to the constitution and composition of the arbitral tribunal, it was also agreed that the seat of arbitration shall be at 'Ahmedabad' and the arbitration proceedings shall be conducted at the said place.

20. The contention is that with this agreement of the parties recorded in the preliminary arbitral meeting held on 07.10.2021 the seat of arbitration has been fixed within the meaning of Section 20(1) of the Act, 1996 at Ahmedabad. The result is that only the Principal Civil Court having original jurisdiction in the Ahmedabad district would be competent to entertain the challenge to the award under Section 34 of the Act, 1996. It was argued that the

application under Section 34 filed by the ONGC at Ankleshwar is a mischievous attempt to file proceedings before a wrong court when the seat of arbitration was chosen to be at Ahmedabad with the consent of the parties recorded at the preliminary arbitral meeting held on 07.10.2021. The Court at Ankleshwar would have no jurisdiction to try and entertain the application under Section 34 or any other application under the Act, 1996 at all.

21. It was argued that not only the parties agreed to the seat of arbitration being at Ahmedabad, but all other events during the course of proceedings of arbitration were held at Ahmedabad and on conclusion, the award was signed and delivered at Ahmedabad. Even the order under Section 33 of the Act, 1996 was delivered and signed at Ahmedabad.

22. It was argued that the respondent ONGC also acted in consonance of the preliminary arbitral meeting and participated throughout the same without raising any dispute whatsoever regarding the seat being at Ahmedabad. The minutes of the preliminary arbitral meeting confirming the seat of arbitration being at Ahmedabad has neither been challenged nor it was ever submitted that such minutes cannot be relied upon. In view of the express consent of both the parties as also the determination of the seat of arbitration by the learned Arbitrator, the parties to the arbitration have in fact chosen the Courts at the seat of Arbitration at Ahmedabad, to be the proper Court for the purpose of challenge to the award.

23. It was argued that the seat of arbitration is akin to exclusive jurisdiction clause and the choice of seat for arbitration would necessarily amount the parties choosing the forum for remedies in

the nature of attack on the award. In absence of any challenge to the fixation of seat in the preliminary meeting with the consent of the parties, the respondent has knowingly waived the requirement of clause 1.3.2(11) of the agreement recording the seat of arbitration being at the place from where the LOA/NOA has been issued.

24. Besides that, even in their reply to the application Exh.9 filed by the petitioner raising objection as to the jurisdiction of the Commercial Court at Ankleshwar, it was admitted by the respondent that the seat of arbitration as decided in the arbitral meeting dated 07.10.2021 was fixed by the parties for smooth conducting of the arbitration, inasmuch as, it helps the parties to determine the Court at which application for appointment of Arbitrator is to be made or application for interim relief is to be submitted or any other application during the arbitration proceedings to be submitted at the Court.

25. Learned senior counsel for the petitioner, thus, would vehemently argue that this statement of the respondent ONGC in their reply to the application Exh.9 raising objection to the Court at Ankleshwar, clinches the issue and is sufficient to hold the order of the Commercial Court being illegal. Once chosen with open eyes that fixation of seat during the course of arbitral proceedings, would determine the jurisdiction of the Court at the place of seat fixed, the respondent cannot be permitted to take a U-turn to contend that after the arbitral award has been passed, they are free to challenge the award at the Court having territorial or pecuniary jurisdiction as prescribed under the arbitration clause. The statement of the respondent that since the arbitral clause was clear regarding the seat of arbitration at Ankleshwar, there stood

no reason for the parties to shift to it to Ahmedabad having no nexus to the dispute and also the submissions based on the clause No. 1.2.6 of the arbitral agreement appreciated by the learned Commercial Court, are nothing but an after thought.

26. The submission is of a clear admission of the respondent in their reply to the application Exh. 9, which has been pressed into service to agitate that the Commercial Court has committed a grave error of law in ignoring the fact that if the parties are free to agree at the place of arbitration (seat) under Section 20(1) of the Act, 1996, they are also free to change the seat at any point of time before inception of the arbitral proceedings.

27. The submission is that the decision of the parties to fix the seat of Arbitration at Ahmedabad as recorded in the minutes of the preliminary meeting dated 07.10.2021 would amount to modification of clause 1.3.2(11) and change of seat, fixing the place of arbitration with the consent of the parties at Ahmedabad within the meaning of Section 20(1) of the Act, 1996. Once fixed, the respondent cannot resile from its own consent and plead otherwise. It was, thus, urged that in the peculiar facts and circumstances of the present case, the order of the Commercial Court of rejection of Exh. 9 application raising jurisdictional issue to be set aside and resultantly, the application under Section 34 filed by the respondent be rejected being outside the jurisdiction of the Court at Ankleshwar.

28. In support of the above submissions, the learned senior counsel for the petitioner would refer to the decision of the Apex Court in **Bharat Aluminium Technical Services Inc. V. Kaiser**

Aluminum Technical Services Inc.³ (BALCO) specifically paragraph Nos. 95, 97, 98 and 99 therein, to emphasis on the party autonomy. It was argued that in the context of Section 20 of the Act, 1996 it was held therein that the term “subject-matter of arbitration” cannot be confused with “subject-matter of suit”. The term “subject matter” in Section 2(1)(e) is confined to part-I and its purpose is to notify the Court having supervisory control over the arbitration proceedings and hence, it refers to the court which would essentially be a Court of the seat of the arbitration process.

29. It was held therein that the provisions of Section 2(1)(e) has to be construed keeping in view of Section 20, which give recognition to party autonomy or else Section 20 would render negatory.

30. We may note at this juncture, that it was observed therein that the Legislature has consciously given jurisdiction to two Courts, i.e. the Court which would have jurisdiction where the cause of action is located and the Courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for seat of arbitration at a place which would be neutral to both the parties. Therefore, the Courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process.

31. It was further observed that a plain reading of Section 20 leaves no room for doubt that the parties are free to agree to any “place” or “seat” and in absence of the parties agreement thereto, Section 20(2) authorises the Tribunal to determine the place/seat of such arbitration. Section 20(3) is an enabling provision which

3 [(2012) 9 SCC 552]

permits the Tribunal to meet at any place of convenience for conducting hearings, consultations, recording of witnesses statement, expert or parties examination etc.. The fixation of the most convenient “venue” for smooth conduct of the arbitration proceedings is, thus, taking care of by Section 20(3). It was observed that while Section 20(1) and 20(2) fix/determine the place/seat of the arbitration either with the agreement of the parties or by the order of the Tribunal, Section 20(3) only talks of venue or convenient place for conducting arbitration proceedings, which may be one or more than one.

32. It was, thus, resolved therein that :

“Party autonomy

95. The learned counsel for the appellants have submitted that Section 2(1)(e), Section 20 and Section 28 read with Section 45 and Section 48(1)(e) make it clear that Part I is not limited only to arbitrations which take place in India. That these provisions indicate that the Arbitration Act, 1996 is *subject-matter centric* and not exclusively *seat-centric*. That therefore, “*seat*” is not the “*centre of gravity*” so far as the Arbitration Act, 1996 is concerned. We are of the considered opinion that the aforesaid provisions have to be interpreted by keeping the principle of territoriality at the forefront. We have earlier observed that Section 2(2) does not make Part I applicable to arbitrations seated or held outside India. In view of the expression used in Section 2(2), the maxim *expressum facit cessare tacitum*, would not permit by interpretation to hold that Part I would also apply to arbitrations held outside the territory of India. The expression “*this Part shall apply where the place of arbitration is in India*” necessarily excludes application of Part I to arbitration seated or held outside India. It appears to us that neither of the provisions relied upon by the learned counsel for the appellants would make any section of Part I applicable to arbitration seated outside India. It will be apposite now to consider each of the aforesaid provisions in turn.

96. Section 2(1)(e) of the Arbitration Act, 1996 reads as under:

“2. Definitions.—(1) In this Part, unless the context otherwise requires(a)-(d)***

(e) ‘**Court**’ means the Principal Civil Court of Original Jurisdiction

in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;”

We are of the opinion, the term “*subject-matter of the arbitration*” cannot be confused with “*subject-matter of the suit*”. The term “*subject-matter*” in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located.

97. The definition of Section 2(1)(e) includes “*subject-matter of the arbitration*” to give jurisdiction to the courts where the arbitration takes place, which otherwise would not exist. On the other hand, Section 47 which is in Part II of the Arbitration Act, 1996 dealing with enforcement of certain foreign awards has defined the term “*court*” as a court having jurisdiction *over the subject-matter of the award*. This has a clear reference to a court within whose jurisdiction the asset/person is located, against which/whom the enforcement of the international arbitral award is sought. The

provisions contained in Section 2(1)(e) being purely jurisdictional in nature can have no relevance to the question whether Part I applies to arbitrations which take place outside India.

98. We now come to Section 20, which is as under:

“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.”

A plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any “place” or “seat” within India, be it Delhi, Mumbai, etc. In the absence of the parties' agreement thereto, Section 20(2) authorises the tribunal to determine the place/seat of such arbitration. Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.

99. The fixation of the most convenient “venue” is taken care of by Section 20(3). Section 20, has to be read in the context of Section 2(2), which places a threshold limitation on the applicability of Part I, where the place of arbitration is in India. Therefore, Section 20 would also not support the submission of the extra-territorial applicability of Part I, as canvassed by the learned counsel for the appellants, so far as purely domestic arbitration is concerned.

117. It would, therefore, follow that if the arbitration agreement is found or held to provide for a seat/place of arbitration outside India, then the provision that the Arbitration Act, 1996 would govern the arbitration proceedings, would not make Part I of the Arbitration Act, 1996 applicable or enable the Indian courts to exercise supervisory jurisdiction over the arbitration or the award. It would only mean that the parties have contractually imported from the Arbitration Act, 1996, those provisions which are concerned with the internal conduct of their arbitration and which are not inconsistent with the mandatory provisions of the *English procedural law/curial law*. This necessarily follows from the fact that Part I applies only to arbitrations having their seat/place in India.”

33. Emphasizing on party autonomy, reliance is further placed on

the decision of the Apex Court in **BGS SGS SOMA JV v/s. NHPC Ltd.**⁴. The relevant paragraph Nos. 44, 45, 46, 47, 48, 49, 50, 53, 55, 56, 57, 60, 61, 63 and 64 were placed before us to substantiate the above submissions, which are reproduced hereinunder :-

“44. If paras 75, 76, 96, 110, 116, 123 and 194 of *BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] are to be read together, what becomes clear is that Section 2(1)(e) has to be construed keeping in view Section 20 of the Arbitration Act, 1996, which gives recognition to party autonomy — the Arbitration Act, 1996 having accepted the territoriality principle in Section 2(2), following the UNCITRAL Model Law. The narrow construction of Section 2(1)(e) was expressly rejected by the five-Judge Bench in *BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]. This being so, what has then to be seen is what is the effect Section 20 would have on Section 2(1)(e) of the Arbitration Act, 1996.

45. It was not until this Court's judgment in *Indus Mobile Distribution (P) Ltd.* [*Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.*, (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] that the provisions of Section 20 were properly analysed in the light of the 246th Report of the Law Commission of India titled, “Amendments to the Arbitration and Conciliation Act, 1996” (August, 2014) (hereinafter referred to as “the Law Commission Report, 2014”), under which Sections 20(1) and (2) would refer to the “seat” of the arbitration, and Section 20(3) would refer only to the “venue” of the arbitration. Given the fact that when parties, either by agreement or, in default of there being an agreement, where the Arbitral Tribunal determines a particular place as the seat of the arbitration under Section 31(4) of the Arbitration Act, 1996, it becomes clear that the parties having chosen the seat, or the Arbitral Tribunal having determined the seat, have also chosen the courts at the seat for the purpose of interim orders and challenges to the award.

46. This Court in *Indus Mobile Distribution (P) Ltd.* [*Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.*, (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760], after referring to Sections 2(1)(e) and 20 of the Arbitration Act, 1996, and various judgments distinguishing between the “seat” of an arbitral proceeding and “venue” of such proceeding, referred to the Law Commission Report, 2014 and the recommendations made therein as follows : (SCC pp. 692-93, paras 17-20)

“17. In amendments to be made to the Act, the Law Commission

4 [(2020) 4 SCC 234]

recommended the following:

'Amendment of Section 20

12. In Section 20, delete the word "place" and add the words "seat and venue" before the words "of arbitration".

(i) In sub-section (1), after the words "agree on the" delete the word "place" and add words "seat and venue".

(ii) In sub-section (3), after the words "meet at any" delete the word "place" and add word "venue". [Note.—The departure from the existing phrase "place" of arbitration is proposed to make the wording of the Act consistent with the international usage of the concept of a "seat" of arbitration, to denote the legal home of the arbitration. The amendment further legislatively distinguishes between the "[legal] seat" from a "[mere] venue" of arbitration.]

Amendment of Section 31

17. In Section 31

(i) In sub-section (4), after the words "its date and the" delete the word "place" and add the word "seat".'

18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the *BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] judgment in no uncertain terms has referred to "place" as "juridical seat" for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word "place" is used, refers to "juridical seat", whereas in Section 20(3), the word "place" is equivalent to "venue". This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the law of arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of the Code of Civil Procedure be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.* [*Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in *B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.* [*B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.*, (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] . Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [*Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744 : (2016) 158 DRJ 391] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly.”

This judgment has recently been followed in *Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.* [*Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.*, (2020) 5 SCC 462 : 2019 SCC OnLine SC 929 at para 15]

47. In fact, the Law Commission Report, 2014 also recommended an amendment in the definition of “court” under Section 2(1)(e) of the Arbitration Act, 1996, so that in the case of international commercial arbitrations held in India, the High Court alone should be the “court” for the purposes of the Arbitration Act, 1996, even where such a High Court does not exercise ordinary original jurisdiction. The recommendation made by the Law Commission, which was followed, leading to an amendment of the Arbitration Act, 1996, is as follows:

“26. It is recommended that in case of international commercial arbitrations, where there is a significant foreign element to the transaction and at least one of the parties is foreign, the relevant “court” which is competent to entertain proceedings arising out of the arbitration agreement, should be the High Court, even where such a High Court does not exercise ordinary civil jurisdiction. It is expected that this would ensure that international commercial arbitrations, involving foreign parties, will be heard expeditiously and by commercial oriented Judges at the High Court level. ...”

Amendment of Section 2

1. In Section 2 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act)—

(ii) In sub-section (1), clause (e), after the words “court means”— add sub-section (i) beginning with the words “in the case of an arbitration other than international commercial arbitration”, before the words “the Principal civil court of Original Jurisdiction”

In sub-section (1), clause (e) replace sub-clause (ii) by following:

‘1. (e)(ii) in the case of an international commercial arbitration, the High Court exercising jurisdiction over the Principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any court of a grade inferior to such High Court, or in cases involving grant of interim measures in respect of arbitrations outside India, the High Court exercising jurisdiction over the court having jurisdiction to grant such measures as per the laws of India, and includes the High Court in exercise of its ordinary original civil jurisdiction.’

[*Note.*—This is to solve the problem of conflict of jurisdiction that would arise in cases where interim measures are sought in India in cases of arbitrations seated outside India. This also ensures that in international commercial arbitrations, jurisdiction is exercised by the High Court, even if such High Court does not exercise ordinary original civil jurisdiction.]”

48. The aforesaid amendment carried out in the definition of “Court” is also a step showing the right direction, namely, that in international commercial arbitrations held in India, the High Court alone is to exercise jurisdiction over such proceedings, even where no part of the cause of action may have arisen within the jurisdiction of such High Court, such High Court not having ordinary original jurisdiction. In such cases, the “place” where the award is delivered alone is looked at, and the High Court given jurisdiction to supervise the arbitration proceedings, on the footing of its jurisdiction to hear appeals from decrees of courts subordinate to it, which is only on the basis of territorial jurisdiction which in turn relates to the “place” where the award is made. In the light of this important change in the law, Section 2(1) (e)(i) of the Arbitration Act, 1996 must also be construed in the manner indicated by this judgment.

49. Take the consequence of the opposite conclusion, in the light of the facts of a given example, as follows. New Delhi is specifically designated to be the seat of the arbitration in the arbitration clause between the parties. Part of the cause of action, however, arises in several places, including where the contract is partially to be performed, let us say, in a remote part of Uttarakhand. If concurrent jurisdiction were to be the order of the day, despite the seat having been located and specifically chosen by the parties, party autonomy would suffer, which *BALCO* [*BALCO v. Kaiser*

Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] specifically states cannot be the case. Thus, if an application is made to a District Court in a remote corner of the Uttarakhand hills, which then becomes the court for the purposes of Section 42 of the Arbitration Act, 1996 where even Section 34 applications have then to be made, the result would be contrary to the stated intention of the parties — as even though the parties have contemplated that a neutral place be chosen as the seat so that the courts of that place alone would have jurisdiction, yet, any one of five other courts in which a part of the cause of action arises, including courts in remote corners of the country, would also be clothed with jurisdiction. This obviously cannot be the case. If, therefore, the conflicting portion of the judgment of *BALCO [BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] in para 96 is kept aside for a moment, the very fact that parties have chosen a place to be the seat would necessarily carry with it the decision of both parties that the courts at the seat would exclusively have jurisdiction over the entire arbitral process.

50. In fact, subsequent Division Benches of this Court have understood the law to be that once the seat of arbitration is chosen, it amounts to an exclusive jurisdiction clause, insofar as the courts at that seat are concerned. In *Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH*, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , this Court approved the dictum in *Shashoua [Shashoua v. Sharma*, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] as follows : (*Enercon case [Enercon (India) Ltd. v. Enercon GmbH*, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , SCC p. 55, para 126)

“126. Examining the fact situation in the case, the Court in *Shashoua case [Shashoua v. Sharma*, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] observed as follows:

‘The basis for the court's grant of an anti-suit injunction of the kind sought depended upon the *seat* of the arbitration. *An agreement as to the seat of an arbitration brought in the law of that country as the curial law and was analogous to an exclusive jurisdiction clause.* Not only was there agreement to the curial law of the *seat*, but also to the courts of the *seat* having supervisory jurisdiction over the arbitration, so that, by agreeing to the *seat*, *the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of the arbitration.*

Although, “*venue*” was not synonymous with “*seat*”, in an arbitration clause which provided for arbitration to be conducted in accordance with the Rules of the ICC in Paris (a supranational body of rules), a provision that “the *venue* of arbitration shall be London, United Kingdom” did amount to the designation of a juridical seat....’

In para 54, it is further observed as follows:

“There was a little debate about the possibility of the issues relating to the alleged submission by the claimants to the jurisdiction of the High Court of Delhi being heard by that Court, because it was best fitted to determine such issues under the Indian law. Whilst I found this idea attractive initially, we are persuaded that it would be wrong in principle to allow this and that *it would create undue practical problems in any event. On the basis of what I have already decided, England is the seat of the arbitration and since this carries with it something akin to an exclusive jurisdiction clause, as a matter of principle the foreign court should not decide matters which are for this Court to decide in the context of an anti-suit injunction.*”

(emphasis in original)

53. In *Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760]* , after clearing the air on the meaning of Section 20 of the Arbitration Act, 1996, the Court in para 19 (which has already been set out hereinabove) made it clear that the moment a seat is designated by agreement between the parties, it is akin to an exclusive jurisdiction clause, which would then vest the courts at the “seat” with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

55. Having so stated, the Division Bench then went on to give a restricted meaning to *Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760]* in para 56 as follows : (*Antrix Corpn. Ltd. case [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338]* , SCC OnLine Del)

“56. In *Datawind [Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744 : (2016) 158 DRJ 391]* , as the facts and the question framed by the Court in the second paragraph of its decision suggest, the Court was faced with a situation where the parties had designated both the seat *and* specified an exclusive forum selection clause. Therefore, its findings have to be interpreted in that light. In fact, were this Court to find otherwise, and interpret *Datawind [Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744 : (2016) 158 DRJ 391]* as holding that the designation of seat alone would amount to an exclusive forum selection clause in domestic arbitrations, then this would run contrary to the five-Judge decision in *BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]* , which as noticed above, gave jurisdiction under Section 2(1)(e) to two courts — one of which was the court of the seat, thereby clearly implying that the designation of a seat would not amount to an exclusive forum selection clause.”

(emphasis in original)

56. The Court then went on to state : (*Antrix Corpn. Ltd. case* [*Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd.*, 2018 SCC OnLine Del 9338] , SCC OnLine Del paras 58-59)

“58. The Court is of the opinion that in this case, only if the parties had designated the seat as New Delhi *and also provided an exclusive forum selection clause in favour of the courts at New Delhi*, could it be said that this Court would have exclusive jurisdiction over all applications filed under the Arbitration Act. Indeed, it is open to parties to an arbitration to designate a particular forum as the exclusive forum to which all applications under the Act would lie. This would merely be an exercise of the right of the parties to choose one among multiple competent forums as the exclusive forum. This is a clearly permissible exercise of the right of party autonomy as held by the Supreme Court in *Swastik Gases (P) Ltd.v. Indian Oil Corpn. Ltd.* [*Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] . Conversely, merely choosing a seat, cannot amount to exercising such a right of exclusive forum selection.

59. This court is of opinion that, holding otherwise would in effect render Section 42 of the Arbitration Act ineffective and useless. Section 42 of the Act presupposes that there is more than one competent forum to hear applications under the Arbitration Act, and hence to ensure efficacy of dispute resolution, this provision enacts that the court, which is first seized of any such application under the Act, would be the only court possessing jurisdiction to hear all subsequent applications. If seat were equivalent to an exclusive forum selection clause in Part-I arbitrations, then every time parties would designate a seat, that would in effect mean that Section 42 would have no application. Thus, only those few situations where parties do not actually designate any seat (and thus no exclusive competence is conferred on one forum) would Section 42 have any role. In fact, often, when parties do not agree upon a seat in the arbitration agreement, for convenience, the Arbitral Tribunal designates a particular seat of the arbitration, or the agreement vests the discretion in the tribunal to decide the seat (and not just the “venue”). In all those circumstances then as well, the decision of the tribunal to agree upon a “seat” would amount to an exclusive jurisdiction clause and Section 42 would have no application. This would dilute Section 42 and would accordingly, be contrary to Parliamentary intent. Undoubtedly, in the present case, the parties have only chosen the seat as New Delhi and have not specified an exclusive forum selection clause. Therefore, it cannot be said that the courts in Delhi have exclusive competence to entertain applications under the Arbitration Act in the present dispute. The jurisdiction of the courts where the cause of action arises, which in this case, is the Bangalore City civil court, cannot be said to have been excluded therefore. Accordingly, question (ii) is also answered in favour of Antrix.”

(emphasis in original)

57. The view of the Delhi High Court in *Antrix Corpn. Ltd. [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338]* , which followed judgments [*Nivaran Solutions v. Aura Thia Spa Services (P) Ltd., 2016 SCC OnLine Bom 5062 : (2016) 5 Mah LJ 234*] · [*Konkola Copper Mines v. Stewarts & Lloyds of India Ltd., 2013 SCC OnLine Bom 777 : (2013) 5 Bom CR 29*] of the Bombay High Court, does not commend itself to us. First and foremost, it is incorrect to state that the example given by the Court in para 96 of *BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]* reinforces the concurrent jurisdiction aspect of the said paragraph. As has been pointed out by us, the conclusion that the Delhi as well as the Mumbai or Kolkata courts would have jurisdiction in the example given in the said paragraph is wholly incorrect, given the sentence, “*This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi*”. The sentence which follows this is out of sync with this sentence, and the other paragraphs of the judgment. Thus, *BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]* does not “unmistakably” hold that two courts have concurrent jurisdiction i.e. the seat court and the court within whose jurisdiction the cause of action arises. What is missed by these High Court judgments is the subsequent paragraphs in *BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]* , which clearly and unmistakably state that the choosing of a “seat” amounts to the choosing of the exclusive jurisdiction of the courts at which the “seat” is located. What is also missed are the judgments of this Court in *Enercon (India) Ltd. [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59]* and *Reliance Industries Ltd. [Reliance Industries Ltd. v. Union of India, (2014) 7 SCC 603 : (2014) 3 SCC (Civ) 737]*

60. The judgments of the English courts have examined the concept of the “juridical seat” of the arbitral proceedings, and have laid down several important tests in order to determine whether the “seat” of the arbitral proceedings has, in fact, been indicated in the agreement between the parties. The judgment of Cooke, J., in *Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376]* , states:

“34. London arbitration is a well-known phenomenon which is often chosen by foreign nationals with a different law, such as the law of New York, governing the substantive rights of the parties. This is because of the legislative framework and supervisory powers of the courts here which many parties are keen to adopt. When therefore there is an express designation of the arbitration venue as London and no designation of any alternative place as the seat, combined

with a supranational body of rules governing the arbitration and no other significant contrary indicia, the inexorable conclusion is, to my mind, that London is the juridical seat and English Law the curial law. In my judgment it is clear that either London has been designated by the parties to the arbitration agreement as the seat of the arbitration, or, having regard to the parties' agreement and all the relevant circumstances, it is the seat to be determined in accordance with the final fall back provision of Section 3 of the Arbitration Act."

61. It will thus be seen that wherever there is an express designation of a "venue", and no designation of any alternative place as the "seat", combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.

63. The Court in *Enercon GmbH* [*Enercon GmbH v. Enercon (India) Ltd.*, 2012 EWHC 689 (Comm) : (2012) 1 Lloyd's Rep 519] began its discussion on the "seat" of the arbitration by referring to *Shashoua* [*Shashoua v. Sharma*, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] , and then referring to "*The Conflict of Laws*", Dicey, Morris & Collins, 14th Edn. as follows:

"58. Moreover, as Cooke, J. noted, this conclusion is consistent with the views expressed in *The Conflict of Laws*, Dicey, Morris & Collins, 14th Edition at ¶16-035 where the authors state that *the seat "is in most cases sufficiently indicated by the country chosen as the place of the arbitration. For such a choice of place not to be given effect as a choice of seat, there will need to be clear evidence that the parties ... agreed to choose another seat for the arbitration and that such a choice will be effective to endow the courts of that country with jurisdiction to supervise and support the arbitration"*.

59. Apart from the last sentence in Clause 18.3 (i.e. "The provisions of the Indian Arbitration and Conciliation Act, 1996 shall apply"), it seems to me that the conclusion that London is the "seat" of any arbitration there-under is beyond any possible doubt. Thus, the main issue is whether this last sentence is to be regarded as "significant contrary indicia" (using the language of Cooke, J.) so as to place the "seat" of the arbitration in India. A similar issue was considered by Saville, J. in *Union of India v. McDonnell Douglas* [*Union of India v. McDonnell Douglas Corpn.*, (1993) 2 Lloyd's Rep 48] which, of course, pre-dates the English 1996 Act. The arbitration agreement in that case provided as follows: "In the event of a dispute arising out of or in connection with this agreement...the same shall be referred to an Arbitration Tribunal... The arbitration shall be conducted in accordance with the procedure provided in the Indian Arbitration Act of 1940 or any enactment or modification thereof. The arbitration shall be

conducted in the English language...The seat of the arbitration proceedings shall be London, United Kingdom.” Saville, J. expressed the view that the arguments on both sides were “finely balanced” but in effect concluded that the reference to the Indian Arbitration Act, 1940 did not have the effect of changing the “seat” of the arbitration designated by the parties. Rather, the phrase referring to the 1940 Act was to be reconciled with the rest of the clause by reading it as referring to the internal conduct of the arbitration as opposed to the external supervision of the arbitration by the courts.”

(emphasis supplied)

64. The Court in *Enercon GmbH [Enercon GmbH v. Enercon (India) Ltd., 2012 EWHC 689 (Comm) : (2012) 1 Lloyd's Rep 519]* then held that although the word “venue” is not synonymous with “seat”, on the facts of that case, London — though described as the “venue” — was really the “seat” of the arbitration. This was for the reason that London was a neutral place in which neither party worked for gain, and in which no part of the cause of action arose. It was thus understood to be a neutral place in which the proceedings could be “anchored”. Secondly, the Court stressed on the expression “arbitration proceedings” in Clause 18.3, which the Court held to be an expression which included not just one or more individual hearings, but the arbitral proceedings as a whole, culminating in the making of an award. The Court held:

“63. Second, the language in Clause 18.3 refers to the “arbitration proceedings”. That is an expression which includes not just one or more individual or particular hearings but the arbitration proceedings as a whole including the making of an award. In other words the parties were anchoring the whole arbitration process in London right up to and including the making of an award. The place designated for the making of an award is a designation of seat. Moreover the language in Clause 18.3 does not refer to the venue of all hearings “taking place” in London. Clause 18.3 instead provides that the venue of the arbitration proceedings “shall be” London. This again suggests the parties intended to anchor the arbitration proceedings to and in London rather than simply physically locating the arbitration hearings in London. Indeed in a case where evidence might need to be taken or perhaps more likely inspected in India it would make no commercial sense to construe the provision as mandating all hearings to take place in a physical place as opposed to anchoring the arbitral process to and in a designated place. All agreements including an arbitration agreement should be construed to accord with business common sense. In my view, there is no business common sense to construe the arbitration agreement (as contended for by EIL) in a manner which would simply deprive the arbitrators of an important discretion that they possess to hear evidence in a convenient geographical location.

64. Third, Joseph QC submitted that the last sentence of Clause

18.3 can be reconciled with the choice of London as the seat. First, he submitted that it can be read as referring simply to Part II of the Indian 1996 Act i.e. the enforcement provisions. Edey QC's response was that if that is all the last sentence meant, then it would be superfluous. However, I do not consider that any such superfluity carries much, if any, weight. Alternatively, Joseph QC submitted that it can be read as referring only to those provisions of the Indian 1996 Act which were not inconsistent with the English 1996 Act."

34. The judgment of the Apex Court in **Inox Renewables Ltd. v/s. Jayesh Electricals Ltd.**⁵ has further been placed to submit that the said case squarely covers the dispute before us. Referring to the facts of the said case, it is submitted that :-

(i) The said case emanates from the decision of this High Court itself, where the High Court referring to the arbitration clause 8.5 of the purchase order therein, had held that even if one is to go by the said clause, exclusive jurisdiction being vested in the Courts at Rajasthan, the appropriate Court shall be at Jaipur.

(ii) The relevant sentence in clause 8.5 of the purchase order therein reads that :-

"The venue of the arbitration shall be Jaipur."

(iii) The appellant therein argued before the Apex Court that the Arbitrator had recorded in the arbitral award that venue/place of arbitration shall be shifted by mutual consent to 'Ahmedabad', as a result of which the place of arbitration or the seat of arbitration became 'Ahmedabad' resulting into the courts at Ahmedabad having exclusive jurisdiction, heavily relying upon **BGS SGS SOMA JV**⁴.

5 [(2023) 3 SCC 733]

(iv) The respondent therein, on the other side, had argued that shifting of place of arbitration even by mutual agreement cannot be done without a written agreement between the parties. It was contended that vesting of exclusive jurisdiction with the Courts at Rajasthan being independent from the arbitration clause stating that the arbitration is to be held at Jaipur, would indicate that the Courts at Rajasthan alone would have exclusive jurisdiction. It was argued therein that the Arbitrator's finding that the venue was shifted by mutual consent from 'Jaipur' to 'Ahmedabad' has reference only to Section 20(3) of the Act, 1996, as Ahmedabad was in reality a convenient place for the arbitration to take place, the seat of the arbitration always remained at Jaipur.

(v) In light of the said dispute, raised before the Apex Court, it was noted in paragraph Nos. '9', '10', '11', and '12' as under:-

"9. Having heard the learned counsel for both the parties, it is first necessary to set out what the learned arbitrator has held in the award with respect to the venue/place of the arbitration. In para 12.3, the learned arbitrator holds thus:

"12.3. There is no controversy as to the constitution of the Tribunal between the parties and the parties have agreed to get their dispute resolved by a sole arbitrator. As per arbitration agreement, the venue of the arbitration was to be Jaipur. However, the parties have mutually agreed, irrespective of a specific clause as to the [venue, that the place] of the arbitration would be at Ahmedabad and not at Jaipur. The proceedings, thus, have been conducted at Ahmedabad on constitution of the Tribunal by the learned Nominee Judge of the Hon'ble High Court of Gujarat."

10. What is clear, therefore, as per this paragraph is that by mutual agreement, parties have specifically shifted the venue/place of arbitration from Jaipur to Ahmedabad. This being so, is it not possible to accede to the argument made by the learned counsel for the respondent that this could only have been done by written agreement and that the arbitrator's finding would really have reference to a convenient venue and not the seat of arbitration.

11. In *BGS SGS [BGS SGS SOMA JV v. NHPC Ltd.]*, (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] , this Court, after an exhaustive

review of the entire case law, concluded thus : (SCC pp. 268, 281, 284, 301-02 & 309, paras 32, 48-49, 53, 82 & 98)

“32. It can thus be seen that given the new concept of “juridical seat” of the arbitral proceedings, and the importance given by the Arbitration Act, 1996 to this “seat”, the arbitral award is now not only to state its date, but also the place of arbitration as determined in accordance with Section 20. However, the definition of “court” contained in Section 2(1)(c) of the Arbitration Act, 1940, continued as such in the Arbitration Act, 1996, though narrowed to mean only Principal Civil Court and the High Court in exercise of their original ordinary civil jurisdiction. Thus, the concept of juridical seat of the arbitral proceedings and its relationship to the jurisdiction of courts which are then to look into matters relating to the arbitral proceedings — including challenges to arbitral awards — was unclear, and had to be developed in accordance with international practice on a case-by-case basis by this Court.

48.

49.

53.

82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as ‘tribunals are to meet or have witnesses, experts or the parties’ where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an International context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so

stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.

98. However, the fact that in all the three appeals before us the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, would lead to the conclusion that both parties have chosen New Delhi as the “seat” of arbitration under Section 20(1) of the Arbitration Act, 1996. This being the case, both parties have, therefore, chosen that the courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the “seat” has been chosen, which would then amount to an exclusive jurisdiction clause so far as Courts of the “seat” are concerned.”

12. This case would show that the moment the seat is chosen as Ahmedabad, it is akin to an exclusive jurisdiction clause, thereby vesting the courts at Ahmedabad with exclusive jurisdiction to deal with the arbitration. However, the learned counsel for the respondent referred to and relied upon paras 49 and 71 of the aforesaid judgment. Para 49 only dealt with the aspect of concurrent jurisdiction as dealt with in *BALCO v. Kaiser Aluminium Technical Services Inc.* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] [“*BALCO*”] which does not arise on the facts of the present case. Para 71 is equally irrelevant, in that, it is clear that the parties have, by mutual agreement, entered into an agreement to substitute the venue at Jaipur with Ahmedabad as the place/seat of arbitration under Section 20(1) of the Arbitration and Conciliation Act, 1996.”

(vi) Further, the Apex Court taking note of the earlier decision in ***Videocon Industries Ltd. v/s. Union of India and Anr.***⁶, (heavily relied upon by the learned senior counsel for the respondent herein), has concluded in paragraph Nos. ‘13’, ‘14’ and ‘15’ in ***Inox Renewables Ltd.***⁵ as under :-

“13. The learned counsel for the respondent relied heavily upon *Videocon [Videocon Industries Ltd. v. Union of India, (2011) 6 SCC 161 : (2011) 3 SCC (Civ) 257]* for the proposition that any change

6 [(2011) 6 SCC 161]

in seat could only be by a written agreement signed by the parties. A close look at the judgment in *Videocon [Videocon Industries Ltd. v. Union of India]*, (2011) 6 SCC 161 : (2011) 3 SCC (Civ) 257] would show that it contained Clause 34.12 which dealt with “venue and law of arbitration agreement” and Clause 35.2 which dealt with “amendment”, as follows : (SCC p. 164, para 3)

“3. ... 34.12. *Venue and Law of Arbitration Agreement.*—The venue of sole expert, conciliation or arbitration proceedings pursuant to this Article, unless the parties otherwise agree, shall be Kuala Lumpur, Malaysia, and shall be conducted in the English language. Insofar as practicable, the parties shall continue to implement the terms of this contract notwithstanding the initiation of arbitral proceedings and any pending claim or dispute. Notwithstanding the provisions of Article 33.1, the arbitration agreement contained in this Article 34 shall be governed by the laws of England.

35.2. *Amendment.*—This contract shall not be amended, modified, varied or supplemented in any respect except by an instrument in writing signed by all the parties, which shall state the date upon which the amendment or modification shall become effective.”

14. Given the above, this Court concluded : (*Videocon case [Videocon Industries Ltd. v. Union of India]*, (2011) 6 SCC 161 : (2011) 3 SCC (Civ) 257] , SCC pp. 169-70, paras 20-21)

“20. We shall first consider the question whether Kuala Lumpur was the designated seat or juridical seat of arbitration and the same had been shifted to London. In terms of Clause 34.12 of the PSC entered into by 5 parties, the seat of arbitration was Kuala Lumpur, Malaysia. However, due to outbreak of epidemic SARS, the Arbitral Tribunal decided to hold its sittings first at Amsterdam and then at London and the parties did not object to this. In the proceedings held on 14-10-2003 and 15-10-2003 at London, the Arbitral Tribunal recorded the consent of the parties for shifting the juridical seat of arbitration to London. Whether this amounted to shifting of the physical or juridical seat of arbitration from Kuala Lumpur to London? The decision of this would depend on a holistic consideration of the relevant clauses of the PSC.

21. Though, it may appear repetitive, we deem it necessary to mention that as per the terms of agreement, the seat of arbitration was Kuala Lumpur. If the parties wanted to amend Article 34.12, they could have done so only by a written instrument which was required to be signed by all of them. Admittedly, neither there was any agreement between the parties to the PSC to shift the juridical seat of arbitration from Kuala Lumpur to London nor was any written instrument signed by them for amending Article 34.12. Therefore, the mere fact that the parties to the particular arbitration had agreed for shifting of the seat of arbitration to London cannot be interpreted as anything except physical change of the venue of arbitration from Kuala Lumpur to London.”

15. The aforesaid judgment would have no application to the facts of the present case as there is nothing akin to Clause 35.2, which is the amendment clause which was applied to the facts in *Videocon case* [*Videocon Industries Ltd. v. Union of India*, (2011) 6 SCC 161 : (2011) 3 SCC (Civ) 257]. This being the case, the parties may mutually arrive at a seat of arbitration and may change the seat of arbitration by mutual agreement which is recorded by the arbitrator in his award to which no challenge is made by either party.”

(vii) Referring to the decision in **Indus Mobile Distribution (P) Ltd. Datawind Innovations (P) Ltd.**⁷ (also relied on by the learned senior counsel for the respondent herein), it was held in paragraph No. ‘16’:-

“16. The reliance placed by the learned counsel for the respondent on *Indus Mobile* [*Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.*, (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760], and in particular, on paras 18 and 19 thereof, would also support the appellant's case, inasmuch as the “venue” being shifted from Jaipur to Ahmedabad is really a shifting of the venue/place of arbitration with reference to Section 20(1), and not with reference to Section 20(3) of the Arbitration and Conciliation Act, 1996, as it has been made clear that Jaipur does not continue to be the seat of arbitration and Ahmedabad is now the seat designated by the parties, and not a venue to hold meetings. The learned arbitrator has recorded that by mutual agreement, Jaipur as a “venue” has gone and has been replaced by Ahmedabad. As Clause 8.5 of the purchase order must be read as a whole, it is not possible to accept the submission of Shri Malkan that the jurisdiction of courts in Rajasthan is independent of the venue being at Jaipur. The two clauses must be read together as the courts in Rajasthan have been vested with jurisdiction only because the seat of arbitration was to be at Jaipur. Once the seat of arbitration is replaced by mutual agreement to be at Ahmedabad, the courts at Rajasthan are no longer vested with jurisdiction as exclusive jurisdiction is now vested in the courts at Ahmedabad, given the change in the seat of arbitration.

(viii) It was, thus, concluded therein that once the seat of arbitration is replaced by mutual agreement to be at ‘Ahmedabad’,

7 [(2017) 7 SCC 678]

the Courts at 'Rajasthan' are no longer vests with jurisdiction, as exclusive jurisdiction is now vests in the Courts at Ahmedabad given the change in the seat of arbitration.

35. It was, thus, vehemently argued by Mr. Mihir Thakore, the learned senior counsel for the petitioner that the discussion in **Inox Renewables Ltd.**⁵ about the mutual agreement of the parties to change the seat of arbitration at the inception of arbitration proceedings from 'Jaipur' to 'Ahmedabad', which has been treated as an agreement under Section 20(1) of the Arbitration Act, 1996 and proceeding on the principle of 'party autonomy', for holding that the mutual agreement arrived at the inception of arbitration, would act as exclusive jurisdiction clause to confer jurisdiction to the Courts at 'Ahmedabad', are guiding principles which would squarely be applicable in the facts and circumstances of the present case. Once the learned Presiding Arbitrator fixed the seat of arbitration with the mutual consent of the parties and the respondent also admitted that they gave consent before the Arbitrator for the seat being at Ahmedabad for interim challenges, the case of the respondent based on the clauses of the agreement namely 1.2.6, 1.3.1 and 1.3.2 (11) is liable to be rejected. The Commercial Court has committed manifest error in deciding the issue.

36. Learned senior counsel further relied on the following decisions :

(i) Ashiana Infra-Homes Pvt. Ltd. & Ors. v/s. Adani Power Ltd. [(2018) SCC OnLine Del 9110].

(ii) Viva Infraventure Pvt. Ltd. v/s. New Okhla Industrial Development Authority [(2025) SCC Onlie Del. 4648].

- (iii) Kalpraj Dharamshi and Another v/s. Kotak Investment Advisors Limited and Anr. [(2021) 10 SCC 401].
- (iv) Quippo Construction Equipment Ltd. v/s. Janardan Nirman Private Limited [(2020) 18 SCC 277].
- (v) Nagindas Ramdas v/s. Dalpatram Iccharam alias Brijram and Ors. [(1974) 1 SCC 242].
- (vi) Jagad Bandhu Chatterjee v/s. Nilima Rani and Others [(1969) 3 SCC 445].
- (vii) The Decision of this Court in Special Civil Application No. 5057 of 2024 in the case of Union of India by Chief Engineer Navy Mumbai v/s. Ms. Pushkarraj Construction P Ltd. Decided on 06.05.2025.
- (viii) Narayan Prasad Lihia v/s. Nikunj Kumar Lohia and Others [(2002) 3 SCC 585].

37. Ms. Manisha Luvkumar, the learned senior counsel for the respondent ONGC, in rebuttal, would argue that the clauses 1.2.6, 1.3.1 and 1.3.2 (11) have to be read and considered as the clauses settled under the arbitral agreement signed by the parties with open eyes to anchor the place of dispute resolution at Ankleshwar. Clauses 1.3.1 and 1.3.2 (11) are indicative of the mutual decision of the parties conferring exclusive jurisdiction of the Courts at the place where the contract is signed and the Letter of Intent (LOA/NOA) has been issued. Clause 1.2.6 would act as *contrary indicia*, restraining any party to the agreement to resile from the terms and conditions of the contract set out in writing and signed by them. The said clause clarifies categorically that no amendment or variation of the contract shall be effective, unless it is in writing, that too only if it expressly refers to the contract and is signed by each party or their duly authorised representative.

38. The submission is that the clause 1.3.2(11) fixes the seat of arbitration, which undoubtedly is at Ankleshwar and has not been shifted by any mutual agreement in writing of the parties referring to the said clause, signed by them. The terms and conditions conferred by the parties unto themselves for any change in the contract being in writing and expressly referring to the contract, is a responsibility entrusted upon them by mutual agreement. None of the parties to the contract can resile or ignore the same.

39. The submission is that indisputably, there is no amendment to clause 1.3.1(11) in writing signed by the parties expressly referring to the contract. The minutes of the preliminary arbitral meeting dated 07.10.2021, held before the learned Presiding Officer for settling the issues, cannot be raised to the level of a written mutual agreement of the parties to amend the said clause. It was argued that the minutes dated 07.10.2021 drawn by the learned Presiding Arbitrator are for settlement of preliminary issues like the disclosure under Section 12(1) of the Arbitration Act, 1996 and Section 16(1) on 'competence- competence principle', noticing that the parties have no objection whatsoever to the constitution and composition of the arbitral tribunal. The procedural and practice directions contained therein are in terms of Section 19 and Section 11(14) of the Arbitration Act, 1996. However, the statement in paragraph No. '5' of the said minutes, cannot alleviate the written contract considering to be the free consent of the parties to change the place or seat of the arbitration in terms of sub-section(1) or sub-section(2) of Section 20. Moreover, as recorded by the learned Presiding Officer therein the consent was of the learned counsel/advocate for the parties and not of the parties. The statement therein only conveys that the arbitration proceedings shall be conducted at Ahmedabad, and in

English, with the consent of the learned advocates for the parties, in accordance with the provisions of the Act or any statutory modification thereto.

40. It was submitted that the only inference which can be drawn from the said statement is that the learned Presiding Officer decided at a convenient place being at Ahmedabad for smooth conducting of the arbitration proceedings, which would obviously fall within the meaning of “venue” or “at a convenient place”, under sub-section(3) of Section 20. In absence of any agreement in writing of the parties, the expression “seat of arbitration” incorporated in clause-‘5’ of the minutes of preliminary meeting, cannot be said to fall in any of the two categories of sub-section(1) and sub-section(2) of Section 20. The word “seat” used before “of arbitration” therein is superfluous and cannot be pressed into service to hold that the parties by their mutual agreement had arrived at a consensus to shift the seat of arbitration from the place fixed in the agreement [clause 1.3.2(11)], to confer exclusive jurisdiction to the Courts at Ahmedabad, in terms of sub-section(1) or sub-section(2) of Section 20 in relation to arbitration proceedings.

41. In any case, in terms of the restrictions clearly conferred by the parties unto themselves under clause 1.2.6, oral agreement, if any, even if accepted for a moment, cannot alleviate the conditions mentioned therein. The conditions incorporated in Clause 1.3.1 and 1.3.2(11) of the written contract remained sacrosanct, in absence of any written contract signed by the parties modifying the same expressly referring thereto, in terms of Section 1.2.6. None of the submissions of the learned senior counsel for the petitioner, as such, can be appreciated to hold that there was an amendment

to the written contract with the mutual agreement of the parties under which they have decided to shift “the seat of arbitration” from “the place” fixed in the contract to the “place” referred to in clause 5 of the minutes of the preliminary meeting set out by the learned Presiding Arbitrator.

42. Referring to paragraph No. ‘12’ of **Inox Renewables Ltd.**⁵, noted hereinbefore, it was argued that in view of the observations therein that the moment the seat is chosen under the written contract (undoubtedly at Ankleshwar herein), it is akin to an exclusive jurisdiction clause, the Courts at Ankleshwar would vest with exclusive jurisdiction to deal with the dispute arising out of the arbitration proceedings. However, in the peculiar facts and circumstances of the said case before the Apex Court, where the learned Arbitrator has specifically recorded in the award with respect to the venue/place of arbitration, that “as per the arbitration agreement the venue of the arbitration was to be Jaipur, however, the parties have mutually agreed, irrespective of specific clause as to [the “venue”, with the place] of the arbitration would be at Ahmedabad and not at Jaipur and thus, the proceedings have been conducted at Ahmedabad on constitution of the Tribunal”, it was concluded that the parties have mutually shifted the ‘venue’ and their ‘seat’. It was submitted that such an expression is completely missing in paragraph No. ‘5’ of the preliminary meeting (heavily relied on by the learned senior counsel for the petitioner). The ratio of **Inox Renewables Ltd.**⁵, as noted in paragraph No. ‘12’ therein that “it is clear that the parties have by mutual agreement entered into an agreement to substitute the venue at Jaipur with Ahmedabad as the place/seat of arbitration under Section 20(1) of the Arbitration and Conciliation Act, 1996”, as such, cannot be applied in the facts and circumstances of the

present case. The reliance placed upon the decision of the Apex Court in **Inox Renewables Ltd.**⁵ by the learned senior counsel for the petitioner, to submit that the said decision squarely covers the dispute at hands, is, thus, wholly misplaced.

43. Reliance is further placed upon the decision of the Apex Court in **Indus Mobile Distribution Private Limited**⁷. From a reading thereof, we may note that the question before the Apex Court therein was as to “whether when the seat of arbitration is Mumbai, an exclusive jurisdiction clause stating that the Courts at Mumbai alone would have jurisdiction in respect of disputes arising under the agreement to oust the jurisdiction of all other courts”. The relevant statement in the dispute resolution mechanism clauses set out therein are to be extracted hereinunder :

“Such arbitration shall be conducted at Mumbai, in English language.”

“All disputes and differences of any kind whatever arising out of or in connection with this agreement shall be subject to the exclusive jurisdiction of the courts of Mumbai only.”

44. The dispute raised by the respondent therein was that the no part of the cause of action arose in Mumbai, that being the case, even if the seat were at Mumbai, it makes no difference as one of the tests prescribed by the Code of Civil Procedure, 1908 to give a Court jurisdiction must, atleast, be fulfilled.

45. Deliberating on the issues, the concept of juridical seat, as has been evolved by the Courts in England and as now effectively embodied in our jurisdiction, reading Section 20 referring to paragraph Nos. ‘98’ to ‘100’ laying down the law as to the seat in **BALCO**³, it was noted therein in paragraph No. ‘10’ as under :-

“10. Paras 98 to 100 have laid down the law as to “seat” thus: (*Bharat Aluminium case [BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , SCC pp. 606-08)

“98. We now come to Section 20, which is as under:

‘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.’

A plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any “place” or “seat” within India, be it Delhi, Mumbai, etc. In the absence of the parties' agreement thereto, Section 20(2) authorises the tribunal to determine the place/seat of such arbitration. Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.

99. The fixation of the most convenient “venue” is taken care of by Section 20(3). Section 20 has to be read in the context of Section 2(2) which places a threshold limitation on the applicability of Part I, where the place of arbitration is in India. Therefore, Section 20 would also not support the submission of the extra-territorial applicability of Part I, as canvassed by the learned counsel for the appellants, so far as purely domestic arbitration is concerned.

100. True, that in an international commercial arbitration, having a seat in India, hearings may be necessitated outside India. In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but it would not have the effect of changing the seat of arbitration which would remain in India. The legal position in this regard is summed up by Redfern and Hunter, *The Law and Practice of International Commercial Arbitration* (1986) at p. 69 in the following passage under the heading “The Place of Arbitration”:

“The preceding discussion has been on the basis that there is only one “place” of arbitration. This will be the place chosen by or on behalf of the parties; and it will be designated in the arbitration agreement or the

terms of the reference or the minutes of proceedings or in some other way as the place or “seat” of the arbitration. This does not mean, however, that the Arbitral Tribunal must hold all its meetings or hearings at the place of arbitration. International commercial arbitration often involves people of many different nationalities, from many different countries. In these circumstances, it is by no means unusual for an Arbitral Tribunal to hold meetings—or even hearings—in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses.... It may be more convenient for an Arbitral Tribunal sitting in one country to conduct a hearing in another country—for instance, for the purpose of taking evidence.... In such circumstances, each move of the Arbitral Tribunal does not of itself mean that the seat of arbitration changes. The seat of the arbitration remains the place initially agreed by or on behalf of the parties.’

This, in our view, is the correct depiction of the practical considerations and the distinction between “seat” [Sections 20(1) and 20(2)] and “venue” [Section 20(3)]. We may point out here that the distinction between “seat” and “venue” would be quite crucial in the event, the arbitration agreement designates a foreign country as the “seat”/“place” of the arbitration and also selects the Arbitration Act, 1996 as the curial law/law governing the arbitration proceedings. It would be a matter of construction of the individual agreement to decide whether:

(i) the designated foreign “seat” would be read as in fact only providing for a “venue”/“place” where the hearings would be held, in view of the choice of the Arbitration Act, 1996 as being the *curial law*, OR

(ii) the specific designation of a foreign seat, necessarily carrying with it the choice of that country's arbitration/*curial law*, would prevail over and subsume the conflicting selection choice by the parties of the Arbitration Act, 1996.”

(emphasis in original)

46. It was further noted in paragraph Nos. ‘11’, ‘12’ and ‘13’ as under :-

“11. In an instructive passage, this Court stated that an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause as follows: (*Bharat Aluminium case [BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , SCC p. 621, para 123)

"123. Thus, it is clear that the regulation of *conduct* of arbitration and *challenge* to an award would have to be done by the courts of the country in which the arbitration is being conducted. Such a court is then the supervisory court possessed of the power to annul the award. This is in keeping with the scheme of the international instruments, such as the Geneva Convention and the New York Convention as well as the UNCITRAL Model Law. It also recognises the territorial principle which gives effect to the sovereign right of a country to regulate, through its national courts, an adjudicatory duty being performed in its own country. By way of a comparative example, we may reiterate the observations made by the Court of Appeal, England in *C v. D* [*C v. D*, 2008 Bus LR 843 : 2007 EWCA Civ 1282] wherein it is observed that: (Bus LR p. 851G, para 17)

'17. It follows from this that a choice of seat for the arbitration must be a choice of forum for remedies seeking to attack the award.'

In the aforesaid case, the Court of Appeal had approved the observations made in *A v. B* [*A v. B*, (2007) 1 All ER (Comm) 591 : (2007) 1 Lloyd's Rep 237] wherein it is observed that:

'... an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause. Any claim for a remedy ... as to the validity of an existing interim or final award is agreed to be made only in the courts of the place designated as the seat of arbitration.'

(emphasis in original)

12. The Constitution Bench's statement of the law was further expanded in *Enercon (India) Ltd. v. Enercon GmbH* [*Enercon (India) Ltd. v. Enercon GmbH*, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] . After referring to various English authorities in great detail, this Court held, following the Constitution Bench, as follows: (SCC p. 58, para 134)

"134. It is accepted by most of the experts in the law relating to international arbitration that in almost all the national laws, arbitrations are anchored to the *seat/place/situs* of arbitration. *Redfern and Hunter on International Arbitration* (5th Edn., Oxford University Press, Oxford/New York 2009), in Para 3.54 concludes that "the *seat* of the arbitration is thus intended to be its centre of gravity". In *BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] (*BALCO v. Kaiser Aluminium Technical Services Inc.*) it is further noticed that this does not mean that all proceedings of the arbitration are to be held at the *seat* of arbitration. The arbitrators are at liberty to hold meetings at a place which is of convenience to all concerned. This may become necessary as arbitrators often come from different countries. Therefore, it may be convenient to hold all or some of the meetings of the arbitration in a location other than where the *seat* of arbitration is located. In *BALCO* [*BALCO v.*

Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , the relevant passage from Redfern and Hunter has been quoted which is as under: (SCC p. 598, para 75)

'75. ... "The preceding discussion has been on the basis that there is only one "place" of arbitration. This will be the place chosen by or on behalf of the parties; and it will be designated in the arbitration agreement or the terms of reference or the minutes of proceedings or in some other way as the place or "seat" of the arbitration. This does not mean, however, that the Arbitral Tribunal *must* hold all its meetings or hearings at the place of arbitration. International commercial arbitration often involves people of many different nationalities, from many different countries. In these circumstances, it is by no means unusual for an Arbitral Tribunal to hold meetings—or even hearings—in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses.... It may be more convenient for an Arbitral Tribunal sitting in one country to conduct a hearing in another country — for instance, for the purpose of taking evidence.... In such circumstances each move of the Arbitral Tribunal does not of itself mean that the seat of arbitration changes. The seat of arbitration remains the place initially agreed by or on behalf of the parties." [*Naviera case [Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru*, (1988) 1 Lloyd's Rep 116 (CA)] (*Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru*), Lloyd's Rep p. 121]'

These observations have also been noticed in *Union of India v. McDonnell Douglas Corpn.* [*Union of India v. McDonnell Douglas Corpn.*, (1993) 2 Lloyd's Rep 48] "

(emphasis in original)

13. This Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration. (*See para 138.*)"

47. The Apex Court further noted in paragraph No. '16' that the proposed amendment in 2015 Act pursuant to a detailed Law Commission Report had sought to make a clear distinction between the usage of the concept of "seat of arbitration" and "mere venue of arbitration" by noticing the decision in **BALCO**³ that the seat is "the center of gravity of arbitration" and that the Supreme Court

recognises the “seat of arbitration” to be a juridical seat.

48. It was noted therein that the Amendment Act, 2015, however, does not incorporate the proposed amendment to delete the word “place” and add the words “seat and venue” in sub-section(1) of Section 20 and the word “venue” in sub-section(3) of Section 20, presumably because the **BALCO**³ judgment in no uncertain terms has referred to “place” as “juridical seat” and made it clear that Sections 20(1) and 20(2) where the word “place” is used, refers to “juridical seat”, whereas in Section 20(3), the word “place” is equivalent to “venue”. That being the settled law, in view of the construction of the Act by the Constitution Bench of the Supreme Court, it was found unnecessary to expressly incorporate the said proposed amendment. It was, thus, finally held in paragraph Nos. ‘19’ and ‘20’ in **Indus Mobile Distribution Private Limited**⁷ as under:-

“19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.* [*Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was

followed in a recent judgment in *B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.* [*B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.*, (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [*Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly.”

49. It may be noted, at this juncture, that **Indus Mobile Distribution Private Limited**⁷ was a case pertaining to a domestic award where the issue of “seat” and “venue” under the law of arbitration, unlike the Code of Civil Procedure which applies to suits filed across in India, has been settled taking into consideration the statement of law in the Constitution Bench decision in **BALCO**³.

50. Ms. Manisha Luvkumar, the learned senior counsel for the respondent has taken us extensively to another decision of the Apex Court in the case of a domestic arbitration in **BBR (India) Private Limited v/s. S.P.Singla Constructions Private Limited**⁸ to submit that the answer to the question posed “whether conducting arbitration proceedings at Delhi, owing to the appointment of new Arbitrator, would shift the “jurisdictional seat of arbitration” from Panchkula in Haryana, the place fixed by the first arbitrator for the arbitration proceedings?, would provide a guidance on the issue of shifting of the place of arbitration. It was pointed out that in the said case, the arbitration clause was silent and did not stipulate “seat” or “venue” of arbitration. The contract and Letter of Intent were executed at Panchkula in Haryana. The

8 [(2023) 1 SCC 693]

first sole arbitrator, in the first sitting of the arbitral tribunal held that the venue of the proceedings would be at Panchkula, Haryana. However, proceedings could not be taken further, but no party objected to the place of arbitration proceedings as fixed in the said meeting of the arbitral tribunal, where the parties were directed to complete the pleadings and matter was adjourned for framing of the issues. The first arbitrator, however, recused and the second arbitrator while recording his consent for appointment as a sole arbitrator in the first procedural order stated that the venue of the proceedings would be at Delhi. The arbitral proceedings were thereafter held and the award was pronounced at New Delhi.

51. The parties have invoked the jurisdiction of two different courts for interim order under Section 9 and the challenge to the arbitral award under Section 34 of the Act, 1996. The question of “jurisdictional seat” of arbitration, therefore, assumed importance therein.

52. The Apex Court while holding that the place of arbitration designated by the first Arbitrator recorded in the first procedural order, shall be the ‘arbitral seat” of arbitration in terms of sub-section(2) of Section 20 of the Act, 1996 and the courts having jurisdiction over Panchkula in Haryana would have exclusive jurisdiction, has noted in paragraph Nos. ‘31’ and ‘32’ as under :-

“31. It is highly desirable in commercial matters, in fact in all cases, that there should be certainty as to the court that should exercise jurisdiction. We do not think the law of arbitration visualises repeated or constant shifting of the “seat of arbitration”. In fact, sub-section (3) of Section 20 specifically states and draws a distinction between the venue of arbitration and the “seat of arbitration” by stating that for convenience and other reasons, the arbitration proceedings may be held at a place different than the “seat of arbitration”, which location is referred to as the venue of arbitration. If we accept this contention of the appellant, we would,

as observed in *C v. D* [*C v. D*, 2008 Bus LR 843 : 2007 EWCA Civ 1282 (CA)] , create a recipe for litigation and (what is worse) confusion which was not intended by the Act. The place of jurisdiction or “the seat” must be certain and static and not vague or changeable, as the parties should not be in doubt as to the jurisdiction of the courts for availing of judicial remedies. Further, there would be a risk of parties rushing to the courts to get first hearing or conflicting decisions that the law does not contemplate and is to be avoided.

32. A secondary contention to support the said plea on the ground that the courts where arbitration proceedings are being conducted should be given supervisory powers, on in-depth consideration, must be rejected as feeble when we juxtapose the unacceptable practicable consequences that emerge. Exercise of supervisory jurisdiction by the courts where the arbitration proceedings are being conducted is a relevant consideration, but not a conclusive and determinative factor when the venue is not “the seat”. “The seat” determines the jurisdiction of the courts. There would be situations where the venue of arbitration in terms of sub-section (3) of Section 20 would be different from the place of the jurisdictional “seat”, and it is equally possible majority or most of the hearing may have taken place at a venue which is different from the “seat of arbitration”. Further, on balance, we find that the aspect of certainty as to the court's jurisdiction must be given and accorded priority over the contention that the supervisory courts located at the place akin to the venue where the arbitration proceedings were conducted or substantially conducted should be preferred.”

53. Placing the observations made therein, it was argued by the learned senior counsel for the respondent that the Apex Court has laid stress therein upon the fact that in all commercial matters, there should be certainty as to the Court that should exercise jurisdiction. It was categorically observed therein that the law of arbitration does not visualise repeated shifting of the Court “seat of arbitration”. The place of jurisdiction or ‘the seat’ must be certain and static and not vague or changeable, as the parties should not be in doubt as to the jurisdiction of the Courts for availing of judicial remedies. Any such situation may entail the risk of conflicting decisions that the law does not contemplate and is to be avoided.

54. In the context of the supervisory jurisdiction by the Courts in juxtaposition to the “seat” determined which confer exclusive jurisdiction of the Courts, it was observed therein that though exercise of supervisory jurisdiction by the Courts where arbitration proceedings are being conducted is a relevant consideration, but not a conclusive and determinative factor when the “venue” is not the “seat”. It was held that the “seat” determines the jurisdiction of the Court. There may be a situation where the venue of the arbitration in terms of Section 20(3) would be different from the place of the “jurisdictional seat” and it is equally possible that majority or most of the hearings may have taken place at a venue which is different from the “seat of arbitration”. However, considering the aspect of certainty, the Courts jurisdiction must be accorded priority over the contention that the supervisory courts located at the place akin to the ‘venue’ where the arbitration proceedings were conducted or substantially conducted should be preferred. On the arguments therein that the proceedings before the first arbitrator at Panchkula, Haryana was restricted to filing of pleadings and documents and the most of or all substantial proceedings were conducted in New Delhi, it was held that “seat of arbitration” as agreed by the parties or as determined by the arbitrator should be given precedent over the place or venue, where the arbitration proceedings may have been held.

55. Inviting attention of the Court to the observations in paragraph Nos. 33 and 34 therein, it was argued that the Apex Court while dealing with the question of territorial jurisdiction has held that the mutual consent of the parties agreeing on the change of jurisdictional seat should be express and clearly understood and mutually agreed by the parties. Relevant paragraph Nos. ‘33’ and ‘34’ of the decision in **BBR (India) Private Limited**⁸ may also be

extracted hereinunder :-

“33. At this stage, we must also deal with the appellant's argument that substantive proceedings were held in Delhi and, therefore, it would be the “seat of arbitration”. The proceedings before the first arbitration at Panchkula, Haryana, were restricted to filing of pleadings and documents. On deeper consideration, this argument should be rejected for the reasons recorded above, as it will lead to confusion and uncertainty. The legal question raised in the present case must be answered objectively and not subjectively with reference to the facts of a particular case. Otherwise, there would be a lack of clarity and consequent mix-up about the courts that would exercise jurisdiction. There could be cases where the arbitration proceedings are held at different locations, but the “seat of arbitration”, as agreed by the parties or as determined by the arbitrator, may be different, and at that place — “the seat”, only a few hearings or initial proceedings may have been held. This would not matter and would not result in shifting of the jurisdictional “seat”. Arbitrators can fix the place of residence, place of work, or in case of recusal, arbitration proceedings may be held at two different places, as in the present case.

34. For clarity and certainty, which is required when the question of territorial jurisdiction arises, we would hold that the place or the venue fixed for arbitration proceedings, when sub-section (2) of Section 20 applies, will be the jurisdictional “seat” and the courts having jurisdiction over the jurisdictional “seat” would have exclusive jurisdiction. This principle would have exception that would apply when by mutual consent the parties agree that the jurisdictional “seat” should be changed, and such consent must be express and clearly understood and agreed by the parties.”

56. Taking aid of the above decision of the Apex Court, it was, thus, argued that the minutes of the preliminary meeting, in the instant case, would not amend the contract and in view of the exclusive jurisdictional clause, the Presiding Arbitrator had no power to deciding on the “jurisdictional seat” fixed under the contract, without mutual agreement of the parties recorded in writing.

57. Further, the judgment of this Court in **Instakart Services**

Private Limited v/s. Megastone Logisparks Pvt. Ltd.⁹ in a proceeding under Section 11(6) of the Arbitration Act, 1996 has been placed before us to submit that on an extensive consideration of the decision of the Apex Court in light of the terms of the dispute resolution and jurisdiction clause of the contract therein, it was held therein that :-

“39. In light of the above discussion, this Court may record that law on “seat” and “venue” of arbitration proceedings is fairly well settled. The cases, where the parties have determined “seat” in their agreements, the same is akin to conferring exclusive jurisdiction on the Court(s) thereof. The expression ‘place’ occurring in Sub-section (1) and (2) of the Section 20, where the word ‘place’ is used, refers to “juridical seat”; whereas, expression “place” occurring in sub-section (3) of Section 20, is equivalent to ‘venue’, i.e., the location of the meeting of arbitral proceedings, as per the convenience of the parties or the arbitrators. The “place” mentioned in Section 20(3) of the Act, 1996 is only a physical place of meeting and has no relevance insofar as “juridical seat”, which shall vest exclusive jurisdiction with the Court of competent civil jurisdiction or High Court of original jurisdiction;

(i) As has been held by the Apex Court in the case of **M/s. Ravi Ranjan Developers Pvt. Ltd. versus Aditya Kumar Chatterjee (Supra)**, Section 11(6) and Section 2(1)(e) of the Act, 1996, have to be harmoniously read and construed to mean, the High Court which exercises superintendence / supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the Act, 1996. Meaning thereby, where a clause in the contract vests exclusive jurisdiction at a Civil Court for all actions / proceedings arising out of the contract, the Court of the ‘place’ located as having exclusive jurisdiction over the disputes should be considered as “seat” and having jurisdiction to entertain applications under the Act, 1996.

(ii) Where the parties have agreed that all actions and proceedings arising out of / related to contract shall lie in the Courts of competent jurisdiction at place ‘A’ and have agreed to conduct arbitration proceedings at place ‘B’, the expression in the agreement that the Court at place ‘A’ will have jurisdiction, would be a contrary indicator, as indicated by the Apex Court in the case of **BGS SGS Soma JV versus NPHC Ltd. (supra)**. In such cases, the intention of the parties to confer exclusive jurisdiction on the Court at place ‘A’, would be clear indication that the seat of arbitration shall be at the same place ‘A’ and the Court at place ‘A’ will have jurisdiction to deal with the applications under section 11(6) of the Act,

9 (Arbitration Petition No. 159 of 2022)

1996.

(iii) The law laid down by the Apex Court in **Mankastu Impex Private Limited versus Airvisual Limited (supra)**, and **BGS SGS Soma JV versus NPHC Ltd. (supra)**, as has been relied upon by the learned counsel for the respondent, does not support his contention that the statement about the “place of arbitration” or the expression “arbitration proceedings” in the agreement would mean that “venue” is the “seat”.

40. Coming to the facts of the instant case, Clause 25(iii) of the Lease Agreement exclusively confers jurisdiction to the Courts at Ahmedabad in all matters arising out of the said agreement. Whereas Sub-clause (ii) of the Clause 25 reads that the parties have agreed that the arbitration proceedings will be conducted at Bangalore. The expression of the place of arbitration proceedings in Clause 25(ii) as extracted hereinabove, is indication of the agreement arrived at between the parties to choose the place of convenience within the meaning of Section 20(3) of the Act, 1996. The words “the parties agree that the arbitration proceedings will be conducted at Bangalore” cannot be read to mean that the place “Bangalore” has been designated under the contract as the “seat of arbitration” and would operate as an exclusive jurisdiction clause to decide the jurisdiction of the High Court under Section 11(6) of the Act, 1996. The exclusive jurisdiction has been conferred to the Courts at Ahmedabad, the subject matter of the Lease Agreement, which is the main agreement containing arbitration clause, is located at Ahmedabad; the agreement was signed at Ahmedabad between the parties; the agreement was executed and stamped in the State of Gujarat; the respondent is situated in Ahmedabad and the petitioner has its corporate headquarters in Ahmedabad.

41. In light of the language of the agreement and the abovenoted facts related to the case, this Court is of the considered view that “venue” at Bangalore is merely a convenient location for holding of arbitration proceedings and the Courts at Ahmedabad selected as having exclusive jurisdiction in all disputes arising out of the Lease Agreement, should be considered as the “seat of arbitration”. “

58. Based on the said decision, it was argued that the exclusive jurisdiction clause therein has been considered to be a contrary indicia to the physical place of meeting for conducting arbitration proceedings and the Courts at the place mentioned in the exclusive jurisdiction clause, shall be the ‘seat of Arbitrator’ irrespective of the place of arbitration where the proceedings are

held.

59. Reliance is further placed on the decision of the Apex Court in **Videocon Industries Limited v/s. Union of India and Another**⁶ to submit that the Apex Court therein has rejected the argument of shifting of the seat of arbitration for the mere fact that the arbitral proceedings were conducted at a different place than the place or seat fixed under the written contract. In the facts of the said case, it was noted that the contractual and juridical seat of arbitration in terms of the clause 34 of the contract therein was Kuala Lumpur. The dispute arose between the parties therein that the arbitral tribunal though fixed the date of hearings at Kuala Lumpur, Malaysia but had shifted the venue of its seat to Amsterdam in the first instance and thereafter Kuala Lumpur because of outbreak of epidemic SARS. Even in the order passed by the learned arbitrator, it was noted that “by consent of the parties, the seat of the arbitration is shifted to London”. The subsequent proceedings were held by the arbitral tribunal at London and the partial award was declared therein.

60. At that stage, an application under Section 9 of the Arbitration Act, 1996 was filed in the Delhi High Court for stay of the arbitral proceedings. The learned single Judge of Delhi High Court overruling the objection of the respondent therein had held that the Delhi High Court has jurisdiction to entertain the petition filed under Section 9 of the Act, 1996. In this context, the matter reached to the Apex Court and it was argued therein that after having expressly consented to the shifting to the seat of arbitration from Kuala Lumpur to Amsterdam in the first instance and effectively taken part in the arbitral proceedings held at London, the respondent therein was estopped from complaining that the

seat of arbitration continues to be at Kuala Lumpur. The contention was that the challenge to the partial award rendered by the arbitral tribunal at London could have been raised only under the relevant provisions of the English Arbitration Act, 1996.

61. The respondent therein, however, argued that the conscious decision was taken by the parties, as recorded in the arbitration agreement binding on all the parties to the contract that the Malaysia would be the seat for intended arbitration and the Indian Law as the law of contract and the English law as the law of arbitration shall govern the proceedings. Mere fact that the arbitration was held outside Kuala Lumpur due to outbreak of epidemic SARS, the venue of arbitration cannot be said to have been changed from Kuala Lumpur to London. Once the parties have decided by written agreement to the place of arbitration, the same could not have been changed except by amending the written agreement as per Article 35.2 of the contract. The relevant clauses 33, 34 and 35 of the Project Sharing Contract (PSC) subject matter of consideration therein, noted in paragraph No. '3' of the said decision, are to be extracted herein as under :-

"3. For the sake of convenience, the relevant clauses of Articles 33, 34 and 35 of the PSC are extracted below:

"33.1. *Indian law to govern.*—Subject to the provisions of Article 34.12, this contract shall be governed and interpreted in accordance with the laws of India.

33.2. *Laws of India not to be contravened.*—Subject to Article 17.1 nothing in this contract shall entitle the contractor to exercise the rights, privileges and powers conferred upon it by this contract in a manner which will contravene the laws of India.

34.3. *Unresolved disputes.*—Subject to the provisions of this contract, the parties agree that any matter, unresolved dispute, difference or claim which cannot be agreed or settled amicably within twenty-one (21) days may be submitted to a sole expert

(where Article 34.2 applies) or otherwise to an Arbitral Tribunal for final decision as hereinafter provided.

34.12. *Venue and law of arbitration agreement.*—The venue of sole expert, conciliation or arbitration proceedings pursuant to this article, unless the parties otherwise agree, shall be Kuala Lumpur, Malaysia, and shall be conducted in the English language. Insofar as practicable, the parties shall continue to implement the terms of this contract notwithstanding the initiation of arbitral proceedings and any pending claim or dispute. Notwithstanding the provisions of Article 33.1, the arbitration agreement contained in this Article 34 shall be governed by the laws of England.

35.2. *Amendment.*—This contract shall not be amended, modified, varied or supplemented in any respect except by an instrument in writing signed by all the parties, which shall state the date upon which the amendment or modification shall become effective.”

62. It was, thus, placed before us that in view of the nature of clause 35.2 therein that the contract shall not be amended, modified, varied or supplemented in any respect except by an instrument in writing signed by all the parties, it was held that the change of seat of arbitration could have been only by written instrument, which was required to be signed by all the parties. The Apex Court has concluded that as there was no agreement between the parties to the contract (PSC) to shift the juridical seat from Kuala Lumpur to London nor there was any written instrument signed by the parties for amending the article 34.12 of the contract, the mere fact that the parties to the arbitration had agreed for shifting the seat of arbitration to London cannot be interpreted to anything except physical change of the venue of the arbitration from Kuala Lumpur to London.

63. It was, thus, sought to be demonstrated before us that the clause 34.12 therein restraining the parties from making any amendment or modification to the terms of the contract had

prevailed upon the Apex Court to hold that the juridical seat could not have been changed except by a written agreement signed by all the parties and the mere change in the physical venue of the hearings from Kuala Lumpur to Amsterdam and then to London did not amount to change in the juridical seat of arbitration.

64. The submission, thus, is that upon a conjoint reading of the above noted decisions would make it clear that there cannot be any dispute in the facts of the present case that the place of conducting arbitration proceedings agreed by the parties before the learned arbitrator being at 'Ahmedabad' was "only the convenient place" conferring supervisory jurisdiction of the Courts at 'Ahmedabad' during the course of the arbitration proceedings. However, once the arbitral proceedings have been concluded and the award is rendered, the seat as fixed by the parties under the written contract would be conferring exclusive jurisdiction to the Courts at 'Ankleshwar' for any further challenge. There being no written contract signed by the parties to modify or amend the clause 1.3.2 (11) of the contract fixing the seat of arbitration at the place where the Letter of Intent had been issued, the objections taken by the petitioner had rightly been upturned by the Commercial Court while holding that it has jurisdiction to entertain and maintain the application under Section 9 of the Act, 1996.

65. It was, thus, submitted that there cannot be any other view to substitute the view already taken by the Commercial Court in light of the terms and conditions of the contract and the law laid down by the Apex Court discussed hereinabove. This Court, therefore, may not entertain the present petition filed under Article 227 of the Constitution of India so as to substitute the justifiable view taken by the Commercial Court. Placing decision on the

decision of the Apex Court in **Rena Dreger (Mrs.) v/s. Lalchand Soni and Others**¹⁰, it was submitted that power of superintendence conferred by the Article 227 of the Constitution of India being extraordinary, is to be exercised most sparingly and only in an appropriate case and the present case is not one of such cases where the High Court may entertain the challenge under Article 227 of the Constitution of India.

66. Lastly, as regards the vehement submissions made by the learned senior counsel for the petitioner about the reply statement made by the respondent before the Commercial Court to the preliminary objection application of the petitioner challenging the territorial jurisdiction, it was argued by the learned senior counsel for the respondent that none of the statements in the reply given by the respondent before the Commercial Court can be given undue importance. Placing statements in paragraph No. '7', '8' and '9' of the reply of the respondent to the objection of jurisdiction (before the Commercial Court), vehemently pressed into service by the learned senior counsel for the petitioner, it was argued that the statement therein clearly conveys the understanding of the respondent that it had admitted to consider the seat at Ahmedabad, as recorded in the first arbitral meeting, during the course of the arbitration proceedings only, which would have helped the parties to determine the Courts at which the application for interim relief or any other application could be submitted during the course of arbitration proceedings. However, once the award is rendered, no objection can be taken to the territorial jurisdiction of the Court mutually agreed by the parties under the arbitration clause with the clear understanding regarding the seat of arbitration being at Ankleshwar. The submission is that the fact that the arbitral

10 [(1998) 3 SCC 341]

proceedings were conducted at Ahmedabad and the learned Presiding Arbitrator has recorded in the minutes of the first arbitral meeting about the seat of arbitration being at Ahmedabad, is having no nexus to the specific agreement of the parties about the seat of arbitration in a written contract and that the amendment or variation of the contract, if any, has to be in writing, expressly referring to the contract, duly signed by the authorised representatives of each of the parties.

67. Reliance is placed on the decision of the Apex Court in **Pratap Narain v/s. The Fifth Additional District Judge, Allahabad and Others**¹¹ and in the case of **Sopan Sukhdeo Sable and Others v/s. Assistant Charity Commissioner and others**¹² to submit that the pleadings cannot be construed like a piece of Legislation. Often loosely drafted pleadings should be given liberal construction and the intention of the parties should be gathered by the Court looking to the substance rather than the wording of the pleadings and the manner in which they have been pleaded. Pleadings should be read and construed as a whole and not in piece-meal. No word or sentence can be picked-up and used for or against the party pleading in isolation of other part of the pleadings. The true import of the pleadings can be ascertained only if it is read as a whole and it is not permissible to pull-out a sentence or a passage to read it out of the context.

68. There cannot be any compartmentalisation, dissection, segregation and inversions of the various paragraphs of the reply of the application of the petitioner herein, raising objection as to the jurisdiction of the Commercial Court. The intention of the respondent herein is to be gathered from the tenor and terms of

11 (1998 SCC OnLine ALL 215)

12 [(2004) 3 SCC 137]

the pleadings taken as a whole, which makes it clear that the respondent has categorically stated before the Commercial Court that the seat of arbitration as decided in the arbitral meeting dated 07.10.2021 was fixed by the parties for smooth conduct of the proceedings of the arbitration, which has no relevance or nexus to the dispute resolution clause where the parties had agreed to anchor the Court proceedings at Ankleshwar conferring exclusive jurisdiction to the Courts where the Letter of Intent/NOC has been issued.

69. It was categorically denied therein that the respondent ONGC had waived in respect of the seat of arbitration to fix it at Ahmedabad and the clause 1.2.6 of the agreement was pressed into service to submit that there cannot be any shifting of the juridical seat of arbitration from Ankleshwar to Ahmedabad in absence of any written instrument signed by the parties for amending the clause 1.3.2(11).

70. In rejoinder, the learned senior counsel Mr. Mihir Thakore for the petitioner sought to distinguish **Videocon Industries Limited**⁶ and **BBR (India) Private Limited**⁸ to reiterate that **Indus Mobile Distribution Private Limited**⁷ squarely governs the issue before this Court. While making distinction to **BBR (India) Private Limited**⁸ for its applicability to the facts of the present case, it was submitted in the said case that :-

- (i) there was no seat fixed under the contract.
- (ii) there was no significant contrary indicia in the contract
- (iii) the Arbitrator fixed the place of arbitration under Section 20(2), which became the 'seat'.
- (iv) Thus, in the context of the facts of the said case, it was held by

the Apex Court that the seat once fixed at Panchkula, should remain static and cannot be changed by the subsequent arbitrator.

71. The submission is that for the mere fact that the arbitration clause therein was silent about the fixing of the 'seat of arbitration', the opinion drawn by the Apex Court that the proceedings therein were held at New Delhi rendering the arbitral award would not change the seat of arbitration, is of no application in the facts of the present case.

72. The submission is that the principles in **Videocon Industries Limited**⁶ cannot be applied for the statement of the parties recorded by the learned Presiding Arbitrator in the first arbitration proceedings and for the further fact that there has been no objection by the respondent herein at any stage of the arbitral proceedings.

73. Lastly, relying upon Section 4 of the Act, 1996 it was argued that the respondent has waived its right to object to the legal implication of fixation of the seat by the learned arbitrator and further in view of its own admission before the Commercial Court in its reply the respondent had admitted to the change of seat at Ahmedabad for the arbitration proceedings and that the respondent had adhered to such explicit understanding throughout the arbitration proceedings. The submission is that the principle of waiver incorporated in Section 4 of the Act, 1996 comes into play in light of the clear statement of the respondent made in their reply before the Commercial Court.

74. It was further submitted that the admission in the pleadings before the Commercial Court is sufficient to hold that the

respondent understood the legal implication of fixation of seat at Ahmedabad during the course of arbitral proceedings and thus, agreed to shift the place and, as such, seat of the arbitration for new challenges confers exclusive jurisdiction to the Courts at Ahmedabad.

75. Reliance is placed on the decision of this Court in the case of **Union of India represented by Chief Engineer Navy Mumabi v/s. M/s. Pushkarraj Construction P. Ltd.**¹³ decided on 06.05.2035, in rejoinder, to substantiate the arguments made on the issue of change of seat of Arbitration.

Analysis:

76. Having heard learned counsels for the parties and perused the record, before entering into the merits of the arguments of the learned advocates for the parties, in order to answer the question posed by us, we would like to summarise the law relating to the “seat” and “venue” of arbitration conferring exclusive jurisdiction to the Court chosen by the parties, which is fairly well settled :-

(i) The concept of “seat” and “venue” incorporated under Section 20 of the Arbitration Act, 1996 is on the fundamental principle of ‘party autonomy’ incorporated under the Arbitration Act, 1996 based on the UNCITRAL model laws. A plain reading of Section 20 leaves no room for doubt that in an arbitration seated in India or in a domestic arbitration, the parties are free to agree to any “place” or “seat” of Arbitration within the India, be it in any city.

(ii) The word “Court” defined in Section 2(1)(e)(i) has to be

13 (SCA No. 5057 of 2024 with SCA No. 15264 of 2024)

construed keeping in view the provisions in Section 20, which gives recognition to 'party autonomy'. The Legislature has given jurisdiction to two Courts, i.e. the Court which would have jurisdiction where the cause of action is located and the Court where the arbitration takes place, with a view to give freedom to the parties to agree for a "seat" of arbitration at a place which would be neutral to both the parties.

The definition of "Court" under Section 2(1)(e) read with Section 20 is, thus, 'seat-centric' and not 'subject matter-centric'.

(iii) Section 20(1) centers around the 'party autonomy'. While Section 20(1) provides that the parties are free to agree on the place of arbitration, Section 20(2), authorises the arbitral tribunal to determine the place/seat of such arbitration in case where there is no agreement as per sub-section(1). Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters, such as consultations amongst its members, for hearing witnesses, experts or the parties. [Reference : **BALCO**³].

(iv) In **Indus Mobile Distribution Private Limited**⁷, the provisions of Section 20 of the Act were analysed in light of 246th Report of the Law Commission of India bringing amendments to Arbitration and Conciliation Act, 1996 in the year 2015. It was held therein that under the law of arbitration unlike the Code of Civil Procedure, which applies to the suits filed in Court, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not be in the classical sense have jurisdiction - i.e. no part of the cause of action may have arisen at the neutral venue and neither would any

of the provisions of Sections 16 to 21 of the CPC be attracted.

In arbitration law, the moment the seat is designated, it is akin to an exclusive jurisdiction clause for the purposes of regulating the arbitral proceedings arising out of the agreement between the parties. Where more than one Court has jurisdiction, it is open for the parties to exclude all other Courts.

While Sections 20(1) and 20(2) would refer to the “seat” of arbitration, Section 20(3) would refer only to the “venue” of the arbitration. The word “place” occurring in Sections 20(1) and 20(2) refers to “juridical seat”, whereas the same word “place” in Section 20(3) is equivalent to “venue”.

(v) Referring to BALCO³ and Indus Mobile Distribution Private Limited⁷, the Apex Court in BGS SGS SOMA JV⁴ has observed that when the parties, either by agreement or, in default of there being an agreement, where the arbitration tribunal determines a particular place as the “seat” of the arbitration under Section 31(4) of the Arbitration Act, 1996, it becomes clear that the parties having chosen the seat of the arbitral tribunal having determined the “seat”, have also chosen the Courts at the seat for the purposes of interim orders and challenges to the award. (Reference para-45).

The very fact that the parties have chosen the place to be the “seat” would necessarily carry with it the decision of both the parties with the Courts at the “seat” would exclusively have jurisdiction over the entire arbitral process. Meaning thereby, once the “seat” of arbitration is chosen, it amounts to an exclusive jurisdiction clause, in so far as the Courts at that seat are concerned.

It was further noted in **BGS SGS Soma**⁴ that in *Indus Mobile Distribution Private Limited*⁷, two separate and distinct reasons are given for arriving at the conclusion that the Courts at the seat chosen by the parties (i.e. the Courts at Mumbai) alone, would have jurisdiction. The first reason, which is independent of the second, is that as the seat of the arbitration was designated as Mumbai, it would carry with it the fact that the Courts at Mumbai alone would have jurisdiction over the arbitration process. The second reason given was that in any case, following the Hakam Singh principle in **Hakam Singh v/s. Gammon (India) Ltd.**¹⁴, where more than one Court can be said to have jurisdiction, the agreement itself designated the Mumbai Court as having exclusive jurisdiction.

Further, considering the judgments of the English Courts, the tests for determination of “seat”, “whether the seat of the arbitral proceedings has, in fact, been indicated in the agreement between the parties”, it was held in paragraph No. ‘61’ (as noted hereinbefore) that wherever there is express designation of a “venue”, and no designation of any alternative place as “the seat” combined with supernational body of rules governing arbitration, and no further significant contrary indicia, inexorable conclusion is that the stated “venue” is actual the ‘juridical seat’ of the arbitral proceedings. It was, thus, concluded in paragraph No. ‘82’ as under :-

“82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the

14 [(1971) 1 SCC 286]

arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”

77. In light of the above stated legal principles on the concept of the “juridical seat” of the arbitration proceedings; the distinction between “seat” and “venue” under the provisions of Section 20(1) and Section 20(2) as against Section 20(3) of the Act, 1996; in light of the test for determination of “seat” laid down in **BGS SGS SOMA JV**⁴, we may now deal with the rival contentions of the learned senior counsels for the parties based on the decision in **Inox Renewables Ltd.**⁵ and **Videocon Industries Limited**⁶.

78. The learned senior counsel for the petitioner has strenuously argued that the decision of the Apex Court in **Inox Renewables Ltd.**⁵ about the change of “seat”, though agreed initially under a written contract during the course of arbitration proceedings, would squarely apply in the facts and circumstances of the present case and it is to be held by this Court that “the seat of arbitration”, as stated in the minutes of the preliminary arbitral meeting drawn

by the learned Presiding Arbitrator with the consent of the parties, shall be the 'juridical seat' of the arbitral proceedings and under Section 20(1) conferring exclusive jurisdiction to the Courts at Ahmedabad.

79. To the contrary, the vehement plea of the learned senior counsel for the respondent is that the decision in **Videocon Industries Limited**⁶, in fact, governs the whole controversy herein as in light of clauses 1.2.6 and 1.3.2(11) of the contract, there can be no change of the seat agreed by the parties under the written contract. Moreover, the minutes of the preliminary arbitral meeting held on 07.10.2021, (para '5' whereof has been relied on by the petitioner), does not record the consent of the parties as to the change of seat of arbitration from 'Ankleshwar' to 'Ahmedabad'.

80. To deal with the above rival submissions of the parties, we may first go through the decision in **Inox Renewables Ltd.**⁵, which is the bone of contention of the petitioner. In the said case, it may be noted that : (a) the venue of arbitration was fixed at Jaipur in the purchase order, containing the dispute resolution clause; (b) however, the arbitration proceedings were held at Ahmedabad and it was categorically stated by the learned Arbitrator in the award rendered at Ahmedabad, as noted in paragraph '9' of the judgment, extracted hereinbefore, that the parties have mutually agreed, irrespective of a specific clause as to the ["venue" that the "place"] of the arbitration, would be at 'Ahmedabad' and not at 'Jaipur'. The said statement incorporated in paragraph No. '12.3' of the award therein [extracted in para 9 in **Inox Renewables Ltd.**⁵] was specific referring to the written arbitration agreement, recording that "as per arbitration agreement the venue of arbitration was to

be at Jaipur” and “that the parties have mutually agreed irrespective of the specific clause”.

81. In light of the said statement recorded by the learned Arbitrator, the Apex Court has held therein that by mutual agreement the parties have specifically shifted the venue/place of arbitration from ‘Jaipur’ to ‘Ahmedabad’ and the contention of the respondent therein that this could only have been done by written agreement and that the arbitrator’s findings would really have reference to a convenient venue and not the seat of tribunal, was rejected, considering the test to determine the juridical seat of arbitration tribunal, laid down in **BGS SGS SOMA JV**⁴.

82. It was recorded that in **BGS SGS SOMA JV**⁴, has noted that concept of juridical seat of arbitral proceedings and its relationship to the jurisdiction of the Courts which are then to look into the matters relating to the arbitral proceedings-including the challenges to the arbitral awards, was unclear and had to be developed in accordance with the international practice on a case-by-case basis by the Apex Court. Further, considering the statement of law in paragraph No. ‘82’ of **BGS SGS SOMA JV**⁴ extracted hereinbefore and the **BALCO**³ it was held in the facts of the said case therein, that it was clear that the parties have by mutual agreement, entered into an agreement to substitute the venue at Jaipur with Ahmedabad as the place/seat of arbitration under Section 20(1) of the Arbitration and Conciliation Act, 1996.

83. On the reliance placed therein upon **Videocon Industries Limited**⁶ for the proposition that any change in seat could only be by way of a written agreement signed by the parties, specific reference has been made to the amendment clause 35.2 in

Videocon Industries Limited⁶, to conclude that the said judgment would have no application to the facts of the case in **Inox Renewables Ltd.**⁵ as there is nothing akin to clause 35.2, applying to the facts in **Videocon**⁶ case.

84. It was, thus, held in **Inox Renewables Ltd.**⁵ that the parties may mutually arrive at a seat of arbitration, may change seat of arbitration by mutual agreement which is recorded by the Arbitrator in his award to which no challenge had been made by either party, “venue” being shifted from Jaipur to Ahmedabad, is really a shifting of the venue/place of arbitration with reference to Section 20(1) and with reference to Section 20(2) of the Arbitration Act, 1996. This would further make it clear that Jaipur does not continue the seat of arbitration and Ahmedabad is now the seat designated by the parties, and not a venue to hold the meetings. The learned Arbitrator has categorically recorded that by mutually agreement Jaipur as a “venue” has gone and has been replaced by Ahmedabad. Once the seat of arbitration is replaced by mutual agreement to be at Ahmedabad, the Courts at Rajasthan are no longer vested with jurisdiction as exclusive jurisdiction is now vested in the Courts at Ahmedabad given the change in the seat of arbitration.

85. Considering the ratio of the decision in **Inox Renewables Ltd.**⁵, reverting to the present case, when we look to the statement in paragraph No. ‘5’ of the preliminary arbitral meeting held on 07.10.2021 recorded by the learned Presiding Arbitrator, we may opine without any semblance of doubt that the statement recorded therein cannot be considered to be the mutual agreement of the parties for shifting of the venue/place of arbitration with reference to Section 20(1) of the Act, 1996. A bare reading of paragraph No.

'5' of the minutes of the preliminary meeting dated 07.10.2021 shows that the learned Arbitrator has decided the place of arbitration to be at Ahmedabad with the consent of the learned counsels/advocates for the parties. The said consent of the learned advocate/parties, as accepted by the parties, can only be said to be determination of the place of convenience for conducting of arbitration proceedings with reference to Section 20(3) of the Arbitration and Conciliation Act, 1996. The said statement cannot be said to be the mutual agreement of the parties on the place of arbitration within the meaning of Section 20(1), nor it can be said to be the place of arbitration determined by the learned Presiding Arbitrator as per Section 20(2) of the Act, `1996..

86. Having regard to the facts and circumstances of the present case, including the convenience of the parties, within the meaning of Section 20(2), which can be invoked only in a case where there is no agreement referred to in sub-section(1) of Section 20, the word "seat" occurring in the expression "the seat of arbitration shall be at Ahmedabad" in paragraph No. '5' of the minutes of the preliminary arbitral meeting dated 07.10.2021 is to be considered to be superfluous, as it can only convey to a place of convenience for conducting of the arbitration proceedings decided by the learned Presiding Arbitrator within the meaning of sub-section(3) of Section 20 (notwithstanding sub-section(1) and sub-section(2) of Section 20). The arguments of the learned senior counsel for the change of seat of arbitration by mutual agreement of the parties, based on the statement recorded by the learned Presiding Arbitrator in paragraph No. '5' of the preliminary arbitral meeting dated 07.10.2021, therefore, are liable to be turned down.

87. The ratio of the decision of the Apex Court in **Inox**

Renewables Ltd.⁵, cannot be applied in the facts and circumstances of the present case.

88. Coming to the **Videocon Industries Limited**⁶, a distinction is sought to be drawn by the learned senior counsel for the petitioner about the applicability of the said decision in the facts and circumstances of the present case; firstly by submitting that the said decision was rendered prior to **BALCO**³ and hence cannot be considered to be a statement of law on the question of “seat” and “venue”. On this submission, suffice it to say that besides making the said statement at the Bar, it could not be elaborated by the learned senior counsel as to how in the matter of distinction between “seat” and “venue”, this judgment has no relevance. We, therefore, do not find any reason to deliberate it further.

89. The second submission is based on the observations of the Apex Court therein in paragraph No. 16, wherein the submission of the respondent therein was recorded that any change in the agreement (PSC) required a concurrence by all the parties to the contract and the consent, if any, given by two of the parties, cannot have the effect of changing the seat of arbitration. The submission is that the Apex Court therein has categorically recorded that the PSC agreement was between five parties whereas only two of the parties had agreed to shift the place of arbitration proceedings outside Kuala Lumpur due to outbreak of epidemic SARS. Thus, in absence of any agreement between all the parties to the contract, the Apex Court has held that the seat of the arbitration as per the agreement of the parties was Kuala Lumpur and mere change in the physical venue outside the Kuala Lumpur did not amount to change in the juridical seat of arbitration.

90. Considering the above, suffice it to record that for the discussions made in the foregoing paragraphs, we have found that the statement recorded by the learned Presiding Arbitrator in paragraph No. '5' of the preliminary arbitral meeting dated 07.10.2021 does not record the mutual agreement of the parties for shifting of the seat of arbitration with reference to clause 1.3.2(11) of the agreement, wherein the parties have fixed the seat of arbitration to be at 'Ankleshwar'. We do not find any substance in the submissions of the learned senior counsel to distinguish the applicability of the ratio of the decision in **Videocon Industries Limited**⁶, for the facts and circumstances of the present case.

91. The fact remains that in the instant case, the parties by mutual agreement under a written contract dated 17.10.2018 not only consented on the seat of arbitration being the place where the LOA/NOA has been issued, but also agreed, for the sake of convenience, that the parties may agree to hold the proceedings at any other "venue". The language employed in clause 1.3.2(11) of the written contract signed by the parties with open eyes is clear and specific as to the "seat" of arbitration and the "venue" within the meaning of Section 20(1) and 20(3) of the Arbitration Act, 1996; respectively.

92. It is evident that the parties specifically agreed to anchor the court proceedings at Ankleshwar by conferring exclusive jurisdiction to the said court by determining the seat of arbitration, with the clear understanding that "venue" of arbitration may be different from the "seat" as per their convenience. Besides that, the clause 1.2.6 of the agreement, relating to amendment of the contract is clear and specific to the extent that no amendment or other variation of the contract shall be effected, unless it is in

writing, specifically referring to the contract. No such amendment, in any case, has either been made or even agreed by the parties referring to the written contract for shifting the 'seat' fixed at Ankleshwar (where LOA/NOA has been issued).

93. It, thus, cannot be accepted that there is a mutual agreement of the parties within the meaning of section 20(1) of the Act, 1996 shifting the seat of arbitration from Ankleshwar to be at Ahmedabad. At the most, under the written contract between the parties, the place of arbitration at 'Ahmedabad' was a convenient place chosen by the parties for holding arbitration proceedings in terms of clause 1.3.2 (11) of the written agreement itself.

94. In this scenario, the minutes of the preliminary arbitral meeting dated 07.10.2021 recorded by the learned Presiding Arbitrator would have no bearing on the terms and conditions of the written contract between the parties. We, thus, find that the decision in **Videocon Industries Limited**⁶ supports the case of the respondent and has rightly been referred, to rely upon, by the learned senior counsel appearing for the said respondent.

95. At this stage, we may also refer to the decision of the Apex Court in **BBR (India) Private Limited**⁸ as a guiding principle in the matter of shifting of 'juridical seat' during the course of arbitration proceedings. We are conscious of the fact that in **BBR (India) Private Limited**⁸, there was no seat fixed under the arbitration agreement and there was no significant contrary indicia as in the present case, about the 'juridical seat' agreed by the parties. It was a case where in absence of any agreement between the parties choosing the 'seat of arbitration' in terms of Section 20(1), the learned Arbitrator in the first meeting had determined

the place of arbitration within the meaning of section 20(2) of the Act, 1996, which was considered to be the seat of arbitration by the Apex Court.

96. What is relevant for us to be considered from the discussion in **BBR (India) Private Limited**⁸ is the distinction drawn between Section 20(1), Section 20(2) and Section 20(3) of the Act, 1996 referring to the previous decisions of the Apex Court in BALCO³, Indus Mobile Distribution (P) Ltd. Datawind Innovations (P) Ltd.⁷, BGS SGS SOMA JV⁴, Inox Renewables Ltd.⁵. It was noted in paragraph No. '23' therein referring to **BGS SGS SOMA JV**.⁴ and **Indus Mobile Distribution Private Limited**⁷ that the moment the parties by agreement designate "seat", it becomes akin to exclusive jurisdiction clause and it would then vest the courts at "the seat" with exclusive jurisdiction to regulate the arbitration proceedings arising out of the agreement between the parties.

97. It was noted in **BBR (India) Private Limited**⁸ that the court in **BGS SGS SOMA JV**⁴ has dealt with the situation where the parties have not agreed or have not fixed the "seat" of arbitration. In such a situation the proceedings must be considered at any rate *prima facie* as being governed and subject to jurisdiction of the Court where the arbitration is being held on the ground that the said court is most likely to be connected with the proceedings. The law as applicable, where the parties by agreement have not fixed the jurisdictional seat, has been crystallized in **BGS SGS SOMA JV**⁴ in paragraph No. '82', that whenever there is an express designation of "venue" and no designation of any alternative place, as the "seat" combined with the supranational body of rules governing the arbitration and no significant contrary indicia, the inexorable conclusion is that the stated "venue" is actually is 'the

juridical seat” of the arbitration proceedings.

98. We may also refer to the observations in paragraph No. ‘26’ in **BBR (India) Private Limited**⁸ where taking note of the **BGS SGS SOMA JV**⁴, it was recorded that it would be correct to hold that while exercising jurisdiction under sub-section(2) of Section 20 of the Act, 1996, the Arbitrator is not to pass a detailed or considered decision. The place where the arbitral tribunal holds the arbitral proceedings, would by default be “the venue” of arbitration and consequentially “the seat” of arbitration. However, the said observation, can only be considered to be a statement of law in a case where the parties have not agreed to or have not fixed the “juridical seat” of arbitration and the arbitrator decides at the place under Section 20(2).

99. However, relevant is to note that the Apex Court in **BBR (India) Private Limited**⁸ has categorically observed that the seat once fixed by the arbitral tribunal under Section 20(2) of the Act, 1996 should remain static and fixed, whereas “the venue” of arbitration can change and move from “the seat” to a new location. The venue is not constant and stationary and can move and change in terms of sub-section(3) of Section 20 of the Act, 1996. However, the change of venue does not result in change or relocation of the “seat of arbitration”.

100. It was categorically held in **BBR (India) Private Limited**⁸, as noted hereinbefore by extracting paragraph Nos. ‘31’ and ‘32’ that the aspect of certainty as to the courts’ jurisdiction must be accorded priority over the contention that the supervisory courts located at the place akin to “the venue” where the arbitration proceedings were conducted or substantially conducted should be

preferred.

101. It is categorically held in paragraph No. '34' in **BBR (India) Private Limited**⁸, as extracted hereinbefore, that when the question of territorial jurisdiction arises, the place or the venue fixed for arbitration proceedings, when sub-section(2) of Section 20 applies, will be the "jurisdictional seat" and the courts having jurisdiction over the "jurisdictional seat" would have exclusive jurisdiction.

102. The further observation in paragraph No. '34' is that this principle would have exception that would apply when by mutual consent the parties agree that the "jurisdictional seat" should be changed, and such consent must be express and clearly understood and agreed by the parties, is relevant for our consideration in the facts of the present case.

103. Taking clue of what has been observed by the Apex Court in paragraph Nos. '31' to '34' in **BBR (India) Private Limited**⁸, in the context of fixation of 'jurisdictional seat" under sub-section (2) of Section 20 of the Act, 1996, in our considered opinion, must be the guiding principle for us in the facts and circumstances of the present case, where, admittedly, "the juridical seat of arbitration" had been fixed by the parties at 'Ankleshwar' under the written contract "in terms of Section 20(1) of the Act, 1996". For shifting of 'juridical seat', there may be a mutual agreement of the parties, however, such an agreement or consent shall be express in writing, clearly understood and agreed by the parties. As found by us that there is no such mutual agreement or consent of the parties in writing, expressly and clearly understood and agreed by them, it cannot be held that the statement recorded by the learned

Arbitrator in paragraph No. '5' of the preliminary arbitral meeting dated 07.10.2021 is the mutual agreement of the parties for shifting of the jurisdictional "seat" of arbitration from 'Ankleshwar' to 'Ahmedabad'.

104. On a careful reading and understanding of the decision of the Apex Court in **Videocon Industries Limited**⁶ and **BBR (India) Private Limited**⁸, as also the test laid down to determine the seat of arbitration as discussed hereinbefore, none of the arguments made by the learned senior counsel for the petitioner to assert that there was a mutual agreement of the parties recorded by the learned Presiding Arbitrator for change of jurisdictional "seat" of arbitration from 'Ankleshwar' to 'Ahmedabad', can be appreciated.

105. Lastly, on the submissions made by the learned senior counsel for the petitioner on the principle of waiver incorporated in Section 4 of the Act, 1996, based on the pleadings in the reply submitted by the respondent to the preliminary objection as to the jurisdiction of the Commercial Court in Section 34 proceedings, suffice it to say that there is no question of waiver by pleadings, wherein the respondent specifically stated that as to its understanding, the supervisory jurisdiction of the Court at 'Ahmedabad' during the course of arbitration proceedings was fixed by the parties for smooth conducting of the arbitration proceedings. From the statement in paragraph Nos. '7', '8' and '9' of the reply pleadings of the respondent, it is evident that the respondent has clearly understood the distinction between the supervisory jurisdiction of the Court at 'Ahmedabad' over the arbitral proceedings and during the course of arbitral proceedings and the jurisdictional "seat" conferring exclusive jurisdiction to the Courts at 'Ankleshwar' after conclusion of the

arbitration proceedings in terms of clause 1.3.2(11) of the written contract signed by the parties. The pleadings in reply cannot be taken out of the context to be considered as an admission of the respondent for change of 'juridical seat' of arbitration from 'Ankleshwar' to 'Ahmedabad'.

106. The Apex Court in **BBR (India) Private Limited**⁸ discouraging the shifting of "seat of arbitration" except with the express intention of the parties, has categorically observed that sub-section(3) of Section 20 specifically draws distinction between "venue of arbitration" and "seat of arbitration" by stating that for convenience and other reasons, the arbitration proceedings may be held at places different from the "seat of arbitration", which location is to be referred to as the "venue of arbitration". At the cost of repetition, the observations therein referring to C v/s. D 2008 Bus LR 843: 2007 EWCA Civ 1282(CA) may be noted here that the place of arbitration or the seat must be certain and static and not vague or changeable, as the parties should not remain in doubt as to the jurisdiction of the Courts for availing of judicial remedies. Any such interpretation of the Courts would be a risk of parties approaching different courts, resulting into conflicting decisions that the law does not contemplate, and is to be avoided [Refer Para 31 (BBR)].

107. In view of the above discussion, in the totality of facts and circumstances of the present case, we do not find any error in the decision of the Commercial Court in rejecting the preliminary objection raised by the petitioner as to the territorial jurisdiction of the Court at Ankleshwar, considering the terms and conditions of the written contract and the abovenoted law stated by the Apex Court. All the reasonings of the Commercial Court in the judgment

impugned are in consonance with the settled law pertaining to the distinction between “seat” and “venue” of arbitration within the meaning of Section 20 of the Arbitration Act, 1996 read with Section 2(1)(e)(i) of the Arbitration Act, 1996.

108. The present petition is, accordingly, dismissed being devoid of merits. No order as to costs.

(SUNITA AGARWAL, CJ)

C.M. JOSHI/PPS

(D.N.RAY,J)