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

**Reserved on: 29<sup>th</sup> January, 2026**  
**Pronounced on: 13<sup>th</sup> March, 2026**

+ CS(OS) 868/2025 &amp; I.A. 30141/2025

SARR FREIGHTS CORPORATION &amp; ANR. ....Plaintiffs

Through: Mr. Dayan Krishnan, Sr. Adv. with  
Mr. Saurabh Seth, Mr. Sumer Dev  
Seth, Ms. Neelampreet Kaur, Mr.  
Abhiroop Rathore, Mr. Kabir Dev,  
Mr. Sukhvir Singh and Mr. Sukrit  
Seth, Advocates (M:9811393402)

versus

ARGO CORAL MARITIME LTD. ....Defendant

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.  
Amitava Majumdar, Mr. Arvind  
Kumar Gupta, Ms. Tripti Sharma, Mr.  
Dushyant Kishan Kaul, Mr.  
Abhiesumat Gupta, Mr. Krisna  
Gambhir, Ms. Shreya Sethi, Ms. Riya  
Kumar, Mr. Ishan Prashar, Advocates  
(M:9811088800)**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****JUDGMENT****I.A. 30141/2025 (Under Order XXXIX Rules 1 and 2 read with Section  
151 of the Code of Civil Procedure, 1908)****INDEX TO THE JUDGMENT**

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### **INTRODUCTION:**

1. The present suit has been filed seeking a declaration and consequential permanent and mandatory injunction restraining the defendant, from continuing with two parallel arbitration proceedings initiated before the London Maritime Arbitrators Association (“**LMAA/Tribunal**”), titled as ‘*Argo Coral Maritime Ltd. Versus SARR Freights Ltd.*’ and ‘*Argo Coral Maritime Ltd. Versus SARR Freights Corporation*’ (“**impugned arbitrations/arbitration proceedings**”), arising



out of the Booking Note dated 04<sup>th</sup> April 2023 (“**Booking Note**”). There is a further prayer seeking declaration of the Partial Final Award dated 18<sup>th</sup> October, 2025 (“**Partial Award**”) passed by the majority of the LMAA as null, void and of no legal effect.

2. The present application has been filed seeking an interim injunction, restraining the defendant from continuing, pursuing or taking any steps in the impugned arbitration proceedings before the LMAA.

3. At the outset, this Court notes the submission of the plaintiffs that the plaintiffs do not seek interference in relation to the merits of the underlying commercial dispute between the parties, and only seek to address the grievance in relation to the impugned arbitration proceedings. Thus, the present application is being dealt with only in relation to the continuation of the impugned arbitration proceedings.

**FACTUAL MATRIX:**

4. The factual matrix in brief is as follows:

**Parties**

4.1. The plaintiffs, i.e., SARR Freights Corporation and SARR Freights Limited, are Indian companies, headquartered in New Delhi and are engaged in the business of multimodal logistics, freight forwarding and chartering operations.

4.2. The defendant, i.e., Argo Coral Maritime Ltd., is the owner of the vessel – MV Panthera J, who has initiated the impugned arbitration proceedings against the plaintiffs in London before the LMAA.

**Booking Note**

4.3. The plaintiffs (SARR Freights) entered into a Charterparty Agreement as charterers with Ocean7 Projects ApS, Denmark, who were acting as



agents to the owners of the performing vessel, by way of the Fixture Recap and the Booking Note, both dated 04<sup>th</sup> April, 2023.

4.4. The Booking Note was executed for a voyage charter relating to shipment of military cargo for the United Nations Peacekeeping Force in Sudan, i.e., United Nations Interim Security Force for Abyei (“UNISFA”), for transport from Nhava Sheva Port, Mumbai to Port Sudan. Further, the voyage of the vessel was scheduled to commence on 15<sup>th</sup> April, 2023 and to reach its destination on 28<sup>th</sup> April, 2023, which was postponed respectively from 20<sup>th</sup> April, 2023 to 03<sup>rd</sup> May, 2023.

4.5. The cargo consisted of 159 military equipments, of which, some equipments were designated under International Maritime Organization (“IMO”) as Class 1, i.e., explosives/dangerous goods.

4.6. The Booking Note contains 43 clauses in its entirety, out of which, Clauses 20 to 43 are additional rider clauses and Page 2 of the Booking Note incorporates the full terms of the Carrier’s Bill of Lading Form. The parties before this Court have made reference to the following clauses of the Booking Note:

- i. Clause 4 – Law and Jurisdiction
- ii. Clause 6 – Substitution of Vessel
- iii. Clause 20 – Vessel
- iv. Clause 43 – Law and Arbitration

4.7. Clauses 6 and 20 of the Booking Note provided for a right to substitute the vessel, and in that regard, the erstwhile vessel, i.e., MV Pelagica with a total cargo capacity of 4,319 sq.m., was substituted by MV Panthera J, which had the cargo capacity of 2,916 sq.m., of which 1,038 sq.m. was the under-deck capacity.



### Subsequent Events

4.8. On 18<sup>th</sup> April, 2023, the United Nations released an official advisory declaring all port and cargo movements through Sudan unsafe, which was also communicated by the Indian Army's representative.

4.9. On account of the war in Sudan, the Managing Director of plaintiff no. 2 addressed a communication to the common broker, i.e., Pirama National Shipping Services LLC, which was to be sent to the defendant, informing that the Booking Note shall be treated as cancelled due to *force majeure* events. Further, on 19<sup>th</sup> April, 2023, the plaintiff no. 2 had also informed the carriers/owners of the vessel, i.e., defendant, that the United Nations had not approved the vessel, i.e., MV Panthera J, for carriage of goods on account of the under-deck cargo capacity, and sought for considering a possibility of stowing the cargo in containers and over-stowing in order to avoid any rolling stock being stowed on deck. The said communication was replied to by the defendant on the same day, stating that their technical team had advised that it would still be necessary to stow 12 trucks on deck.

4.10. On 20<sup>th</sup> April, 2023, the United Nations formally terminated the Purchase Order with the plaintiffs, citing *force majeure* reasons and directed the plaintiffs to retain the cargo at Mumbai, pending further instructions. Consequently, the defendant through its agent tendered a Note of Readiness (“**NOR**”) on 20<sup>th</sup> April, 2023 at the load port. Further, on the same date, the defendant claimed damages from the plaintiffs to the tune of USD 584,741.10/- for ‘*dead freight*’.

4.11. The parties exchanged a number of emails from 20<sup>th</sup> to 27<sup>th</sup> April,



2023, wherein, the plaintiff no. 2 reiterated the cancellation of the Booking Note along with non-acceptance of vessel substitution, whereas, the defendant claimed its damages for '*dead freight*'.

4.12. A Demand Notice dated 27<sup>th</sup> June, 2023 was sent by the defendant in the capacity as the owner of the vessel - 'MV Panthera J', claiming wrongful termination of the Booking Note, and making a demand for damages. The said Notice was replied by the plaintiff no. 2 on 12<sup>th</sup> July, 2023, denying the claims of the defendant, and asserting that the Booking Note had been lawfully cancelled.

**First Arbitration/Reference**

4.13. Subsequently, the defendant issued a Notice dated 27<sup>th</sup> July, 2023, invoking arbitration under the Arbitration Clause, i.e., Clause 43 of the Booking Note. The parties then appointed their arbitrators and the defendant filed their Claim Submissions on 28<sup>th</sup> September, 2023 and a Statement of Defense was filed by plaintiff no. 2 on 26<sup>th</sup> October, 2023. Further, Reply/Rejoinder Submissions were filed by the defendant on 09<sup>th</sup> November, 2023, which were refuted by the plaintiff no. 2 on 04<sup>th</sup> December, 2023 in its rejoinder.

4.14. Thereafter, on 06<sup>th</sup> June, 2024, the defendant informed the plaintiffs that they intended to amend their submissions before the LMAA. The defendant then applied with the LMAA in October, 2024, for determination of preliminary issues and on 08<sup>th</sup> October, 2024, sought for directions on the defendant's request for amendment. During this course, the parties had exchanged various communications amongst themselves and with the LMAA.

4.15. The LMAA issued a communication on 22<sup>nd</sup> November, 2024, stating



that before making any decision on the preliminary issues, it was necessary to examine certain other issues, and therefore, the LMAA observed that the decision on the preliminary issues in the first arbitration reference would only be binding on plaintiff no. 2, i.e., SARR Freights Limited, and in this regard, the defendant was required to review its position.

### **Second Arbitration/Reference**

4.16. The defendant by Email dated 06<sup>th</sup> December, 2024, served a Notice of commencement of a second arbitration in relation to the Booking Note against plaintiff no. 1. The same was replied to by plaintiff no. 2 by Email dated 19<sup>th</sup> December, 2024, denying the claims of the defendant, with notice of appointment of its arbitrator, without prejudice to their objections.

4.17. The defendant filed its Claim Submissions on 15<sup>th</sup> January, 2025 and the plaintiff no. 1 filed their Defense Submissions on 13<sup>th</sup> February, 2025. Further, the rejoinder was filed by the defendant on 28<sup>th</sup> February, 2025.

4.18. The LMAA in the Second Arbitration/Reference by way of Order dated 26<sup>th</sup> March, 2025 decided to rule on certain preliminary issues and allowed for the two arbitration proceedings to be heard concurrently. The preliminary issues for determination, as framed by the LMAA, are as follows:

*“(1) Was any arbitration agreement agreed between the parties, in either or both of the fixture recap dated 4 April 2023 or the booking note dated 4 April 2023, such that this Tribunal has jurisdiction to hear the disputes in this reference, and if so, in what terms?”*

*(2) Should the booking note be rectified by substituting the words “clause 20-43” for “clause 20-41”?*

*(3) Is the “Merchant” (Charterers), being a party to the fixture recap and/or the booking note, SARR Freights Corporation or SARR Freights Limited?*

*(4) Is the “Carrier” (Owners), being a party to the booking note and/or fixture recap, the owner of MV PELAGICA or the owner of MV*



*PANTHERA J, the Claimant in these references?”*

4.19. Further, the parties filed their evidence and written submissions and thereafter, the defendant, by Email dated 21<sup>st</sup> August, 2025, informed the LMAA that no oral hearing was required for the preliminary issues.

4.20. Pursuant to the same, on 21<sup>st</sup> August, 2025, a third arbitrator was appointed by the two existing arbitrators in consonance with paragraph 8 (b)(ii) of the LMAA Terms, 2021.

4.21. Subsequently, on 18<sup>th</sup> October, 2025, the Partial Award was passed by the majority Tribunal, dismissing the plaintiffs’ objections on all four preliminary issues. Further, one of the co-arbitrators issued a Dissenting Award, wherein, he concurred with the findings of the majority in respect of Issue Nos. 1 to 3, however, dissented on Issue No. 4, holding that the reference to arbitration by the defendant is not maintainable.

4.22. Thereafter, the defendant by way of Email dated 20<sup>th</sup> November, 2025, while referring to the Tribunal’s determination, proposed for a timetable up to the Final Award.

4.23. Thus, the plaintiffs have approached this Court and have filed the present suit and application, being aggrieved by the arbitration proceedings commenced by the defendant in London before the LMAA.

**PLAINTIFFS’ SUBMISSIONS:**

5. The plaintiffs have made the following submissions, for the purposes of the present application:

5.1. The present suit is maintainable and the submissions of the defendant that the designation of a foreign seat of arbitration *ipso facto* ousts the jurisdiction of Indian Civil Courts and all questions relating to the existence, validity, interpretation, and jurisdiction of the Arbitral Tribunal fall within



the exclusive supervisory jurisdiction of the Courts at the seat, is erroneous.

5.2. Section 9 of the Code of Civil Procedure, 1908 (“CPC”) confers jurisdiction on Civil Courts to try all suits of civil nature, unless their cognizance is expressly or impliedly barred, and neither the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) nor the mere choice of foreign seat constitutes such a bar. Further, under Section 151 of the CPC, the Court of equity possesses inherent powers to prevent injustice, is competent and can exercise power to restrain foreign seated arbitration and grant anti-arbitration injunctions when the exceptional circumstances show that the arbitral proceedings would be vexatious, oppressive or against the public policy of India.

5.3. This Court has jurisdiction for the present matter as part cause of action arose in New Delhi, as the shipment of goods originated from New Delhi, negotiations and even payments were made at New Delhi. Further, the Booking Note was part of the same transaction, and even bears the stamp which mentions the word, “Delhi”. Moreover, the List of Equipment, Pre-Dispatch Inspection Reports, Packing Lists contained in the Fixture Recap and the Booking Note, all mention that the voyage was between New Delhi and Sudan. Thus, the contract was partially performed in New Delhi and in terms of Section 20(c) of CPC, this Court has jurisdiction as substantial part of cause of action took place in New Delhi.

5.4. The plaintiffs are amenable to the personal jurisdiction of the Courts of New Delhi, as they carry on their business at their registered office in New Delhi and in matters seeking anti-arbitration injunctions, jurisdiction lies with Courts, to which the plaintiffs are personally amenable. Further, any enforcement proceedings in relation to arbitration would be filed in New



Delhi, as all assets of the plaintiffs are in New Delhi.

5.5. The mere participation of the plaintiffs in the arbitration proceedings till the Partial Award was passed on jurisdictional objections, does not mean that the Civil Court is powerless to grant injunctive relief to prevent vexatious or oppressive conduct of the defendant, using the inherent powers under Section 151 read with Section 9 of the CPC.

5.6. There is no bar on a Civil Court's intervention due to the principle of *Kompetenz-Kompetenz*, as the doctrine does not create any presumption in favour of the Tribunal on which the parties have not conferred jurisdiction, and a party cannot be compelled to submit to arbitral process, which are alleged to be fundamentally unfair or structurally compromised.

5.7. The present is a case which squarely falls within the narrow class of exceptional circumstances warranting judicial intervention as the plaintiffs have been compelled to arbitrate despite there being no arbitration clause between the parties. Further, the defendant has pursued parallel arbitral proceedings on the same cause of action and sought to substitute parties after one year of the commencement of the arbitration despite absence of privity, dragged the arbitration along for another whole year to complete pleadings in the Second Reference, thereafter, procured a Partial Award by effectively rewriting the underlying contract, and at last, abandoned the First Reference after the plaintiffs filed the present anti-arbitration injunction suit. Thus, each of these acts on part of the defendant constitutes procedural oppression, and reveals an abuse of the arbitral process.

5.8. The defendant was never party to the Booking Note, rather it was only the owner of MV Pelagica, with whom the plaintiff no. 2 had a contract. Therefore, there is no privity of contract with the defendant.



5.9. The rectification of the Booking Note by the LMAA creates an arbitration agreement between the parties, which is completely opposed to the public policy of India. Further, the mandate of the Specific Relief Act, 1963 is clear that rectification of contract or any instrument can only be done by the Court and that too, if the parties specifically claim such relief in their pleadings. Therefore, the rectification of the contract by the Tribunal when no arbitration agreement existed between the parties usurps the jurisdiction of the Courts as expressed in Clause 4 of the Booking Note, and thus, in effect, is untenable. Moreover, Clause 4 of the Booking Note was only in connection to the Bill of Lading, which never came into existence.

5.10. Section 28(3) of the Arbitration Act categorically provides that a Tribunal shall consider the terms of the contract while deciding and making an Award. Therefore, despite there being an express and unambiguous reference to “*Additional Rider Clauses 20-41*” in the Booking Note, which was consciously chosen by the parties, the Tribunal by importing an arbitration clause under the guise of ‘typographical error’, disregarded the intention of the parties and the same is against the tenor of Section 28(3) of the Arbitration Act.

5.11. The Booking Note further records that it shall be performed subject to the terms contained on pages 1 and 2 thereof, and that those terms shall prevail over any prior negotiations or understandings. The said aspect is in the nature of an entire agreement clause, which disregards all prior negotiations/arrangements. Therefore, Clause 4 of the ‘Standard Terms’ which confers jurisdiction on Courts situated in the Carrier’s principal place of business, i.e., Denmark, cannot be rewritten or rectified. Further, the contractual intent of the parties is manifest from the Booking Note itself,



wherein, the parties expressly incorporated only the Additional Rider Clauses 20-41 under the ‘Special Terms’, and Clauses 42 and 43 were expressly excluded.

5.12. The contention of the defendant that the plaintiffs have waived their right to challenge the Partial Award by not challenging the said Award in England and approaching this Court, is untenable, as the Courts in England under the Arbitration and Conciliation Act, 1996 of the United Kingdom (“**UK Arbitration Act**”), could not have granted the relief sought by the plaintiffs for stay on the impugned arbitration proceedings on account of it being vexatious and oppressive.

5.13. The Courts of London would not have jurisdiction as the plaintiff has challenged the very existence of a valid and binding arbitration agreement. Therefore, even if the ‘seat’ as per Arbitration Clause is ‘London’, the same would not apply in view of an invalid arbitration agreement. Further, no cause of action had taken place in London for the Courts therein to assume jurisdiction, and reliance on the Fixture Recap cannot be construed to include an intentionally excluded Arbitration Clause, particularly, when the Booking Note expressly supersedes the Fixture Recap.

5.14. Even if London is treated to be the seat of arbitration, still LMAA procedure will not automatically be applicable.

5.15. The substitution of a party during the course of arbitral proceedings is unknown to the arbitration law and strikes at the root of procedural fairness, and the attempt of the defendant to reframe its case by invoking arbitration for the second time, is procedural abuse. Further, while the First Reference was pending, the defendant, without withdrawing or abandoning the same, commenced the Second Reference arising out of the same Booking Note, for



the same voyage and the same alleged breach, with the same cause of action. Therefore, the invocation of parallel proceedings constitutes procedural oppression by the defendant.

5.16. Any mistakes with regard to the Booking Note will be attributable to the draftsmen, and the Booking Note was admittedly a standard form contract. Further, there can be no rectification in case of a unilateral mistake, which is not attributable to the plaintiffs and the doctrine of *contra preferentum* states that if a document is capable of two interpretations, the one favoring the non-draftsmen would prevail. Therefore, any error in the standard form contract cannot be read against the plaintiffs as it was not drafted by the plaintiffs.

5.17. The LMAA *qua* Issue No. 1 has held that there was an arbitration agreement between the parties with the reasoning that the non-addition of the Arbitration Clause was a ‘typographical error’, and the plaintiffs had signed on all the pages of the Booking Note. Therefore, it was inferred that Arbitration Clause was not included because of a ‘typographical error’. However, the Tribunal overlooked that Clause 41, which was included in the terms of the Booking Note, is on the same page as Clauses 42 and 43, and therefore, the plaintiffs had signed the said page.

5.18. The Tribunal’s finding on Issue No. 4 is perverse and is opposed to the public policy of India, as the contract was entered with the agents, i.e., Ocean7 Projects ApS acting on behalf of the owners of MV Pelagica as the Carrier. Therefore, the findings of the Tribunal have compelled the plaintiffs to arbitrate against a party with whom there is no contractual privity.

5.19. The LMAA, despite recognizing that the two impugned arbitration proceedings involve the same dispute and arise from the same contract and



cause of action, nevertheless, permitted both arbitral proceedings to continue simultaneously, instead of terminating the First Reference. Thus, the plaintiffs have been compelled to defend two parallel proceedings, which is plainly oppressive, vexatious, and travels beyond the permissible limits of arbitral jurisdiction, and falls within circumstances for grant of injunction in favour of the plaintiffs.

5.20. The prosecution of two parallel arbitration proceedings, on the same cause of action, arising out of the same Booking Note, and claiming the same relief, is opposed to the public policy of India. Further, the defendant in its Reply to *I.A. No 30141/2025* filed before this Court, has expressly admitted that it has dropped the First Reference and that it is now pursuing arbitration only against plaintiff no. 1, which supports the position of the plaintiffs that parallel proceedings are untenable and abusive. Abandonment of First Reference, which was pursued for a year and a half, does not cure the prejudice already caused to the plaintiffs, and continuation of the surviving arbitration in itself is oppressive and unconscionable.

5.21. The contract between the parties substantively only provided an option for substitution of the vessel and not for substitution of parties, meaning thereby, that the owner of MV Pelagica, or its agent, could have substituted the vessel with another compliant vessel (of equivalent capacity and capability) owned or operated by them. It was never contemplated that the plaintiff no. 2 (the Charterer) would be dealing with an unknown vessel owner/charteree/contracting party.

5.22. The balance of convenience is in favour of the plaintiffs as no harm will be caused to the defendant. However, if the arbitration before LMAA continues, the plaintiffs will be compelled to submit to a process that may



ultimately be held to be without jurisdiction, and therefore, irreparable harm will also be caused to the plaintiffs.

**DEFENDANT'S SUBMISSIONS:**

6. The defendant has made the following submissions, for the purposes of the present application:

6.1. The plaintiffs had raised the same arguments before the Tribunal that have been made in the present suit. The Tribunal has held that there exists a valid arbitration agreement between the parties. Further, the plaintiffs seek to challenge the Partial Final Award under the guise of the present suit. Moreover, the defendant is only pursuing arbitration proceedings against plaintiff no. 1, and any relief seeking injunction against arbitration proceedings with plaintiff no. 2 is infructuous.

6.2. This Court lacks territorial jurisdiction as the plaint does not disclose any material that substantial or integral part of cause of action had arisen within the territorial jurisdiction of this Court. Therefore, the grounds taken by the plaintiffs fail to establish the territorial jurisdiction of this Court.

6.3. Section 20 of the CPC can only be invoked where the defendant resides or carries on the business. The residence or carrying of business of the plaintiffs does not vest territorial jurisdiction in this Court. Further, the Booking Note has been signed by the agents residing in Denmark and the same was exchanged over Email, therefore, it cannot be said that the Booking Note was executed in India.

6.4. The case of the plaintiffs that the personal amenability of the plaintiffs to the jurisdiction of the Courts in New Delhi would inure this Court with jurisdiction is incorrect, as the same can only be effected if both the parties make such reference, and thus, the same is against the tenor of Section 20 of



CPC.

6.5. No performance of the contract or part thereof has given rise to a cause of action before this Court. The cause of action arises at the place where the contract was made, or where it is performed or breached. Further, the dispute occurs from a foreign seated agreement, negotiated through brokers and agents outside of Delhi, with a foreign owned vessel for a foreign voyage, and the alleged breach of cancellation of foreign shipment. Thus, the plaintiffs have failed to establish any cause of action that has arisen before this Court.

6.6. The contention of the plaintiffs that part cause of action arose in New Delhi is incorrect, as the document relied upon by the plaintiffs to substantiate the same was executed between the plaintiffs and the United Nations, and therefore, the defendant was not privy to that contract. Further, the other documents such as the List of Equipment, Pre-dispatch Inspection Report and Packing Lists, cannot be relied upon as the same pre-date the Booking Note and Fixture Recap, and the defendant was not a party to those documents.

6.7. The plaint does not plead that any meetings were conducted between plaintiff no. 2 and the defendant at New Delhi for execution of the Booking Note. The record reflects that negotiations were through the common broker and the agent, neither of whom are based out of New Delhi, and moreover, the Booking Note has not been signed in New Delhi. Therefore, the plaintiffs cannot travel beyond their pleadings.

6.8. Even assuming that the correct law and jurisdiction is as per Clause 4 of the Booking Note, the jurisdiction of this Court stood ousted as the said Clause provides for jurisdiction of Courts at the principal place of business



of the Carrier. Therefore, as the parties have agreed for arbitration as per English Law, the Courts of England would have jurisdiction. Thus, the plaintiffs cannot be allowed to approbate and reprobate on the clauses of the Booking Note.

6.9. The juridical seat of arbitration in the present case is London and therefore, it is only the English Courts which are vested with supervisory jurisdiction over the arbitral proceedings and the Partial Final Award. Any reliefs sought by the plaintiffs can only be before the English Courts. Thus, this Court does not possess concurrent or residual supervisory jurisdiction over a foreign seated arbitration. Moreover, even if the plaintiffs were to deny the existence of the arbitration agreement between the parties, they cannot seek a foreign award to be declared null and void in an anti-arbitration suit.

6.10. The parties had entered into the Fixture Recap on 04<sup>th</sup> April, 2023, which included an Arbitration Clause, and the plaintiffs had no objections towards the same. Further, the Fixture Recap incorporates a binding and separable arbitration agreement which survives termination and provides for the designated seat of arbitration as 'London'.

6.11. The determination of validity of the arbitration clause falls squarely within the exclusive domain of the Arbitral Tribunal under the doctrine of *Kompetenz-Kompetenz*, and the said issue has already been adjudicated by the LMAA.

6.12. The Booking Note does not override the Fixture Recap and the expression "*prevail over*" indicates an intention to override only inconsistent arrangements, and Clause 43 of the Booking Note is consistent with the Arbitration Clause in the Fixture Recap. Therefore, the parties



intended the arbitration agreement to subsist and to operate in tandem across both the documents.

6.13. The interpretation of the plaintiffs in relation to the ‘mutual typing mistake’ does not amount to abuse, as both the Fixture Recap and Booking Note are of the same date. The page which contained both Clauses 42 & 43 was signed by both the parties.

6.14. The invocation of two references to arbitration was due to the conduct of the plaintiffs, and the conduct of the defendant was *bona fide*, without any intent to harass. Further, the Tribunal has unanimously held plaintiff no. 1 to be the “*Merchant*” under the Booking Note. Therefore, the defendant seeks to continue the arbitration proceedings only against plaintiff no. 1.

6.15. The plaintiffs are barred by waiver, acquiescence, and estoppel from seeking any anti-arbitration relief as the plaintiffs participated in the arbitral proceedings before the Tribunal for over a period of two years, and now that the Partial Award has attained finality, the plaintiffs now seek to invoke the jurisdiction of this Court. However, the plaintiffs cannot approbate and reprobate to stall the arbitration proceedings.

6.16. The argument of the plaintiffs in relation to Section 67 of the UK Arbitration Act is incorrect, as the English Courts have the jurisdiction to set aside the Award if they arrive at a finding that the Tribunal does not have substantive jurisdiction. Further, the challenge to the Partial Final Award before this Court is legally untenable in the absence of challenge to the same in the supervisory Court within the prescribed limitation period as per the UK Arbitration Act.

6.17. The plaintiffs had accepted the vessel of the defendant without any objection, and the Fixture Recap expressly contemplated that the performing



vessel would be “*MV Pelagica / MV Panthera J or sub in Carriers’ option*”. Moreover, Clauses 6 and 20 of the Booking Note permitted substitution of the performing vessel without notice. Therefore, having accepted performance without protest, and thereafter, having themselves terminated the contract, the plaintiffs cannot now allege that the defendant is a stranger, or that the arbitration is oppressive.

6.18. The plaintiffs have failed to establish exceptional circumstances in the present case that an anti-arbitration injunction can be granted, as the proceedings before LMAA are not vexatious or oppressive. Further, even if a challenge has to be made on the said ground, it has to be made before the ‘Appropriate Court’, which in this case would be the Courts of London. Moreover, even in domestic Courts, any challenge to an Award of the Arbitral Tribunal would be by way of an appropriate petition and not by way of a suit.

6.19. The ingredients of an interim injunction under the principles of Order XXXIX Rules 1 & 2 of CPC have not been satisfied by the plaintiffs. Further, the arbitration proceedings between the parties are neither ‘*inoperative*’ nor ‘*incapable of being performed*’, the ingredients, which a party has to showcase, for seeking any interim measure.

### **FINDINGS AND ANALYSIS:**

7. I have heard learned counsels for the parties and perused the record.
8. At the outset, it is clarified that this Court is not sitting in appeal against the Partial Final Award dated 18<sup>th</sup> October, 2025 passed in the arbitral proceedings by the LMAA in London, and is not adjudicating on the merits of the said Partial Final Award.
9. The scope of adjudication before this Court in the present proceedings



is with regard to the plea of the plaintiffs to pass injunction orders in order to restrain the defendant from continuing with the arbitral proceedings initiated by the defendant against the plaintiffs in London. The principal objection of the plaintiffs is that the defendant is not party to the contract, i.e., the Booking Note dated 04<sup>th</sup> April, 2023 and further, that the said Booking Note, on the basis of which arbitration proceedings have been initiated by the defendant, does not contain any Arbitration Clause. Further, it is the case of the plaintiffs that the defendant cannot rely on the Fixture Recap to create an Arbitration Clause between the parties or to read an Arbitration Clause into the Booking Note. Injunction of arbitral proceedings in London is sought by plaintiffs on the ground that the said proceedings are oppressive, vexatious and unconscionable.

10. It is further clarified that in the present proceedings, the Court is only concerned with the issue regarding the commencement and continuance of arbitral proceedings at the behest of defendant in London, and not the merits of the case regarding the claims of the respective parties.

11. In the first instance, the Court would deal with the issue regarding the jurisdiction of this Court, as raised by the defendant. In case, the Court comes to a conclusion at the present interim stage that this Court has territorial jurisdiction to entertain the present suit, this Court shall consider the pleas raised by the plaintiffs regarding the privity of contract with defendant, existence of a valid Arbitration Clause and whether the plaintiffs have established any *prima facie* case for interim injunction in their favour for injuncting the arbitration proceedings commenced at the behest of the defendant in London.



**Whether this Court has the jurisdiction to entertain the present suit?**

12. On the aspect of jurisdiction as to subject-matter, it is to be noted foremost that it is settled principle that there exists an inherent right in every person to institute a suit of civil nature, and such a suit requires no specific statutory authorization, so long as it is not barred by any existing law, either impliedly or expressly. Section 9 of the CPC indicates that Civil Courts have the jurisdiction to try all Civil Suits except those which are expressly or impliedly barred and thus, the ouster of jurisdiction of a Civil Court would be based on an expressed or implied bar. Section 9 of CPC reads as under:

*“9. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*

*[Explanation I].—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.*

*[Explanation II].—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]”*

13. Reference in this respect as to jurisdiction of Civil Courts and Section 9 of CPC may be made to the judgment of five-judge bench of the Supreme Court in the case of ***Dhulabhai Versus State of Madhya Pradesh and Another<sup>1</sup>***, wherein, it has been held as follows:

“xxx xxx xxx

*The next question which was considered was whether the jurisdiction conferred on the taxing authorities included the jurisdiction to determine the nature of the transaction, or was the decision about the character of the transaction, a decision on a collateral fact? This Court held that it was the former and not the latter. Therefore the*

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<sup>1</sup> 1968 SCC OnLine SC 40.



decision was held to be merely an error in assessment which was capable of correction by the usual procedure of appeals, etc. The bar of section 20 was therefore, held to apply. During the course of the arguments the Special Bench considered Basappa's case(2) and distinguished it from the Firm of Illuri Subbayya Chetty's case(3), on the ground that the former was not barred by section 18-A as it did not exist. The Special Bench, however, made an observation to the following effect:

**“In cases where the exclusion of the civil courts’ jurisdiction is, expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If it appears that a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf, and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it becomes pertinent to enquire whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.”**

The Special Bench refrained from either accepting the dictum of Mask and Co. ’s case (4) or rejecting it, to the effect that **even if jurisdiction (1) (1947) 74 I.A. 50; 15 I.T.R. 332 .(3) (1964) 1 S.C.R. 752; 14 S.T.C. 680. (2) (1964) 5 S.C.R. 517; 15 S.T.C. 144 .(4) (1940) 67 I.A. 222. is excluded by a provision making the decision of the authorities final, the civil courts have jurisdiction to examine into cases where the provisions of the particular Act are not complied with.**

Neither of the two cases of Firm of Illuri Subbayya(1) or Kamala Mills (2) can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

(1) **Where the statute gives a finality to the orders of the special tribunals the civil courts’ jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.**

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy



or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

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

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

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

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

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

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

xxx xxx xxx”

(Emphasis Supplied)

14. Delving on the aspect of jurisdiction of the Civil Courts to entertain suits, including, suits wherein the relief of anti-arbitration injunction is prayed for, this Court in the case of ***Engineering Projects (India) Limited Versus MSA Global LLC (Oman)***<sup>2</sup>, held as follows:

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<sup>2</sup> 2025 SCC OnLine Del 5072.



“xxx xxx xxx

45. Reference can also be made to the decision of the Supreme Court in the case of *S. Vanathan Muthuraja v. Ramalingam @ Krishnamurthy Gurukkal*, wherein, **the Court while considering Section 9 of the CPC and the question of exclusion of Civil Court's jurisdiction, has held that when a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the Civil Courts would take cognizance of it. It is further observed in the said decision that the normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded. The rule of construction being that every presumption would be made in favour of the existence of a right and remedy in a democratic set up governed by the rule of law and jurisdiction of the Civil Courts is assumed. The exclusion would, therefore, normally be an exception.** The relevant extract of the said decision reads as under:—

**“Under Section 9, CPC, the courts shall, subject to the provisions contained therein, have jurisdiction to try all suits of civil nature excepting suits cognizance of which is either expressly or impliedly barred. When a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the civil courts would take cognizance of it. Therefore, the normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded. The Rule of construction being that every presumption would be made in favour of the existence of a right and remedy in a democratic set up governed by rule of law and jurisdiction of the civil courts is assumed. The exclusion would, therefore, normally be an exception. Courts generally construe the provisions strictly when jurisdiction of the civil courts is claimed to be excluded.** However, in the development of civil adjudication and abnormal delay at hierarchical stages, statutes intervene and provide alternative mode of resolution of civil disputes with less expensive but expeditious disposal. It is settled legal position that if a Tribunal with limited jurisdiction cannot assume exclusive jurisdiction and decide for itself the dispute conclusively, in such a situation, it is the court that is required to decide whether the Tribunal with limited jurisdiction has correctly assumed jurisdiction and decided the dispute within its limits. It is settled law that when jurisdiction has been conferred on a Tribunal, the court examine whether the essential principles of jurisdiction have been followed and decided by the Tribunal leaving the decision on merits to the Tribunal. **It is also equally**



settled legal position that where a statute gives finality to the orders of the special Tribunal, the civil court's jurisdiction must be held to be excluded, if there is adequate remedy to do what the civil court would normally do in a suit. Such a provision, however does not exclude those cases where the provision, of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. Where there is an express bar of jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary that the statute creates a special right or liability and provides remedy for the determination of the right or liability and further lays down that all questions about the said right or liability shall be determined by the Tribunal so constituted and the question whether remedies are normally associated with the action in civil courts or prescribed by the statutes or not require examination. Therefore, each case requires examination whether the statute provides right and remedy and whether the scheme of the Act is that the procedure provided will be conclusive and thereby excludes the jurisdiction of the civil court in respect thereof."

46. In view of the aforesaid, it is crystal clear that there exists a strong and statutorily entrenched presumption in favour of the jurisdiction of Civil Courts, as enshrined under Section 9 of the CPC. This provision confers upon Civil Courts the authority to adjudicate all suits of a civil nature unless such jurisdiction is expressly or by necessary implication barred by statute. The jurisprudential foundation of Section 9 of CPC affirms that exclusion of the Civil Courts' jurisdiction is not to be readily inferred; it must be clearly provided for in the concerned enactment or be deducible by compelling implication. While conducting this inferential exercise, the Courts usually take into account various factors and circumstances, such as availability of complete remedy before the Tribunal, adherence of the Tribunal to settled judicial procedures, functioning of the Tribunal in tune with the special enactment, finality of the orders of the Tribunal, nature of oversight of Civil Courts over the functioning of the Tribunal etc. There could be other factors too, in the specific context of the case at hand, and such relevant factors could not be pigeonholed. Accordingly, it could



**be seen that in the absence of a clear legislative intent to the contrary, Civil Courts retain plenary jurisdiction in all civil matters.**

xxx xxx xxx

**61. Considering the desirability of maintaining consistency in the practices and procedures of international arbitration across jurisdictions, it is of utmost relevance to note that the concept of anti-arbitration injunction is not alien to other prominent jurisdictions. Of course, the power is to be exercised sparingly, but the existence of power, especially in cases of vexatious and oppressive conduct, is not denied. In J. Jarvis & Sons Ltd. v. Blue Circle Dartford Estates Ltd., the English Court held that the grant of anti-arbitration injunction on the ground of vexatiousness, oppression and abuse of process is permissible, however, the power is to be exercised sparingly. Further, in Minister of Finance (Inc) and Malaysian Development Berhad v. International Petroleum Investment Coy, the English Court of Appeal granted an anti-arbitration injunction on the ground of vexatious conduct of the respondent therein. Interestingly, it was granted on the premise that the act of the respondent in trying to curtail the supervisory jurisdiction of the regular Court was 'vexatious' as the respondent tried to deflect the challenge to the arbitral award by initiating fresh arbitration during the pendency of the challenge before the regular Court. The case is relevant to understand that it is against public interest to enforce an arbitration agreement/award if the foundation of the arbitral tribunal is in question, unless the serious apprehension against the Arbitral Tribunal is decided first. For, the Courts must prevent the perpetuation of a wrong, and not advance it by turning a blind eye. Of course, the Courts must be slow in intervening, but wherever there are demonstrable and undeniable facts, the Courts are duty bound to act on equitable considerations.**

xxx xxx xxx

**63. The judicial authority of the Civil Courts under Section 9 of the CPC and its inherent powers under Section 151 CPC remain preserved to safeguard against the misuse of the arbitral process, unless expressly barred by the statute which is not the case herein. Where the arbitral proceedings are shown to have been vexatious and oppressive in a manner calculated to harass the opposite party, the Civil Courts are not only empowered but also under a solemn duty to intervene. It would be wholly unjust to compel a party to submit to arbitration when the process itself is a vehicle of abuse, serving no legitimate adjudicatory purpose.**



**64. The Civil Courts are essentially the custodian of all civil rights and in such situations, to summarily relegate a party to the arbitral forum, particularly when the very institution of arbitration is being used to perpetuate unfairness, would amount to a mechanical application of statutory principles, contrary to both equity and the broader constitutional mandate of access to justice. It is in these exceptional cases that the Civil Court must act as a sentinel on the qui vive i.e., watchful guardian, ensuring that the party alleging vexation and oppression is not left remediless. The Court must, in the exercise of its judicial conscience and upon a satisfaction of procedural abuse, extend its protective jurisdiction and prevent the continuation of proceedings that are clearly unjust, thereby upholding the rule of law and preserving the sanctity of adjudication.**

xxx xxx xxx”

(Emphasis Supplied)

15. The position is, thus, clear that Section 9 of CPC confers jurisdiction on all Civil Courts to try all suits of a civil nature unless their cognizance is expressly or impliedly barred. Considering the desirability of maintaining consistency in the practices and procedures of international arbitration across jurisdictions, the concept of anti-arbitration injunction is not alien to other prominent jurisdictions. The jurisdiction of Indian Civil Courts is not excluded merely because arbitration is seated abroad, and Courts retain residual equitable powers to prevent abuse of arbitral process. Thus, in the case of *World Sport Group (Mauritius) Limited Versus MSM Satellite (Singapore) PTE. Limited*<sup>3</sup>, the Supreme Court held as follows:

“xxx xxx xxx

**21. The question that we have to decide is whether the Division Bench of the Bombay High Court could have passed the order of injunction restraining the arbitration at Singapore between the parties.** As various contentions have been raised by Mr Venugopal, learned counsel for the appellant, in support of the case of the

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<sup>3</sup> 2014 SCC OnLine SC 58.



appellant that the Division Bench of the Bombay High Court could not have passed the order of injunction restraining the arbitration at Singapore, we may deal with each of these contentions separately and record our findings. While recording our findings, we will also deal with the submissions made by Mr Gopal Subramaniam on behalf of respondent in reply to the contentions of Mr Venugopal. We will also consider the correctness of the findings of the Division Bench of the Bombay High Court separately.

**22. We are unable to accept the first contention of Mr Venugopal that as Clause 9 of the Facilitation Deed provides that any party may seek equitable relief in a court of competent jurisdiction in Singapore, or such other court that may have jurisdiction over the parties, the Bombay High Court had no jurisdiction to entertain the suit and restrain the arbitration proceedings at Singapore because of the principle of comity of courts.** In Black's Law Dictionary, 5th Edn., Judicial Comity, has been explained in the following words:

“Judicial comity.—The principle in accordance with which the courts of one State or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect.”

Thus, what is meant by the principle of “comity” is that courts of one State or jurisdiction will give effect to the laws and judicial decisions of another State or jurisdiction, not as a matter of obligation but out of deference and mutual respect.

**23. In the present case no decision of a court of foreign country or no law of a foreign country has been cited on behalf of the appellant to contend that the courts in India out of deference to such decision of the foreign court or foreign law must not assume jurisdiction to restrain arbitration proceedings at Singapore. On the other hand, as has been rightly submitted by Mr Subramaniam, under Section 9 CPC, the courts in India have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. Thus, the appropriate civil court in India has jurisdiction to entertain the suit and pass appropriate orders in the suit by virtue of Section 9 CPC and Clause 9 of the Facilitation Deed providing that the courts in Singapore or any other court having jurisdiction over the parties can be approached for equitable relief could not oust the jurisdiction of the appropriate civil court conferred by Section 9 CPC.** We find that in Para 64 of the plaint in Suit No. 1828 of 2010 filed before the Bombay High Court by the respondent, it is stated that the **Facilitation Deed in which the arbitration clause is incorporated came to be executed by the defendant at Mumbai and the fraudulent inducement on the**



**part of the defendant resulting in the plaintiff entering into the Facilitation Deed took place in Mumbai and the rescission of the Facilitation Deed on the ground that it was induced by fraud of the defendant has also been issued from Mumbai. Thus, the cause of action for filing the suit arose within the jurisdiction of the Bombay High Court and the Bombay High Court had territorial jurisdiction to entertain the suit under Section 20 CPC.**

xxx xxx xxx”

(Emphasis Supplied)

16. As regards territorial jurisdiction of this Court, Section 20(c) of CPC delineates on the said aspect, to include jurisdiction of a Court within the local limits of which cause of action, wholly or in part, arises. Section 20(c) of CPC reads as under:

**“20. Other suits to be instituted where defendants reside or cause of action arises. – Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction –**

xxx xxx xxx

**(c) the cause of action, wholly or in part, arises.**

[Explanation].—A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

(Emphasis Supplied)

17. In the facts of the present case, plaintiffs are Indian companies based out of Delhi and their registered office is located in New Delhi. The Booking Note dated 04<sup>th</sup> April, 2023, which forms the basis of the arbitral proceedings in London, contains the stamp of plaintiff no. 2, which indicates the place as Delhi.

18. The Pre-Dispatch Inspection Report dated 07<sup>th</sup> March, 2023, issued by IAR Insurance Surveyor & Loss Assessors Private Limited in respect of the cargo to be transported, was prepared after inspection was carried out in Army Camp, Gate No. 4, Khanpur, New Delhi. The Report mentions that the



voyage was to take place from New Delhi to Port Sudan. Thus, even though the actual voyage was to take place from Port Nhava Sheva, Mumbai to Port Sudan, the cargo to be transported was to be taken from Army Camp in New Delhi to Port Nhava Sheva in the first instance. It is also relevant to note that though the defendant was not a party to this Inspection Report, however, the Inspection Report was shared with the defendant, and the same was received by it on 03<sup>rd</sup> April, 2023. Receipt of the same is also admitted by the defendant in its 'Claim Submissions' before the LMAA in the First Arbitration/Reference.

19. As per the pleadings and documents on record, the Fixture Recap and the Booking Note contain List of Equipment, Packing Lists and Pre-dispatch Inspection Reports, which all mention that the voyage was between New Delhi and Sudan. The contractual obligations, being the shipment of 159 items of military equipment to the UNISFA originated from New Delhi. The entire negotiations, meetings and correspondence in relation to the aforesaid shipment was received and/or sent by the plaintiff no. 2 from New Delhi.

20. Further, the arbitral proceedings against which the plaintiffs seek injunctive and declaratory reliefs, were also commenced by the defendant by way of notice of arbitration dated 27<sup>th</sup> July, 2023 and subsequent notice of arbitration dated 06<sup>th</sup> December, 2024, both of which were received by the plaintiffs in New Delhi.

21. The payments in relation to the shipment/cargo were received by plaintiff no. 1 from the United Nations in New Delhi. In this regard, the plaintiffs had handed over a Tax Invoice relating to detention charges paid by the United Nations to the plaintiffs during the Court proceedings on 22<sup>nd</sup> January, 2026. It mentions the Delhi office of plaintiffs and bears the name



of plaintiff no. 1.

22. Thus, it is apparent that part of cause of action has arisen at New Delhi, i.e., within the territorial jurisdiction of this Court.

23. In the case of *A.B.C. Laminart (P) Ltd. and Another Versus A.P. Agencies, Salem*<sup>4</sup>, the Court discussed the connecting factors based upon which jurisdiction is said to arise under Section 20(c) of CPC. In the instance of breach of contract, the Court noted that cause of action consisted of making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed, and the breach occurred. The making of the contract is part of the cause of action. A suit *qua* a contract, therefore, can be filed at the place where it was made. Thus, it was held as follows:

“xxx xxx xxx

13. *Under Section 20(c) of the Code of Civil Procedure subject to the limitation stated theretofore, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. **It may be remembered that earlier Section 7 of Act 7 of 1888 added Explanation III as under:***

**“Explanation III.—In suits arising out of contract the cause of action arises within the meaning of this section at any of the following places, namely:**

**(1) the place where the contract was made;**

**(2) the place where the contract was to be performed or performance thereof completed;**

**(3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.”**

14. **The above Explanation III has now been omitted but nevertheless it may serve as a guide. There must be a connecting factor.**

15. **In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause**

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<sup>4</sup> (1989) 2 SCC 163.



**of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have been performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.**

xxx xxx xxx”

(Emphasis Supplied)

24. Likewise, in the case of ***Dqs Certification India Private Limited Versus Isaca Inc. and Others***<sup>5</sup>, the Court held that cause of action is devoid of a precise definition and encompasses all material facts which require proof to substantiate the reliefs sought by the plaintiff. Thus, under Section 20(c) of CPC, determination of cause of action would include consideration of factum of execution of contract, place of execution, place of business, scope of operation of contract and effect of its breach/determination. These would be some examples of the fundamental aspects of cause of action,

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<sup>5</sup> 2025 SCC OnLine Del 1892.



which would show the nexus with the territorial jurisdiction of a Court. Thus, it was held as follows:

“xxx xxx xxx

**22. It is the trite law that a cause of action, although devoid of a precise definition, encompasses all the material facts that are mandatorily required to be proved by the plaintiff in order to prove his entitlement to the relief claimed from the court of competent jurisdiction. Admittedly, in the present case, Defendant 1 does not reside in Delhi. However, looking at the nature of the licence agreement, the plaintiff can issue certification to companies all around the world, thus, the effect of the licence agreement is felt within the territorial jurisdiction of this Court. Furthermore, the plaintiff resides in Delhi and the licence agreement was signed and executed in Delhi. Moreover, the effect of the impugned termination notice was also felt in Delhi as the plaintiff resides and works from the Delhi office. Therefore, the factum of the execution of the contract, the place of execution, the place of business, the scope of the operation of the contract and the resultant effect of the breach or invocation of the contract are illustratively some of the few fundamental aspects of the cause of the action and they have a nexus with respect to the jurisdiction of this Court.**

**23. Therefore, by looking at the averments in the plaint and as per Section 20(c) CPC, a part of the cause of action arises within the territorial jurisdiction of this Court, thus, this Court has jurisdiction to entertain the suit. (See Kusum Ingots & Alloys Ltd. v. Union of India; Alchemist Ltd. v. State Bank of Sikkim and Nawal Kishore Sharma v. Union of India).**

xxx xxx xxx”

(Emphasis Supplied)

25. With regard to territorial jurisdiction of this Court, another factor to be taken into consideration is that plaintiffs are amenable to the personal jurisdiction of the Courts at New Delhi. As noted hereinabove, the plaintiffs carry on their business at their registered office at New Delhi and the bank accounts and assets of the plaintiffs are also located in New Delhi.

26. In this regard, the case of *Himachal Sorang Power Private Limited*



*and Another Versus NCC Infrastructure Holdings Limited*<sup>6</sup> may be referred to, wherein, this Court has held that in suits seeking anti-arbitration injunctions, jurisdiction lies with Courts to whose jurisdiction the plaintiff is personally amenable. Thus, it has been held as follows:

“xxx xxx xxx

**127. Thus, if I were to attempt an encapsulation of the broad parameters governing anti-arbitration injunctions, they would be the following:**

i) *The principles governing anti-suit injunction are not identical to those that govern an anti-arbitration injunction.*

ii) *Courts are slow in granting an anti-arbitration injunction unless it comes to the conclusion that the proceeding initiated is vexatious and/or oppressive.*

iii) **The Court which has supervisory jurisdiction or even personal jurisdiction over parties has the power to disallow commencement of fresh proceedings on the ground of res judicata or constructive res judicata. If persuaded to do so the Court could hold such proceeding to be vexatious and/or oppressive. This bar could obtain in respect of an issue of law or fact or even a mixed question of law and fact.**

iv) *The fact that in the assessment of the Court a trial would be required would be a factor which would weigh against grant of anti-arbitration injunction.*

v) *The aggrieved should be encouraged to approach either the Arbitral Tribunal or the Court which has the supervisory jurisdiction in the matter. An endeavour should be made to support and aid arbitration rather than allow parties to move away from the chosen adjudicatory process.*

vi) *The arbitral tribunal could adopt a procedure to deal with “re-arbitration complaint” (depending on the rules or procedure which govern the proceeding) as a preliminary issue.*

xxx xxx xxx”

*(Emphasis Supplied)*

27. Another important factor to be considered by this Court is that any enforcement proceeding in relation to the impugned arbitration proceedings would ultimately have to be filed against the plaintiffs in New Delhi. It is to

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<sup>6</sup> 2019 SCC OnLine Del 7575.



be noted that during the course of arguments, the defendant has also clearly admitted that any potential enforcement proceedings emanating from a future award, would be filed at New Delhi.

28. Both the plaintiffs are headquartered in New Delhi, with assets located within the territorial bounds of this Court. Therefore, enforcement, if any, would necessarily be pursued in New Delhi, thus, giving this Court territorial jurisdiction. Dealing with a similar case of anti-arbitration injunction, holding that amenability of the foreign party to the jurisdiction of such Court may also be seen in the context of the foreign party coming on a later date to enforce the foreign decree or foreign award in this country, in the case of *Devi Resources Limited Versus Ambo Exports Limited*<sup>7</sup>, it was held as follows:

“xxx xxx xxx

**65. Equally, merely because an injunction is sought against a foreign court or a foreign forum and not in personam against a party amenable to the court in seisin of the prayer for such injunction, it would not make the prayer for injunction infructuous if the applicant meets the high test otherwise required.** The court may mould the relief and issue an injunction in personam. There is a line in some of the judgments, including in *Noy Vallesina*, that an anti-suit and anti-arbitration injunction may issue in personam only against a party amenable to the jurisdiction of the court issuing the injunction. Such amenability need not be seen or tested at the time of issuance of the injunction, but may also be seen from a different perspective. **If such an injunction is sought against a foreign party by a party amenable to the jurisdiction of the court, the amenability of the foreign party to the jurisdiction of such court may also be seen in the context of the foreign party coming on a later date to enforce the foreign decree or foreign award in this country.**

xxx xxx xxx”

(Emphasis Supplied)

29. The defendant, to assert its submission that this Court lacks the

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<sup>7</sup> 2019 SCC OnLine Cal 7774.



territorial jurisdiction to entertain the present suit, has relied upon the following judgments:

- (a) *Golden Peacock Overseas Limited Versus Ranjit Industries & Ors.*<sup>8</sup> (“Golden Peacock”),
- (b) *EX. RECT./GD, Vinod Kumar Versus Union of India and Ors.*<sup>9</sup> (“Vinod Kumar”), and
- (c) *Capital Fire Engineers Versus State Bank of Patiala*<sup>10</sup> (“Capital Fire Engineers”).

30. It is pertinent to note that the Court in the case of *Golden Peacock* was deciding an application under Order VII Rule 10 of the CPC, seeking return of the plaint on the ground that no cause of action had arisen in the territory of the Court. The Court therein allowed the application by holding that the entire facts pleaded and not mere happening of an inconsequential event would determine cause of action. It further held that there were no specific averments made in the plaint which could show that any transaction between the parties had been completed or even happened within the territory of the Court. However, the ratio in the case of *Golden Peacock* would not aid the defendant as the entire facts pleaded and specific averments made in the present case, as has been noted in the preceding paragraphs in detail, disclose that substantial and integral part of cause of action has arisen within the jurisdiction of this Court.

31. Further, even the judgment in the case of *Vinod Kumar* would not be applicable in the facts of the present case as the Court therein was deciding

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<sup>8</sup> 2005 SCC OnLine Del 1035.

<sup>9</sup> 2006 SCC OnLine Del 1401.

<sup>10</sup> 2005 SCC OnLine Del 1041.



the question of maintainability and cause of action while adjudicating writ petitions. In the facts of the said case, the Court had come to the conclusion that no cause of action or part thereof had arisen within the territorial jurisdiction of the Court. However, the same is not the position in the present case, in view of the discussion hereinabove.

32. The judgment in *Capital Fire Engineers* is also clearly distinguishable as the Court therein was dealing with the issue of maintainability of an arbitration petition under Section 11 of the Arbitration Act. The Court noted that the agreement between the parties was executed at Patiala, Punjab, the work was required to be performed at Patiala and payments were also made at Patiala, whereas, only a document was addressed to the petitioner's office in New Delhi and thus, the Court at New Delhi was held not to have jurisdiction. *Per contra*, in the case at hand, in view of the plaintiffs being amenable to personal jurisdiction of this Court in an anti-arbitration suit, the arbitration award, if any, being enforceable in this Court and other facts and circumstances discussed hereinabove, it is clear that this Court has territorial jurisdiction in the present case.

33. In the light of the aforementioned facts and the position of law, it cannot be said that this Court does not have territorial jurisdiction to entertain the present case. It is apparent that fundamental as well as substantial aspects of cause of action have arisen within the territorial jurisdiction of this Court, and thus, this Court shall have the jurisdiction to entertain and adjudicate the present suit under Section 20(c) of CPC.

**Whether there is a binding contract between the parties?**

34. This brings us to the next issue as to whether there is valid contract between the plaintiffs and the defendant.



35. The plaintiffs have raised the contention that there is no privity of contract between the defendant and the plaintiffs and that the defendant is a complete stranger to the Booking Note dated 04<sup>th</sup> April, 2023.

36. This Court notes that the present case pertains to a shipping contract, wherein, parties enter into contracts through agents and brokers. In the present case, Pirama National Shipping Services LLC was the common broker to the plaintiffs and the defendant, while Ocean7 Projects ApS was the agent of the owners of various vessels. It is the agent who decides which vessel of which owner is available to undertake the journey of shipment of cargo. In contracts related to shipping, the contracts are discussed and finalized through the broker, who is common to the parties and the agent of the vessels belonging to various carriers, which the agent represents. Thus, it is the agents who represent and contract on behalf of the owners of the vessels, which they represent.

37. The Booking Note dated 04<sup>th</sup> April, 2023 clearly records that the “carrier” was Ocean7 Projects ApS – as agents to the owners. This means that the Ocean7 Projects ApS signed the contract, i.e., the Booking Note, not on their behalf, but as agent of the owner of the vessel. Clause 20 of the Booking Note clearly stipulates that the vessel, as named in the Booking Note can be substituted. Clause 20 of the Booking Note, which contains the contracting terms, reads as under:

**“Clause 20: VESSEL**

**MV Pelagica or Sub**

**The Carrier shall at any time prior to the expiration of laydays/laycan, be entitled to substitute the above vessel with another vessel of equivalent capability and capacity. Nothing herein shall be**



*construed as imposing on the Carrier an obligation to make such substitution.”*

*(Emphasis Supplied)*

38. The Booking Note refers to the vessel as MV Pelagica or Sub, meaning thereby, that the vessel could be either MV Pelagica or its substitute, in terms of the contractual terms as encapsulated in the Booking Note.

39. In the present case, the common broker of the plaintiffs and defendant, i.e., Pirama National Shipping Services LLC, sent an Email dated 04<sup>th</sup> April, 2023 to the agent, Ocean7 Projects ApS, who were acting as agents for the owners of the vessel ‘MV Pelagica or Sub’, informing them that the charterer/SARR Freights had agreed to Fixture Recap set out in that Email, with very minor changes. The said Email/Fixture Recap dated 04<sup>th</sup> April, 2023, reads as under:

```
From : Pirama - National Shipping (pirama@nationaldubai.ae)
To : dubai@united-o7.com (dubai@united-o7.com) - 'Europe@ocean7projects.com'
(Europe@ocean7projects.com) - Bbulkteam (bbulkteam@nationaldubai.ae)
Subject : RE: NSS ENQUIRY 31/1 -1 - Nhava Sheva/Mundra, India to Port Sudan, Sudan
Date : 04/04/2023 12:35:31
Dear Anup , Good day!

Charterer agree for following fixture recap with very minor changes as highlighted in yellow , other seems in order and send us the
booking note for charterer's signing.

Fixture recap ++++++

- Account:
Name: SARR Freights
Address:1E/12, Sewak House, Jhandewalan Extn., New Delhi 110055 | Phone: +91 11 23557146/47
| Fax: +91 11 23633620
http://sarrfreights.com/

- Carrier:
Ocean7 Projects ApS or Owners/nominee
Ocean7 Chartering ApS or nominee
- always as agents to owners -
Jyllandsgade 19A
DK-7000 Fredericia

Denmark
- Tonnage:
MV Pelagica / Mv PANTHERA J or sub, in Carriers option. (**Charterer want Mv Pelagica name
in Booking note since this vessel name has given to UN already. )
- For a part cargo of: 159 units /6716.94 cbm as per attached PL
including IMO Class 1 cargo detailed as per PL
Attached our survey report for owner's reference on 159 pkgs and Attached few photos for
owners reference.
Other documents & DG related documents can be provided upon shipment fixing which still
need to collect from Indian Military once we collect the shipments from warehouse.
As per attached packing list.

- PoL: NHAVE SHEVA ,INDIA - carriers berth.
- PoD: PORT SUDAN,SUDAN - carriers berth.
- ToS: 15-28 APRIL
-Freight: 85 usd per w/m basis above freight tonne
- for the cargo/quantity as described above -
```

**MAIN TERMS:**

- 1) Liner hook in/hook out.
- 2) Under/on deck in Carrier's option.
- 3) Loading/discharging as fast as vessel can receive/deliver cargo, otherwise detention as per provisions of clause 22 to apply.
- 4) Detention/demurrage: USD 15,000 pd/pr.  
Time lost in waiting for berth and/or delays to loading/discharging due to congestion, ~~swell~~ or any other reason beyond carriers control to count as time on detention/demurrage after a grace period of 24 hours reversible

Any delays due to swell not to count as detention.

Detention only to apply in case of cargo or cargo documents or transport means such as trucks, trailers, barges not ready or not available upon vessel's arrival /during vessel's stay bends.

NOR to be tendered /accepted anytime day and night sshinc (fsshinc) upon vessel's arrival at load /discharge port, www.

5) Any slings/wires/cradles/saddle/spreaders/bars etc., not already onboard the vessel, are to be arranged by owners considering very normal break bulk cargo and max weight 18tons.

6) The above freight amount has been based on bunker prices at Rotterdam of USD 650 per mt (VSLFO) and USD 1150 per mt (LSMGO) and shall be adjusted in accordance with cl. 40 of the Carrier's Liner Booking Note.

7) Carrier's Liner Booking Note (available [here](#)) and Bills of Lading to apply.

8) total commission 2.5 pct on f/d/d

**GENERAL TERMS AND CONDITIONS:-**

9) Merchants warrant that this shipment is not subject to any UN/EU/UK sanctions nor subject to OFAC restrictions.  
This is UN cargo and shipper is Indian Military and receiver Sudan defense authority and not subject to any sanctions.

10) goods to be packed/delivered in seaworthy condition and fitted with suitable lifting eyes and/or hoisting frames and/or similar appliances with guaranteed sufficient strength for the foreseen handling operation; goods are to be properly marked to indicate exact place(s) where pieces are to be slung and to indicate the exact location of the center of gravity of each separate piece; cradles and/or lashing points suitable for the ocean carriage are to be provided by Merchant free of risk and expense to the Carrier/Ship owner; any damage resulting from Merchants failure to comply with the above to be for Merchants account and any time lost thereby to count as detention times as stipulated in the Carrier's Liner Booking Note, clause 22.

11) Freight, payable into Carrier's nominated bank Account 5 days after completion of loading and before signing/releasing bills of lading.  
Charterer need 5 banking days after completion of loading and Need copy of BL (Non-negotiable) for banking purpose /payments.

12) Freight deemed earned upon completion of loading and non-returnable vessel and/or cargo lost or not lost.

13) Carrier's agents all ports.

14) Any dues/duties/taxes/fees/wharf ages etc. calculated on freight and/or cargo for Merchants account, same calculated on vessel for Carrier's account.

15) L/s/d material and time for Carrier's account

16) All cargo to be delivered/received within reach of vessel's gear and quot;hooking on/hooking offquot; chargers for owner's account.

17) Goods to be brought alongside the vessel in a sequence as required by the Carrier/ship owner.

18) BIMCO VoyWar, Conway, ISPS as well as BIMCO Infectious or Contagious Diseases clauses deemed fully incorporated.

19) Merchant shall reimburse Carrier in full/for their share of the cargo being loaded and/or discharged at subject ports in the event that Carrier incurs a liability for an increased premium be it for basic or additional war risk, or for any other operation expenses arising as a result of the voyage herein (Voywar 2013 to apply).

20) Carrier's option to deviate from the direct geographical route also for the purpose of loading/discharging port/loading port

21) Carrier/Master to give 10/7/5/3/2 days approximate notice prior vessel's arrival discharging port/loading port



Carrier to give noon position report daily, including course, speed, direction and latitude & longitude location as desired by client

22) For any IMDG shipment and prior to loading, the Merchants are to supply Carrier/Master with valid IMDG certificates. For IMDG class 1 and military cargo also submit valid End-User-

Certificates (EUC).

23) English law and London arbitration

24) Sub Carrier's BOD Approval

25) Sub stowage

END+++

=====x=====

We NSS or Our employees never sent any emails with regards to change of our Banking details. hereby inform you that our bank details have not changed, do not make payments to other accounts than you were used to until now. Kindly check with respective NSS's contacts by phone call before making any remittances.

Thanks & Best regards,

Pirama / National Shipping Services LLC (As brokers only)

40. Perusal of the aforesaid Email clearly shows that the parties were cognizant about the identification of the vessel MV Panthera J during the course of discussion of the terms of the contract. However, since the name of the vessel MV Pelagica had been given to the United Nations already, it was decided that the Booking Note would refer to the name MV Pelagica or Substitute.

41. Thereafter, on the same day, i.e., 04<sup>th</sup> April, 2023, the agent replied to the broker *vide* Email, confirming that they will reflect 'MV Pelagica or Sub' in the Booking Note.

42. Subsequent to the aforesaid Fixture Recap, the Booking Note dated 04<sup>th</sup> April, 2023 was issued evidencing the voyage charterparty as agreed under the Fixture Note between the owners of 'MV Pelagica or Sub' and SARR Freights/plaintiffs. The Booking Note describes the various contracting parties as follows:

- i. Vessel: MV Pelagica or Sub
- ii. Carrier: Ocean7 Projects ApS - as Agents to Owners
- iii. Merchant: SARR Freights

43. The defendant, as owner, provided the vessel MV Panthera J as



substitute to MV Pelagica to perform the voyage agreed under the Booking Note. As is evident from the Fixture Recap, the parties knew and understood beforehand that MV Panthera J would be the performing vessel under the Booking Note, and not MV Pelagica. Pertinently, while it was agreed in the Fixture Recap that the Booking Note will mention 'MV Pelagica or Sub', the pre-stowage plan of MV Panthera J was provided to SARR Freights/plaintiffs.

44. Thereafter, under the Fixture Recap and in accordance with the Booking Note, the defendant, through the agents, provided daily updates of MV Panthera J's location and estimated time of arrival at Nhava Sheva, Mumbai. The various Emails sent by the defendant to the agents informing about MV Panthera J's estimated time of arrival, have been placed before this Court.

45. Accordingly, considering the aforesaid facts and circumstances, this Court is of the considered *prima facie* view that there existed a valid contract between the plaintiffs and the defendant. Therefore, the contention of the plaintiffs that there is no privity of contract between the defendant and the plaintiffs, and that the defendant is a complete stranger to the Booking Note, cannot be accepted. The terms of the contract in the Booking Note intended that the "Carrier" would be the owner of the performing vessel, which is the defendant in the present case.

46. The contention of the plaintiffs that the vessel could be substituted only with another compliant vessel of equivalent capacity and capability, would be subject matter of disputes on merits, which shall be considered in proceedings dealing with the merits of the dispute between the parties. However, for the purposes of adjudicating the issues as raised in the present



proceedings, this Court is of the *prima facie* opinion that there exists a valid contract between the plaintiffs and the defendant.

**Whether there exists a valid Arbitration Clause between the parties?**

47. Accordingly, having noted that firstly, this Court has jurisdiction to entertain the present suit and secondly, that *prima facie* there exists a valid contract between the parties, the next issue to be considered by this Court is whether the contract between the parties contains an arbitration clause.

48. As per the case put forth by the plaintiffs, the parties never contracted to London as the seat of arbitration. The parties had only agreed to pages 1 and 2 of the Booking Note and Additional Rider Clauses 20-41 of the Booking Note, which did not contain any arbitration clause.

49. As per the plaintiffs, the Booking Note, which was entered between the parties on 04<sup>th</sup> April, 2023, contained the Special Terms agreed upon by the parties on the first page itself, wherein, the words “*As per additional rider clause 20-41 in attached*” is mentioned. Since the same did not mention Clause 43, i.e., the Law and Arbitration Clause, objection has been raised by the plaintiffs that the Booking Note did not contain any arbitration clause.

50. In this regard, at the first instance, this Court would look at the intention of the parties to decide the question regarding existence of an arbitration clause. For gathering said intention of the parties, the Court shall not only look at the Booking Note, but also consider the prior communications between the parties, including, the Fixture Recap.

51. In this regard, reference is made to the judgment in the case of ***Govind Rubber Limited Versus Louis Dreyfus Commodities Asia Private***



*Limited*<sup>11</sup>, wherein, the Supreme Court has held that an agreement, even if not signed by the parties, can be spelt out from correspondence exchanged between the parties. While construing an arbitration agreement or arbitration clause, the Courts have to adopt a pragmatic and not a technical approach. An arbitration agreement can be culled out from an exchange of letters, telegrams or other means of communication, which provide a record of the agreement. If it can be *prima facie* shown that the parties are *ad idem*, then the mere fact that one party disputes the same, cannot absolve such party from the liability under the agreement. Thus, in the aforesaid case, Supreme Court held as follows:

“xxx xxx xxx

**12. There may not be any dispute with regard to the settled proposition of law that an agreement even if not signed by the parties can be spelt out from correspondence exchanged between the parties. However, it is the duty of the court to construe correspondence with a view to arrive at the conclusion whether there was any meeting of mind between the parties which could create a binding contract between them. It is necessary for the court to find out from the correspondence as to whether the parties were ad idem to the terms of contract.**

**13. It is equally well settled that while construing an arbitration agreement or arbitration clause, the courts have to adopt a pragmatic and not a technical approach.** In *Rukmanibai Gupta v. Collector* [(1980) 4 SCC 556], this Court held that: (SCC p. 560, para 6)

**“6. Arbitration agreement is not required to be in any particular form.** What is required to be ascertained is whether the parties have agreed that if disputes arise between them in respect of the subject-matter of contract such dispute shall be referred to arbitration, then such an arrangement would spell out an arbitration agreement.”

**14.** So far as the first contention made by the learned counsel for the appellant that since the appellant did not sign the agreement, it cannot

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<sup>11</sup> (2015) 13 SCC 477.



be said to be a party to the agreement, we would like to refer Section 7 of the Arbitration and Conciliation Act, which reads as under:

**“7. Arbitration agreement.—(1) In this Part, ‘arbitration agreement’ means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.**

**(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.**

**(3) An arbitration agreement shall be in writing.**

**(4) An arbitration agreement is in writing if it is contained in—**

**(a) a document signed by the parties;**

**(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or**

**(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.**

**(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”**

15. A perusal of the aforesaid provisions would show that in order to constitute an arbitration agreement, it need not be signed by all the parties. Section 7(3) of the Act provides that the arbitration agreement shall be in writing, which is a mandatory requirement. Section 7(4) states that the arbitration agreement shall be in writing, if it is a document signed by all the parties. But a perusal of clauses (b) and (c) of Section 7(4) would show that a written document which may not be signed by the parties even then it can be arbitration agreement. **Section 7(4)(b) provides that an arbitration agreement can be culled out from an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.**

16. On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by **the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication.** Section 7(4)(c) provides that there can be an arbitration agreement in the exchange of statements of claims and defence in which the



existence of the agreement is alleged by one party and not denied by the other. If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement. In the present day of e-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. **In such agreements, if the identity of the parties is established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties.** Therefore, signature is not a formal requirement under Section 7(4)(b) or 7(4)(c) or under Section 7(5) of the Act.

xxx xxx xxx

**23. It is clear that for construing an arbitration agreement, the intention of the parties must be looked into.** The materials on record which have been discussed hereinabove make it very clear that the appellant was prima facie acting pursuant to the sale contract issued by the respondent. So, it is not very material whether it was signed by the second respondent or not.

xxx xxx xxx”

(Emphasis Supplied)

52. In the case at hand, by way of the Email dated 04<sup>th</sup> April, 2023, the broker of the plaintiffs communicated the Fixture Recap with their relevant changes, the terms of which were to be incorporated in the Booking Note. The changes made were accepted by an Email of the same date by the agents of the Carrier (defendant), confirming the changes and providing confirmation for incorporation of the same in the Booking Note.

53. In the said Email sent by the broker of the plaintiffs, as reproduced hereinabove, the changes to the Fixture Recap were made in “Yellow” highlight, and there was no change/suggestion/alteration with respect to the clause dealing with Arbitration, i.e., Clause 23 of the Fixture Recap, which states that the Arbitration shall be conducted as per “*English law and London arbitration*”. It is to be noted that the plaintiffs indicated several



other changes in the terms of the Fixture Recap, however, despite having the opportunity to change or even oust the said Arbitration Clause, the plaintiffs did not put forth any comment or request for its alteration/removal. Thus, the aforesaid conduct is a clear pointer to the intention of the parties regarding inclusion of the Arbitration Clause.

54. Furthermore, in the Email dated 0<sup>4th</sup> April, 2023 sent at 12:35:31 PM, wherein changes to Fixture Recap were made, there is a specific line added by the broker of the plaintiffs, which reads as follows:

***“Charterer agree for following Fixture Recap with very minor changes as highlighted in yellow, other seems in order and send us the booking note for Charter’s signing.”***

*(Emphasis Supplied)*

55. Thus, as the document (Fixture Recap) is a summary of negotiations and the final agreed upon essential terms between the parties, the intent of the parties is evidently discernable therefrom, i.e., to be governed by the Arbitration Clause between the parties, which prescribes English Law and arbitration in London. It is apparent that the Fixture Recap between the parties contains an arbitration agreement, which is binding upon the parties.

56. Post mutual agreement and finalization of the terms of Fixture Recap, the Booking Note dated 04<sup>th</sup> April, 2023 was entered into by the parties, which, based upon the aforesaid undisputed Clause 23 in the Fixture Recap, incorporates an Arbitration Clause as Clause 43, in the following manner:

***“CLAUSE 43: LAW AND ARBITRATION***

*Bimco Dispute Resolution Clause latest edition to apply, subject to English Law and LMAA Terms and Procedures.”*

57. In the case of *Trimex International FZE Limited, Dubai Versus*



*Vedanta Aluminium Limited, India*<sup>12</sup>, the Supreme Court considered the correspondence exchanged between the parties containing the conditions prescribed and held that it was clear that the intention of the parties was to arbitrate any dispute which arose. On the basis of the correspondence between the parties, the Supreme Court considered the intention of the parties to conclude that the parties in the said case were *ad idem* as far as adopting arbitration as a method of dispute resolution was concerned. The Supreme Court also took note of the fact that charter party agreements are governed as per international shipping practices, wherein, the normal procedure is that the brokers from both sides first agree on the vital terms through correspondence. Thus, the Supreme Court in the aforesaid case held as follows:

“xxx xxx xxx

*44. From the materials placed, it has to be ascertained whether there exists a valid contract with the arbitration clause. It is relevant to note that on 15-10-2007 at 4.26 p.m. the petitioner submitted a commercial offer wherein Clause 6 contains the arbitration clause i.e. “this contract is governed by Indian law and arbitration in Mumbai courts”. At 5.34 p.m. though the respondents offered their comments, as rightly pointed out by Mr K.K. Venugopal, no comments were made in respect of the “arbitration clause”. It is further seen that at 6.04 p.m., the petitioner sent a reply to the comments made by the respondent. Again, on 16-10-2007 at 11.28 a.m., though the respondents suggested certain additional information on the offer note, here again no suggestion was made with regard to the arbitration clause.*

xxx xxx xxx

*46. Apart from the above minute to minute correspondences exchanged between the parties regarding the offer and acceptance, as rightly pointed out by Mr Venugopal the offer of 15-10-2007 contains all essential ingredients for a valid acceptance by the respondents, namely, (1) offer validity period, (2) product description,*

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<sup>12</sup> 2010 SCC OnLine SC 214.



(3) quantity, (4) price per tonne, (5) delivery terms (CIF), (6) payment terms (irrevocable letter of credit), (7) shipment lots, (8) discharge port, (9) discharge rate with international shipping acronyms, (10) demurrage rate, (11) period of shipment, (12) vessel details, (13) draft (port/berth capacity corresponding to height of cargo), (14) stipulations as to survey by independent surveyors, (15) quality benchmark, (16) bonus/penalty rates, and **(17) applicable laws (Indian law) and arbitration.**

**47. The minute to minute correspondence exchanged between the parties, all the conditions prescribed which had been laid down, awareness of urgency of accepting the offer without any further delay to avoid variation in the freight or other factors, coupled with the e-mail sent on 16-10-2007 at 3.06 p.m. under the subject “re : offer for imported bauxite” stated in unequivocal terms i.e. “we confirm the deal for five shipments”, would clearly go to show that after understanding all the details and the confirmation by the respondent, the petitioner sent a reply stating that “thanks for the confirmation, just in time to go to the shipowners”. All the above details clearly establish that both the parties were aware of various conditions and understood the terms and finally the charter party was entered into a contract by the parties on 17-10-2007.**

xxx xxx xxx

**49. In the light of the details which have been extracted in the earlier paragraphs, I am unable to accept the stand of the respondent. It is clear that if the intention of the parties was to arbitrate any dispute which arose in relation to the offer of 15-10-2007 and the acceptance of 16-10-2007, the dispute is to be settled through arbitration. Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialled by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initialled.**

xxx xxx xxx

**56. Mr Venugopal pointed out that the charter party agreements are governed as per international shipping practices. The normal procedure is that the brokers from both sides first agree on the vital terms over phone/telex [these terms relate to freight, type of ship, lay can (period of shipping), demurrage rate, cranes, etc.] At this stage, no agreement is formally signed but the terms are binding on both the parties, as per the contract of affreightment (CoA), which in the present case was entered into on the next day i.e. 17-10-2007. Certain minor modifications could go on from either side on mutual**



agreement but in the absence of any further modification, the originally agreed terms of CoA are binding on both the parties. Till the agreement is actually signed by both the parties, the term “draft” is used. This does not mean that the terms are not binding as between the petitioner and the shipowners. Further, according to him, the existence of the charter party, various international shipping practices, etc. which are to be pleaded in detail before the Arbitral Tribunal once it is constituted and not before this Court since this means extensive quoting of shipping laws and decided cases which cannot be done in the present arbitration petition. The above submissions cannot be underestimated.

57. Both in the counter-affidavit as well as at the time of arguments Mr C.A. Sundaram, learned Senior Counsel for the respondent has pointed out various differences between the version of the respondent and the petitioner. However, a close scrutiny of the same shows that there were only minor differences that would not affect the intention of the parties. It is essential that the intention of the parties be considered in order to conclude whether the parties were ad idem as far as adopting arbitration as a method of dispute resolution was concerned. In those circumstances, the stand of the respondent that in the absence of signed contract, the arbitration clause cannot be relied upon is liable to be rejected.

xxx xxx xxx

60. It is clear that in the absence of signed agreement between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of e-mails, letter, telex, telegrams and other means of telecommunication.

xxx xxx xxx”

(Emphasis Supplied)

58. Likewise, holding that conduct of the parties clearly manifested acceptance of the terms and conditions of the contract, including, the arbitration clause, Supreme Court in the case of **Glencore International AG Versus Shree Ganesh Metals and Another**<sup>13</sup>, held as follows:

“xxx xxx xxx

19. We are of the considered opinion that it was not necessary for the appellant to fall back upon the contract of 2012 in the light of the

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<sup>13</sup> 2025 SCC OnLine SC 1815.



*admitted facts that demonstrated, in no uncertain terms, that the parties duly accepted and acted upon Contract No. 061-16-12115-S dated 11.03.2016. There is no denying the legal proposition that an arbitration agreement can be inferred even from an exchange of letters, including communication through electronic means, which provide a record of the agreement. The mere fact that Contract No. 061-16-12115-S was not signed by respondent No. 1 would not obviate from this principle when the conduct of the parties in furtherance of the said contract, clearly manifested respondent No. 1's acceptance of the terms and conditions contained therein, which would include the arbitration agreement in clause 32.2 thereof.*

xxx xxx xxx”

*(Emphasis Supplied)*

59. Apart from Clause 43, i.e., the Arbitration Clause, there is only one dispute resolution clause, i.e., Clause 4 – Law and Jurisdiction, contained in the Booking Note. However, the same is only for disputes in relation to the ‘Bill of Lading’. Further, the Booking Note states that pages 1 and 2 thereto shall prevail over any previous arrangements, and that the Booking Note shall in turn be superseded by the terms of Bill of Lading. However, in the present case, the Bill of Lading never came into effect, as the goods were never loaded on the carrier, and the Bill of Lading would have come into effect only thereafter.

60. In the present case, there is a clear indication that the parties intended for arbitration to be the dispute resolution mechanism. There is an indication of exclusivity shown by the words used in Clause 43, i.e., the Arbitration Clause, wherein, BIMCO (Baltic and International Maritime Council) Dispute Resolution Clause has been specifically added. The BIMCO Dispute Resolution Clause, with stipulation that the same was subject to English Law and LMAA Terms and Procedures, along with the plain language of the Arbitration Clause as per Fixture Recap, manifests that the parties specifically intended to have their disputes resolved by way of



arbitration in London, under the aegis of LMAA.

61. In view of the aforesaid discussion, this Court is of the prima facie view that the reference to “As per additional rider clause 20-41 in attached” in the Booking Note is an inadvertent error and an oversight. It is to be noted that this oversight persisted even in the blank standard form/booking note of the agent as well. The said blank standard form/booking note of the agent, i.e., Ocean7 Projects ApS, is extracted hereunder:

Page 1

Agents (full style and address)		<b>CARRIERS' LINER BOOKING NOTE</b>	
		Place and Date Fredericia, Select Date	
		Vessel MV Insert Vessel Name	
Carrier (full style and address) or Order  Choose an item. C/O Jyllandsgade 19A, DK-7000 Fredericia Denmark		Time of shipment (about) Select Date / Select Date	
		Port of loading Insert Loading Port name, Insert Country – Choose an item	
		Port of discharge Insert Discharge Port name, Insert Country – Choose an item.	
Merchant * (full style and address)  Type Company name Type Address line 1 Type Address line 2 Type Zipcode / City Type State Type Country		Merchant's representative at loading port (full style and address)  Type Company name Type Address line 1 Type Address line 2 Type Zipcode / City Type State Type Country	
Container No./Seal No./Marks and Numbers (if available)	Number and kind of packages; description of cargo	Gross weight, kg (if available)	Measurement, m3 (if available)
Freight details and charges Detention rate: Choose Currency Insert amount per day, pro rata. Brokers commission: Insert amount / Value Choose Currency / PCT Otherwise as defined in Rider Clauses No. 22+24		Special terms, if agreed As per additional rider clause 20 - 41 in attached	
Freight (state prepayable or payable at destination) Freight amount: Choose Currency Insert amount Choose Unit Payment terms: Choose Payment Terms			
It is hereby agreed that this Contract shall be performed subject to the terms contained on Page 1 and 2 hereto which shall prevail over any previous arrangements and which shall in turn be superseded (except as to deadfreight) by the terms of the Bill of Lading			
Signature (Merchant) Type Company name		Signature (Carrier) Choose an item.	

\* As defined hereinafter (Cl. 1)

\*\* (or so near thereto as the Vessel may safely get and lie always afloat)

ONCE PAGE ONE HAS BEEN COMPLETED PLEASE CLICK "CTRL+>" FOLLOWED BY THE F2 KEY AFTER WHICH DATA WILL TRANSFER TO FOLLOWING PAGES.



62. It is also to be noted that the page of the Booking Note containing Clauses 42 and 43 was duly signed and stamped by both the parties. The omission to mention and incorporate Clauses 42 and 43 in the Special Terms, which governed the parties under the Booking Note, is clearly a lapse, though said Clauses 42 and 43 containing the Arbitration Clause clearly form part of the Booking Note and as noted, the pages containing the said clauses, have been duly signed by both the parties. For convenience of reference, the said page of the Booking Note is reproduced as under:

**CLAUSE 41: INFECTIOUS OR CONTAGIOUS DISEASES**  
 (a) For the purposes of this Clause, the words:  
 "Disease" means a highly infectious or contagious disease that is seriously harmful to humans.  
 "Affected Area" means any port or place where there is a risk of exposure to the Vessel, crew or other persons on board to the Disease and/or to a risk of quarantine or other restrictions being imposed in connection with the Disease.  
 (b) The Vessel shall not be obliged to proceed to or continue to or remain at any place which, in the reasonable judgement of the Master/Owners, on the date of this Charter Party already is or thereafter becomes an Affected Area.  
 (c) In accordance with Sub-clause (b):  
 (i) at any time before loading commences, the Owners may give notice to the Charterers cancelling this contract of carriage or may refuse to perform such part of it as will require the Vessel to enter or remain at an Affected Area.  
 (ii) if loading has commenced, the Owners may notify the Charterers that the Vessel will leave with or without cargo on board, provided always that if the Charter Party provides that loading or discharging is to take place within a range of ports, the Owners shall first request the Charterers to nominate any other safe port which lies within the range for loading and discharging and may only cancel this Charter Party or leave the loading port if the Charterers fail to nominate such alternative safe port within forty-eight (48) hours of receipt of notice of such request. If part cargo has been loaded, the Vessel may complete with cargo for the Owners' account at any other port or ports whether or not on the customary route for the chartered voyage.  
 (d) If prior to or after arrival and in accordance with Sub-clause (b) the discharging port is determined to be in an Affected Area, the Owners may request the Charterers to nominate an alternative safe port which lies within the Charter Party range. If the Charterers fail to make such nomination within forty-eight (48) hours of receipt of the Owners' request, the Owners may discharge the cargo, or such cargo remaining on board if discharging has not been completed, at any safe port of their choice (including the port of loading) in complete fulfillment of the contract of carriage. If discharge takes place at any port other than the loading port or at a port that lies outside the range of ports in the Charter Party, the Owners shall be entitled to recover from the Charterers the extra expenses of such discharge, to receive full freight as if the cargo had been carried to the discharging port and, if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route. The Owners shall have a lien on the cargo for such extra expenses and freight.  
 (e) The Owners shall not be obliged to sign, and the Charterers shall not allow or authorize the signing of, bills of lading, waybills or other documents evidencing contracts of carriage for any Affected Area.  
 (f) If, notwithstanding Sub-clause (b) to (e), the Vessel does proceed to or continue to or remain at an Affected Area:  
 (i) The Owners shall notify the Charterers of their decision, but the Owners shall not be deemed to have waived any of their rights under this Charter Party.  
 (ii) The Owners shall endeavor to take such reasonable measures in relation to the Disease as may from time to time be recommended by the World Health Organization.  
 (iii) Any additional costs, expenses or liabilities whatsoever arising out of the Vessel visiting or having visited an Affected Area, including but not limited to screening, cleaning, fumigating and/or quarantining the Vessel and its crew, shall be for the Charterers' account and any time lost shall count as laytime or time on demurrage.  
 (g) The Vessel shall have liberty to comply with all orders, directions, recommendations or advice of competent authorities and/or the Flag State of the Vessel in respect of arrival, routes, ports of call, destinations, discharge of cargo, delivery or in any other respect whatsoever relating to issues arising as a result of the Vessel being or having been ordered to an Affected Area.  
 (h) If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation but shall be considered as due fulfillment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of this Charter Party, this Clause shall prevail to the extent of such conflict, but no further.  
 (i) The Charterers shall indemnify the Owners for claims arising out of the Vessel proceeding in accordance with any of the provisions of Sub-clauses (b) to (h) which are made under any bills of lading, waybills or other documents evidencing contracts of carriage.  
 (j) The Charterers shall procure that this Clause shall be incorporated into all bills of lading, waybills or other documents evidencing contracts of carriage issued pursuant to this Charter Party.

**CLAUSE 42: SHIP-TO-SHIP OPERATION**  
 The Charterers shall have the right to order the Vessel to conduct ship-to-ship cargo operations (to or from any other vessel(s)), including loading cranes and barges, hereinafter "Ship-to-Ship Operations".  
 The Charterers shall not have the right to conduct Ship-to-Ship Operations.  
 (a) Provided it has been agreed for Charterers to have the right to conduct ship-to-ship operations as above then all such Ship-to-Ship Operations shall be at the Charterers' risk, cost and expense.  
 (b) The Charterers shall direct the Vessel to a safe place, anchorage or berth for the conduct of such Ship-to-Ship Operations where the Vessel can safely proceed to, lie and depart from, but always subject to the Master's approval. The Charterers shall provide adequate tendering, securing and mooring equipment, and/or other equipment, as necessary for these operations, to the satisfaction of the Master.  
 (c) The Charterers shall obtain any and all relevant permissions from proper authorities to perform Ship-to-Ship Operations.  
 (d) If Ship-to-Ship Operations are carried out at a place or anchorage, such place or anchorage shall be considered as a berth. Notice of readiness may be tendered at such place or anchorage and laytime shall count in accordance with the Charter Party. If at any time, the Master considers that Ship-to-Ship Operations are, or may become, unsafe, he may order them to be suspended or discontinued. In such event the Master shall have the right to order the other vessel(s) away from the Vessel or to remove the Vessel. Any stoppages or additional time attributable to Ship-to-Ship Operations shall not be excluded from laytime or time on demurrage.  
 (e) The Charterers shall indemnify the Owners for any liabilities, losses or costs, arising out of or related to Ship-to-Ship Operations.

**CLAUSE 43: LAW AND ARBITRATION**  
 BIMCO Dispute Resolution Clause latest edition to apply, subject to English Law and LMAA Terms and Procedures.

By accepting this Booking Note the Merchant acknowledges and accepts that this contract is entered into strictly by the entity identified in this contract as the Merchant. In the event the vessel as stated on page one for any reason whatsoever will be substituted by another vessel the Carrier may without notice change whereby Owners will act solely "as agents" to Owners of the actual performing vessel.

SIGNATURE & STAMP: \_\_\_\_\_ SIGNATURE & STAMP: \_\_\_\_\_  
 Date: \_\_\_\_\_ Date: 05-04-2023

Carrier \_\_\_\_\_ Merchant SARR Freights

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63. Further, the use of the phrase “*prevail over*” in the Booking Note indicates an intention that the Booking Note terms should override any inconsistent prior arrangement. However, the Arbitration Clause contained in the Fixture Recap, cannot be said to be inconsistent with Clause 43 of the Booking Note. On the contrary, the Arbitration Clause in the Fixture Recap is consistent with the terms of the Booking Note.

64. In the second instance, the aspect of commercial sense of entering into a contract has to be looked at. In other words, it would be of material consideration whether parties would enter into a commercial contract without there being any dispute resolution mechanism.

65. If the contention of the plaintiffs that Clause 43 had been deliberately excluded from the Booking Note is accepted by this Court, it would give rise to a situation wherein an international commercial contract, such as the Booking Note in the present case, would be operating without any dispute resolution clause. The same fails to withstand scrutiny, especially, when such a contract governs and obligates multiple stages and steps of execution of the terms therein. In the considered view of this Court, it does not make commercial sense that in a commercial contract, parties would not envisage any dispute resolution mechanism.

66. The Clause 23 of Fixture Recap expressly provides for English Law and London Arbitration. Further, it is to be noted that Clause 43 of the Booking Note elaborates the Arbitration Agreement already reflected in the Fixture Recap. It is pertinent to note that negotiations had taken place between the parties on 04<sup>th</sup> April, 2023 through a recap exchange and both the Fixture Recap and Booking Note were executed on 04<sup>th</sup> April, 2023. Fixture Recap is a document which in terms of shipping is a concise written



summary of the agreed upon terms between the ship owner (defendant) and the charterer (plaintiffs). The same comes from the word ‘recapitulation’, which means a summary of the main points of a discussion.

67. In the present case, the parties discussed the terms on 04<sup>th</sup> April, 2023 and on the same date materialized the Fixture Recap, and communicated the same over Email between the broker of the plaintiffs, i.e., Pirama National Shipping Service LLC and the agent of the ship owner, i.e., Ocean7 Projects ApS. Thus, both documents are of the same date, rendering it commercially implausible that the parties intended to abandon arbitration without any discussion, and not include Clause 43 in the terms governing the provisions of the Booking Note, which contained the Arbitration Clause.

68. Further, there is no document before this Court to evidence that the parties intended to change what had been agreed in the Fixture Recap or that the parties intended to dispense with the agreement to arbitrate.

69. Therefore, considering the documents before this Court, this Court is of the *prima facie* view that there exists a valid, enforceable and operative Arbitration Agreement between the parties, and the disputes between the parties ought to be resolved through the arbitration process, in terms of the agreement between the parties.

70. Delving on the aspects of interpretation of commercial contract *inter se* the parties, and holding that the Courts imply a term in a contract in order to give business efficacy to the transaction, when it is obvious that both parties must have intended it, the Supreme Court in the case of ***Nabha Power Limited (NPL) Versus Punjab State Power Corporation Limited***



(PSPCL) and Another<sup>14</sup>, held as follows:

“xxx xxx xxx

39. In *Liverpool City Council v. Irwin* [*Liverpool City Council v. Irwin*, 1976 QB 319: (1975) 3 WLR 663 (CA)], Lord Denning M.R., observed as under: (QB pp. 329-30)

**“It is often said that the courts only imply a term in a contract when it is reasonable and necessary to do so in order to give business efficacy to the transaction (see *The Moorcock* [*The Moorcock*, (1889) LR 14 PD 64 (CA)], LR p. 68). [Emphasis is put on the word “necessary”: *Reigate v. Union Mfg. Co. (Ramsbottom) Ltd.* [*Reigate v. Union Mfg. Co. (Ramsbottom) Ltd.*, (1918) 1 KB 592 (CA)], KB p. 605.] Or when it is obvious that both parties must have intended it: so obvious indeed that if an officious bystander had asked them whether there was to be such a term, both would have suppressed it testily: “Yes, of course” [see *Shirlaw v. Southern Foundries (1926) Ltd.* [*Shirlaw v. Southern Foundries (1926) Ltd.*, (1939) 2 KB 206: (1939) 2 All ER 113 (CA)], KB p. 227]. .....**

40. ....

I have respectfully to say that I prefer the views of the majority in the Court of Appeal. Bowen, L.J. said in the well-known passage in *The Moorcock* [*The Moorcock*, (1889) LR 14 PD 64 (CA)] : (PD p. 68)

**‘... In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are business men ... to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for...’**

That is not to say, of course, that consideration of what is reasonable plays no part in determining whether or not a term should be implied. Thus, in *Hamlyn & Co. v. Wood & Co.* [*Hamlyn & Co. v. Wood & Co.*, (1891) 2 QB 488 (CA)], decided only two years after *The Moorcock* [*The Moorcock*, (1889) LR 14 PD 64 (CA)] (to which he had been a party), Lord Esher, M.R. said, at QB p. 491:

**‘... the court has no right to imply in a written contract any such stipulation, unless, on considering the terms of the contract in a reasonable and business manner, an implication necessarily arises that the parties must have intended that the**

<sup>14</sup> (2018) 11 SCC 508.



**suggested stipulation should exist. It is not enough to say that it would be a reasonable thing to make such an implication. It must be a necessary implication in the sense that I have mentioned.’**

.....  
xxx xxx xxx

43. A parallel development in Australia arose out of a judgment of the Lords of the Judicial Committee of the Privy Council in the appeal preferred from the Full Court of the Supreme Court of Victoria in *B.P. Refinery (Westernport) Proprietary Ltd. v. Shire of Hastings* [*B.P. Refinery (Westernport) Proprietary Ltd. v. Shire of Hastings*, 1977 UKPC 13: (1977) 180 CLR 266 (Aus)]. On the implication of the terms of contraction five conditions were laid down and a reference was, once again, made to *The Moorcock* [*The Moorcock*, (1889) LR 14 PD 64 (CA)] , *Reigate v. Union Mfg. Co. (Ramsbottom) Ltd.* [*Reigate v. Union Mfg. Co. (Ramsbottom) Ltd.*, (1918) 1 KB 592 (CA)] and *Shirlaw v. Southern Foundries (1926) Ltd.* [*Shirlaw v. Southern Foundries (1926) Ltd.*, (1939) 2 KB 206 : (1939) 2 All ER 113 (CA)] in the following terms:

“40. **Their Lordships do not think it necessary to review exhaustively the authorities on the implication of a term in a contract which the parties have not thought fit to express. In their view, for a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that “it goes without saying”; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract.**

41. Their Lordships venture to cite only three passages — albeit they are familiar to every student of this branch of the law. In *The Moorcock* [*The Moorcock*, (1889) LR 14 PD 64 (CA)] Bowen, L.J. said: (PD p. 68)

‘... I believe if one were to take all the cases, and they are many, of implied warranties or covenants in law, it will be found that in all of them the **law is raising an implication from the presumed intention of the parties with the object of giving to the transaction such efficacy as both parties must have intended that at all events it should have. In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction**



**as must have been intended at all events by both parties who are business men....'**

*It is because the implication of a term rests on the presumed intention of the parties that the primary condition must be satisfied that the term sought to be implied must be reasonable and equitable. It is not to be imputed to a party that he is assenting to an unexpressed term which will operate unreasonably and inequitably against himself.*

*In Reigate v. Union Mfg. Co. (Ramsbottom) Ltd. [Reigate v. Union Mfg. Co. (Ramsbottom) Ltd., (1918) 1 KB 592 (CA)], Scrutton, L.J. said: (KB p. 605)*

**'... A term can only be implied if it is necessary in the business sense to give efficacy to the contract i.e. if it is such a term that it can confidently be said that if at the time the contract was being negotiated someone had said to the parties, "What will happen in such a case?", they would both have replied: "Of course, so and so will happen; we did not trouble to say that; it is too clear".'**

*In Shirlaw v. Southern Foundries (1926) Ltd. [Shirlaw v. Southern Foundries (1926) Ltd., (1939) 2 KB 206: (1939) 2 All ER 113 (CA)], MacKinnon, L.J. said: (KB p. 227)*

**"... 'Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement, they would testily suppress him with a common, "Oh, of course!" ' "**

*(emphasis supplied)*

**44.** *The next development was in Investors Compensation Scheme Ltd. v. West Bromwich Building Society [Investors Compensation Scheme Ltd. v. West Bromwich Building Society, (1998) 1 WLR 896 : (1998) 1 All ER 98 (HL)] . Lord Hoffmann, in his majority opinion, prefaced his explanation of reasons with some general remarks about the principles which contractual documents are nowadays construed—common sense principles by which any serious utterance would be interpreted in ordinary life. Almost all the old intellectual baggage of "legal" interpretation was observed to have been discarded, and the principles summarised as follows: (WLR pp. 912 H-913 F)*

***"(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the***



*time of the contract.*

*(2) The background was famously referred to by Lord Wilberforce as the “matrix of fact”, but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.*

*(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.*

*(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [*Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.*, 1997 AC 749 : (1997) 2 WLR 945 (HL)]*

*(5) The “rule” that words should be given their “natural and ordinary meaning” reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require Judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *Antaios Compania Naviera S.A. v. Salen Rederierna A.B.* [*Antaios Compania Naviera S.A. v. Salen Rederierna A.B.*, 1985 AC 191 : (1984) 3 WLR 592 (HL)] : (AC p. 201)*



*'... if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense.'* ”

45. Once again, Lord Hoffmann, now sitting on the Privy Council, in *Attorney General of Belize v. Belize Telecom Ltd.* [*Attorney General of Belize v. Belize Telecom Ltd.*, (2009) 1 WLR 1988 (PC)] , dealt with the implied terms of the contract in the context of the articles of association of a company. It has been observed as under: (WLR pp. 1993-95, paras 16-27)

“ ..... ”

17. The question of implication arises when the instrument does not expressly provide for what is to happen when some event occurs. The most usual inference in such a case is that nothing is to happen. If the parties had intended something to happen, the instrument would have said so. Otherwise, the express provisions of the instrument are to continue to operate undisturbed. If the event has caused loss to one or other of the parties, the loss lies where it falls.

18. In some cases, however, the reasonable addressee would understand the instrument to mean something else. **He would consider that the only meaning consistent with the other provisions of the instrument, read against the relevant background, is that something is to happen. The event in question is to affect the rights of the parties. The instrument may not have expressly said so, but this is what it must mean. In such a case, it is said that the court implies a term as to what will happen if the event in question occurs. But the implication of the term is not an addition to the instrument. It only spells out what the instrument means.**

19. The proposition that the implication of a term is an exercise in the construction of the instrument as a whole is not only a matter of logic (since a court has no power to alter what the instrument means) but also well supported by authority. In *Trollope and Colls Ltd. v. North West Metropolitan Regl. Hospital Board* [*Trollope and Colls Ltd. v. North West Metropolitan Regl. Hospital Board*, (1973) 1 WLR 601 : (1973) 2 All ER 260 (HL)] , Lord Pearson, with whom Lord Guest and Lord Diplock agreed, said: (WLR p. 609 B-D)

**'... the court does not make a contract for the parties. The court will not even improve the contract which the parties have made for themselves, however desirable the improvement**



**might be. The court's function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been more suitable. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made for themselves.**

(emphasis in original)

.....

22. There are dangers in treating these alternative formulations of the question as if they had a life of their own. Take, for example, the question of whether the implied term is “necessary to give business efficacy” to the contract. That formulation serves to underline two important points. The first, conveyed by the use of the word “business”, is that in considering what the instrument would have meant to a reasonable person who had knowledge of the relevant background, one assumes the notional reader will take into account the practical consequences of deciding that it means one thing or the other. **In the case of an instrument such as a commercial contract, he will consider whether a different construction would frustrate the apparent business purpose of the parties.** That was the basis upon which *Equitable Life Assurance Society v. Hyman* [*Equitable Life Assurance Society v. Hyman*, (2002) 1 AC 408 : (2000) 3 WLR 529 (HL)] was decided. **The second, conveyed by the use of the word “necessary”, is that it is not enough for a court to consider that the implied term expresses what it would have been reasonable for the parties to agree to. It must be satisfied that it is what the contract actually means.**

.....

46. There were, once again, parallel developments in India during this period in various High Courts but the views of this Court can be found expression in *Dhanrajamal Gobindram v. Shamji Kalidas and Co.* [*Dhanrajamal Gobindram v. Shamji Kalidas and Co.*, (1961) 3 SCR 1020 : AIR 1961 SC 1285] : (AIR pp. 1291-92, para 19)



**“19. ... Commercial documents are sometimes expressed in language which does not, on its face, bear a clear meaning. The effort of courts is to give a meaning, if possible. This was laid down by the House of Lords in Hillas & Co. v. Arcos Ltd. [Hillas & Co. v. Arcos Ltd., 1932 All ER Rep 494 (HL)], and the observations of Lord Wright have become classic, and have been quoted with approval both by the Judicial Committee and the House of Lords ever since. The latest case of the House of Lords is Adamastos Shipping Co. Ltd. v. Anglo-Saxon Petroleum Co. Ltd. [Adamastos Shipping Co. Ltd. v. Anglo-Saxon Petroleum Co. Ltd., 1959 AC 133 : (1958) 2 WLR 688 (HL)] There, the clause was “This bill of lading”, whereas the document to which it referred was a charter-party. Viscount Simonds summarised at AC p. 158 all the rules applicable to construction of commercial documents, and laid down that effort should always be made to construe commercial agreements broadly and one must not be astute to find defects in them, or reject them as meaningless.”**

47. In *Union of India v. D.N. Revri & Co.* [*Union of India v. D.N. Revri & Co.*, (1976) 4 SCC 147], P.N. Bhagwati, J. (as he then was), speaking for the Bench of two Judges said in para 7 as under: (SCC p. 151)

**“7. It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation. ...”**

48. Lastly, in *Satya Jain v. Anis Ahmed Rushdie* [*Satya Jain v. Anis Ahmed Rushdie*, (2013) 8 SCC 131: (2013) 3 SCC (Civ) 738], Ranjan Gogoi, J., **elucidated the well-established principles of the classic test of business efficacy to achieve the result of consequences intended by the parties acting as prudent businessmen.** It was opined as under: (SCC pp. 143-44, paras 33-35)

**“33. The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen. Business efficacy means the power to produce intended results. The classic test of business efficacy**



was proposed by Bowen, L.J. in The Moorcock [The Moorcock, (1889) LR 14 PD 64 (CA)]. This test requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. But only the most limited term should then be implied—the bare minimum to achieve this goal. If the contract makes business sense without the term, the courts will not imply the same. The following passage from the opinion of Bowen, L.J. in The Moorcock [The Moorcock, (1889) LR 14 PD 64 (CA)] sums up the position: (PD p. 68)

‘... In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are businessmen; not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of those perils or chances.’

.....  
35. The business efficacy test, therefore, should be applied only in cases where the term that is sought to be read as implied is such which could have been clearly intended by the parties at the time of making of the agreement. ...”

xxx xxx xxx”

(Emphasis Supplied)

71. The position of law is also clear to the effect that it has always been the intent of the Courts to validate an arbitration agreement, rather than to invalidate it. In the present case, keeping in mind the communications between the parties and the documents on record, it becomes apparent that the Arbitration Clause, even as a general standard, was agreed upon by the parties, and there exists a valid Arbitration Clause in the agreement between the parties.



72. In this regard, reference is made to the judgment in the case of *Govind Rubber Limited Versus Louis Dreyfus Commodities Asia Private Limited*<sup>15</sup>, wherein, Supreme Court held that a commercial document having an arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it. The agreement has to be interpreted in order to effectuate the immediate intention of the parties. Thus, it was held as follows:

“xxx xxx xxx

**17. We are also of the opinion that a commercial document having an arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it. On the principle of construction of a commercial agreement, Scrutton on Charter Parties (17th Edn., Sweet & Maxwell, London, 1964) explained that a commercial agreement has to be construed, according to the sense and meaning as collected in the first place from the terms used and understood in the plain, ordinary and popular sense (see Article 6 at p. 16). The learned author also said that the agreement has to be interpreted “in order to effectuate the immediate intention of the parties”. Similarly, Russell on Arbitration (21st Edn.) opined, relying on Astro Vencedor Compania Naviera S.A. v. Mabanaf GmbH [(1970) 2 Lloyd's Rep 267], that the court should, if the circumstances allow, lean in favour of giving effect to the arbitration clause to which the parties have agreed. The learned author has also referred to another judgment in Paul Smith Ltd. v. H and S International Holdings Inc. [(1991) 2 Lloyd's Rep 127] in order to emphasise that in construing an arbitration agreement the court should seek to “give effect to the intentions of the parties”. (See p. 28 of the book.)**

**18. The Apex Court also in Union of India v. D.N. Revri and Co. [(1976) 4 SCC 147: AIR 1976 SC 2257], held that a commercial document between the parties must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. The learned Judges clarified it by saying: (SCC p. 151, para 7)**

**“7. It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to**

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<sup>15</sup> (2015) 13 SCC 477.



**invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation.**”

xxx xxx xxx”

(Emphasis Supplied)

73. Likewise, in the case of ***Glencore International AG Versus Shree Ganesh Metals and Another***<sup>16</sup>, holding that if the circumstances allow, the Courts should lean in favour of giving effect to the arbitration clause to which the parties have agreed, the Supreme Court has held as follows:

“xxx xxx xxx

27. *More relevant is the decision of this Court in Govind Rubber Limited v. Louis Dreyfus Commodities Asia Private Limited, wherein this Court observed that a commercial document having an arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it. Reference was made to Scrutton on Charter Parties in the context of principles relating to construction of a commercial agreement and it was observed that it has to be construed according to the sense and meaning as collected in the first place from the terms used and understood in the plain, ordinary and popular sense. It was further observed that the Court should, if the circumstances allow, lean in favour of giving effect to the arbitration clause to which the parties have agreed. As in the case on hand, one of the parties therein had not signed the contract agreement. However, at its request, the other party had changed the terms mentioned in the contract. Further, as is the case presently, the parties acted upon the said contract agreement and, in that factual scenario, this Court observed thus:*

**“16. On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication. Section 7(4)(c) provides that there can be an arbitration agreement in the exchange of statements of**

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<sup>16</sup> 2025 SCC OnLine SC 1815.



*claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. **If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement. In the present day of e-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. In such agreements, if the identity of the parties is established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties.** Therefore, signature is not a formal requirement under Section 7(4)(b) or 7(4)(c) or under Section 7(5) of the Act.*

.....

*23. **It is clear that for construing an arbitration agreement, the intention of the parties must be looked into.** The materials on record which have been discussed hereinabove make it very clear that the appellant was prima facie acting pursuant to the sale contract issued by the respondent. So, it is not very material whether it was signed by the second respondent or not.”*

xxx xxx xxx”

*(Emphasis Supplied)*

74. Likewise, this Court also takes note of the judgment of the High Court of Justice, Queen’s Bench Division, Commercial Court in the case of *NWA and another Versus NVF and others*<sup>17</sup>, wherein, the Court was dealing with an appeal against an award under Section 67 of the UK Arbitration Act and elaborated upon the need for consideration of the commercial rationale of parties while constructing an arbitration clause between them. The relevant portion of the said judgment reads as under:

“xxx xxx xxx

*33. Additionally, when interpreting an arbitration clause, particularly in the context of international commercial arbitration, Lord Hoffmann’s observations in Premium Nafta Products Limited & others v Fili Shipping Company Limited [2007] UKHL 40 at [5] to*

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<sup>17</sup> [2021] EWHC 2666 (Comm).



[8], (the 'Fiona Trust' case) should be kept firmly in mind:

“...Arbitration is consensual. It depends upon the intention of the parties as expressed in their agreement. Only the agreement can tell you what kind of disputes they intended to submit to arbitration. But the meaning which parties intended to express by the words which they used will be affected by the commercial background and the reader’s understanding of the purpose for which the agreement was made. Businessmen in particular are assumed to have entered into agreements to achieve some rational commercial purpose and an understanding of this purpose will influence the way in which one interprets their language.

6. In approaching the question of construction, it is therefore necessary to inquire into the purpose of the arbitration clause. As to this, I think there can be no doubt. The parties have entered into a relationship, an agreement or what is alleged to be an agreement or what appears on its face to be an agreement, which may give rise to disputes. They want those disputes decided by a tribunal which they have chosen, commonly on the grounds of such matters as its neutrality, expertise and privacy, the availability of legal services at the seat of the arbitration and the unobtrusive efficiency of its supervisory law. Particularly in the case of international contracts, they want a quick and efficient adjudication and do not want to take the risks of delay and, in too many cases, partiality, in proceedings before a national jurisdiction.

7. If one accepts that this is the purpose of an arbitration clause, its construction must be influenced by whether the parties, as rational businessmen, were likely to have intended that only some of the questions arising out of their relationship were to be submitted to arbitration and others were to be decided by national courts. ...one would need to find very clear language before deciding that they must have had such an intention.

8. A proper approach to construction therefore requires the court to give effect, so far as the language used by the parties will permit, to the commercial purpose of the arbitration clause. ...”

34. In the case of the Agreement, it is clear that what the parties as rational businessmen consensually agreed and intended was that any dispute arising out of or in connection with their agreement



**should be referred to arbitration.** *The wording of clause 10.2(b) makes that clear; “the dispute shall be referred to and finally resolved by arbitration” (emphasis added). They agreed upon LCIA arbitration in London. They did not intend that their disputes should be litigated, in whole or in part. Indeed, by clause 10.2(g) they even waived “any right of recourse to national courts in order to challenge or appeal against any arbitral award.”*

xxx xxx xxx”

(Emphasis Supplied)

75. Considering the discussion hereinabove, this Court is of a *prima facie* view that there is a valid Arbitration Clause/Agreement governing the parties.

**Whether the impugned arbitration proceedings are oppressive or vexatious or unconscionable?**

76. Thus, having held that there is a valid Arbitration Clause between the parties, this brings the Court to the next question to be decided, i.e., whether the plaintiffs have been able to establish that the impugned arbitration proceedings commenced at the behest of the defendant are vexatious, oppressive or unconscionable for this Court to injunct the said arbitration proceedings being held in London.

77. It is pertinent to note that anti-arbitration injunctions are an exceptional remedy, granted only in the rarest of circumstances, where the arbitration is shown to be vexatious, oppressive and unconscionable. A proceeding becomes vexatious if it is found to be without reasonable ground to harass or subdue an adversary. Whereas, oppressive proceedings are those that unjustly burden the other side to the point of being unconscionable.

78. On this aspect, it is to be noted that Section 45 of Part II of the Arbitration Act provides that Courts shall not refer parties to arbitration, when the arbitration agreement is null and void; or inoperative or incapable



of being performed. An anti-arbitration injunction is an exceptional relief and can be granted only if it is shown that the arbitration agreement is null and void, inoperative or incapable of being performed, in line with the principles underlying Section 45 of the Arbitration Act.

79. Thus, in the case of *World Sport Group (Mauritius) Limited Versus MSM Satellite (Singapore) PTE. Limited*<sup>18</sup>, the Supreme Court upheld the judgment of the Single Judge in rejecting the relief of injunction against a foreign seated arbitral proceeding, on the ground that agreement between the parties being void on account of fraud would be for the arbitrator to consider. Further, while upholding the said judgment, the Supreme Court emphasized upon the mandate of Section 45 of the Arbitration Act, and held that unless an agreement is null and void, inoperative or incapable of being performed, the Court shall not decline reference to arbitration. Thus, it held as follows:

“xxx xxx xxx

**24. Any civil court in India which entertains a suit, however, has to follow the mandate of the legislature in Sections 44 and 45 in Chapter I of Part II of the Act, which are quoted hereinbelow:**

“Chapter I

**NEW YORK CONVENTION AWARDS**

*44. Definition.—In this Chapter, unless the context otherwise requires, ‘foreign award’ means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—*

**(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and**

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<sup>18</sup> 2014 SCC OnLine SC 58.



(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

**45. Power of judicial authority to refer parties to arbitration.—Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in Section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.”**

25. The language of Section 45 of the Act quoted above makes it clear **that notwithstanding anything contained in Part I or in the Code of Civil Procedure, a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in Section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.** Thus, even if, under Section 9 read with Section 20 CPC, the Bombay High Court had the jurisdiction to entertain the suit, once a request is made by one of the parties or any person claiming through or under him to refer the parties to arbitration, the Bombay High Court was obliged to refer the parties to arbitration unless it found that the agreement referred to in Section 44 of the Act was null and void, inoperative or incapable of being performed. **In the present case, the appellant may not have made an application to refer the parties to arbitration, but Section 45 of the Act does not refer to any application as such. Instead, it refers to the request of one of the parties or any person claiming through or under him to refer the parties to arbitration. In this case, the appellant may not have made an application to refer the parties to arbitration at Singapore but has filed an affidavit-in-reply to the notice of motion and has stated in Paras 3, 4 and 5 of this affidavit that the defendant had already invoked the arbitration agreement in the Facilitation Deed and the arbitration proceedings have commenced and that the suit was an abuse of process of court. The appellant had thus made a request to refer the parties to arbitration at Singapore which had already commenced.**

26. **Section 45 of the Act quoted above also makes it clear that even where such request is made by a party, it will not refer the**



**parties to arbitration, if it finds that the agreement is null and void, inoperative or incapable of being performed.** As the very language of Section 45 of the Act clarifies the word “agreement” would mean the agreement referred to in Section 44 of the Act. Clause (a) of Section 44 of the Act refers to

“... an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies”.

(emphasis supplied)

xxx xxx xxx

34. *Albert Jan Van Den Berg in an article titled “The New York Convention, 1958 — An Overview” published in the website of ICCA*

([www.arbitration-icca.org/media/0/12125884227980/new\\_york\\_convention\\_of-1958\\_overview.pdf](http://www.arbitration-icca.org/media/0/12125884227980/new_york_convention_of-1958_overview.pdf)), referring to Article II(3) of the New York Convention, states:

**“The words ‘null and void’ may be interpreted as referring to those cases where the arbitration agreement is affected by some invalidity right from the beginning, such as lack of consent due to misrepresentation, duress, fraud or undue influence.**

**The word ‘inoperative’ can be said to cover those cases where the arbitration agreement has ceased to have effect, such as revocation by the parties.**

**The words ‘incapable of being performed’ would seem to apply to those cases where the arbitration cannot be effectively set into motion. This may happen where the arbitration clause is too vaguely worded, or other terms of the contract contradict the parties’ intention to arbitrate, as in the case of the so-called co-equal forum selection clauses. Even in these cases, the courts interpret the contract provisions in favour of arbitration.”**

xxx xxx xxx

36. **Thus, the arbitration agreement does not become “inoperative or incapable of being performed” where allegations of fraud have to be inquired into and the court cannot refuse to refer the parties to arbitration as provided in Section 45 of the Act on the ground that allegations of fraud have been made by the party which can only be inquired into by the court and not by the arbitrator.** *N. Radhakrishnan v. Maestro Engineers [(2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] and Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak [AIR 1962 SC 406] were decisions rendered in the*



context of domestic arbitration and not in the context of arbitrations under the New York Convention to which Section 45 of the Act applies. **In the case of such arbitrations covered by the New York Convention, the Court can decline to make a reference of a dispute covered by the arbitration agreement only if it comes to the conclusion that the arbitration agreement is null and void, inoperative or incapable of being performed, and not on the ground that allegations of fraud or misrepresentation have to be inquired into while deciding the disputes between the parties.**

xxx xxx xxx

39. The Division Bench of the High Court has also held that as allegations of fraud and serious malpractices on the part of the appellant are in issue, it is only the court which can decide these issues through furtherance of judicial evidence by either party and these issues cannot be properly gone into by the arbitrator. **As we have already held, Section 45 of the Act does not provide that the court will not refer the parties to arbitration if the allegations of fraud have to be inquired into. Section 45 provides that only if the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed, it will decline to refer the parties to arbitration.**

xxx xxx xxx”

(Emphasis Supplied)

80. Likewise, in the case of ***Balaji Steel Trade Versus Fludor Benin S.A. and Others***<sup>19</sup>, dealing with a suit seeking a decree of permanent injunction restraining the defendant therein from continuing with the foreign seated arbitral proceedings in Benin, West Africa, this Court has held as follows:

“xxx xxx xxx

**46. The use of the terms “shall” and “refer the parties to arbitration” in Section 45 of the Arbitration Act, as interpreted unambiguously by the aforementioned statute, makes it essential for the Court to refer the parties to arbitration if the agreement in question is neither void nor inoperative nor incapable of being performed. To put it another way, the Court has no discretion other than sending the parties to arbitration once it is found that the agreement in question is a legal and valid agreement that is capable of being performed by the parties to the Suit.**

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<sup>19</sup> 2024 SCC OnLine Del 7750.



47. Section 45 stipulates the requirements for a judicial authority when seized of an action to refer the parties to arbitration. The section stipulates that the action must be in a matter in respect of which the parties have made an agreement referred to in section 44. Further, the reference should be made at the request of one of the parties. This is subject only to the agreement being found by the judicial authority to be null and void, inoperative or incapable of being performed. It is not the Plaintiff's case that the agreements for arbitration are null and void, inoperative or incapable of being performed.

xxx xxx xxx

49. In *Sasan Power Ltd. v. North American Coal Corpn. (India)(P)(Ltd.)*, (2016) 10 SCC 813, the apex court while highlighting the essentials under section 45 of the A&C Act, inter-alia held as under:

*“50. The case of the appellant as disclosed from the plaint is that Article X Section 10.2 is inconsistent with some provisions of the Indian Contract Act, 1872, and hit by Section 23 of the Indian Contract Act (as being contrary to public policy). It is a submission regarding the legality of the substantive contract. Even if the said submission is to be accepted, it does not invalidate the arbitration agreement because the arbitration agreement is independent and apart from the substantive contract. All that we hold is that the scope of enquiry under Section 45 does not extend to the examination of the legality of the substantive contract. The language of the section is plain and does not admit of any other construction. For the purpose of deciding whether the suit filed by the appellant herein is maintainable or impliedly barred by Section 45 of the 1996 Act, the Court is required to examine only the validity of the arbitration agreement within the parameters set out in Section 45, but not the substantive contract of which the arbitration agreement is a part.”*

50. In *Superon Schweisstechnik India Ltd. v. Europaische Holding Intercito*, 2022 SCC OnLine Del 4756, wherein it was inter alia held that:

*“17. The only point which Mr. Kapoor has stressed is that the scope of enquiry of under Section 45 is on a prima facie basis. This indeed is the correct position, as is evident from the language of the provision itself. At this stage, it must also be noted that the words “unless it prima facie finds” were introduced in Section 45 by replacing the words “unless it finds” by way of Amending Act No. 33 of 2019, made effective from 30<sup>th</sup> August, 2019. This expression is now at par with what*



can be seen under Section 8 of the Act, as applicable to domestic arbitration. Therefore, at this stage, although the Court will examine as to whether the Agreement sought to be enforced by way of the instant suit is null and void, inoperative or incapable of being performed, yet the test that would be applied would be of a prima facie basis. This means that the Court is not to conduct any detailed enquiry or minute trial at this stage, in order to discern if such is the case. Hence, if the Court ex facie finds that the Agreement is null and void, inoperative or incapable of being performed, the Court would decline a request on behalf of a party for reference to arbitration.”

xxx xxx xxx

59. Furthermore, the principle of minimal judicial interference is enshrined in Article 5 of the UNCITRAL Model Law, which provides: “In matters governed by this law, no court shall intervene except as provided in this law.” This legal framework has been adopted and implemented in the A&C Act in Section 5. When arbitration proceedings are triggered by one of the parties because of the existence of an arbitration agreement between them, Section 5 of the A&C Act, being a non-obstante clause, provides a clear message that there should not be any judicial intervention at that stage scuttling the arbitration proceedings. This provision prohibits judicial oversight of procedural decisions made by the arbitral tribunal in the course of an ongoing arbitration. However, it does not envisage a complete bar to judicial intervention in arbitral proceedings. Reliance is placed upon A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386.

xxx xxx xxx

**61.** In light of the preceding factual and legal analysis, the answers to the issues framed in para 44 are as under:

Issue (i.) What are the requisites to be considered by the court while deciding an application filed under section 45 of the A&C Act?

Answer: At the time of considering an application under Section 45 of the A&C Act, a judicial authority shall, at the request of either of the parties, refer the parties to arbitration unless it prima facie finds that the said agreement is ‘null’ and ‘void’, ‘inoperative’ or ‘incapable of being performed’.

xxx xxx xxx”

(Emphasis Supplied)



81. Perusal of the aforesaid judgments brings to the fore that the factors under Section 45 of the Arbitration Act must be satisfied while adjudicating a suit seeking an anti-arbitration injunction. In the facts of the present case, this Court has already held that there is a valid agreement between the parties, and *prima facie* there exists a valid Arbitration Clause therein. Thus, once it is found that the agreement in question is valid and capable of being performed, the Court is required to relegate the parties to arbitration. Further, the factor in relation to an agreement being inoperative would not apply in the present case, as the parties themselves were operating under the agreement and performing the conditions therein in relation to the voyage. Moreover, in pursuance to the operation of the agreement, the parties had invoked the *force majeure* and arbitration clauses. Thus, the factors underscored under Section 45 of the Arbitration Act are not applicable to the facts of the present case.

82. Likewise, declining to interfere and vacating the injunction granted earlier in the absence of any finding that the arbitration agreement itself was invalid or incapable of performance, and further stating that the factors under Section 45 of the Arbitration Act were not met, *whilst* emphasizing that cases with respect to specific trade require domain expertise in the form of specialized arbitration institutions to effectively adjudicate disputes, the Court in the case of *ADM International Sarl Versus Sunraja Oil Industries Private Limited*<sup>20</sup>, held as follows:

“xxx xxx xxx

*23. When the above clauses are examined cumulatively, the undisputed position that emerges is that all disputes are required to be referred to arbitration in accordance with the Rules of Arbitration and*

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<sup>20</sup> 2021 SCC OnLine Mad 16535.



Appeal of FOSFA. As stated earlier, such arbitration would be governed by the English Arbitration Act and the juridical seat of arbitration is England. It is also evident that the contracts are required to be construed in accordance with English law. Thus, there is little doubt that the contract discloses the parties' intention that the governing and curial law is English law, and that the arbitration would be governed by the FOSFA Rules of Arbitration and Appeal. Consequently, the arbitral tribunal constituted as per the contracts and not Indian courts should exercise jurisdiction, in the first instance, and, thereafter, challenges, if any, would lie before the English courts. The only exception that the contracts carve out, in this regard, is as regards interim measures to secure the claim or counter claim, as the case may be, which may be requested for before an appropriate court; but it is certainly not the case of the respective Plaintiff that these suits would qualify as actions for such interim measures.

**24. This leads to the question whether a case is made out to grant an anti-arbitration injunction. The principles relating to the grant of anti-suit injunctions were examined and formulated in paragraph 24 of Modi Entertainment, wherein the Supreme Court held, inter alia, that an anti-suit injunction would not be granted to forbear the exercise of jurisdiction by the forum chosen by the parties. Likewise, the law on anti-arbitration injunctions was considered in McDonalds India Pvt. Ltd. v. Vikram Bakshi, 2016 SCC OnLine Del 3949 (McDonalds) by a Division Bench of the Delhi High Court, wherein the Court underscored the fact that the threshold tests for an anti-arbitration injunction are more exacting than that applicable for an anti-suit injunction and concluded that the principal considerations would be those underpinning Section 45 of the Indian Arbitration Act, i.e. whether there is an arbitration agreement; and whether such agreement is null and void, inoperative or incapable of being performed. I respectfully concur with the principles set out therein. Therefore, these tests should be applied to the case at hand.**

xxx xxx xxx

27. The respective Plaintiff also contended that the arbitral institution is not neutral inasmuch as it is controlled by oil seed producers. In effect, the respective Plaintiff appeared to contend that any arbitral institution which is set up by a trade organisation is not neutral. On this issue, reliance was placed on **Laker Airways** to contend that the onus on the plaintiff is limited to establishing justifiable doubts of bias, and that actual bias need not be established. **While “justifiable doubts of bias” may be a valid test when an arbitral tribunal is**



**challenged either before such tribunal or before a jurisdictional court; as stated earlier, a higher threshold should be satisfied for an anti-arbitration injunction because the plaintiff should justify the departure from the contractual dispute resolution mechanism. There are several arbitral institutions spread across the world which are established by organisations or entities that represent the interest of the specific trade. This is particularly the case with regard to trade in commodities such as cotton, oil, spices and the like. The rationale for the establishment of such arbitral institutions is that domain expertise is necessary to effectively adjudicate such disputes and trade practice and the knowledge thereof is also significant. In the present context unless it is ex facie evident that the contractual remedy is unconscionable and illusory, either because there was no genuine agreement to resolve disputes through arbitration or for other comparable and compelling reasons, there is no basis to interfere with the contractual dispute resolution process. The material on record does not support a conclusion that the FOSFA arbitral institution is ex facie not neutral and I see no reason to draw such conclusion merely because FOSFA is an organisation representing the interest of traders in oil seeds and fats.**

**28. The next contention that should be dealt with relates to the alleged lack of neutrality on the part of the arbitrators. Although such allegation is levelled by the respective Plaintiff, no actionable material has been placed before this Court to substantiate the contention that all the panel arbitrators of FOSFA or the specific arbitrators in the present case are not neutral.** Indeed, the facts on record disclose that the respective Plaintiff proceeded to nominate its arbitrator upon receiving a notice of arbitration from ADM. The decision to abandon the arbitral process and institute proceedings before this Court was taken subsequently. In any event, any grievance on this score should be canvassed before the arbitral tribunal and/or the courts in the UK in accordance with applicable law.

**29.** A contention was raised that the arbitral institution does not permit a party to be represented by an advocate or practising lawyer, but that ADM was permitted to avail such assistance. On perusal of the English Arbitration Act, I find that there are mandatory provisions that ensure equal opportunity (Section 33). Indeed, there are provisions to challenge an arbitrator (Section 23 and 24) and provisions that enable: jurisdictional challenges (Section 67); challenges on the ground of serious irregularity (Section 68); and on a point of law (Section 69). Although such provisions are hedged with conditions, it is clear that the grounds of challenge raised here by the respective Plaintiff could have been and may still be raised before the arbitral tribunal or the English courts.



**30. Thus, the respective Plaintiff has failed to demonstrate that the arbitration agreement is null and void, inoperative or incapable of being performed. In light of the above discussion and analysis, I find no reason to continue the anti-arbitration injunction. Consequently, the order of injunction granted originally on 05.07.2019 and extended periodically stands vacated. I also conclude that this Court does not have jurisdiction As a corollary, the applications to revoke leave are allowed.**

xxx xxx xxx”

(Emphasis Supplied)

83. In the case of *Jinneng Clean Energy Technology Ltd. Versus SunEdison Energy Holding (Singapore) Pte Ltd. and Others*<sup>21</sup>, the Court held that the validity or invalidity of the arbitration agreement was under the purview of the Arbitral Tribunal as per the principle of *Komeptenz-Komeptenz*. It was held that if the arbitration agreement is *prima facie* found to be valid, the Courts will not enter into the question of validity of proceedings before the Arbitral Tribunal. Thus, it was held as follows:

“xxx xxx xxx

**261. After the Courts in India recognized the existence of an “agreement in writing” whether the agreement was valid or not for the purpose of arbitration was to be considered by the Arbitral Tribunal itself while exercising its power under Section 10(2) of the Singapore International Arbitration Act, 1994. Section 10(2) of the Singapore International Arbitration Act, 1994 is similar to Section 16 of the Arbitration and Conciliation Act, 1996. Both are based on the doctrine of Kompetenz-kompetenz which are incorporated in Article 16 of the UNCITRAL Model Law which implies it is for the Arbitral Tribunal to determine whether it has jurisdiction to proceed with the case or not.**

xxx xxx xxx

**264. In Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 at page 69, the Constitution Bench of the Hon'ble Supreme Court referred to Article 16 of the Model Law and observed that the Arbitral Tribunal's**

<sup>21</sup> 2024 SCC OnLine Mad 7039.



**jurisdiction will be affected only when the defect causing invalidity is directed at the arbitration agreement.**

265. The Hon'ble Supreme Court further observed that the invalidity of the underlying contract will not necessarily entail the invalidity of an arbitration agreement contained in the contract. Paragraph No. 110 and &112 of the said judgment reads as under:—

“110. Article 16 of the Model Law deals with the competence of an Arbitral Tribunal to rule on its own jurisdiction. Article 16(1) provides:

“16. **Competence of arbitral tribunal to rule on its jurisdiction.**—The Arbitral Tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.”

(emphasis supplied)

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112. According to the UNCITRAL Working Group, the separability presumption is incorporated under Article 16(1) to complement the principle of competence-competence. **The separability presumption further ensures that the invalidity of the underlying contract does not affect the jurisdiction of the Arbitral Tribunal to decide on the nullity of the contract or any other issues submitted to its jurisdiction by the parties “unless it finds that the defect which causes the nullity of the contract affects also the arbitration clause itself.”** [“Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration”, A/CN.9/264 (25-3-1985) 38.] The last sentence of Article 16(1) (extracted above) states the general principle of contractual validity of arbitration clauses. [Gary Born, *International Arbitration Law and Practice* (3rd Edn., 2021) 403.] — [Digest of Case Law on the Model Law on International Commercial Arbitration (2012) 76.]”

xxx xxx xxx

268. **Thus, the doctrine of competence-competence [doctrine of kompetenz-kompetenz] has been given full recognition under Singapore International Arbitration Act, 1994. Since the Arbitral Tribunal gets the first priority to determine issues with respect to the very existence of an “agreement in writing”, the jurisdiction of the**



**Courts are limited to a prima facie determination under Section 8 or 45 of the Arbitration and Conciliation Act,1996 as the case may be.**

xxx xxx xxx

**272. Thus, question of arbitrability of a dispute could have been raised and decided before the Court in Singapore if the respondent had filed an anti-arbitration suit in Singapore instead of Chennai, in India. Thereafter, the only option that was available for the respondents was before the Arbitral Tribunal as per the doctrine of Kompetenz - Kompetenz, which was raised by the respondent and answered against them, which decision was not only affirmed by the Singapore High Court, but also Court of Appeal of Singapore. Thus, it is not open for the respondents to question either the Arbitrability of the dispute at the stage of Recognition and Enforcement of the International Award passed by the Arbitral Tribunal.**

xxx xxx xxx

283. Secondly, the phrase “fundamental policy of Indian Law” was discussed in detail and interpreted as under in *Ssangyong Engg. & Construction Co. Ltd. v. NHAJ*, (2019) 15 SCC 131, which held as under:—

34. What is clear, therefore, is that the expression “public policy of India”, whether contained in Section 34 or in Section 48, would now mean the “fundamental policy of Indian law” as explained in paras 18 and 27 of *Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49]* i.e. the fundamental policy of Indian law would be relegated to “*Renusagar*” (*Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644*) understanding of this expression. This would necessarily mean that *Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263]* expansion has been done away with. In short, *Western Geco*, as explained in paras 28 and 29 of *Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49]*, **would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. ...**

xxx xxx xxx”

(Emphasis Supplied)

84. The principles of *Kompetenz-Kompetenz*, are enshrined in Section 16



of the Arbitration Act, and it is settled law that Courts will not interfere with the questions such as validity or invalidity of the arbitral proceedings, if the Courts have *prima facie* come to the conclusion that there exists a valid arbitration clause. Therefore, in the facts of the present case, wherein this Court has already held there to be a *prima facie* valid Arbitration Clause between the parties, thus, this Court cannot adjudicate and sit in appeal over the contentions in relation to jurisdiction of the Tribunal/LMAA.

85. It is pertinent to note the case of *Himachal Sorang Power Private Limited and Another Versus NCC Infrastructure Holdings Limited*<sup>22</sup>, wherein this Court, while reiterating that Courts should be slow and cautious in granting anti-arbitration injunctions, has carved out the parameters governing grant of the same, as follows:

“xxx xxx xxx

*82. This is, especially so, as what HSPL and TAQA, in effect, seek in terms of relief, both in the interlocutory application and the suit, is an anti-arbitration injunction. The Courts, ordinarily, have been very slow in granting injunctions whereby arbitration proceedings are brought to a standstill. The fundamental reason for this appears to be that the parties by entering into a contract would have necessarily agreed, as in this case, that all issues connected with or arising from the agreement entered into between them, would be tried by an Arbitral Tribunal duly constituted in terms of the agreement and, therefore, any sort of injunction granted by the Court would tantamount to aiding breach of the arbitration agreement.*

xxx xxx xxx

*101. Insofar as this Court is concerned, a decision cannot be taken as to whether the second action would be barred on the ground of constructive res judicata without a trial. To my mind, it is undoubtedly a mixed question of fact and law. Thus, at this stage, to say that the arbitration agreement is inoperative and/or incapable of being performed would be, metaphorically speaking, putting the cart before the horse.*

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<sup>22</sup> 2019 SCC OnLine Del 7575.



xxx xxx xxx

**127. Thus, if I were to attempt an encapsulation of the broad parameters governing anti-arbitration injunctions, they would be the following:**

i) *The principles governing anti-suit injunction are not identical to those that govern an anti-arbitration injunction.*

ii) **Court's are slow in granting an anti-arbitration injunction unless it comes to the conclusion that the proceeding initiated is vexatious and/or oppressive.**

iii) **The Court which has supervisory jurisdiction or even personal jurisdiction over parties has the power to disallow commencement of fresh proceedings on the ground of res judicata or constructive res judicata. If persuaded to do so the Court could hold such proceeding to be vexatious and/or oppressive. This bar could obtain in respect of an issue of law or fact or even a mixed question of law and fact.**

iv) **The fact that in the assessment of the Court a trial would be required would be a factor which would weigh against grant of anti-arbitration injunction.**

v) *The aggrieved should be encouraged to approach either the Arbitral Tribunal or the Court which has the supervisory jurisdiction in the matter. An endeavour should be made to support and aid arbitration rather than allow parties to move away from the chosen adjudicatory process.*

vi) *The arbitral tribunal could adopt a procedure to deal with "re-arbitration complaint" (depending on the rules or procedure which govern the proceeding) as a preliminary issue.*

xxx xxx xxx"

(Emphasis Supplied)

86. Likewise, declining anti-arbitration injunction and delineating principles with regard thereto, a Division Bench of this Court in the case of ***McDonald's India Private Limited Versus Vikram Bakshi and Others***<sup>23</sup>, held as follows:

"xxx xxx xxx

**40. It is important to note that the present case pertains to an anti-**

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<sup>23</sup> 2016 SCC OnLine Del 3949.



**arbitration injunction and the principles governing the present case cannot be the same as one governing a case of an anti-suit injunction. This is so because of the principles of autonomy of arbitration and the competence-competence (Kompetenz-kompetenz) principle.** For the present, it is necessary to note point numbers 6 and 7 in the extract from the Supreme Court decision in *Modi Entertainment Network* (*supra*). It has been observed that when one of the parties to a contract containing a jurisdiction clause approaches the court of choice in which exclusive or non-exclusive jurisdiction is created, the proceedings in that court cannot per se be treated as vexatious or oppressive. **Furthermore, the burden of establishing that the proceedings in the forum of choice are oppressive or vexatious would be on the party so contending to aver and prove the same.**

41. The only principle on which the respondents' case is based is that the arbitration proceedings at London would be vexatious or oppressive. **But, as pointed out in *Modi Entertainment Network* (*supra*), merely because an arbitration is proceeded with at the place of choice (London), would not, per se amount to a vexatious or oppressive proceeding. The onus would be on the respondents to establish that the arbitration proceedings are oppressive or vexatious.** We may also note that the learned counsel for the respondents had categorically stated that it is not the place of arbitration or the expenses which would be incurred for the conduct of arbitration proceedings at London, which is the objection on their part. The objection is to the forum of arbitration itself being vexatious. In other words, **the grievance of the respondents is not with regard to the place of arbitration, but to the arbitration proceedings itself !**

xxx xxx xxx

60. **Our focus is on the question whether an anti-arbitration injunction could at all have been granted in the facts and circumstances of the present case. We have already explained as to how, if the arbitration agreement was taken to be one which was covered under Section 44 of the 1996 Act, the arbitration proceedings could not be enjoined because the same was neither null or void, inoperative or incapable or being performed. Even if we assume that Part I of the 1996 Act was to apply, then also, because of the provisions of Section 8, the judicial authority would be obliged to refer the parties to arbitration.** We may point out that Section 8 and, in particular, sub-section (1) thereof has been recently amended with retrospective effect from 23.10.2015 to read as under :-

***“8. Power to refer parties to arbitration where there is an arbitration agreement.- (1) A judicial authority, before which***



*an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*

xxxx xxxx xxxx xxxx xxxx ”

**61. Thus, there is now a mandate to refer the parties to arbitration unless the court finds that prima facie (sic) no valid arbitration agreement exists. This is clearly not the case here. Therefore, in any eventuality, in the facts and circumstances of the case and applying the principles, as indicated above, the learned single Judge could not have restrained the appellant from pursuing the arbitration proceedings before the arbitral tribunal.**

62. There is a very interesting observation in paragraph 7.01 of *Redfern and Hunter on International Arbitration: Sixth Edition: Oxford University Press*. The observation is as follows: -

*“The relationship between national courts and arbitral tribunals swings between forced cohabitation and true partnership. Arbitration is dependent on the underlying support of the courts, which alone have the power to rescue the system when one party seeks to sabotage it. ...”*

**63. Courts need to remind themselves that the trend is to minimize interference with arbitration process as that is the forum of choice. That is also the policy discernible from the 1996 Act. Courts must be extremely circumspect and, indeed, reluctant to thwart arbitration proceedings. Thus, while courts in India may have the power to injunct arbitration proceedings, they must exercise that power rarely and only on principles analogous to those found in sections 8 and 45, as the case may be, of the 1996 Act. We have already indicated that the circumstances of invalidity of the arbitration agreement or it being inoperative or incapable of being performed do not exist in this case.**

xxx xxx xxx ”

*(Emphasis Supplied)*

87. In the present case, the plaintiffs have contended that the arbitration proceedings are vexatious, as the plaintiffs neither agreed to contract with the defendant, nor arbitrate with the defendant.



88. As regards the contention of the plaintiffs that the arbitral proceedings in London are vexatious, this Court has already given a *prima facie* finding that there exists a valid contract between the parties and that the contractual terms between the parties incorporate a valid Arbitration Clause. Therefore, the contention of the plaintiffs in this regard is rejected.

89. It is further contended by the plaintiffs that the arbitration proceedings are oppressive as after nine months of proceedings against plaintiff no. 2, in December, 2024, the defendant invoked a Second Reference arising out of the same Booking Note, same voyage and same cause of action against plaintiff no. 1. Thus, as per the plaintiffs, this has made plaintiffs bear the risk of double cost as well as inconsistent decisions.

90. Further, it is contended that the decision of the Arbitral Tribunal in London in allowing both arbitral proceedings to “co-exist” is *ex-facie* unconscionable.

91. As regards the aforesaid contention, this Court notes the submission on behalf of the defendant that the defendant was constrained to invoke two references against the respective plaintiffs, due to the conduct of the plaintiffs. The Booking Note identifies the “Merchant” as “SARR Freights” and bears the stamp of SARR Freights Corporation, i.e., plaintiff no. 1. Upon invocation of arbitration in the first reference on 27<sup>th</sup> July, 2023, plaintiff no. 2 responded and appointed an arbitrator on 09<sup>th</sup> August, 2023, leading the defendant to believe that plaintiff no. 2 was the contracting party.

92. As per the case put forth by the defendant, it was only subsequently that it became apparent that the Charter Party/Booking Note did not name plaintiff no. 2 and was executed and stamped by plaintiff no. 1. When



clarification was sought by the defendant, the plaintiff no. 2 stated that the plaintiff no. 2 was only acting as an agent of plaintiff no. 1. The defendant even tried to revise the first reference itself for it to be against plaintiff no.1. However, plaintiff no. 2 denied such revision. Since plaintiff no. 1 was nowhere named in the Booking Note and plaintiff no. 2 had not represented itself as an agent while signing, the defendant invoked arbitration against plaintiff no. 1 in the Second Reference, in order to obtain an award against the correct contractual party.

93. Before this Court, the defendant has stated in categorical terms that since the LMAA has unanimously held that plaintiff no. 1 was the “Merchant” and “Charterer” under the Fixture Recap and Booking Note, the defendant seeks to continue proceedings only against plaintiff no. 1.

94. Thus, this Court notes the submission of the defendant in this regard in their Reply to the present application, relevant portions of which, are reproduced as under:

“xxx xxx xxx

**48. The Charterparty mentions the “Merchant” as “SARR Freights”. The Charterparty is stamped by SARR Freights Corporation (Plaintiff No. 1). There is no noting that the Plaintiff No. 1 is signing as agents on behalf of the Plaintiff No. 2.**

**49. It is submitted that when the Defendant (through its insurers) issued the notice invoking arbitration in First Reference, a response was received by a lawyer representing Plaintiff No. 2. Therefore, the Defendant proceeded against the Plaintiff No. 2 under the bona fide belief that the Plaintiff No. 2 was its contractual counterparty.**

**50. However, while preparing for the proceedings in the First Reference, the Defendant noticed that the Charterparty does not specify the exact name of the Plaintiff No. 2. Contrarily, the Charterparty was signed and stamped by Plaintiff No. 1. On observing the same, the Defendant sought to amend its Claim Submissions in the First Reference and also requested the advocate purporting to represent Plaintiff No. 2 to confirm if they were**



**instructed by Plaintiff No.1, which was denied by the advocate of Plaintiff No. 2. Hence, by way of abundant caution, the Defendant issued notice of arbitration to Plaintiff No. 1 in the Second Reference.**

51. The Ld. Arbitral Tribunal pursuant to a procedural order dated 26 March 2025, inter alia directed that both First Reference and Second Reference would be conducted and heard concurrently. It was directed that the documents disclosed evidence given by parties in one arbitration shall be made available in the other, on such conditions as the Ld. Arbitral Tribunal may determine.

52. One of the issues formed by the Ld. Arbitral Tribunal was to determine whether the “Merchant” (Charterers), i.e., the party to the Fixture Recap and/or Booking Note, is Plaintiff No. 1 or Plaintiff No. 2. **The Defendant had contended that the Plaintiff No. 1 is its contractual counterparty. The Ld. Arbitral Tribunal unanimously found that the preponderance of the evidence points to SARR Freights Corporation (i.e., Plaintiff No. 1) being the “Merchant”/Charterer in the Fixture Recap and Booking Note.** Such finding was made by the Ld. Arbitral Tribunal after evaluating the evidence produced by both parties. Hence, the Plaintiff No. 2 failed to demonstrate that it was the contractual counterparty as alleged by them in both First Reference and Second Reference.

xxx xxx xxx”

(Emphasis Supplied)

95. This Court has already held that *prima facie* there exists a valid Arbitration Clause between the parties and that the plaintiffs have failed to *prima facie* establish that the present case falls within the contours of Section 45 of the Arbitration Act, in order to impel this Court to exercise its jurisdiction to injunct the arbitration proceedings in London. There is nothing before this Court that the plaintiffs are not being given equal opportunities to present their case before the learned Arbitral Tribunal, or that the arbitral proceedings are otherwise vexatious or oppressive, in any manner.

96. At this stage, it is apposite to refer to the case of *Ms. Sancorp*



*Confectionary Pvt. Ltd. and Another Versus M/s Gumlink A/S*<sup>24</sup>, wherein, this Court while denying an anti-arbitration injunction on the ground that *prima facie* there existed an arbitration agreement between the parties, has held that in certain situations, granting an interim relief tantamounts to grant of the final relief, whereas, denial of the same would translate to dismissal of the main case itself and therefore, in such cases, the threshold for granting the interim relief/injunction must be such that withholding of the same would prick the conscience of the Court. Thus, it was held as follows:

“xxx xxx xxx

14. ....

**The interim relief sought by the plaintiffs before this Court is an injunction restraining the defendant from continuing with the arbitration proceedings before SIAC. If such an interim relief is granted, it would amount to almost decreeing the suit since it will not be possible for the defendant to continue with the arbitration proceedings already initiated before SIAC. It would be unrealistic to assume that this suit would be decided in a short span permitting resumption of arbitration in the event of the suit being ultimately decided on merits. On the other hand, it is also equally true that refusal of injunction would amount to frustrating the relief sought by the plaintiffs in the absence of injunction from this Court, the Arbitrator may go ahead with the proceedings above the award, thereby giving the full fait accompli to the plaintiffs.**

Referring to such a situation, Supreme Court in the *Deoraj v. State of Maharashtra* (2004) 4 SCC 697, *inter alia*, held as under : -

**“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury**

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<sup>24</sup> 2012 SCC OnLine Del 5507.



forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent.”

In my view, the plaintiffs before this Court have not been able to make out a strong prima facie case. The Board Committee of SIAC has considered the objection of the plaintiffs with respect to the scope of the arbitration agreement and has opined that an arbitration agreement does exist between the parties. The opinion formed by the Committee is in conformity with the prima facie view formed by this Court.

In fact, prima facie it appears to me that the scope of the arbitration agreement contained in the JVA extends to the current disputes between the parties. No irreparable loss would be caused to the plaintiffs in case the defendant is not restrained from continuing with the arbitration to inasmuch they have an opportunity to establish before the Arbitrator that the current disputes between the parties are beyond the scope of the arbitration clause contained in the JVA. In case their plea is not accepted by the Arbitrator, they would be entitled to raise plea when execution of the award which may be passed against them, is sought.

I, therefore, find no reasonable ground to restrain the defendant from proceeding with the arbitration proceedings invoked by it. The application is accordingly dismissed. The interim order dated 9.8.2012 is hereby vacated.

The observations made in this order being tentative and prima facie would affect the decision of the suit on merits.

xxx xxx xxx”

(Emphasis Supplied)

97. Having regard to the position of law as aforesaid, in view of the *prima facie* validity of the agreement between the parties, the arbitration clause



therein, and there being no exceptional circumstances being made out by the plaintiffs, this Court is not inclined to grant an interim injunction.

98. At this juncture, this Court notes the judgment in the case of *LMJ International Limited Versus Sleepwell Industries Co. Ltd. & Anr.*<sup>25</sup>, wherein, while relying on the principles governing anti-suit injunctions and respecting Comity of Courts, the Court held that in the absence of coercion or demonstrable injustice, there was no justification to restrain the agreed arbitral process. Thus, it was held as follows:

“xxx xxx xxx

**62. The intention of the parties to have their disputes resolved by arbitration cannot be doubted. The parties have entered into such contract with their eyes wide open. They have decided that all disputes are to be resolved, adjudicated and decided by arbitral tribunal to be constituted under the GAFTA Rules. The principal ground for avoiding the said Tribunal is of forum inconvenience. The additional grounds appeared to be that there is no agreement between the plaintiff and the defendant to refer any dispute arising out the said contract to arbitration either as per GAFTA Rules, 125 in London or otherwise. In deciding the said issue, the reference is required to be made to the contract containing such arbitration clause. There cannot be any dispute that the obligation to make payment or avoidance of any such payment is arising out of a transaction covered by the contract which contains the arbitration the arbitration clause. The principal ground of forum inconvenience does not apply to civil suits in India which are governed by the Code of Civil Procedure in view of the specific bar created by Section 41(b) of the Specific Relief Act. However, the doctrine of anticipatory injunction which is very often now being applied in resisting a proceeding before a foreign court or tribunal on the ground that since the courts in India like the Courts in England are courts of both law and equity and thus, all equitable principle the Court in India may grant an order of injunction restraining a party from proceeding before any foreign court or forum. However, this doctrine has to be applied with care and caution as it involves the issue of respect for corresponding another international forum. Although in this case, it is a proceeding before an arbitral tribunal**

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<sup>25</sup> 2012 SCC OnLine Cal 10733.



but the same principle is to be applied in which the tests are that the Court in the domestic forum may grant an ad interim order of injunction to avoid injustice or if the foreign proceedings are found to be oppressive or vexatious or to put it simply "in the ends of justice".

63. In Modi Entertainment Network & Anr. v. W.S.G. Cricket Pte. Ltd. reported in AIR 2003 SC 1177 it was held that where parties have agreed, under a non-exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti-suit injunction will be granted in regard to proceedings in such a forum convenience and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors submitting to non-exclusive jurisdiction of the court of their choice which cannot be treated just an alternative forum.

64. The Hon'ble Supreme Court laid down principles governing anti-suit injunction in Paragraph 23 of the said report which is reproduced here in below:-

1 . In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:-

- (a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;
- (b) if the injunction is declined the ends of justice will be defeated and injustice will be perpetuated; and
- (c) the principle of comity - respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained - must be borne in mind;

2. In a case where more forums than one are available, the Court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (Forum conveniens) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a forum non-conveniens;

3. Where a jurisdiction of a Court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or nonexclusive jurisdiction of the court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case;



**4. A court of natural jurisdiction will not normally grant anti-suit injunction against a defendant before it where parties have agreed to submit to the exclusive jurisdiction of a court including a foreign court, a forum of their choice in regard to the commencement or continuance of proceedings in the court of choice, save in an exceptional case for good and sufficient reasons, with a view to prevent injustice in circumstances such as which permit a contracting party to be relieved of the burden of the contract; or since the date for the contract the circumstances or subsequent events have made it impossible for the party seeking injunction to prosecute the case in the court of choice because the essence of the jurisdiction of the court does not exist or because of a vis major or force majeure and the like;**

**5. Where parties have agreed, under a non-exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no antisuit injunction will be granted in regard to proceedings in such a forum conveniens and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to non-exclusive jurisdiction of the court of their choice which cannot be treated just an alternative forum;**

6. A party to the contract containing jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or nonexclusive jurisdiction is created, the proceedings in that court cannot per se be treated as vexatious or oppressive nor can the court be said to be forum nonconveniens;

**7. The burden of establishing that the forum of the choice is a forum nonconveniens or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same.**

65. In an earlier judgment, the Hon'ble Supreme Court in *Oil and Natural Gas Commission v. Western Company of North America* reported in MANU/SC/0014/1987 : 1987 (1) SCC 496 which possibly was the first case where the Hon'ble Supreme Court in exercising jurisdiction under Section 151 of the Code of Civil Procedure granted antisuit injunction.

66. In *Albon v. Naza Motor Trading Sdn Bhd* reported in 2008 (1) Lloyd's Law Reports, the court of appeal in considering a case of anti-arbitration injunction observed that if it appears that the agreement to



arbitrate has been forged in order to defeat proceedings properly brought in Civil Court (England), the autonomy of the arbitrators can be undermined. In paragraph 7 of the said report it was held that a party will not be restrained from instituting or continuing foreign proceedings unless the applicant can show that to do so would be oppressive and vexatious or (as it sometimes said) unconscionable. Paragraph 7 of the said report is reproduced here in below:-

**7. These submissions derive from the well-known principle that a party will not be restrained from instituting or continuing foreign proceedings unless the applicant can show that to do so would be oppressive and vexatious or (as it is sometimes said) unconscionable.** A recent enunciation of the principle is contained in the judgment of Rix LJ in the Metro litigation. *Glencore International AG v. Exter Shipping Ltd* (2003 (2) All ER Comm 1 at paras 42 and 43 where he said that:

(i) the defendant must be amenable to English territorial and personal jurisdiction;

(ii) jurisdiction to grant an injunction in cases in which it is "just and convenient to do so" is then provided by Section 37 of the Supreme Court Act, 1981.

(iii) It will not be just and convenient unless;

(a) the threatened conduct is "unconscionable" which primarily means it must be conduct which is oppressive or vexatious or which interferes with the due process of the court;

(b) the jurisdiction is necessary to protect the applicant's legitimate interest in proceedings in England which must be the natural forum for the litigation.

*Rix LJ then said that while these are conditions for the grant of an anti-suit injunction (and in that sense may be said to go to jurisdiction), these considerations are again relevant when the court comes to exercise its discretion. I would, however, myself prefer to say that the conditions set out in (iii) above do not, strictly speaking, go to jurisdiction. They are requirements of the exercise of a jurisdiction that the court already has. This is, however, purely a matter of nomenclature and I have no doubt that, while Rix LJ confined his permission to appeal in the present case to the question of jurisdiction and refused permission to appeal against the judge's discretion, he intended there to be full argument as to the principles on which the judge exercised his jurisdiction.*

**67. In the instant case, there is no dispute that the said contract containing arbitration clause has been validly and duly executed by the parties.**



**68. In Kyaerner Cementation (supra) the Hon'ble Supreme Court declined to stay the arbitration proceeding in view of Section 16 of the Arbitration and Conciliation Act which permits the arbitral tribunal to rule on its own jurisdiction. The Hon'ble Supreme Court has also taken into consideration the object of the Arbitration and Conciliation Act, 1996.**

xxx xxx xxx

**73. In view of the aforesaid, it cannot be said that the proceeding under the GAFTA Rules would be oppressive or vexatious. The ground to resist the said arbitration is that it involves prohibitive costs. The appellant was not compelled to execute the said agreement. The appellant precisely knew at the time of execution of the contract that in the event of any dispute arising out of the said contract, it would be governed by the GAFTA Arbitration Rules, 125. In absence of any demonstrable injustice or harassment being caused by reason of initiation of the arbitral proceedings participation in such proceeding and having regard to the fact that the agreement is not in dispute, in our view, the plaintiff is not entitled to an order of injunction. The learned judge, in our view, was justified in vacating the interim order and dismissing the interlocutory application filed by the plaintiff.**

xxx xxx xxx”

(Emphasis Supplied)

99. Thus, considering the aforesaid and also keeping in mind the judicial principle of Comity of Courts (See: *Modi Entertainment Network Versus W.S.G. Cricket Pte. Ltd.*<sup>26</sup> and *Devi Resources Versus Ambo Exports Ltd.*<sup>27</sup>), the principle of minimal judicial interference (See: *Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899, In re*<sup>28</sup>), as well as the legislative intent of enactment of the Arbitration Act, this Court finds no occasion whatsoever to interfere in the LMAA arbitration proceedings in London, at this *prima facie* stage.

<sup>26</sup> (2003) 4 SCC 341 – Paras 10 and 20.

<sup>27</sup> 2019 SCC OnLine Cal 7774 – Para 55.

<sup>28</sup> (2024) 6 SCC 1 – Paras 67, 74, 81.



**CONCLUSION:**

100. Accordingly, in view of the overall conspectus of the present dispute and the position of law noted hereinabove, it is held that the plaintiffs have failed to *prima facie* establish the exceptional circumstances for grant of anti-arbitration injunction in the present case. The plaintiffs have not been able to *prima facie* establish that the arbitration proceedings in London are vexatious or oppressive or unconscionable.

101. Further, the questions as to whether the arbitral proceedings in London are vexatious, oppressive or unconscionable, are mixed questions of fact and law, which would have to be established by the plaintiffs by leading evidence.

102. Considering the detailed discussion hereinabove, no merit is found in the present application.

103. It is clarified that nothing contained herein shall be construed as an expression on the merits of the dispute between the plaintiffs and defendant. Further, the Court has only expressed a *prima facie* opinion herein, and the merits of the claims as raised by the plaintiffs in the present suit shall be the subject matter of final adjudication, post the trial in the present suit.

104. Accordingly, in view of the aforesaid discussion, the present application is dismissed.

**CS(OS) 868/2025**

105. List before the Joint Registrar (Judicial) for further proceedings on 01<sup>st</sup> April, 2026.

**MINI PUSHKARNA  
(JUDGE)**

**MARCH 13, 2026/ Kr/Ak**