IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 52 OF 2021

Shekhar K. Shah and others … Petitioners
vs.
Panasonic Lighting Europe GMBH and another … Respondents

WITH
INTERIM APPLICATION NO. 390 OF 2021
IN
COMMERCIAL ARBITRATION PETITION NO. 52 OF 2021

Mr. Gautam Ankhad a/w. Mr. Muttaher Khan, Mr. Sunny Shah, Ms. Chaiti Desai, Mr. Kenneth Martin and Ms. Ria Garg, i/by. Advani & Co. for petitioners.

Mr. Dinyar Madon, Senior Counsel, a/w. Mr. Shlok Parekh, Ms. Supriya Majumdar and A. Pathare, i/by. Vaish Associates for respondents.

CORAM : MANISH PITALE, J
DATE : 23rd FEBRUARY, 2023

JUDGMENT

. The question that arises for consideration in the present petition is, as to whether this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, is maintainable before this Court, considering the preliminary objection in that regard, raised on behalf of the respondents. It is specifically contended on behalf of the respondents that the impugned award, being a foreign award, where the seat/place of arbitration was Singapore, Part-I of the said Act is not applicable and that therefore, the present petition deserves to be dismissed as not maintainable. According to the respondents, the impugned award could have been challenged on merits, only before the Courts having jurisdiction over the seat of arbitration.

2. Brief facts leading to the filing of the present petition are that an arbitration proceeding was initiated at the behest of the petitioners at Singapore, where the International Chamber of Commerce (ICC) Rules, Paris, were made applicable to the arbitration proceeding. The said proceeding was initiated on the basis of an arbitration clause contained in a Termination Agreement executed between the parties.

3. On 26th April, 1997, a Memorandum of Understanding was executed between the petitioner No.1 and Vossloh Elektro GmbH for promotion of a joint venture company, engaged in the business of marketing and sales of ballasts and other equipment for lighting systems in the Indian market. The petitioner No.4 was to take up the manufacturing of the product. It was already registered as a small scale industry unit. A Shareholders Agreement was executed on 10th March, 1999, whereby 24% equity-holding of petitioner No.4 was allotted to the respondent No.1, while the balance 76% equity was held by petitioner Nos.1 to 3. Subsequently, the said Vossloh Elektro Gmbh was taken over by Matsushita Electric Works GMBH. A Shareholders Agreement was executed in the year 2003, wherein, the shareholding pattern was revised and the original Vossloh Elektro Gmbh, taken over by Matsushita Electric Works GMBH, held 75% of the shareholding and SKS Group held balance 25% of the shareholding.

4. Subsequently, agreements were executed, termed as Agreement for Takeover of Liability and Supplementary Agreement for Takeover of Liability, under which, *inter alia*, it was provided that all profits and losses, resulting from transactions of take over of liability, would stand transferred to the joint venture company. Subsequent events took place, the details of which are not relevant for the principal question regarding maintainability arising in the

present petition. On 30th September, 2004, the petitioner No.4 transferred all its machinery and equipment to the joint venture company.

5. The business of the joint venture company was not performing as expected and, in that backdrop, on 31st July, 2006, the aforementioned Termination Agreement was executed between respondent No.1 and petitioners. Disputes arose between the parties on the nature of mutual rights and obligations under the Termination Agreement. The petitioner No.4 received Show Cause Notices from Sales Tax Department and a loan advanced by the Union Bank of India to the petitioner No.4, was recalled. The account of the petitioner No.4 was declared as a non-performing asset.

6. The parties exchanged correspondences with each other and allegations were levelled, as regards breach of obligations. The petitioners raised some claims against the respondents, which were rejected and this led to the petitioners invoking arbitration, by submitting their first request for arbitration on 30th March, 2016. It is an admitted position that the said request for arbitration was withdrawn on 27th July, 2016, as the petitioners could not pay the requisite fees/deposit as per the ICC Rules, Paris. The request was withdrawn, without prejudice to the right of the petitioners to renew the request subsequently. Accordingly, on 4th September, 2017, the petitioners filed their second request for arbitration before the Secretariat of the ICC. This was responded to, by the respondents and while denying the claims of the petitioners, they raised counter-claims.

7. The petitioners invoked arbitration under clause 14 of the Termination Agreement. Clauses 13 and 14 of the Termination Agreement are relevant for the present case and the said clauses read as follows:

> ‘13. **Governing Law**
> This Termination Agreement shall be governed by and construed in accordance with the laws of India.
>
> 14. **Arbitration**
> All disputes arising out of or in connection with this Termination Agreement, including a dispute as to the validity or existence of this Termination Agreement and/or this Clause 14, shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce, Paris, with three arbitrators. The arbitration shall be without recourse to the ordinary courts of law and conducted in English in Singapore. All documents submitted must be in English or with an English translation by a suitably qualified translator.’

8. The petitioners filed an application under Section 16 of the aforesaid Act, i.e. Arbitration and Conciliation Act, 1996, contending that the arbitral tribunal did not have jurisdiction to adjudicate on the counter-claims of the respondents, as they were barred by limitation. Respondents did raise an objection that the said application was not maintainable. But, the arbitral tribunal eventually ruled that the counter-claims could not be entertained, as they were indeed barred by limitation.

9. It is significant that the petitioners had also moved an application under Section 27 of the said Act, for applying to the Courts in India for assistance in taking evidence. In this application, the petitioners specifically pleaded that Section 27 was available, by virtue of amendment of the said Act in the year 2015, which made Section 27 applicable to international commercial arbitrations, where the place of arbitration was outside India. The said application was rejected.

10. Eventually, the majority award of the three-member arbitral tribunal dated 27th February, 2020, dismissed the claim of the petitioners, as being barred by time. It is an admitted position that the majority award as well as the minority award held that the place of arbitration was Singapore, under the ICC Rules, Paris.

11. It is in this backdrop that the present petition was filed under Section 34 of the said Act, challenging the majority award, whereby the claims of the petitioners were rejected.

12. On 19th October, 2020, this Court admitted the present petition, directing that it would be heard for final disposal. The respondents entered appearance and submitted before this Court that the order admitting the petition deserved to be recalled, for the reason that as per the law laid down by the Supreme Court in various judgments and re-iterated in its judgment in the case of *Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others* [**(2020) SCC OnLine SC 957**], since the place of arbitration was Singapore and the award rendered by the arbitral tribunal was a foreign award, the same could not be challenged in the Courts in India, under Section 34 of the said Act.

13. By an order dated 7th December, 2020, this Court recalled its earlier order dated 19th October, 2020, whereby the present petition was admitted and specifically kept the petition for hearing on the question of maintainability. The petition was listed on a few occasions and thereafter, finally came up for hearing/disposal on the aforementioned question before this Court.

14. Mr. Gautam Ankhad, learned counsel appearing for the petitioners submitted that since the Termination Agreement executed between the parties, pertained to a period prior to the Constitution Bench judgment of the Supreme Court, in the case of *Bharat Aluminium Company v/s. Kaiser Aluminium Technical Services* [**(2012) 9 SCC 552**], the position of law laid down by the Supreme Court in its earlier judgment in the case of *Bhatia International v/s. Bulk Trading S.A. and another* [**(2002) 4 SCC 105**], applied to the facts of the present case. It was submitted that applying the said principle of law, the present petition, challenging the impugned order under Section 34 of the said Act, was clearly maintainable. The learned counsel for the petitioners referred to clauses 13 and 14 of the Termination Agreement, quoted hereinabove, to contend that since the parties had expressly agreed that the Termination Agreement shall be governed by the laws of India, notwithstanding the fact that the arbitration proceedings were undertaken at Singapore, the impugned award could certainly be challenged in the Courts in India, under Section 34 of the said Act. It was submitted that even if the proceedings or hearings of the arbitral tribunal had taken place in Singapore, it was a venue, agreed upon by choice by the parties and that therefore, the present petition before this Court was clearly maintainable.

15. It was further submitted that even if the contentions raised on behalf of the respondents, as regards Singapore being the place of arbitration, were to be accepted, the fact that the parties agreed about the applicability of Indian laws, demonstrated that a challenge to the impugned award was maintainable only in the Courts in India. It was submitted that the statements made in the requests for arbitration, where the petitioners had stated that the seat of arbitration was Singapore, were a case of imprecise

drafting and that in any case, the same ought not to be construed as admissions on part of the petitioners, particularly in the light of the position of law, relied upon by them.

16. It was further submitted that in the present case, an application filed under Section 16 of the said Act was entertained by the arbitral tribunal, despite specific objection regarding jurisdiction, raised by the respondents on the basis that the place of arbitration was Singapore. This clearly demonstrated the applicability of Part-I of the arbitral proceedings, thereby further indicating that the petitioners were justified in resorting to Section 34 of the said Act, to challenge the impugned award. As regards reliance placed on the judgment of the Supreme Court, in the case of **Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others** (*supra*), it was submitted that the same could be distinguished on facts, because the arbitration clause in the said case was different and the Supreme Court found, in the facts of the said case, that the award therein could not be challenged in the Courts in India. The learned counsel further submitted that a proper interpretation of the judgments of the Supreme Court, in the cases of **Bhatia International v/s. Bulk Trading S.A. and another** (*supra*), **Bharat Aluminium Company v/s. Kaiser Aluminium Technical Services** (*supra*), *Union of India v/s. Hardy Exploration and Production (India) Inc.* [**(2019) 13 SCC 472**], *BGS SGS Soma JV v/s. NHPC Limited* [**(2020) 4 SCC 234**] and *Mankastu Impex Private Limited v/s. Airvisual Limited* [**(2020) 5 SCC 399**], would show that there is no substance in the contention regarding maintainability of the present petition, raised on behalf of the respondents.

17. On the other hand, Mr. Dinyar Madon, learned Senior Counsel appearing for the respondents submitted that the place of arbitration in the present case, was Singapore. In order to support the aforesaid assertion made on behalf of the respondents, the learned Senior Counsel relied upon ICC Rules, Paris, that were applicable to the arbitration proceedings in the present case. By referring to Rules 18 and 23 of the ICC Rules, Paris, alongwith the guide published by the Secretariat of the ICC for interpretation of the Rules, it was submitted that the place of arbitration was Singapore. Attention of this Court was invited to the requests for arbitration, submitted on behalf of the petitioners, wherein, at various places, the petitioners themselves had stated that the seat of arbitration was Singapore. On this basis, it was submitted on behalf of the respondents that there could be no dispute about the place of arbitration being Singapore, in terms of clause 14 of the Termination Agreement.

18. The learned Senior Counsel further submitted that merely because clause 13, pertaining to governing law, stated that the Termination Agreement shall be governed by and be construed in accordance with the laws of India, it would not facilitate challenging the impugned award under Section 34 of the said Act, before the Courts in India. It was submitted that the said clause would, at best, mean that the interpretation of the clause of the Termination Agreement, would be based on Indian laws, including the Indian Contract Law. On this basis, it was submitted that once the material placed on record, including admissions by the petitioners, demonstrated that the place of arbitration was indeed Singapore, a challenge to the merits of the award could be raised only in appropriate proceedings before the concerned Court, having jurisdiction over the place of arbitration i.e. Singapore.

19. In this regard, the learned Senior Counsel for the respondents placed emphasis on the position of law, re-iterated and clarified by the Supreme Court, in the case of **Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others** (*supra*). It is submitted that the arbitration clause in the said case, was almost identically worded to the clause in the present case. It is submitted that in the said judgment, the Supreme Court referred to all the earlier judgments, on which the learned counsel for the petitioners, in the present case has relied and thereupon, rendered a finding that since the seat/place of arbitration, in that case, was London, and the arbitration proceedings were conducted under the ICC Rules, the Courts in India would not have jurisdiction to entertain a challenge to such an award. It was submitted that even if the contention raised on behalf of the petitioners that the pre-BALCO position of law laid down by the Supreme Court, in the case of **Bhatia International v/s. Bulk Trading S.A. and another** (*supra*) applied, was to be accepted, the place of arbitration in the present case being Singapore, the present petition filed under Section 34 of the Act was not maintainable.

20. It was further submitted that merely because the arbitral tribunal entertained the application filed on behalf of the petitioners, under Section 16 of the said Act, it would not foist jurisdiction on the Courts in India to entertain the challenge under Section 34 of the said Act, for the reason that the place of arbitration was Singapore and in the present case, the award was indeed a foreign award. It was brought to the notice of this Court that one of the grounds stated in the present petition for invoking jurisdiction of this Court was that a Counsel in Singapore had given an opinion to the petitioners that if the impugned award was challenged in the Courts at

Singapore, the challenge would be rejected, as per the position of law in the said jurisdiction. It was submitted that this could certainly not be a ground for invoking jurisdiction of this Court. On this basis, it was submitted that the preliminary objection regarding maintainability, raised by the petitioners, ought to be upheld and the present petition ought to be dismissed.

21. Having heard the learned counsel for the rival parties, before deciding the preliminary objection on behalf of the respondents, it would be appropriate to refer to the judgments, relied upon by the learned counsel appearing for the parties.

22. In the case of **Bhatia International v/s. Bulk Trading S.A. and another** (*supra*), a Bench of three Hon'ble Judges of the Supreme Court, after considering various aspects of the question regarding maintainability of a petition challenging a foreign award and applicability of Part-I of the said Act to such foreign award, held as follows:

> '32. To conclude, we hold that the provisions of Part I would apply to all arbitrations and to all proceedings relating thereto. Where such arbitration is held in India the provisions of Part I would compulsorily apply and parties are free to deviate only to the extent permitted by the derogable provisions of Part I. In cases of international commercial arbitrations held out of India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or rules will not apply.'

23. Subsequently, a Constitution Bench of the Supreme Court, in the case of **Bharat Aluminium Company v/s. Kaiser Aluminium Technical Services** (*supra*) overruled the judgment, in the case of **Bhatia International v/s. Bulk**

Trading S.A. and another (*supra*), and held as follows:

> '195. With utmost respect, we are unable to agree with the conclusions recorded in the judgments of this Court in *Bhatia International*[2] and *Venture Global Engg.*[3] In our opinion, the provision contained in Section 2(2) of the Arbitration Act, 1996 is not in conflict with any of the provisions either in Part I or in Part II of the Arbitration Act, 1996. In a foreign-seated international commercial arbitration, no application for interim relief would be maintainable under Section 9 or any other provision, as applicability of Part I of the Arbitration Act, 1996 is limited to all arbitrations which take place in India. Similarly, no suit for interim injunction simpliciter would be maintainable in India, on the basis of an international commercial arbitration with a seat outside India.'

24. Thereafter, in the case of **Union of India v/s. Hardy Exploration and Production (India) Inc.** (*supra*), a Bench of three Hon'ble Judges of the Supreme Court, after referring to the Constitution Bench judgment in **Bharat Aluminium Company v/s. Kaiser Aluminium Technical Services** (*supra*), discussed the concepts of seat and venue. Thereupon, certain view was taken in the facts of the said case.

25. In a subsequent judgment, in the case of **BGS SGS Soma JV v/s. NHPC Limited** (*supra*) also rendered by three Hon'ble Judges of the Supreme Court, after referring to the Constitution Bench judgment, in the case of **Bharat Aluminium Company v/s. Kaiser Aluminium Technical Services** (*supra*), held that the aforementioned judgment of the Supreme Court, in the case of **Union of India v/s. Hardy Exploration and Production (India) Inc.** (*supra*), was contrary to the Constitution Bench judgment of **Bharat Aluminium Company v/s. Kaiser Aluminium Technical Services** (*supra*) and therefore, not good law. The relevant observation, in the case of **BGS SGS Soma JV**

v/s. NHPC Limited (*supra*) is as follows:

> '94. The decision in *Hardy Exploration & Production (India) Inc.*[6] is therefore contrary to the five-Judge Bench in *BALCO*[4], in that it failed to apply the Shashoua[24] principle to the arbitration clause in question. The *Hardy Exploration & Production (India) Inc.*[6] decision would lead to the result that a foreign award would not only be subject to challenge in the country in which it was made, but also subject to challenge under Section 34 of Part I of the Arbitration Act, 1996, which would lead to the chaos spoken of in para 143 of *BALCO*[4], with the concomitant risk of conflicting decisions, as held in *Venture Global Engg.*[64] [overruled in BALCO[4]], which would add to problems relating to enforcement, and undermine the policy underlying the New York Convention and the UNCITRAL Model Law. We, therefore, declare that the judgment in *Hardy Exploration & Production (India) Inc.*[6], being contrary to the five-Judge Bench in *BALCO* [4], cannot be considered to be good law.'

26. Thereafter, in the case of **Mankastu Impex Private Limited v/s. Airvisual Limited** (*supra*), the Supreme Court again commented upon the concepts of seat and venue of arbitration and observed as follows:

> '19. The seat of arbitration is a vital aspect of any arbitration proceedings. Significance of the seat of arbitration is that it determines the applicable law when deciding the arbitration proceedings and arbitration procedure as well as judicial review over the arbitration award. The situs is not just about where an institution is based or where the hearings will be held. But it is all about which court would have the supervisory power over the arbitration proceedings. In *Enercon (India) Ltd. v. Enercon GmbH*[6], the Supreme Court held that: (SCC pp. 43 & 46, paras 97 & 107)
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> > "*[T]he location of the seat will determine the courts that will have exclusive jurisdiction to oversee the arbitration proceedings. It was further held that the seat normally carries with it the choice of that country's arbitration/curial law.*" (emphasis supplied)

20. It is well settled that "seat of arbitration" and "venue of arbitration" cannot be used interchangeably. It has also been established that mere expression "place of arbitration" cannot be the basis to determine the intention of the parties that they have intended that place as the "seat" of arbitration. The intention of the parties as to the "seat" should be determined from other clauses in the agreement and the conduct of the parties.

21. In the present case, the arbitration agreement entered into between the parties provides Hong Kong as the place of arbitration. The agreement between the parties choosing "Hong Kong" as the place of arbitration by itself will not lead to the conclusion that the parties have chosen Hong Kong as the seat of arbitration. The words, "the place of arbitration" shall be "Hong Kong", have to be read along with Clause 17.2. Clause 17.2 provides that "... *any dispute, controversy, difference arising out of or relating to MoU shall be referred to and finally resolved by arbitration administered in Hong Kong*.....". On a plain reading of the arbitration agreement, it is clear that the reference to Hong Kong as "place of arbitration" is not a simple reference as the "venue" for the arbitral proceedings; but a reference to Hong Kong is for final resolution by arbitration administered in Hong Kong. The agreement between the parties that the dispute "*shall be referred to and finally resolved by arbitration administered in Hong Kong*" clearly suggests that the parties have agreed that the arbitration be seated at Hong Kong and that laws of Hong Kong shall govern the arbitration proceedings as well as have power of judicial review over the arbitration award.'

27. The learned counsel for the petitioners has placed reliance on the said observation of the Supreme Court to contend that merely referring to Singapore as the place, where the arbitration proceeding would be conducted, ought not to lead to a conclusion that Singapore was the place or seat of arbitration. It was submitted that even if that be so, since the

governing laws were the laws of India, the present petition ought to be held as maintainable.

28. This brings us to the judgment of the Supreme Court, in the case of **Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others** (*supra*), upon which, the learned Senior Counsel for the respondents has placed much reliance. In the said case, the Supreme Court was considering a similar question of maintainability of a petition under Section 34 of the said Act, challenging a foreign award. In this judgment, the Supreme Court took into consideration the aforementioned earlier judgments, particularly the law laid down by the Constitution Bench of the Supreme Court, in the case of **Bharat Aluminium Company v/s. Kaiser Aluminium Technical Services** (*supra*). The Supreme Court referred to and relied upon the Shashoua principle, as recognized in the earlier judgments of the Supreme Court, particularly in the case of *Union of India v/s. Reliance Industries* [**(2015) 10 SCC 213**]. Amongst the portions of the said judgment, relied upon in the case of **Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others** (*supra*), paragraph No.21 of the judgment in the case of **Union of India v/s. Reliance Industries** (*supra*), is significant and it reads as follows:

> ‘21. The last paragraph of BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552: (2012) 4 SCC (Civ) 810] judgment has now to be read with two caveats, both emanating from para 32 of Bhatia International [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] itself - that where the Court comes to a determination that the juridical seat is outside India or where law other than Indian law governs the arbitration agreement, Part I of the Arbitration Act, 1996 would be excluded by necessary implication. Therefore, even in the cases governed by the Bhatia [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] principle, it is only those cases in which

> agreements stipulate that the seat of the arbitration is in India or on whose facts a judgment cannot be reached on the seat of the arbitration as being outside India that would continue to be governed by the Bhatia [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] principle. Also, it is only those agreements which stipulate or can be read to stipulate that the law governing the arbitration agreement is Indian law which would continue to be governed by the Bhatia [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] rule.'

29. It is significant that in the case of **Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others** (*supra*), the Supreme Court rendered its judgment in the backdrop of an arbitration agreement, which reads as follows:

> '12.4.1 This Engineering Contract shall be governed by the laws of India.
>
> 12.4.2 In case of disputes or disagreement between the parties as any matter arising out of or relating to this engineering That Contract and provided no understanding between the parties can be reached for the settlement of the difference, the matter shall be finally settled by arbitration. That under the rules of conciliation That and Arbitration That of the International That Chamber of commerce Paris, and Arbitration proceedings shall be in English language and shall take place in London. The decisions of such arbitration shall be final and binding on the parties.'

30. After applying the position of law laid down by the Supreme Court in the earlier judgments, in the case of **Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others** (*supra*), after referring to the above-quoted arbitration clause, it was held as follows:

> '27. Having regard to the precedential unanimity, so to say, about the manner of applicability of BALCO in respect of

> agreements entered into and awards rendered earlier, with respect to the law of the seat of arbitration (or the curial law) excluding applicability of Part I of the Act, and the unambiguous intention of the parties in the present case (expressed in Clause 12.4.2) that the seat of arbitration was London, where the ICC arbitration proceedings were in fact held, and the awards rendered, this court is of the opinion that the impugned judgment cannot be sustained.'

31. On this basis, the Supreme Court set aside the judgment of the Division Bench of this Court and restored the judgment of the learned Single Judge, wherein it was held that the petition filed under Section 34 of the said Act, challenging the foreign award, in the context of the above-quoted arbitration clause, was not maintainable.

32. This Court is of the opinion that the learned counsel for the petitioners is not justified in contending that the arbitration clause in the case of **Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others** (*supra*), was different from the arbitration clause in the present case. This Court has compared the arbitration clauses in the two cases and it is found that they are almost identical, for the reason that although it is recorded that the contract/agreement would be governed by the laws of India, the arbitration itself was to be conducted under the ICC Rules, Paris, in the case of **Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others** (*supra*) at London, while in the present case, at Singapore. The learned Senior Counsel appearing for the respondents is justified in contending that the two arbitration clauses are almost identical and therefore, the position of law, re-iterated in the case of **Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others** (*supra*), applies to the facts of the present case.

33. The next contention raised on behalf of the petitioners to the effect that Part-I of the said Act would apply to the present case, for the reason that the application under Section 16 of the said Act was considered by the arbitral tribunal, is also without any substance. Merely because the arbitral tribunal considered the said application cannot *ipso facto*, lead to a conclusion that the position of law discernible from the judgments of the Supreme Court, including the interpretation of the judgment, in the case of **Bhatia International v/s. Bulk Trading S.A. and another** (*supra*), further clarified in the case of **Noy Vallesina Engineering SPA (Now known as Noy Ambiente S.P.A.) v/s. Jindal Drugs Limited and others** (*supra*), could be done away with, for the present case. The application of the law, as it is laid down by the Supreme Court, in the aforementioned series of judgments, makes it clear that when the place of arbitration is clearly found to be outside India, as in the present case at Singapore, the arbitral award rendered in pursuance of such arbitration proceedings, cannot be challenged under Section 34 of the said Act, before the Courts in India.

34. The material on record shows that while filing the application under Section 27 of the said Act, for taking assistance of the Courts in India for recording evidence, the petitioners themselves referred to the amendment of the year 2015 in the said Act, which specifically adds a proviso to Section 2(2) of the Act, specifying that Part-I of the Act will apply, where the arbitration is in India and that only Sections 9, 27, 37(1)(b) and (iii) of the Act shall apply to international commercial arbitrations, which take place outside India. In other words, the petitioners were themselves conscious and aware about the fact that Part-I of the Act will not apply, since the arbitration took place at Singapore, outside India.

35. The contention raised on behalf of the petitioners that since a Counsel at Singapore had given an opinion that the impugned award would not be interfered with, in the Courts at Singapore, the petitioners approached this Court, under Section 34 of the said Act, to challenge the impugned award, is also found to be wholly unsustainable. Can it be said that because an award is not likely to be interfered with, by the Courts having jurisdiction to entertain a challenge against such an award, the said award can be challenged before the Courts that do not have jurisdiction to entertain such a challenge? The answer has to be in the negative and against the petitioners in the present case.

36. Therefore, viewed from any angle, the petitioners have not been able to repudiate the preliminary objection regarding maintainability, raised on behalf of the respondents. It is found that the present petition filed under Section 34 of the said Act, to challenge the impugned award, which is indeed a foreign award, is not maintainable before this Court. The preliminary objection is accordingly accepted and the petition is dismissed, as not maintainable.

37. Pending applications, if any, also stand disposed of. No order as to costs.

(MANISH PITALE, J)

Priya Kambli