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APHC010473462025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

MONDAY, THE 21st DAY OF SEPTEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

INTERNATIONAL COMMERCIAL ARBITRATION ORIGINAL
APPLICATION NO: 1 OF 2026

Between:

1. RASHTRIYA ISPAT NIGAM LTD.,, Visakhapatnam Steel Plant,
Ukkunagaram, Visakhapatnam.

...Petitioner

AND

1. DANIELI AND C OFFICINE MECCANICHE SPA ITALY, Via Nazionale 41,
330042 Buttrio (UD), Italy.

2. Danieli India Limited India, Technopolis, 5th floor. Wing B, Block BP, Plot
IV, Sector V, Salt Lake, Kolkata 700091.

3. Gillanders Arbuthnot and Co Ltd India, C-4 Gillanders House, Netaji
Subhash Road, Kolkata-700001, India

4. Datuk Professor Sundra Rajoo Presiding Arbitrator, 0/o. Sundra Rajoo
Arbitration Chambers, 28-1, Jalan Madan Setia 2, Bukit Damansara, 50490
Kualalampur, Malaysia.

5. Professor Douglas Jones AO, 0/o. Sydney Arbitration Chambers, Suit - IB,
Level-3,139 Macquarie Street, Sydney, Australia.

6. Professor Lawrence Boo, 28, Maxwell Road 03-18, Maxwell Chambers Suits, Singapore 069120.

...Respondents

pleased to Allow the present petition and set aside the impugned Award dt.26.02.2025 as amended dt. 10.06.2025, passed by the Arbitral Tribunal in ICC Case NO.26939/HTG pass

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the Award dt. 26.02.2025 as addendum Award dt. 10.06.2025 passed by the Arbitral Tribunal in ICC Case No.26939/HTG/YMK including Execution proceedings EXEP. No 1 of 2026 and pass

Counsel for the Petitioner: V SUBRAHMANYAM

Counsel for the Respondents: VARUN BYREDDY

Counsel for the Respondents: S RAM BABU

The Court made the following order:

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**I.C.O.M.A.O.A. NO.1 of 2026****ORDER:**

1. This application is filed under section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Arbitration Act”), against the award dated 26.02.2025 and the addendum dated 10.06.2023 passed in ICC case No.26939/HTGG by the arbitral Tribunal.
2. Respondents have filed their counter-affidavit raising a preliminary objection as to the maintainability of the present petition filed under Section 34 of the Arbitration Act before this Court. It is contended that, as agreed between the parties, the seat of arbitration is New Delhi and, consequently, the Courts at New Delhi alone have jurisdiction to entertain the petition under Section 34 of the Arbitration Act.
3. As the applicant and the respondents have requested to decide the issue of maintainability of the application under section 34 of the Arbitration Act before this Court, accordingly this Court has taken up to decide the following question:

“Whether this Court has jurisdiction to entertain an application under section 34 of the Arbitration and Conciliation Act, 1996, in view of the decision of the Arbitral Tribunal treating the seat of Arbitration as ‘New Delhi’?”

2. The brief facts of the case are that:

(i) Petitioner/Applicant, Rashtriya Ispat Nigam Limited, floated global tenders inviting bids for the construction of a 'Structural Mill'. Pursuant thereto, respondents Nos.1 to 3, being a consortium, participated in the tender process, and their bid was accepted by the applicant. Accordingly, applicant and respondents Nos.1 to 3 entered into a contract dated 27.03.2009 (hereinafter referred to as the "Main Contract"). For operational convenience, applicant also entered into nine individual agreements with respondents Nos.1 to 3, covering their respective scopes of work. Respondent No.1 was entrusted with the overall responsibility for execution and completion of the works under the Main Contract. As per the terms of the Main Contract, the works were required to be completed within 27 months from the date of commencement of the contract. However, respondents sought several extensions of time, which were granted by applicant while expressly reserving its right to levy liquidated damages and milestone penalties in accordance with the terms of the contract.

(ii) Thereafter, at the request of respondents Nos.1 to 3, a Preliminary Acceptance Certificate (hereinafter referred to as the "PAC") was issued vide letter dated 16.11.2016. Subsequently, keeping in view the operational requirements of the applicant, applicant exercised its discretion under Clause 19.1.5 of the General Conditions of Contract (hereinafter referred to as the "GCC") and notified the issuance of PAC in

respect of a part of the Plant on 10.12.2016. Under the terms of contract, the Plant could be deemed to have been taken over by applicant only upon issuance of the PAC in respect of all units of the Plant, namely, the final PAC. By communication dated 10.12.2016, respondents Nos.1 to 3 undertook to liquidate all the defects identified therein by 28.02.2017. Applicant also expressly reserved its right to amend or add to the list of defects before or at the time of issuance of the final PAC. Subsequently, on 17.12.2016, applicant issued PAC in respect of part of the Plant, together with a list of 5,139 defects, deficiencies and punch points requiring rectification by respondents. Respondents were specifically informed that all outstanding defects and deficiencies were required to be rectified by 28.02.2017 so as to make the Plant fully ready for the subsequent Performance Tests.

(iii) Respondents, however, failed to adhere to their commitment to rectify and liquidate the identified defects and punch points within the stipulated period. Instead, citing financial difficulties, they requested the applicant to release payments against the part PAC. Although such release was not contemplated under the contract, applicant, having regard to the existing business relationship between the parties and as a matter of goodwill, acceded to the request and released the requisite amounts. Subsequently, on 28.02.2018, with a view to maintaining a healthy business relationship with the respondents and facilitating expeditious completion of the project, applicant issued the final PAC,

relying upon the assurance of respondents Nos.1 to 3 that the outstanding punch points would be rectified at the earliest. A fresh/additional list of deficiencies, defects and punch points was also issued in accordance with the agreed terms. At no point during issuance of the part PAC dated 17.12.2016 or the final PAC dated 28.02.2018, did respondents Nos.1 to 3 raise any dispute or objection regarding the identified defects, deficiencies or punch points, or their obligation to rectify the same. The Plant was thereafter operated under the supervision and guidance of respondents Nos.1 to 3 in accordance with Clause 19.1.5 of the GCC. Under contractual arrangement, the Plant was required to be operated under the supervision and guidance of the contractor until issuance of the Provisional Acceptance Certificate under Clause 20.0 of the GCC, following successful completion of the prescribed Performance Tests.

(iv) Despite repeated reminders and follow-up communications issued by applicant after issuance of the final PAC dated 28.02.2018, respondents failed to rectify the outstanding defects and punch points in accordance with their contractual obligations. Even after a lapse of considerable time, including nearly two years from issuance of the final PAC, respondents failed to complete the rectification work and continued to seek extensions on one pretext or another. Applicant, therefore, issued several communications calling upon respondents to discharge their contractual obligations. Finally, by communication dated 12.04.2019,

applicant specifically brought to the notice of respondents the outstanding critical PAC punch points and defects which had remained unattended for a considerable period. Applicant further made it clear that contractor would continue to be responsible for completion of the project and called upon respondents to take immediate steps for expeditious rectification of the outstanding defects.

(v) Pursuant thereto, a meeting was held on 17.04.2019, wherein applicant emphasized the necessity of rectifying certain critical defects before the proposed Capital Repair Shutdown of the Mill. Respondents were specifically advised to utilize the shutdown period effectively for carrying out the requisite rectification and repairs, particularly those works which could be undertaken only during such shutdown. Respondents agreed to undertake the said works. However, in breach of Clauses 16.14.1 and 19.1.5 of the GCC, respondents thereafter unilaterally abandoned the Plant, resulting in the work and progress at the Plant being substantially stalled. Consequently, by email dated 30.04.2019, applicant informed respondents that their representatives/agents were not available at the Plant, which was a matter of serious concern, and called upon them to immediately resume their presence at the site and rectify the outstanding defects and punch points.

(vi) Clause 16.14.1 of the GCC specifically mandates the presence of the contractor's representatives/agents at the site during working

hours and further provides that such representatives/agents shall not leave the site during the subsistence of the contract without the consent of the Engineer/Consultant. Respondents' failure to maintain such presence and their unilateral abandonment of the Plant thus constituted a clear breach of their contractual obligations.

3. In view of the aforesaid preliminary objection, this Court has taken up the above framed question regarding the jurisdiction of this Court to entertain an application under section 34 of the Arbitration Act.

4. Heard Sri W.B. Srinivas, learned Senior Counsel appearing on behalf of Sri V. Subramanyam, learned counsel for the appellant, Sri Suhail Dutt, learned Senior Counsel appearing on behalf of Sri S. Ram Babu, learned counsel for the respondents No.1 and 2 and Sri Gaurav Juneje, learned counsel appearing for the respondent No.3.

5. The contention of the petitioner/applicant is that, having regard to Article 18 of the Agreement dated 27.03.2009 and Clause 34.2 of the General Conditions of Contract (GCC), all disputes arising out of or in any manner connected with the Contract are deemed to have arisen within the jurisdiction of Visakhapatnam, and the parties have expressly agreed that the Courts at Visakhapatnam shall have jurisdiction. Although the venue of arbitration was agreed to be at any one of the following places, namely, New Delhi, Mumbai, Chennai, Kolkata, Hyderabad or Visakhapatnam, such stipulation pertains only to the venue of the arbitral proceedings and does not confer exclusive

jurisdiction upon the Courts at any of the said places. The exclusive jurisdiction having been conferred upon the Courts at Visakhapatnam, and as the present dispute is arising out of an international commercial arbitration, present application under Section 34 of the Arbitration Act is maintainable before this Court.

6. Learned counsel for applicant has drawn the attention of this Court to article 18 of the agreement as well as clause 34.2 of General Conditions of Contract, which reads as follows:

34.2 Settlement of Disputes by Arbitration: *All disputes and differences, whatsoever, arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this Contract or Breach thereof shall be settled between the Employer and the Contractor amicably.*

if however, the Employer and the Contractor are not able to resolve their disputes and differences amicably as aforesaid, such disputes and differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this contract or the breach thereof shall be settled by Arbitration. Each party shall appoint its arbitrator. The two arbitrators so appointed shall appoint the third arbitrator who shall be the presiding arbitrator.

For Indigenous Contract, the arbitration shall be governed by the provisions of Arbitration and Conciliation Act 1996 and the statutory modifications to the said Act

in case of Foreign Contracts, Arbitration proceedings shall be as per the rules of international Chamber of Commerce (ICC).

The award made in pursuance of above shall be binding on the parties,

The further progress of any work under the contract shall unless otherwise directed by the Engineer continue during the Arbitration proceedings and no payment due or payable by the Employer shall be withheld on account of such proceedings. It shall not be open to Arbitrators to consider and decide whether or not such work shall continue during the Arbitration proceedings.

Provided further that no reference to Arbitration, whether the final bill for the work has been passed or not, shall be made later than 6 months from the date of satisfactory completion of the work under the contract.

No interest shall be awarded by the Arbitrators in any Arbitration proceedings.

The Arbitration bench shall make a reasoned award.

For Foreign Contracts the venue of Arbitration shall be at/ in any one of the following cities, New Delhi & Mumbai, in India.

For Indigenous Contracts, the venue of Arbitration shall be in Vishakhapatnam.

7. Learned Senior Counsel appearing for applicant submits that Article 18 of the Agreement specifically provides for the jurisdiction of the Courts at Visakhapatnam, whereas the venue of arbitration may, for the convenience of the parties, be varied in terms of the said Article. Clause 34.2 of the GCC cannot be relied upon for determining the jurisdiction of the Court, as the said clause merely prescribes the procedure for constitution of the Arbitral Tribunal, including the appointment of an arbitrator by each party and the appointment of the Presiding Arbitrator by the arbitrators so appointed. It is contended that, where a specific provision governing jurisdiction is contained in Article 18 of the Agreement, the same would prevail over the general provisions contained in the GCC. It is further submitted that the Agreement, insofar as it confers jurisdiction upon the Courts at Visakhapatnam, must prevail, and the fact that the arbitral proceedings were conducted at New Delhi would not, by itself, confer jurisdiction upon the Courts at New Delhi. As such, New Delhi was only the venue of the arbitral proceedings and not the seat of arbitration, which, in terms of Article 18 of the Agreement, remained at Visakhapatnam.

8. Learned senior counsel for applicant further submits that the arbitration in question constitutes an international commercial arbitration within the meaning of Section 2(1)(f) of the Arbitration and Conciliation Act, 1996, as one of the parties to the agreement is a foreign entity. It is also contended that respondents themselves had earlier invoked the jurisdiction of this Court by filing an application under Section 9 of the Arbitration Act in Arbitration Application No.17 of 2022 and had obtained interim orders therefrom. Having thus submitted to the jurisdiction of this Court and obtained relief under Section 9 of the Arbitration Act, respondents cannot now contend that this Court lacks jurisdiction to entertain the present petition under Section 34 of the Arbitration Act.

9. Learned senior counsel for applicant placed reliance on the judgment of the Hon'ble Supreme Court in **BGS SGS Soma JV V. NHPC Limited**¹, submits that the expression "place of arbitration", as contemplated under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Arbitration Act"), assumes significance in determining the jurisdiction of the Court in relation to the arbitral proceedings. Under Section 20(1) of the Arbitration Act, the parties are at liberty to agree upon the place of arbitration and, in the absence of such agreement, the place of arbitration is to be determined by the Arbitral Tribunal having regard to the circumstances of the case. Section 20(3) further permits the Arbitral Tribunal, notwithstanding sub-sections (1) and (2), to meet at any place it considers appropriate for

¹ 2020 (4) SCC 234

consultation among its members, hearing witnesses, experts or parties, or for inspection of goods, other property or documents, unless otherwise agreed by the parties. The place at which the Arbitral Tribunal may convene for such purposes is distinct from the juridical seat of arbitration and, therefore, the mere conduct of arbitral proceedings at a particular place would not, by itself, determine the jurisdiction of the Court.

10. Learned senior counsel for applicant further submits that, under Section 31(4) of the Arbitration and Conciliation Act, 1996, the arbitral award shall state the date and the place of arbitration determined in accordance with Section 20(1), and shall be deemed to have been made at such place. Once an application arising out of the arbitration agreement or the arbitral proceedings is made before a competent Court, such Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising therefrom. Accordingly, the subsequent proceedings under the Arbitration Act are required to be instituted before the same Court.

11. Relying on the aforesaid principle, learned senior counsel for applicant submits that the jurisdiction of the Court is governed by Article 18 of the Arbitration Agreement. Under Section 42 of the Arbitration Act, once an application arising out of the arbitration agreement is made before a competent Court, that Court alone has jurisdiction over all subsequent proceedings arising out of the same agreement. Since respondents had earlier invoked the jurisdiction of this Court under Section 9 of the Arbitration

Act and obtained interim relief, they cannot now contend that this Court lacks jurisdiction merely because the arbitral award was made at New Delhi.

12. Learned senior counsel for applicant further placed reliance upon paragraphs 30 to 35, 40 and 42 of the judgment in **BGS SGS Soma JV cited supra**, and submits that Sections 20 and 31(4) of the Arbitration and Conciliation Act, 1996 correspond to Articles 20 and 31(3) of the UNCITRAL Model Law, which accord primacy to the seat of the arbitral proceedings. The definition of “Court” under Section 2(1)(e) of the Arbitration Act confines jurisdiction to the principal Civil Court of original jurisdiction in a district and, where applicable, the High Court exercising ordinary original civil jurisdiction.

13. Relying upon the aforesaid judgment and the judgment of the Constitution Bench of the Hon’ble Supreme Court in **Bharat Aluminium Company V. Kaiser Aluminium Technical Services Inc.**², learned senior counsel for applicant submits that the seat of arbitration constitutes the juridical centre of the arbitral proceedings, but does not require all proceedings or meetings of the Arbitral Tribunal to be conducted at the seat. Particularly in international commercial arbitration, the Tribunal may, for the convenience of the parties or for its own convenience, conduct hearings or meetings at a place other than the designated seat. Therefore, the venue of a particular hearing cannot, by itself, be treated as the juridical seat of arbitration. It is further submitted that the arbitral procedure, including the constitution of the Arbitral Tribunal, is governed by the agreement between the

² (2012) 9 SCC 552

parties and the applicable law. Article 18 of the Agreement makes it clear that Visakhapatnam is the seat and the Courts at Visakhapatnam have exclusive jurisdiction, while the other places specified therein are merely venues for conducting the arbitral proceedings. Thus, the mere conduct of the arbitral proceedings at New Delhi does not alter the seat of arbitration or confer jurisdiction upon the Courts at New Delhi. Consequently, the Courts at Visakhapatnam alone have jurisdiction to entertain proceedings under the Arbitration and Conciliation Act, 1996 in relation to the arbitral award in question.

14. Placing reliance on the decision of the five-Judge Bench of the Hon'ble Apex Court in ***Bharat Aluminium Company's case*** cited supra, learned senior counsel for applicant submitted that the seat of arbitration constitutes the juridical centre of gravity of the arbitral proceedings, but it does not necessarily mean that all proceedings must be conducted at the seat. The Arbitral Tribunal may, for its convenience or that of the parties, hold meetings or hearings at places other than the designated seat. Particularly in international commercial arbitration, involving parties and arbitrators from different jurisdictions, it is not unusual for the Tribunal to conduct proceedings at different venues. Such venues, however, do not, by themselves, alter the seat of arbitration. Learned senior counsel further submitted that the arbitral procedure, including the constitution of the Arbitral Tribunal, is governed by the agreement between the parties and the applicable law. In the present case, the agreement expressly provides for jurisdiction at Visakhapatnam and

designates Visakhapatnam as the place/seat of arbitration, while also providing for the conduct of arbitral proceedings at different venues. This clearly establishes the intention of the parties to designate Visakhapatnam as the seat of arbitration for the purpose of determining the supervisory jurisdiction of the Court. Therefore, the mere fact that hearings or meetings may be conducted at other venues would not confer jurisdiction upon the Courts at such places. Accordingly, no Court other than the competent Court at Visakhapatnam would have jurisdiction to entertain proceedings under the Act in respect of the arbitral award passed pursuant to the said agreement.

15. Learned senior counsel for applicant further submitted that the courts having supervisory jurisdiction over the place of arbitration are competent to exercise supervisory control over the arbitral proceedings. Where the Arbitral Tribunal conducts proceedings at a place unconnected with either party or the subject matter of the dispute and passes an order under Section 17 of the Act, any appeal under Section 37 would lie before the Court having supervisory jurisdiction over the arbitral proceedings and the Tribunal, irrespective of the place where the contractual obligations were to be performed. In this regard, the Hon'ble Apex Court has held that, in appropriate circumstances, both courts may have jurisdiction, namely, (i) the Court within whose jurisdiction the subject matter of the suit is situated, and (ii) the Court within whose jurisdiction the arbitration is located. While considering Section 20 of the Act, the Hon'ble Apex Court further held that the provision leaves no room for doubt that the parties are free to agree upon the place or seat of arbitration within India. In

the absence of such an agreement, Section 20(2) empowers the Arbitral Tribunal to determine the place or seat of arbitration. Section 20(3), however, permits the Tribunal to meet at any place for conducting hearings, consultations or other proceedings, having regard to the convenience of the parties.

16. Placing reliance on the above, learned senior counsel for applicant submits that, once the agreement expressly designates Visakhapatnam as the seat/place of arbitration and confers exclusive jurisdiction on the Courts at Visakhapatnam, there is no occasion for the Arbitral Tribunal to determine or alter the seat of arbitration. Such determination by the Tribunal would arise only in the absence of an agreement between the parties as to the place or seat of arbitration. Once the parties have expressly agreed upon Visakhapatnam as the seat, the said contractual stipulation would prevail, and the Tribunal cannot subsequently fix a different seat. It is not the case of either party that any request was made for determination of the place or seat of arbitration contrary to the terms of the agreement. Accordingly, in view of the express agreement of the parties designating Visakhapatnam as the seat of arbitration and excluding the jurisdiction of courts other than those at Visakhapatnam, the Courts at Visakhapatnam alone would have jurisdiction over proceedings arising out of the arbitral award. Therefore, this Court, being a Court of original civil jurisdiction at Visakhapatnam, alone has jurisdiction to entertain the appeal under Section 34 of the Act.

17. Per contra, learned senior counsel for respondents 1 and 2 further submits that the jurisdiction clause contained in Article 18 of the Agreement applies only to indigenous contracts. Insofar as foreign contracts are concerned, the arbitration proceedings are governed by the Rules of the International Chamber of Commerce (ICC). Neither Article 18 of the Agreement nor Clause 34.2 of the GCC expressly fixes the seat of arbitration at any particular place and that the seat could, therefore, be determined by mutual agreement between the parties. Pursuant to the terms of reference agreed to and signed by all the parties, New Delhi was expressly agreed upon as 'the seat' of arbitration. The subsequent agreement of the parties as recorded in the terms of reference constitutes an express determination of the seat of arbitration at New Delhi. Consequently, Courts at New Delhi alone would have jurisdiction in respect of an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Arbitration Act"), and this Court lacks jurisdiction to entertain the present application.

18. Learned senior counsel appearing for respondents 1 and 2 further submits that Clause 34.2 of the General Conditions of Contract (GCC) provides that, in the case of a foreign contract, the arbitration shall be governed by the Rules of the International Chamber of Commerce (ICC). It is contended that a contract would constitute a foreign contract where either one of the parties is a foreign national or the supplies are of foreign origin, and that the presence of such foreign elements is sufficient to treat the contract as an

International Commercial Contract. Placing reliance on Article 8 of the agreement, wherein the contract price is stipulated in Euros, a foreign currency, learned Senior Counsel submits that the contract cannot be treated as an indigenous contract and is, in substance, an International Commercial Contract governed by the ICC Rules. Learned Senior Counsel further submits that Clause 34.2 of the GCC provides for New Delhi or Mumbai as the venue in the case of a foreign contract, whereas Visakhapatnam is prescribed as the venue for an indigenous contract. Therefore, the jurisdiction clause contained in Article 18 applies only to indigenous contracts and cannot be extended to arbitration proceedings arising out of an International Commercial Contract governed by the ICC Rules. It is contended that, since the present contract is governed by the ICC Rules, the Arbitral Tribunal was competent to determine the seat of arbitration, and the jurisdiction clause contained in Article 18 has no application to the present arbitral proceedings in view of the specific stipulation contained in Clause 34.2 of the GCC.

19. Learned senior counsel for respondents 1 and 2 further submits that the seat of arbitration was subsequently changed with the consent of the parties in terms of Section 21 of the Act. The Terms of Reference specifically designate New Delhi as the seat of arbitration, and applicant, having accepted the said Terms of Reference and signed the same, cannot now take a contrary stand disputing the seat of arbitration.

20. Learned Senior Counsel drawn the attention of this Court to the Terms of Reference set out in **Part IX Procedural Rules** in support of the aforesaid contention, which reads as follows:

34. Pursuant to Article 19 of the ICC Rules, the proceedings shall be governed by the ICC Rules. By signing these Terms of Reference, the Parties agree that where the ICC Rules are silent, the proceedings shall be governed by any rules which the Parties or, failing them, the Tribunal may settle on. As the seat of the arbitration is in New Delhi, India, the Arbitration and Conciliation Act, 1996 will also apply.

21. Pursuant to Article 19 of the ICC Rules, the arbitral proceedings are to be governed by the ICC Rules. Learned senior counsel for respondents submits that, by consenting to and signing the Terms of Reference, the parties have agreed that the proceedings would be governed by the applicable rules agreed upon by them or, in the absence of such agreement, by the rules determined by the Arbitral Tribunal. Since New Delhi was designated as the seat of arbitration in India, the Arbitration and Conciliation Act, 1996 would also apply to the proceedings. Learned Senior Counsel further submits that applicant, having signed the Terms of Reference with full knowledge and without raising any objection to New Delhi being designated as the seat of arbitration, cannot now take a contrary stand and contend that the seat of arbitration is governed by Article 18 of the agreement. It is therefore contended that, as the contract constitutes an International Commercial Contract and the arbitral proceedings are governed by the ICC Rules, the place/seat of arbitration was subsequently determined by the consent of parties in the Terms of Reference. Having expressly accepted the same,

applicant is therefore debarred from subsequently challenging the jurisdiction of the Arbitral Tribunal or the Court by relying upon Article 18 of the agreement.

22. With regard to the Addendum Award, which is also the subject matter of challenge in the present appeal, learned senior counsel for respondents submits that applicant has not raised any specific ground challenging the finding recorded by the Arbitral Tribunal in paragraph 104 thereof, whereby applicant's request to amend the award so as to specifically state that the seat of arbitration was Visakhapatnam was rejected. It is therefore contended that the present challenge to the seat of arbitration is an afterthought, raised only with a view to delay and drag the execution proceedings pending before this Court.

23. Learned senior counsel for respondents 1 and 2 further places reliance on the judgment of the Hon'ble Apex Court in **Inox Renewables Ltd. v. Jayesh Electricals Ltd.**³, wherein it held as follows:

8. Shri Purvish Jitendra Malkan, learned counsel appearing on behalf of the respondent, argued in support of the impugned judgment. He relied upon the judgment in Videocon Industries Ltd. v. Union of India [Videocon Industries Ltd. v. Union of India, (2011) 6 SCC 161 : (2011) 3 SCC (Civ) 257] ["Videocon"] and Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] ["Indus Mobile"] for the proposition that even if the place of arbitration is shifted by mutual agreement, it cannot be so done without a written agreement between the parties. In any event, he argued that the vesting of exclusive jurisdiction with the courts at Rajasthan, being independent from the arbitration clause stating that the arbitration is to be held at

³ (2023) 3 SCC 733

Jaipur, would indicate that the courts at Rajasthan alone would have exclusive jurisdiction. He also argued 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 Arbitration and Conciliation Act, 1996 as Ahmedabad was in reality a convenient place for the arbitration to take place, the seat of the arbitration always remaining at Jaipur.

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.

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.

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.

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.

18. Vide order dated 12-12-2019 [Inox Renewables Ltd. v. Jayesh Electricals Ltd., 2019 SCC OnLine SC 2036] , this Court stayed the execution proceedings in Execution Petition No. 117 of 2019 on the condition that the appellant shall deposit an amount of Rs 40,00,000 in this Court, which has been so deposited. This deposit will now be transferred to the appropriate forum at Ahmedabad by which the Section 34 petition will be decided. The execution proceedings shall remain stayed till the disposal of the Section 34 petition unless the appropriate forum at Ahmedabad varies this interim order.

24. Placing reliance on the aforesaid judgment, learned senior counsel submits that, once the parties have mutually agreed to shift the place of arbitration from one place to another, it cannot be contended that such change could be effected only by a written agreement. He further submits that, where the seat of arbitration is designated by agreement between the parties, the exclusive jurisdiction clause would vest the courts at the seat with exclusive jurisdiction over the arbitral proceedings arising out of the agreement. Referring to the judgment in **Indus Mobile Distribution (P) Ltd.**, learned Senior Counsel submits that, once the parties have expressly chosen New Delhi as the seat of arbitration under Section 20 of the Act, the courts at New Delhi alone would have jurisdiction over the arbitral proceedings. In the

present case, the parties, by mutually consenting to the Terms of Reference, agreed that New Delhi as the seat of arbitration, and the said arrangement was duly recorded by the Arbitral Tribunal in its award. There has been no subsequent objection or variation by either party with regard to the seat of arbitration. It is therefore contended that, once the seat of arbitration was substituted by mutual consent of the parties, applicant cannot subsequently rely upon the original contractual clause to contend that the seat ought to remain at Visakhapatnam. Consequently, the contention that the Arbitral Tribunal acted contrary to the agreement in fixing New Delhi as the seat of arbitration cannot be sustained.

25. Learned senior counsel for respondents 1 and 2 also placed reliance on ***Sundaram Finance Limited V. Abdul Sama and another***⁴, submitted that enforcement of an award through its executives can be filed anywhere in the country, where such decree can be executed and there is no requirement of seeking transfer of the decree from the original court.

26. Learned senior counsel also placed reliance on the judgment of the Hon'ble Supreme Court in ***Hindustan Construction Company Limited V. NHPC Limited and another***⁵, submitted that once a particular place is designated as the seat of arbitration, the courts at such seat alone would have jurisdiction over the arbitral proceedings. Even if an application is initially filed before a court having no jurisdiction, such filing would not confer jurisdiction

⁴ (2018) 3 SCC 622

⁵ (2020) 4 SCC 310

upon that court. Therefore, the contention of applicant that filing of an application under Section 9 before this Court would confer jurisdiction upon it cannot be accepted. Since New Delhi was subsequently agreed upon as the seat of arbitration, the courts at New Delhi alone would have jurisdiction to entertain an application under Section 34 of the Act.

27. Learned counsel appearing for respondent No.3 also submits that Visakhapatnam cannot be treated as the seat of arbitration in view of Clause 34.2 of the GCC, as the parties subsequently agreed to change the seat to New Delhi. It is contended that the issue relating to the seat of arbitration was considered and decided by the Arbitral Tribunal in the Terms of Reference, which was accepted by the parties and was not challenged. Learned Counsel further submits that applicant has not raised any specific ground challenging the finding of the Arbitral Tribunal with regard to the seat of arbitration. The refusal of the Tribunal, in the Addendum Award, to amend the award concerning the seat of arbitration has also not been specifically challenged. Consequently, the said finding has attained finality, and this Court has no jurisdiction to entertain the present appeal.

28. Learned counsel appearing for respondent No.3 further submits that Clauses 2.3.1 and 2.10 of the agreement indicate that the contract is a foreign contract, as it involves the import of goods and services, payment of customs duties, foreign supervision, and a foreign principal contractor. He further submits that the arbitration was conducted under the ICC Rules and that, in the Statement of Defence filed pursuant to the Procedural Order dated

27.09.2022, New Delhi was mentioned as the place of arbitration. The counter-claim was also made in Euros. These circumstances establish the international character of the contract and the applicability of the ICC Rules. Learned Senior Counsel further submits that applicant raised the issue of the seat of arbitration only after the arbitral award was passed against it. Therefore, the objection is an afterthought, raised only to delay the execution proceedings.

29. In reply, Sri W.B. Srinivas, learned senior counsel appearing for applicant, submits that the award as well as the Addendum Award are under challenge in the present proceedings and that the issue relating to the seat of arbitration is also part of the challenge. Therefore, it cannot be contended that the decision of the Arbitral Tribunal regarding the seat of arbitration has not been challenged. Learned Senior Counsel reiterated that, once Clause 18 of the agreement confers jurisdiction on the Courts at Visakhapatnam, the same necessarily indicates Visakhapatnam as the seat of arbitration. Clause 34.2 of the GCC does not deal with jurisdiction but merely specifies the venue for conducting the arbitral proceedings.

30. Learned senior counsel for applicant further submits that the venue is merely the physical location where arbitral proceedings may be conducted and does not, by itself, determine the juridical seat of arbitration. Once the parties have agreed upon a particular seat, the Tribunal may conduct hearings at any other convenient venue without altering the seat. It is therefore contended that the reference to New Delhi in the Terms of Reference was

only with regard to the procedural conduct of the arbitration and cannot be construed as a change of the seat agreed upon by the parties. The Terms of Reference merely define the scope and ambit of the arbitral proceedings and cannot operate in derogation of the contractual provision relating to the seat of arbitration. It is further submitted that the seat of arbitration could not have been changed merely by recording a different place in the Terms of Reference and that such a change would require a specific and separate agreement between the parties. Therefore, New Delhi could, at the highest, be treated as a venue for conducting the arbitral proceedings and not as the seat of arbitration. Therefore, such an interpretation is in conformity with Article 18 of the agreement and Clause 34.2 of the GCC, which contemplate Visakhapatnam as the seat of arbitration.

31. Learned senior counsel for applicant further submits that, having regard to Section 2(1)(e) of the Act, this Court, being the competent Court having original civil jurisdiction in respect of the present International Commercial Arbitration, has exclusive jurisdiction to entertain the application under Section 34 of the Act. Section 20(1) of the Act permits the parties to agree upon the place of arbitration. In the present case, the agreement dated 27.03.2018, particularly Article 18 thereof, expressly provides for the seat of arbitration and constitutes a written agreement between the parties in that regard. Therefore, the seat so agreed upon cannot be altered except by a subsequent agreement between the parties. The mere recording of a different place in the Terms of Reference, which relates to the scope and ambit of the adjudication and the

procedure to be followed by the Arbitral Tribunal, cannot have the effect of modifying the seat agreed upon by the parties or divesting this Court of its jurisdiction. Learned Senior Counsel further submits that Article 18 itself distinguishes between the seat and the venue of arbitration. Therefore, the fact that the arbitral proceedings were conducted at New Delhi, which is merely the venue, cannot confer jurisdiction upon the Courts at New Delhi when the parties had expressly agreed upon Visakhapatnam as the seat of arbitration. The agreed seat cannot be altered merely by fixing a different venue for conducting the arbitral proceedings. Accordingly, in view of the express agreement between the parties, this Court alone has jurisdiction to entertain the present application under Section 34 of the Act.

32. To consider the aforesaid submission, the relevant provisions of the Act are required to be examined. Section 2(1)(e)(ii) of the Act stipulates that, in respect of International Commercial Arbitration, the High Court exercising its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of arbitration. Section 20 of the Act is also equally relevant for the purpose of deciding the place of arbitration. For the sake of convenience, section 20 is extracted hereunder:

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.

33. The aforesaid provision makes it clear that, under Section 20 of the Act, the parties are free to agree upon the place of arbitration. In the absence of any agreement as contemplated under sub-section (1) of Section 20, the Arbitral Tribunal shall determine the place of arbitration, having regard to the facts and circumstances of the case, in terms of sub-section (2) thereof. Subsection (3) of Section 20 further provides that 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 other parties, or for inspection of documents, goods or other property. Such a place may not necessarily be the place of arbitration, where the parties may agree to conduct such proceedings at a place other than the place/seat of arbitration, which may be referred to as the venue. The other relevant provision is Section 34 of the Act, which provides recourse to the aggrieved party against the arbitral award seeking to set aside such award under sub-section (2) and (3) of Section 34.

34. For a better appreciation, it is relevant to reproduce section 34 of the Arbitration and Conciliation Act, 1996, which reads as follows:

34. Application for setting aside arbitral award.

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

[\(2\)](#) An arbitral award may be set aside by the Court only if

(a)the party making the application [establishes on the basis of the record of the arbitral tribunal that:] [Substituted 'furnishes proof that' by Act No. 33 of 2019, dated 9.8.2019.]

(i)a party was under some incapacity; or

(ii)the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii)the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv)the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v)the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b)the Court finds that

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

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

[Explanation 1. [Substituted by Act [No. 3 of 2016](#) dated 31.12.2015.] - For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i)the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii)it is in contravention with the fundamental policy of Indian law; or

(iii)it is in conflict with the most basic notions of morality or justice.

Explanation 2. - For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(2A)[An arbitral award arising out of arbitration's other than international commercial arbitration's, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be

set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.] [Inserted by Act [No. 3 of 2016](#) dated 31.12.2015.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) [An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.] [Inserted by Act [No. 3 of 2016](#) dated 31.12.2015.]

35. Article 18 of the International Court of Arbitration, Arbitration Rules, 2021 is also required to be looked into and the same reads as under:

Place of the Arbitration

- 1. The place of the arbitration shall be fixed by the Court, unless agreed upon by the parties.*
- 2. The arbitral tribunal may, after consulting the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties.*
- 3. The arbitral tribunal may deliberate at any location it considers appropriate.*

The aforesaid enables the Arbitral Tribunal to fix the place of arbitration unless agreed upon by the parties and the tribunal may, after consulting the parties, may conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties and the arbitral tribunal may deliberate at any location it considers appropriate. The said article is similar to that of section 20 of Arbitration Act.

36. Thus, the place of arbitration can be fixed by the arbitral tribunal if the parties fail to come to understanding, or on the request/consent of the parties to fix a particular place as a place of arbitration so as to confirm place/seat of arbitration. Before appreciating contentions of learned counsel for respective parties, this court deems it appropriate to refer relevant clauses under the agreement, namely, Articles 18 and 19 of the agreement and clause 34 of the General Conditions of Contract.

37. Articles 18 and 19 of the agreement reads as under:

Article 18

All disputes arising out of or in any way connected with this Contract shall be deemed to have arisen in Visakhapatnam. Jurisdiction of Courts shall be only at Visakhapatnam. Venue of Arbitration shall be in any one of the following cities: New Delhi, Mumbai, Chennai, Kolkata, Hyderabad and Visakhapatnam, India. However, the disputes, if any, shall be settled by Arbitration mentioned in clause no 34.2 of General Conditions of Contract referred to as in the Contract No VSP/CONT/6.3 MTPA EXPN/ STM/COV/M-995/2008-2009 Dated 27.03.09. The language of Arbitration shall be English.

Article-19

The governing Law of this Contract shall be by the Laws of India.

38. Under Article 18, all disputes arising out of or in any way connected with this contract shall be deemed to have arisen in Visakhapatnam. Jurisdiction of courts shall be only at Visakhapatnam and venue of arbitration was agreed to be in anyone of the following cities, namely, New Delhi, Mumbai, Chennai, Kolkata, Hyderabad and Visakhapatnam. Further, Article reads that disputes shall be settled by arbitration as mentioned in Clause 34.2 of the GCC dated 27.03.2009. Article 19 declares that governing law of this contract shall be by the Laws of India.

39. Clause 34.2 of GCC stipulates the settlement of disputes by arbitration and the same reads as under:

Settlement of Disputes by Arbitration: All disputes and differences, whatsoever, arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this Contract or Breach thereof shall be settled between the Employer and the Contractor amicably.

if however, the Employer and the Contractor are not able to resolve their disputes and differences amicably as aforesaid, such disputes and differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this contract or the breach thereof shall be settled by Arbitration. Each party shall appoint its arbitrator. The two arbitrators so appointed shall appoint the third arbitrator who shall be the presiding arbitrator.

For Indigenous Contract, the arbitration shall be governed by the provisions of Arbitration and Conciliation Act 1996 and the statutory modifications to the said Act.

In case of Foreign Contracts, Arbitration proceedings shall be as per the rules of international Chamber of Commerce (ICC).

The award made in pursuance of above shall be binding on the parties,

The further progress of any work under the contract shall unless otherwise directed by the Engineer continue during the Arbitration proceedings and no payment due or payable by the Employer shall be withheld on account of such proceedings. It shall not be open to Arbitrators to consider and decide whether or not such work shall continue during the Arbitration proceedings.

Provided further that no reference to Arbitration, whether the final bill for the work has been passed or not, shall be made later than 6 months from the date of satisfactory completion of the work under the contract.

No interest shall be awarded by the Arbitrators in any Arbitration proceedings.

The Arbitration bench shall make a reasoned award.

For Foreign Contracts the venue of Arbitration shall be at in any one of the following cities:, New Delhi & Mumbai, in India

For Indigenous Contracts, the venue of Arbitration shall be in Vishakhapatnam.

Governing law shall be-Laws of India and the language shall be in English.

40. The aforesaid clause provides for the procedure regarding appointment of arbitrator by each party and the two arbitrators so appointed shall appoint a third arbitrator as the presiding arbitrator. Regarding Foreign Contracts are concerned, arbitration proceedings shall be as per the rules of International Chamber of Commerce (ICC) and the venue of arbitration shall be at/in any one of the cities, namely, New Delhi and Mumbai in India. For Indigenous Contracts are concerned, the venue of arbitration is fixed at Visakhapatnam. As the case pertains to 'foreign contract', though the word 'foreign contract' is not defined in the agreement as this is of a foreign subject, it is specially provided under Clause 34.2 of the GCC that the International Chamber of Commerce rules are applicable, as such, the agreement itself is an international commercial agreement, as such, it has to be treated as a foreign contract.

41. A plain reading of Clause 34.2 of the GCC clearly indicates that the venue of arbitration for indigenous contracts is mentioned as Visakhapatnam,

whereas, for foreign contracts, the venues are mentioned as Delhi and Mumbai. The GCC specifically used the word 'venue' even in respect of a foreign contract, as either New Delhi or Mumbai. However, in the agreement dated 27.03.2009, Article 18 specifically declares that the jurisdiction of the Courts shall be only at Visakhapatnam and that the venue of arbitration shall be in any one of the cities, namely, New Delhi, Mumbai, Chennai, Kolkata, Hyderabad and Visakhapatnam. As per the agreement between the parties, the governing law of the contract shall be Indian law and the arbitration proceedings shall be conducted in accordance with the Rules of the International Chamber of Commerce.

42. Section 20 of the Act contemplates the place of arbitration, which, in other words, called as seat of arbitration. Under sub-section (1) of Section 20 of the Act, the parties are free to agree upon the place of arbitration. If no such agreement has arrived, the arbitral tribunal shall determine the place of arbitration, thereby conferring jurisdiction on the Courts. The venue of arbitration may be at either of the places mentioned in the agreement or at the convenience of the parties to the proceedings. The ICC rules which are applicable to the present contract as the contract is of international arbitration or foreign contract, Article 18 of ICC prescribes the method in which the place of arbitration shall be decided. The place of arbitration shall be fixed by the Tribunal, unless agreed upon by the parties, which is akin to sub-section (1) of Section 20 of the Act. As the parties have never intended to nor made a request either before International Court of Arbitration or before the Arbitral

Tribunal for fixing place/seat of arbitration, there would not be any occasion for the tribunal to decide such seat/place. As the parties have agreed upon and conferred jurisdiction on the courts at Visakhapatnam, the same cannot be tinkered with, unless the parties expressly requested for such change in place of arbitration. In the case on hand, the parties have entered into an agreement where the parties have agreed upon the venue of arbitration as the cities mentioned therein and specifically conferred the jurisdiction on the courts at Visakhapatnam, which are well within the territorial jurisdiction of this Court as defined under section 2(1)(e)(ii) of the Act.

43. Respondents herein, in fact, invoked the jurisdiction of this Court under Section 9 of the Act for interim measures, owing to such interpretation by the respondents that this Court alone has jurisdiction. Therefore, it cannot be said that this Court has no jurisdiction. It is also the contention of the learned counsel for the applicant that the agreement, in its express terms, provides for conferment of jurisdiction, along with the reference to the place/seat of arbitration. Once such an agreement is entered into and acted upon, the Tribunal cannot delve into the said issue without there being any requisition from either of the parties. The terms of reference referred to the place of arbitration at New Delhi, which, in fact, was signed by the applicant herein also. However, the same does not take away the right of the party under the agreement between the parties. It is not even the case of the respondents that either of the parties made an application to the Tribunal to fix the place/seat of arbitration at New Delhi. The Tribunal seems to have proceeded on the

assumption that there is no agreement between the parties regarding the seat of arbitration and fixed the same.

44. Learned counsel for applicant submits that the terms of reference were signed with regard to the terms mentioned therein and that, though the term with reference to the seat of arbitration was also signed inadvertently, the same cannot form the basis for the Tribunal to treat it as the seat of arbitration without there being any requisition from either of the parties to fix the seat of arbitration at New Delhi. It is further contended that even while appointing its arbitrator in pursuance of Clause 34.2 of the GCC, the applicant had specifically stated in its e-mail dated 11.05.2022 appointing its arbitrator that the same was subject to the jurisdiction of this Court, as the jurisdiction conferred under the agreement was Visakhapatnam. Thereafter, the ICC appointed another arbitrator, and both the arbitrators appointed the Presiding Arbitrator. It is contended that no material is available on record to establish that either of the parties requested the Tribunal or the International Court of Arbitration to decide the place/seat of arbitration at New Delhi. The Tribunal, on its own, in a routine manner, decided the place/seat of arbitration at New Delhi. In fact, it is a designated venue.

45. Learned counsel for respondent No.3 would submit that, as the applicant had agreed to and signed the terms of reference with wide open eyes, it cannot now go back and contend that it cannot agreed that the place of arbitration to be New Delhi.

46. In reply to the said contention, learned counsel for applicant would submit that, as the agreement itself prescribed the place/seat of arbitration at Visakhapatnam, the Tribunal had no occasion to proceed to fix the place of arbitration at New Delhi. Upon noticing the same after the award was passed, the applicant filed an application seeking modification of the award. Pursuant to the same, an addendum was passed by the Tribunal, wherein, by merely referring to the terms of reference, without taking into consideration the agreement between the parties, particularly Article 18 of the agreement read with Clause 34.2 of the GCC, the request for amendment of the place/seat of arbitration was rejected. The main award along with its addendum is under challenge before this Court. As such, the terms of reference cannot be relied upon to contend that the parties had consented to the place of arbitration to be at New Delhi.

47. As stated above, the clauses contained in the agreement, Clause 34.2 of the GCC, and Article 18 of the ICC Rules clearly indicate that, unless there is consent of the parties, the Tribunal cannot fix the place/seat of arbitration, as there is already an express written consent of the parties by way of the agreement. In the absence of any requisition from either of the parties to decide the issue of place/venue, the same cannot fall within the scope of the Arbitral Tribunal to decide such an issue. The case law relied upon by the learned counsel on either side would clearly indicate that, unless there is an agreement between the parties regarding the place of arbitration, the question of deciding such place by the Tribunal itself does not arise, except that, in the

event of any dispute regarding the same, the Tribunal can proceed to decide the said issue.

48. Whereas, in the instant case, there is a written agreement conferring jurisdiction on the Courts at Visakhapatnam, which, in other words, confers jurisdiction under Section 2(1)(e)(ii) of the Act upon this Court, as the contract is an International Commercial Contract/Foreign Contract. Therefore, Tribunal had no occasion to go into the aspect of place/seat of arbitration and the same will not assume any jurisdiction to decide on the said issue, which was already decided by the parties themselves to treat place/seat of arbitration at Visakhapatnam.

49. Regarding the proposition laid down in the various case laws relied upon by the learned counsel on either side, there is no dispute that the seat/place of arbitration can be decided by the Tribunal only in the absence of an agreement between the parties, or where a requisition is made by either of the parties, in which event, the same can be considered for deciding such an issue. In the instant case, neither of the parties have placed any material to establish that the said issue was agitated before the Tribunal or the International Court of Arbitration for deciding the place/seat of arbitration. Even assuming such an application is filed, the same has to be decided by seeking response of the other party. Whereas, Tribunal had taken its decision by placing reliance in the terms of reference. The reference made in the terms of reference cannot be acted upon without there being any requisition as

required under Section 20 of Act or under Article 18 of the ICC. Thus, the issue is of a very narrow compass regarding whether the tribunal is right in deciding the seat of arbitration at New Delhi, particularly when the seat of arbitration, by conferring jurisdiction on the courts at Visakhapatnam, was expressly mentioned in the agreement itself in terms of Article 18 of the agreement as well as clause 34.2 of GCC.

50. In **BGS SGS SOMA JV v. NHPC** cited supra, the Hon'ble Apex Court at paragraph No.52 held as under:

52. *In Reliance Industries Ltd. [Reliance Industries Ltd. v. Union of India, (2014) 7 SCC 603 : (2014) 3 SCC (Civ) 737] , this Court held : (SCC pp. 627, 630-31, paras 45, 55-56)*

“45. In our opinion, it is too late in the day to contend that the seat of arbitration is not analogous to an exclusive jurisdiction clause. This view of ours will find support from numerous judgments of this Court. Once the parties had consciously agreed that the juridical seat of the arbitration would be London and that the arbitration agreement will be governed by the laws of England, it was no longer open to them to contend that the provisions of Part I of the Arbitration Act would also be applicable to the arbitration agreement. This Court in Videocon Industries Ltd. v. Union of India [Videocon Industries Ltd. v. Union of India, (2011) 6 SCC 161 : (2011) 3 SCC (Civ) 257] has clearly held as follows : (SCC p. 178, para 33)

‘33. In the present case also, the parties had agreed that notwithstanding Article 33.1, the arbitration agreement contained in Article 34 shall be governed by laws of England. This necessarily implies that the parties had agreed to exclude the provisions of Part I of the Act. As a corollary to the above conclusion, we hold that the Delhi High Court did not have the jurisdiction to entertain the petition filed by the respondents under Section 9 of the Act and the mere fact that the appellant had earlier filed similar petitions was not sufficient to clothe that High Court with the jurisdiction to entertain the petition filed by the respondents.’

55. *The effect of choice of seat of arbitration was considered by the Court of Appeal in C v. D [C v. D, 2008 Bus LR 843 : 2007 EWCA Civ 1282 (CA)] . This judgment has been specifically*

approved by this Court in *Balco* [*Balco v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] and reiterated in *Enercon (India) Ltd. v. Enercon GmbH* [*Enercon (India) Ltd. v. Enercon GmbH*, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59]. In *C v. D* [*C v. D*, 2008 Bus LR 843 : 2007 EWCA Civ 1282 (CA)], the Court of Appeal has observed : (C case [*C v. D*, 2008 Bus LR 843 : 2007 EWCA Civ 1282 (CA)], Bus LR p. 851, para 16)

Primary conclusion

16. I shall deal with Mr Hirst's arguments in due course but, in my judgment, they fail to grapple with the central point at issue which is whether or not, by choosing London as the seat of the arbitration, the parties must be taken to have agreed that proceedings on the award should be only those permitted by English law. In my view they must be taken to have so agreed for the reasons given by the Judge. The whole purpose of the balance achieved by the Bermuda form (English arbitration but applying New York law to issues arising under the policy) is that judicial remedies in respect of the award should be those permitted by English law and only those so permitted. Mr Hirst could not say (and did not say) that English judicial remedies for lack of jurisdiction on procedural irregularities under Sections 67 and 68 of the 1996 Act were not permitted; he was reduced to saying that New York judicial remedies were also permitted. That, however, would be a recipe for litigation and (what is worse) confusion which cannot have been intended by the parties. No doubt New York Law has its own judicial remedies for want of jurisdiction and serious irregularity but it could scarcely be supposed that a party aggrieved by one part of an award could proceed in one jurisdiction and a party aggrieved by another part of an award could proceed in another jurisdiction. Similarly, in the case of a single complaint about an award, it could not be supposed that the aggrieved party could complain in one jurisdiction and the satisfied party be entitled to ask the other jurisdiction to declare its satisfaction with the award. There would be a serious risk of parties rushing to get the first judgment or of conflicting decisions which the parties cannot have contemplated.'

56. The aforesaid observations in *C v. D* [*C v. D*, 2008 Bus LR 843 : 2007 EWCA Civ 1282 (CA)] were subsequently followed by the High Court of Justice, Queen's Bench Division, Commercial Court (England) in *Sulamérica Cia Nacional de Seguros SA v. Enesa Engelharia SA* [*Sulamérica Cia Nacional de Seguros SA v. Enesa Engelharia SA*, (2013) 1 WLR 102 : 2012 EWCA Civ 638 : 2012 WL 14764 (CA)]. In laying down the same proposition, the High Court noticed that the issue in that case depended upon the weight to be given to the provision in Condition 12 of the insurance policy that "the seat of the arbitration shall be London, England". It was observed that this necessarily carried with it the English Court's

supervisory jurisdiction over the arbitration process. It was observed that:

‘this follows from the express terms of the Arbitration Act, 1996 and, in particular, the provisions of Section 2 which provide that Part I of the Arbitration Act, 1996 applies where the seat of the arbitration is in England and Wales or Northern Ireland. This immediately establishes a strong connection between the arbitration agreement itself and the law of England. It is for this reason that recent authorities have laid stress upon the locations of the seat of the arbitration as an important factor in determining the proper law of the arbitration agreement.’”

(emphasis in original)

51. The Hon’ble Apex Court in the above said judgment placing reliance on ***Reliance Industries Ltd. v. Union of India***⁶ held that it is too late in the day to contend that the seat of arbitration is not analogous to an exclusive jurisdiction clause. Once the parties had consciously agreed that the juridical seat of the arbitration would be at a particular place and the agreement will be governed by the laws of that particular place, it is no longer open to them to contend that place/seat can be changed without the consent of the parties. In ***Indus Mobile Distribution (P) Ltd’s case (cited supra)***, the Hon’ble Apex Court referring to the judgment in ***Eitzen Bulk A/S v. Ashapura Minechem Ltd’s case*** held that the moment the seat is designated between the parties, it is akin to an exclusive jurisdiction clause which would mean and vest the courts at the seat with exclusive jurisdiction for the purpose of regulating arbitral proceedings arising out of the agreement between the parties.

52. In the instant case, Article 18 of the agreement clearly stipulates that the Courts at Visakhapatnam shall have exclusive jurisdiction, which would exclude the parties from contending that the seat of arbitration is at

⁶ (2014) 7 SCC 603

somewhere else. The agreement, after excluding all other Courts except the Courts at Visakhapatnam, stated that the venue may be at a different place. This means that the venue may be at any of the places as mentioned in the agreement, but the same cannot be treated as the seat of arbitration, as the seat of arbitration is fixed by prescribing the jurisdiction of the Courts at Visakhapatnam alone. Such stipulation would not confer any discretion either on the parties or on the Tribunal to exclude such jurisdiction and decide the seat of arbitration. Referring to various judgments of the Hon'ble Apex Court in the above said judgment, it was ultimately held that the seat of arbitration is the juridical seat. Once the parties have agreed upon the same by way of a written agreement, the same cannot be changed. Once the agreement contains an exclusion of jurisdiction clause conferring the seat of arbitration at a particular place, if the same is changed or is not treated as the seat/place of arbitration, such an interpretation would render the agreement meaningless and the intention of the parties, at the time of entering into an agreement for exclusion of jurisdiction of other courts other than the place mentioned would render in otiose.

53. In the case on hand, it is apparent from the record that no material has been placed by the respective parties seeking to change the seat of arbitration agreed upon between the parties under the agreement, or making any requisition either before the Tribunal or the International Court of Arbitration to fix the seat of arbitration with the consent of the parties, or filing an application seeking to fix the place of arbitration on the ground that there is no agreement

between the parties, which would fall within the ambit of Section 20 of the Act and Article 18 of the ICC Rules. In absence of any such application, Tribunal, assuming jurisdiction to decide the same, making it as part of reference and, placing reliance on the terms of reference, declared the seat of arbitration at New Delhi which is unsustainable. The applicant had filed an application before the Arbitral Tribunal seeking for a change of the place/seat of arbitration, which would clearly establish that the applicant had not consented to the same. However, the Tribunal failed to consider the same and rejected the plea of the applicant.

54. As the arbitral award dated 26.02.2025 and addendum dated 10.06.2025 in ICC Case No.26939/HTG/YMK are now under challenge under section 34 of the Arbitration and Conciliation Act, it cannot be said that the fixation of place/seat of arbitration by the Tribunal is not under challenge. Though it is recorded in the award that place of arbitration is at New Delhi, mere recording of the same does not confer any right on the respondents to contend that this court has no jurisdiction over the subject application under section 34 of the Act. The respondents having invoked jurisdiction of this court under Section 9 by filing an Execution Petition before this court, and having entered into an agreement with the applicant that the courts at Visakhapatnam shall alone have jurisdiction, cannot now contend that this Court has no jurisdiction, by placing reliance on the decision of Arbitral Tribunal regarding fixation of seat of arbitration at New Delhi, which otherwise cannot be done in

view of written agreement and without such prayer sought for by party and accepted or consented by the other party.

55. In view of the foregoing reasons, this court is of the considered view that this court has jurisdiction to entertain the application under section 34 of the Arbitration and Conciliation Act, as the parties have expressly agreed upon the jurisdiction of the courts at Visakhapatnam, which ultimately refers to the seat of arbitration and the proceedings being International Commercial arbitration, this Court exercising ordinary original Civil Jurisdiction, has jurisdiction to entertain the application under section 34 of the Arbitration Act. The place of arbitration mentioned in the award and addendum award shall be the venue of arbitration in terms of the agreement and General Conditions of Contract.

56. Accordingly, the question is answered in favour of the applicant and against the respondents holding that this Court has jurisdiction to entertain the application under section 34 of the Arbitration and Conciliation Act, 1996.

57. List main ICOMAOA No: 1 of 2026 and Ex.E.P.Nos.1 and 2 of 2025 on 26.10.2026.

JUSTICE BALAJI MEDAMALLI

Date: 21.09.2026
SAK / Dvs

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

ICOMAOA NO.1 of 2026

Date: 21.09.2026

SAK/Dvs