2025 INSC 1342

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

ARBITRATION PETITION NO. 65 OF 2023

BALAJI STEEL TRADE **...PETITIONER (S)**

VERSUS

FLUDOR BENIN S.A. & ORS. **…RESPONDENT(S)**

J U D G M E N T

1. For the sake of convenience and ready reference, this judgment contains the following parts: -

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I. Introduction:

2. The Arbitration Petition under Section 11 of the Arbitration and Conciliation Act, 1996[1] is an attempt by the petitioner to anchor an international commercial arbitration, arising out of Buyer and Seller Agreement (BSA), and its Addendum which is governed by laws of Republic of Benin, into the domestic framework of the Act, 1996 by placing reliance on dispute resolution clauses contained in subsequent contractual arrangements, namely Sales Contracts executed with respondent no. 2 and High Seas Sales Contracts (HSSAs) executed with

[1] Hereinafter, "Act, 1996".

respondent no. 3. The prayer is for constitution of an Arbitral Tribunal and a composite reference of the alleged disputes including within the embrace the three respondents as its parties by invoking the group of companies doctrine. We have considered issue of jurisdiction, concluded decision between the parties, and also the propriety of the present petition and dismissed the petition. We have held that as the primary contract (BSA) incorporates (i) international commercial arbitration, question of application of Section 11 contained in Part I does not arise, (ii) BSA with respondent no. 1 is the “mother agreement'' to which respondents no. 2 and 3 are aliens, (iii) the petitioner is barred by issue estoppel arising owing to dismissal of anti-arbitration injunction suit and also that, (iv) there is no compositeness of the transaction so as to attract group of companies doctrine.

II. Facts:

3. The petitioner, Balaji Steel Trade, has approached this Court under Section 11(6) read with Section 11(12)(a) of the Act 1996 praying for appointment of sole arbitrator to adjudicate and decide upon dispute that has arisen between the parties owing to the alleged breach of Buyer and Seller Agreement (hereinafter, “BSA”) dated 06.06.2019 executed between the present petitioner and respondent no.1, Fludor Benin S.A. Petitioner prays for a composite reference to arbitration by seeking the

inclusion of respondent no. 2, M/s Vink Corporations DMCC, a company incorporated in Dubai, UAE, and respondent no. 3, Tropical Industries International Pvt. Ltd., a private limited company registered in New Delhi, India. As per the petitioner, all three respondents are owned and controlled by Tropical General Investments Ltd. Group ("TGI Group") whereby TGI Group holds 100% shares in respondent no.1, 51% shares in respondent no. 2 and 99.73% shares in respondent no.3.

4. *Buyer and Seller Agreement between Petitioner and Respondent No.1:* The petitioner, Balaji Steel Trade, is a partnership firm engaged in the business of steel trading as well as in the trade of various agricultural commodities. Respondent No. 1, Fludor Benin S.A., is a private limited company incorporated under the laws of Republic of Benin, a country in West Africa. According to the petitioner, in the year 2018, respondent no. 1 made representations to the petitioner with respect to the supply of cotton seeds. Consequent thereto, both parties entered into negotiations with a view to explore a business arrangement for the manufacture and sale of cottonseed cakes.

5. In furtherance of the aforesaid discussions, the parties executed a Collaboration and Buy Back Agreement ("Collaboration Agreement") dated 10.12.2018. Under the said agreement, the petitioner undertook to provide the requisite machinery and establish a manufacturing unit at

Bohicon, a city in Benin, for the manufacture of cottonseed cake. Respondent no. 1, on its part, assumed the obligation to manufacture the said product and supply it to the petitioner in India. Clause 20[2] of the Collaboration Agreement contained an arbitration provision stipulating that disputes thereunder would be referred to arbitration before CAMEC-CCIB[3] in Benin.

6. Subsequently, and in supersession of the Collaboration Agreement, the petitioner and respondent no. 1 entered into a Buyer-Seller Agreement ("BSA") dated 06.06.2019, for a term of five years, governing the supply and sale of the product. The said BSA also incorporated an arbitration clause this time providing for ad hoc arbitration to be conducted in Benin. Article 11 of the BSA incorporating arbitration agreement is as follows:

> *"**11. Arbitration:** All the disputes will be resolved by discussions and if Arbitration becomes only option then it will take place in Benin and decision will be binding on both the parties and Arbitration fee will be borne by the losing party."*

7. *Execution of Sales Contracts with Respondent No. 2:* After having executed the BSA, on 17.10.2019 respondent no. 1 assigned its obligation for supply of product to respondent no. 2, M/s. Vink Corporations DMCC. In order to give effect to the said assignment and to facilitate supply of the

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[2] ***20. Arbitration:*** *All the disputes shall be settled amicably and if arbitration becomes the sole option to settle a crises, it shall take place in Benin before CAMEC-CCIB and the decision shall be binding on both parties. The arbitration costs shall be borne by the losing party.*

[3] "Centre d'Arbitrage, de Médiation et de Conciliation de la Chambre de Commerce et d'Industrie du Bénin"

product, the petitioner and respondent no. 2 entered into a series of Sales Contracts providing for reference of dispute to sole arbitrator in accordance with the Act, 1996, with the place of arbitration at New Delhi. The relevant portion of the dispute resolution clause is as follows:

> *"**Dispute Resolution:** Any dispute arising out of or relating to this agreement, including any question regarding its existence, validity, or termination, which cannot be amicably resolved by the Parties, shall be settled before a sole arbitrator in accordance with the Indian Arbitration and Conciliation Act, 1996. The sole arbitrator shall be appointed mutually by the parties. In the event the Parties fail to agree on a sole arbitrator within Thirty (30) days from the date of notice of arbitration, then appointment of such sole arbitrator shall take place as per the provisions of the Indian Arbitration and Conciliation Act, 1996. The place of arbitration should be New Delhi and language shall be English. The resulting arbitral award shall be final and binding without right of appeal, and judgment upon such award may be entered in any court having jurisdiction thereof. A dispute shall be deemed to have been arisen when either Party notifies the other Party in writing to that effect."*

8. *Execution of the Addendum:* The terms of BSA were modified on 09.01.2021 by signing an Addendum, terms of which eliminated petitioner's exclusive rights of purchase of the product thereby allowing respondent no. 1 to sell the product to third parties also. The petitioner contends that, following the execution of the Addendum, there was a shortfall in the quantity of the product supplied to it.

9. *HSSAs executed between Petitioner and Respondent No. 3:* In order to address the said shortfall, respondent no. 3, Tropical Industries International Pvt. Ltd., was introduced to the petitioner. Consequent thereto, the petitioner and respondent no. 3 entered into a series of High

Sea Sale Contracts ("HSSA"), which, inter alia, delineated the respective rights and obligations of respondent no. 3 as the seller and the petitioner as the purchaser of the product. Said HSSAs also contained arbitration clause providing that:

> *"g) Dispute if any, between the parties arising in relation to this agreement of HIGH SEAS SALE shall be referred to the arbitration under the Indian Arbitration Act 1940. In witness whereof, the parties have said and subscribe their hands at DELHI, INDIA, the day and year first hereinabove written."*

10. Disputes arose between the parties with respect to quantity of supply and payments inter-se which led to petitioner serving a notice dated 15.07.2022 served on all party respondents. Respondent nos. 2 and 3 replied to said notice shrugging their responsibility on the ground of lack of privity and separateness from respondent no. 1. Petitioner then issued termination notice dated 06.09.2022 under which BSA and the Addendum were terminated.

11. *Respondent No.1's invocation of Benin Arbitration:* Things took a turn when the petitioner received a notice from Chamber of Commerce, Benin - CAMEC dated 12.04.2023 apprising the petitioner that respondent no. 1 has requested for settlement of disputes by arbitration in terms of the BSA before it in Benin and called upon the petitioner to nominate its arbitrator. Petitioner refuted to the said arbitration by sending its objections vide letter dated 15.05.2023. Thereafter, respondent no.1 on 31.05.2023 sent notice invoking arbitration under the laws of Benin to the petitioner to

which the petitioner replied on 30.06.2023 denying the contents of the notice and resisting to Benin as seat of arbitration. Further objection of the petitioner was with regard to the non-joinder of respondent no. 2 and respondent no. 3, who were, as per petitioner, proper and necessary parties.

12. Instead of submitting to the Benin arbitration, the petitioner issued its own notice invoking arbitration to all the three respondents purportedly in terms of Section 21 of the Act, 1996 referring the disputes arising out of the BSA, Sales Contract and HSSAs to arbitration and proposed the name of sole arbitrator. Respondent no. 1 however continued to proceed with Benin arbitration and filed an application before the Commercial Court of Cotonou, Benin ("Benin Court") seeking appointment of arbitrator which was allowed on 26.07.2023, whereby the Benin Court appointed one Dr. Gilbert Ahouandjinou as the sole arbitrator for determination of disputes between the petitioner and respondent no. 1.

13. *Petitioner's institution of Anti-Arbitration Injunction Suit:* Petitioner however proceeded to institute Anti-Arbitration Injunction Suit (CS (Comm) No. 544 of 2023) before the High Court of Delhi on 10.08.2023, inter alia praying for a decree of permanent injunction restraining the respondent no. 1 from proceeding/continuing with the Benin Arbitration.

14. *Filing of the Present Petition:* Pending disposal of anti-arbitration injunction suit, more or less around the same time, petitioner on 23.08.2023 filed the present application under Section 11(6) read with Section 11(12)(a) of the Act, 1996 for appointment of sole arbitrator for adjudication of the disputes.

15. *Culmination of Benin Arbitration:* Pending disposal of the anti-arbitration injunction suit, and the application under Section 11(6) of the Act, 1996 for constitution of arbitral tribunal before this Court, the ad hoc arbitration in Benin got concluded and the sole arbitrator rendered its award on 21.05.2024.

16. Further fact having a bearing on the present proceeding is the dismissal of the anti-arbitration injunction suit (Comm) No. 544 of 2023 by High Court of Delhi on 08.11.2024.

III. Submissions:

17. *Submissions on behalf of the Petitioner:* Mr. Devadatt Kamat, senior counsel assisted by Ms. Shruti Sabharwal, Mr. Nishant Doshi and others, appearing on behalf of the petitioner has made the following submissions:

(i) Disputes against all respondents arise from a composite transaction, as the series of agreements are interlinked and founded on a common commercial objective under the TGI Group. Respondents nos. 2 and 3

supplied goods on the instructions of respondent no. 1, thereby performing obligations under the BSA by conduct. This, coupled with contemporaneous correspondence and the common legal notice dated 15.07.2022 issued to all respondents, shows that the disputes are inseparable and require a composite reference under the group of company doctrine[4].

(ii) The dispute resolution clause in the BSA stands novated by the arbitration clauses contained in the subsequent Sales Contracts and HSSAs executed with respondent nos. 2 and 3. Reference in this regard has been made to Sales Contract between the petitioner and respondent no. 2, the arbitration clause of which is framed as, "*appointment of such sole arbitrator shall take place as per the provisions of the Indian Arbitration and Conciliation Act, 1996*".

(iii) Alternatively, even if the BSA clause is given effect, it is submitted that Benin was indicated only as the venue, not the juridical seat, since Article 11 merely states that arbitration "*will take place in Benin*." In contrast, the later contracts evince a clear intention to adopt Indian law as the governing law of arbitration. Relying on *Mankastu Impex Pvt. Ltd. v. Airvisual Ltd.*[5], it is argued that the seat must be inferred from the parties'

[4] Cox & Kings Ltd. v. SAP India (P) Ltd., 2023 SCC OnLine SC 1634. (hereinafter, *Cox & Kings*)
[5] (2020) 5 SCC 399. (hereinafter, Mankastu Impex)

conduct and the governing law, which unmistakably points to India as the seat.

(iv) Arbitral proceedings in Benin and the consequent award are non-est in law, having been unilaterally invoked by respondent no. 1 to pre-empt petitioner's claims under Indian law. Benin is not a reciprocating territory under Section 44(b)[6] of the Act, 1996, and any award rendered there would be unenforceable in India.

(v) Lastly, it is argued that the Delhi High Court's findings in the anti-arbitration injunction suit have no bearing on these proceedings, as the inquiry under Section 45 (before the High Court) and Section 11 (before this Court) operate in distinct spheres. The limited scrutiny is only to enquire about the existence of a valid arbitration agreement, and all other questions can be raised and contested before the arbitral tribunal itself.

18. *Submissions on behalf of Respondent No. 1:* Mr. Nakul Dewan, senior counsel, assisted by Mr. Susshil Daga, Mr. Pallav Mongia and others made the following submissions opposing the maintainability of the petition. He would strongly urge for dismissal of the present petition on the ground that it is abuse of process for the following reasons:

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[6] Section 44. **Definition** -…
(a) …
(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.

(i) It is urged that Part I of the Act, 1996, including Section 11, has no application since the dispute arises solely under the BSA, which expressly stipulates that arbitration "*shall take place in Benin*" and that the governing law shall be the laws of Benin (Article 5 of the Addendum). Hence, the arbitration under BSA is international commercial arbitration, governed by the Benin Arbitration Act.

(ii) The legal notice issued by the petitioner on 15.07.2022 virtually seeks specific performance of the BSA on the ground that the respondent has breached the agreement by not supplying the contracted quantity of goods. On the other hand, his client invoked arbitration on 31.05.2023 under the BSA, on the ground that the petitioner had defaulted in accepting delivery, resulting in losses. Under these circumstances, the dispute arises out of rights and obligations under BSA, for which the governing law is that of Republic of Benin, the Benin Arbitration Act[7] being the curial law.

(iii) Respondent no. 1 is not bound by the arbitration clauses in the Sales Contracts or HSSAs, which were executed independently between the petitioner and respondent nos. 2 and 3 as the BSA neither refers nor incorporates these subsequent contracts. The principles of group of

[7] Uniform Act on Arbitration of the Organisation for the Harmonisation of Business Law in Africa (OHADA).

companies doctrine as laid down in *Cox & Kings*, has no application to the facts of the present case.

(iv) Placing reliance on *Balasore Alloys Ltd. v. Medima LLC*[8], respondent no. 1 argues that the BSA is the principal or "mother" agreement, and therefore its arbitration clause prevails over those in any ancillary or subsequent contracts. Having consciously accepted Benin as the seat of arbitration, the petitioner cannot now resile from its contractual commitment or seek parallel proceedings in India.

(v) Lastly, the contention that the BSA stood novated or assigned through the Sales Contracts and HSSAs is denied. Even if such assignment were assumed, respondent nos. 2 and 3 would merely step into respondent 1's contractual position, leaving no ground for a separate or parallel arbitration. In any event, all such issues fall within the jurisdiction of the arbitral tribunal constituted under the BSA. The respondents further rely on the Delhi High Court's findings in the petitioner's anti-arbitration injunction suit, which, having attained finality, bar re-litigation of identical issues.

19. *Submissions on behalf of Respondent No. 2:* Ld. Counsel for respondent no. 2, M/s. Vink Corporations DMCC, submitted that the multiple Sales Contracts that they have entered into with the petitioner

[8] (2020) 9 SCC 136.

were standalone limited term contracts concluding with the delivery of the goods. The arbitration clause is limited to, "*any dispute arising out of or relating to this Agreement*".

20. *Submissions on behalf of Respondent No. 3:* Similarly, Ld. Counsel for respondent no. 3 submits that it and petitioner entered into four HSSAs for delivering a specified quantity of the products detailed in each HSSAs. The arbitration clause in each HSSA provided that "*Dispute if any, between the parties arising in relation to this agreement of HIGH SEAS SALE shall be referred to the arbitration under the Indian Arbitration Act 1940*". Hence, the said clause was limited to disputes arising out of the specific HSSA between the petitioner and respondent no. 3.

21. Thus, respondent nos. 2 and 3 have submitted that no dispute has arisen with respect to Sales Contracts or the HSSAs and that the disputes raised by the petitioner are limited to BSA and the Addendum, with respect to which they are aliens.

IV. Analysis:

22. At the outset, it is to be noted that the present application has been filed under Section 11(6) read with Section 11(12)(a) of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator for a composite reference of disputes arising out of the (i) BSA, (ii) the Sales Contracts, and (iii) the HSSAs. At this stage, the Court is required to advert

to the foundational question of whether there exists a valid and enforceable arbitration agreement between the parties, which can form the basis of an arbitral reference.[9] Equally material is the principle that the Court at this stage does not engage in a roving enquiry into merits but confines itself to the existence and validity of an arbitration agreement.[10]

23. *Maintainability of the Section 11(6) Petition in International Commercial Arbitration:* However, before touching upon the merits of the matter, we must first concern ourselves with the seminal question whether the present petition is proper in the sense that whether this Court, in exercise of jurisdiction under Section 11(6) read with Section 11(12)(a) of the 1996 Act, can at all entertain a request for appointment of an arbitrator in respect of a dispute which, as contended by respondent, is an international commercial arbitration. This issue assumes foundational importance because, if Part I of the 1996 Act stands excluded by virtue of the parties' choice of the seat of arbitration and the governing law, the jurisdiction of this Court to entertain the application is ousted at the threshold.

24. Section 2(1)(f) of the Act, 1996 defines 'international commercial arbitration' as arbitration relating to disputes arising out of legal

[9] SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754.
[10] Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re, (2024) 6 SCC 1.

relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is a foreign national, whether that party is an individual, a body corporate, an association or body of individuals or a foreign Government. Respondent no. 1 being a company incorporated under the laws of Benin, the present dispute squarely falls within the ambit of international commercial arbitration. Once this characterisation is made, Section 2(2) of the Act becomes immediately relevant, for it stipulates that Part I shall apply only where the place of arbitration is in India, thereby mandating that Part I stands excluded where the parties have chosen a foreign seat. This Court has consistently held, beginning with *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*[11] *(BALCO)*, that Part I of the 1996 Act has no application to arbitrations seated outside India. The seat has a juridical significance in arbitration law: it determines the courts that exercise supervisory jurisdiction over the arbitral proceedings.

25. Respondent no. 1 has urged that Part I, including Section 11 is not applicable to the BSA dated 06.06.2019. At the threshold, it is common ground that the relationship between the petitioner and respondent no. 1 was crystallised in the BSA and its Addendum dated 09.01.2021. These agreements constitute the principal arrangements between the two

[11] (2012) 9 SCC 552.

contracting entities. The arbitration clause contained in Article 11 of the BSA explicitly provides that in the event of disputes, arbitration shall "*take place in Benin*," while Article 5 of the Addendum makes it further explicit that the BSA shall be "*construed, governed and interpreted in accordance with the laws of Benin*." In *Mankastu* (supra), this Court emphasised that the seat of arbitration is to be ascertained from the intention of the parties as gathered from the agreement as a whole. Further, in *BGS SGS SOMA JV v. NHPC Ltd.*[12] this Court observed that;

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

26. Article 11 of BSA read with Article 5 of the Addendum unequivocally shows that the parties not only indicated the geographical location of arbitration but also selected the governing law. The dual indications together leave little scope for doubt that Benin was intended to be the juridical seat with laws of Benin as the curial law.

27. *Inapplicability of Arbitration Clauses in Sales Contracts and HSSAs to dispute arising from BSA and Addendum*: The petitioner has sought to place reliance on arbitration clauses contained in Sales Contracts and HSSAs to argue that it was the intention of the parties to arbitrate in India.

[12] (2020) 4 SCC 234.

Petitioner argued that mere mention in BSA that arbitration shall *take place in Benin* does not by itself make Benin the juridical seat especially in light of contrary indica in terms of arbitration clauses in Sales Contracts and HSSAs. To buttress this proposition, petitioner further argued that BSA stood novated or superseded by the Sales Contracts and HSSAs which provide for arbitration in India. This argument is equally unmeritorious. It is well settled that novation of a contract must be established by clear and unequivocal intention of the parties to substitute the earlier agreement with a new one. The BSA dated 06.06.2019 constituted the principal or "mother" contract between the petitioner and respondent no. 1, defining their long-term commercial relationship, specifying supply obligations, pricing structure, risk allocation, and a self-contained dispute resolution clause providing for arbitration "to take place in Benin" under Benin law.

28. *No novation or supersession of BSA by Sales Contracts and HSSAs:* By contrast, the Sales Contracts executed between the petitioner and respondent no. 2, and the HSSAs executed with respondent no. 3, were subsequent, limited-purpose instruments. They were entered into only to facilitate execution of individual shipments once respondent no. 1 assigned part of its performance to other group entities. Each Sales Contract and HSSA were confined to a specific consignment or

transaction, contained its own commercial terms such as quantity, price and delivery schedule, and had separate arbitration clauses, one referring disputes to arbitration under the Act, 1996 (for Sales Contracts) and the other under the Indian Arbitration Act, 1940 (for HSSAs). None of these contracts incorporate or refer to the BSA or its arbitration clause, nor did they expressly substitute, novate, or supersede the BSA. Their scope ended upon completion of delivery and payment under the respective consignment.

29. The absence of cross-references or language of substitution makes it impossible to infer novation under Section 62[13] of the Indian Contract Act, 1872. The BSA continued to subsist independently and governed the broader supply arrangement, while the Sales Contracts and HSSAs merely operated as implementing or ancillary arrangements for discrete transactions. As this Court observed in *Balasore Alloys Ltd.*, where several contracts coexist, the arbitration clause of the mother agreement governs the dispute unless a later contract unequivocally replaces it. The petitioner has shown no such intention of substitution. Consequently, any alleged default by respondent no. 1, such as short-supply or failure to deliver contracted quantities, emanates from obligations under the BSA,

[13] Section 62. **Effect of novation, rescission, and alteration of contract**: If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

not from the Sales Contracts or HSSAs, which stand concluded. Therefore, the arbitration agreements in the Sales Contracts or HSSAs cannot displace or override the arbitration clause in the BSA, and disputes rooted in the BSA must be resolved exclusively through the arbitration agreed therein, namely, arbitration seated in Benin and governed by Benin law. Owing to the separateness of the three contractual instruments, it cannot be said that there were any contrary indica in BSA in respect of any other law.

30. In view of the aforesaid discussion, both the legal position and the factual matrix converge to a single, inescapable conclusion. The very nature of the present dispute is that of an "international commercial arbitration" as defined under Section 2(1)(f) of the 1996 Act, respondent no. 1 being a corporation incorporated under the laws of Benin. This statutory characterisation necessarily triggers the application of Part II of the 1996 Act when the arbitration is foreign-seated, and not Part I. Section 2(2) makes the position explicit by providing that Part I applies only where the place of arbitration is in India; consequently, recourse to Section 11, located within Part I, is available solely in respect of India-seated arbitrations. As this Court explained in *BALCO*, reaffirmed in *Mankastu*, *BGS SGS SOMA JV*, and emphatically reiterated in *PASL Wind*

Solutions[14], Indian Courts have no jurisdiction to appoint an arbitrator for a foreign-seated arbitration, irrespective of the nationality or domicile of the parties. On the facts as well, the BSA and its Addendum constitute the mother agreement, containing a clear and deliberate choice of Benin as the juridical seat of arbitration and Benin law as the governing and curial law. The subsequent Sales Contracts and HSSAs are merely ancillary, facilitating performance of isolated shipments, and cannot override the dispute resolution framework of the BSA. Thus, both in principle and in the factual circumstances of the case, the arbitration agreement in the BSA prevails. The disputes raised by the petitioner arise squarely from the BSA, and the parties' chosen forum for their adjudication is arbitration in Benin. Accordingly, the invocation of Part I and the present request under Section 11(6) of the 1996 Act is fundamentally misconceived, legally untenable, and contrary to the statutory scheme as well as the autonomy of the parties' contractual design.

31. *Initiation and Culmination of Benin Arbitration:* It is significant to note, even prior to the institution of the present proceedings, respondent no. 1 had already invoked arbitration in terms of Article 11 of the BSA in Benin. As already indicated, the Benin Commercial Court, vide order dated 26.07.2023, appointed a sole arbitrator, Dr. Gilbert Ahouandjinou,

[14] PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd, 2021 SCC OnLine SC 331.

in exercise of powers available under the Benin Arbitration Act, thereby constituting a tribunal under the parties' chosen curial law. The arbitral tribunal, after considering the objections, ruled affirmatively on its own jurisdiction in accordance with the doctrine of *kompetenz–kompetenz* and proceeded to adjudicate the substantive disputes arising out of the BSA.

32. The Benin-seated arbitral tribunal thereafter rendered a final and reasoned award dated 21.05.2024. The consequence of this development is twofold. First, the arbitral process agreed to by the parties in the BSA has already culminated in an adjudication on the very disputes which the petitioner now seeks to re-agitate through the present Section 11 proceedings. Second, once the tribunal has asserted and exercised its jurisdiction and delivered a final award, the petitioner cannot seek to initiate a parallel arbitral process in India in respect of the same subject matter. Allowing such an endeavor would be wholly antithetical to the principles of finality of arbitral proceedings, undermine the doctrine of *kompetenz–kompetenz,* and would defeat the territorial principle that the courts of the seat (Benin) exercise supervisory jurisdiction over the arbitration.

33. *Dismissal of Anti-Arbitration Injunction by High Court of Delhi*: Another consideration which cannot be lost sight of is that petitioner's attempt to resist the Benin arbitration before the Delhi High Court failed in

light of the judgment dated 08.11.2024 whereby the High Court allowed respondent no. 1's application under Section 45 and dismissed the anti-arbitration injunction suit filed by the petitioner. Although proceedings under Section 45 of the 1996 Act are distinct in scope from an application under Section 11, the reasoning adopted by the High Court, particularly its interpretation of the BSA, the Addendum, and the inter-relationship of the subsequent Sales Contracts and HSSAs, bears directly upon the factual architecture that underlies the present petition. The High Court, after a detailed examination of the contractual framework, arrived at a categorical finding that the BSA and its Addendum form the principal and operative contractual matrix between the petitioner and respondent no. 1, and that the arbitration clause contained therein represents the parties' deliberate and binding choice of dispute resolution. It held that the Sales Contracts and HSSAs, being independent and self-contained arrangements with respondent nos. 2 and 3 respectively, do not, and cannot, supersede, modify, or dilute the arbitration agreement in the BSA, nor do they create a composite dispute capable of attracting a unified arbitral mechanism under Indian law. To this effect, it was observed:

> **"*52.*** *Defendant No. 1 is not a party to either the Sales Contracts or HSSAs. Thus, there is no question of it being bound by the arbitration clause contained in the Sales Contracts and/or HSSAs. It is an admitted fact that Plaintiff and Defendant No. 1 signed the BSA and Addendum. If Defendant No. 1 assigned its obligation to Defendant No. 2 & 3 and Plaintiff agreed to the same, it would result in Defendant No. 2 & 3 stepping into the shoes of Defendant No. 1 for the purposes of the BSA and addendum. Defendants No. 2 & 3 would then be bound*

by the BSA and Addendum, including Article 11 and Article 5, respectively, but it cannot be vice-versa. Hence, Articles 11 and article 5 would continue to remain the binding arbitration agreement between the parties. The arbitration clause/Article 11 of BSA and Article 5 of the Addendum reads as under:

…….

After pursuing the arbitration clauses of BSA and Addendum, it is clear that the plaintiff and defendant no. 1 had, out of their own will, choose the preferred place of arbitration to be in Benin. Therefore, Arbitration would be the method of resolving any disagreement that might emerge between the parties to the BSA and addendum. Therefore, it is clear that the agreements entered into between defendants no 2 & 3 and the plaintiff are separate from the BSA and addendum.

***53.** The supplementary obligation, as stated by the plaintiff, would be limited to the consignment identified in the Sales Contracts or HSSAs. The sales contracts and HSSAs were entered for the supply of the product on behalf of defendants no 2 & 3. Neither is there a mention of any article/clause that states that the sales contracts and HSSAs are just an addition to the BSA, nor any clause that states that addendum and parties to BSA and addendum would be governed by the clauses of sales contracts and HSSAs. Defendants No. 2 & 3 are individual companies. Therefore, the contracts or agreements entered into between Defendants no 2 & 3 and the plaintiff containing an arbitration clause with the place of arbitration in India will be enforceable separately."*

34. The findings and conclusions have been summed up by the High Court in paragraph 60 in the following manner:

"*60. This court finds that the BSA, Addendum, and Sales contracts, along with HSSAs are distinct contracts having different parties, differing scope of work and different arbitration clauses. Merely stating that the defendant no 2 & 3 are the companies which are run by the defendant no.1 is not sufficient. Defendants No. 1 and the plaintiff have entered into the BSA and Addendum as individual entities therefore, any dispute that arises out of these agreements will be resolved as per the dispute resolution mechanism provided in the articles of these agreements, i.e., as per article 11 of BSA and article 5 of Addendum. The Initiation of arbitration proceedings under CAMEC in April 2023 and issuance of the Fludor NOA, demonstrate that the Plaintiff"s concerns stem from the BSA read with the Addendum as the cause of action of the present Suit is all rooted in the BSA and the Addendum. Therefore, disputes, if any, are to be adjudicated as per the Parties' chosen adjudicatory forum, i.e., under Article 11 of the BSA and the arbitration clause provided under Article*

> *11 of the BSA. Clearly Plaintiff has never questioned the validity of BSA and Addendum, which means that the Agreements are not null, void, inoperative or incapable of being performed."*
>
> (emphasis supplied)

In terms of the above, the High Court of Delhi allowed respondent no. 1's application under Section 45 and dismissed the suit filed by the petitioner.

35. *Findings of High Court of Delhi as 'Issue Estoppel'*: Importantly, these findings relating to (i) the autonomy and separateness of the contractual frameworks, (ii) the absence of any common arbitration agreement across respondents, and (iii) the impossibility of construing the BSA as having been novated by the later consignment-based contracts, are findings of jurisdictional fact. Once such jurisdictional facts have been adjudicated by a competent court, they cannot be reopened in subsequent proceedings between the same parties. The petitioner, having unsuccessfully canvassed the very same assertions before the High Court, is now barred by issue estoppel from reagitating those issues in a slightly altered statutory setting. The doctrine applies with full force even though the present proceeding is under Section 11 and the earlier one was under Section 45, for the identity of the issue, namely the operative agreement, the seat of arbitration, and the scope of the respective arbitration clauses, remains the same.

36. This Court in *Hope Plantations Ltd. v. Taluk Land Board Peermade & Anr.*[15] has elaborated upon 'issue estoppel' by observing as under:

> ***"26.*** *It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice."*
>
> (emphasis supplied)

37. Further, in *Anil v. Rajendra*[16] this Court noted that once there is refusal to refer to arbitration under Section 8 of the Act, 1996, parties thereafter cannot seek reference to arbitration under Section 11(6) as the earlier refusal under Section 8 amounts to issue estoppel. It was observed that;

> "***15****…….Thus, once the judicial authority takes a decision not to refer the parties to arbitration, and the said decision having become final,*

[15] (1999) 5 SCC 590.
[16] (2015) 2 SCC 583.

thereafter Section 11(6) route before the Chief Justice is not available to either party."

38. In the totality of circumstances, therefore, the findings of the High Court of Delhi furnish a cogent and authoritative factual foundation against which the present petition must be tested. When those findings are read conjointly with the statutory framework under Sections 2(1)(f) and 2(2) of the 1996 Act and the jurisprudence laid down in above referred judicial pronouncements, the legal position becomes unequivocal: (i) the BSA constitutes the mother agreement; (ii) the juridical seat of arbitration is Benin; (iii) the governing and curial law is the law of Benin; (iv) Part I of the Act stands excluded by operation of law; (v) Indian courts lack jurisdiction to appoint an arbitrator for a foreign-seated arbitration; (vi) after the commencement and during the subsistence of international commercial arbitration at Benin, the petitioner filed the anti-arbitration injunction suit, but failed to obtain any order or direction, (vii) in the meanwhile, international commercial arbitral proceedings culminated in the final award dated 21.05.2024, and finally (viii) the Delhi High Court dismissed the anti-arbitration injunction suit considering the very same issues raised herein and as such the petitioner will be estopped from raising the same issues.

39. The petitioner's endeavor to confer jurisdiction upon this Court by invoking ancillary contracts of a different genus, executed with different

parties, and containing materially different arbitration clauses, is wholly misconceived and contrary to the territorial principle that lies at the heart of the 1996 Act. The petition, therefore, is not merely untenable, it is foreclosed both in law and on account of estoppel arising from the petitioner's own prior litigation conduct.

40. *Misplaced reliance on Group of Companies Doctrine*: At this juncture, we must also answer the argument raised by Mr. Devadatt Kamat that under the group of companies doctrine, respondent nos. 2 and 3, though not signatories to the BSA, should nonetheless be made parties for a composite arbitration. The group of companies doctrine, as recognised in Indian law, is not an automatic talisman for impleading every corporate entity of a group into arbitral proceedings. This Court in *Cox & Kings* was at pains to emphasise that the doctrine is applied sparingly and only where there is compelling evidence of mutual intention of all the parties concerned to bind a non-signatory to an arbitration agreement. Such intention may be inferred from direct participation in negotiation, performance of contract, or from the role played in the overall transaction. However, a mere overlap of shareholding, or the fact that entities belong to the same corporate family, is not by itself sufficient. It was observed:

> "***93***. *Moreover, since the companies in a group have separate legal personality, the presence of common shareholders or Directors cannot lead to the conclusion that the subsidiary company will be bound by the acts of the holding company. The statements or representations made by promoters or Directors in their personal*

capacity would not bind a company. Similarly, the mere fact that the two companies have common shareholders or a common Board of Directors will not constitute a sufficient ground to conclude that they are a single economic entity…."

(emphasis supplied)

V. Conclusion and Decision:

41. Hence, the reliance placed by the petitioner on group of companies doctrine is misplaced in light of the foregoing analysis.

42. For the reasons stated above, Arbitration Petition No. 65 of 2023 filed under Section 11(6) read with Section 11(12)(a) of the Act, 1996 is hereby dismissed.

43. Parties shall bear their own costs.

……..J.
[PAMIDIGHANTAM SRI NARASIMHA]

……..J.
[ATUL S. CHANDURKAR]

NEW DELHI;
NOVEMBER 21, 2025