

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDCITION**

**APPEAL LODGING NO.439 OF 2015
WITH
NOTICE OF MOTION (L) NO.1401 OF 2015
IN
ARBITRATION PETITION NO.1001 OF 2012**

JSW Steel Ltd.
(formerly known as JSW Ispat Ltd.
and Ispat Industries Ltd.) ..Appellant.

vs.

Thoresen Shipping Singapore Pte Ltd. ..Respondent.

Mr. Janak Dwarkadas, Senior Counsel with Mr. A. Randive and
Ms. Manorama Mohanty i/by S.K.Srivastav & Co. for the
Appellant.

**CORAM : MOHIT S. SHAH, C.J. AND
A.K. MENON, J.**

DATE : 16 JUNE, 2015

PC:

This appeal is directed against the impugned order dated 13 March 2015 of the learned Single Judge dismissing the appellant's petition under Section 34 of the Arbitration and Conciliation Act,. 1996 as not maintainable.

2) The appellant sought to challenge the Arbitral Award dated 13 March 2012 rendered by the Arbitral Tribunal constituted under Clause 42 of the Agreement dated 29 July 2010 which reads as under:'

“In case of any dispute not settled between the two parties mutually by negotiation, matter to be decided by arbitration in London based on the English law. Each party to appoint their own arbitrator. In an event for arbitrators falling to reach unanimous decision, they are to appoint an umpire. The Umpire's decision shall be binding on both the parties.”

In view of the above, it is clear that the parties are governed by the English Law. The jurisdictional seat of the arbitration was in London. Learned Single Judge accordingly took a view that the Part I of the Arbitration and Conciliation Act, 1996 is not applicable. In arriving at this conclusion, the learned Single Judge has relied upon the decision dated 20 January 2015 of the Division Bench of this Court to which one of us (Chief Justice) was a party.

3) In Harkirat Singh vs. Rabobank International Holding B.V. Co-operative Centrale Raiffeisen (Appeal No.171 of 2007) decided on 20 January 2015, this Court considered the issue and after examining the decisions of the Supreme Court in **Bhatia International vs. Bulk Trading S.A. and anr.**¹, **Venture Global Engineering vs. Satyam Computer Services Ltd. and**

¹(2002) 4 SCC 105

anr.¹ , Bharat Aluminium Co. and ors. vs. Kaiser Aluminium Technical Services Inc. and ors. (BALCO)², Yograj Infrastructure Ltd. vs. Ssang Yong Engg. & Construction Co.³ and a few other decisions held that even if decision in BALCO is not to be applied and the decision in Bhatia International and Venture Global are applicable, the Court would have to consider the Arbitration Clause in the agreement and find out which curial law would apply.

4) In Yograj Infrastructure Ltd. (supra) the the Apex Court held that....

“Since the SIAC Rules included Rule 32 which categorically provided that when the seat of arbitration was in Singapore, the law of arbitration under those Rules would be the International Arbitration Act (Cap. 143A, 2002 Edn. Statutes of the Republic of Singapore) or its modification or reenactment thereof, the Supreme Court held that having agreed that Singapore law would apply to arbitration proceedings, it was no longer available to the appellant in that case to contend that the substantive law of the contract would apply to arbitration proceedings. The Supreme Court further held that the decision in Bhatia International which was subsequently applied in Venture Global would have no application once the parties agreed that the arbitration

1 (2008) 4 SCC 190

2 (2012) 9 SCC 552

3 (2011) 9 SCC 735

proceedings would be conducted in Singapore i.e. the seat of arbitration would be in Singapore in accordance with the Singapore International Arbitration Centre (SIAC) Rules as in force at the time of signing the agreement.”

5) In **Harkirat Singh** case (supra) also the jurisdictional seat of the arbitration was at London and after examining the provisions of the English Arbitration Act, 1996 this Court held that if the jurisdictional seat of arbitration is in London, Part- I of the English Arbitration Act, 1996 would apply. In fact, under Part I of the said Act, sections 67 and 68 which deal with challenges to an arbitral award, are mandatory provisions having effect notwithstanding any agreement to the contrary. In this view of the matter, we are clearly of the clear view that in the present case also, the parties having chosen the jurisdictional seat of arbitration at London, had subjected themselves to the English law by virtue of section-2, read with section 4 and sections 67 and 68 of the English Arbitration Act, 1996. We are, therefore, of the firm view that the award in question could be challenged by the appellant only before the English Courts under sections 67 and 68 of the English Arbitration Act, 1996 and not under section 34 of the Arbitration & Conciliation Act, 1996. This is also the law that has been laid down by the Supreme Court in the case of *Yograj Infrastructure Limited* (supra).

Accordingly, the legal position is that when parties have chosen the jurisdictional seat of arbitration at London, Part I of the Arbitration and Conciliation Act, 1996 is not applicable.

6) In the aforesaid decision we also relied upon the following passage from **Redfern and Hunter** on International Arbitration which to our mind puts the entire controversy in its proper perspective. It reads thus:-

“It is also sometimes said that parties have selected the procedural law that will govern their arbitration, by providing for arbitration in a particular country. This is too elliptical and, as an English court itself held more recently in *Braes of Doune Wind Farm* it does not always hold true. What the parties have done is to choose a place of arbitration in a particular country. That choice brings with it submission to the laws of that country, including any mandatory provisions of its law on arbitration. To say that the parties have “chosen” that particular law to govern the arbitration is rather like saying that an English woman who takes her car to France has “chosen” French traffic law, which will oblige her to drive on the right hand side of the road, to give priority to vehicles approaching from the right, and generally to obey traffic laws to which she may not be accustomed. But it would be an odd use of language to say this notional motorist had opted for “French traffic law”. What she has done is to choose to go to France. The applicability of French law then follows

automatically. It is not a matter of choice.

Parties may well choose a particular place of arbitration precisely because its *lex arbitri* is one which they find attractive. Nevertheless, once a place of arbitration has been chose, it brings with it its own law. If that law contains provisions that are mandatory so far as arbitrations are concerned, those provisions must be obeyed. It is not a matter of choice, any more than the notional motorist is free to choose which local traffic laws to obey and which to disregard.”

7) In view of the above discussion, we do not find any merit in the appeal. The Appeal is, accordingly, summarily dismissed.

CHIEF JUSTICE

(A.K. MENON, J.)