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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

AP.IM. 12 OF 2025

BETWEEN:

JAGDALE INDUSTRIES PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT NO. 782,
15TH CROSS I PHASE, J.P. NAGAR BANGALORE KARNATAKA,
INDIA - 560 078
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. GANAPATI R HEBBAR.

...PETITIONER

(BY SRI. MURALIDHARA C.,ADVOCATE)

AND:

JOHNSON AND JOHNSON PVT. LTD.,
A LIMITED LIABILITY COMPANY
HAVING ITS REGISTERED OFFICE AT: 2,
INTERNATIONAL BUSINESS PART,
SINGAPORE - 609 930.

...RESPONDENT

(BY SRI.DHYAN CHINNAPPA SENIOR ADVOCATE FOR
SRI.MOHAMMED SHAMEER., ADVOCATE FOR RESPONDENT)

THIS ARBITRATION PETITION-INTERIM MEASURE IS
FILED UNDER SECTION 9 OF THE ARBITRATION AND
CONCILIATION ACT, 1996, PRAYING TO (1) PASS AN ORDER
OF INJUNCTION RESTRAINING THE RESPONDENT, THEIR
AGENTS, ASSIGNEES, NOMINEES, REPRESENTATIONS OR
ANYONE CLAIMING THROUGH OR UNDER THE RESPONDENT



FROM USING, COMMERCIALIZING AND DEALING IN ANY MANNER WHATSOEVER WITH THE ACQUIRED ASSETS (2) PASS AN ORDER TO RESTRAIN THE RESPONDENT THEIR AGENTS, ASSIGNEES, NOMINEES, REPRESENTATIONS OR ANYONE CLAIMING THROUGH OR UNDER THE RESPONDENT FROM DISPOSING OFF ASSETS AMOUNTING TO RS.617 CRORES AND ETC.

THIS AP.IM PETITION HAVING BEEN HEARD AND RESERVED ON 05.06.2026 FOR ORDER COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

CAV ORAL ORDER ON I.A.4/2025

This Arbitration Petition is filed by the applicant under Section 9 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act, 1996') seeking interim measures in the nature of following reliefs:

"a. Pass an order of injunction restraining the Respondent, their agents, assignees, nominees, representations or anyone claiming through or under the Respondent from using, commercialising and dealing in any manner whatsoever with the Acquired Assets.

b. Pass an order to restrain the Respondent their agents, assignees, nominees, representations or anyone claiming through or under the Respondent from disposing off assets amounting to Rs.617 Crores.

c. Pass an order directing the Respondent to forthwith pre-deposit an amount of Rs.617 Crores in this Hon'ble Court;

d. In the alternative to prayer (b), and without prejudice to the same, pass an order directing the Respondent to

furnish an unconditional and irrevocable bank guarantee for an amount of Rs.617,00,00,000/- (Rupees Six Hundred and Seventeen Crores Only), issued by a scheduled commercial bank, in favour of the Applicant".

2. The present interim application in I.A.No.4/2025 is filed by the respondent under Section 151 Code of Civil Procedure read with Section 9 of Act, 1996 seeking rejection of the aforesaid petition on the ground of this Court lacking jurisdiction to entertain the same.

3. Brief facts of the case for the purpose of consideration of interim application in I.A.No.4/2025 are:

(a) that the applicant and the respondent had entered into an Agreement for Sale and Purchase of Acquired Assets on 09.10.2014 in terms of which applicant had agreed to sell and the respondent had agreed to purchase the "Acquired Assets" which includes *interalia* all Product Intellectual Property, all Books and Records and all Products and Improvements as defined under Section 2.1(a) of the said agreement.

(b) That the applicant has received the entire consideration in respect of "acquired assets".

(c) The closing date of the agreement as agreed between the parties in terms of Amendment and Addendum Agreement was 07.11.2014.

(d) Parties had also executed a Bill of Sale dated 07.11.2014 pursuant to the said agreement.

(e) Section 6.5 of the Agreement imposed non-compete obligation upon the applicant for a period of 10 years from the closing date in India and other applicable jurisdiction, whereby applicant was prohibited from directly or indirectly engaging in any business that competes with the acquired business or its product and for discharging these obligations, respondent was required to pay a consideration to the applicant. Applicant in compliance with the said provisions of Section 6.5 of the Agreement had duly and faithfully discharged the non-compete obligation for the entire duration of 10 years from the closing date i.e., 07.11.2014 to 07.11.2024. That despite applicant having fully discharged his non-compete obligation for the said agreement, respondent failed to take any steps to initiate process of computation or displacement of the consideration due for such performance. Thus giving rise to a dispute between the parties.

(f) That the value assessed for non-compete performance being Rs.617 crores.

(g) Applicant had issued a legal notice on 13.01.2025 demanding payment of the said sum with interest at 24% per annum.

(h) A reply came to be issued by the respondent giving rise to the dispute between the parties.

(i) That Section 10.7 of the Agreement provides for Resolution of dispute through arbitration. Applicant accordingly issued notice dated 09.06.2025 as per Section 10.7 of the Agreement, appointing its nominee arbitrator and called upon the respondent to appoint second arbitrator. Applicant received a reply dated 21.06.2025, by which the respondent had requested for mediation without prejudice.

(j) That due to the conduct of the respondent, of they continuously evading their obligation in paying the dues to the applicant, the present petition seeking interim measure as noted above is filed.

(k) It is contended that since the registered office of the applicant is situated in Bengaluru and the respondent's office is situated in Singapore and all the tangible assets pertaining to the present matter are situated in Bengaluru and the agreement was executed in Bengaluru, the applicant business operation being established in Bengaluru, this Court has jurisdiction. Hence the petition.

4. Resisting the prayers for interim measures being sought for by the applicant as noted above, the present interim application in I.A.No.4/2025 is filed by the respondent seeking dismissal/rejection of the above main petition, primarily contending that:

(a) Applicant has admitted to have received entire purchase price, as such there is no ambiguity on the completion and final performance of the commercial transaction between the parties;

(b) That this Court lacks inherent jurisdiction to entertain Section 9 petition, in the light of provisions contained under Section 10.7(b) of the agreement which explicitly designates Mumbai as the place where the arbitration shall be conducted thereby clarifying Mumbai as the juridical seat of arbitration. That once the seat of arbitration is designated, exclusive supervisory jurisdiction rests only with the Courts at the seat. Designation of place of arbitration amounts to designation of juridical seat.

(c) That in the present case not only does the sale agreement lack any such contrary indicia, but it further strengthens the Mumbai's exclusive jurisdiction by explicitly conferring enforcement jurisdiction upon the Courts at Mumbai as provided under Section 10.7(i).

Hence sought for rejection of the main petition.

5. Sri Dhyan Chinnappa, learned Senior counsel appearing for the respondent in support of grounds raised in application in IA.No.4/2026, reiterating the written synopsis, submitted:

(a) that in terms of Section 10.7 of the agreement, the parties have expressly and consciously agreed Mumbai to

be the place of arbitration which is to be considered as juridical seat of Arbitration. Therefore any clause running contrary to the said agreement and understanding to vest jurisdiction outside the seat of arbitration cannot be given effect to.

(b) Referring to Paragraphs 75, 76, 96 to 99 of the Judgment of the Apex Court in the case of ***Bharat Aluminium Company Vs Kaiser Aluminium Technical Service Inc., (BALCO)*** reported in **(2012) 9 SCC 552**, he submitted that the juridical seat of arbitration is the seat of arbitration and law of the said seat of arbitration alone govern the arbitration proceedings.

(c) Referring to paragraphs 44, 46, 56, 59 and 82 of the Judgment in the case of ***BGS, SGS, Soma JV v. NHPC Ltd.*** reported in **(2020)4 SCC 234** as well as paragraphs 11 to 20 of the Judgment in the case of ***Brahmani River Pellets Ltd., Vs Kammachi Industries Ltd.*** reported in **2025 SCC 465**, he submitted that an agreement as to seat of arbitration is analogous to an exclusive jurisdiction clause. As such once the seat of arbitration is agreed and finalized, no other Court would have jurisdiction to deal with the matter.

(d) Referring to judgment of the Apex Court in the case of ***M/s.Arif Azim Co. Ltd. Vs M/s.Micromax Informatics FZE*** **2024 INSC 850**, he submitted that moment a juridical seat is designated it vests the Court of the seat with exclusive jurisdiction to supervise the arbitration thereby ousting the jurisdiction of all other Courts. That

the notional doctrine of concurrent jurisdiction has been firmly over ruled. Even a general jurisdictional clause relating to substantive contract cannot undermine the specific designation of the seat of arbitration.

(e) That the Act, 1996 is a self contained code and the principles governing jurisdiction of the Courts for suits under Code of Civil Procedure do not apply to the proceedings under Act, 1996. Any attempt to confer the jurisdiction to the Court other than what is agreed in the agreement cannot be accepted. That once the seat of arbitration has been designated, competency of the Court based on traditional tests under the Code of Civil procedure is wholly inapplicable to the arbitration proceedings.

(f) Thus, he submitted that the jurisdiction of supervisory Court in arbitration is not determined by where the cause of action arises or where the defendant resides. But is anchored exclusively to the place chosen by the parties as the seat of arbitration.

(g) Referring to Section 10.7, he submitted that any ambiguity in 10.7(b) is removed by the harmonious reading of 10.7(i) of the agreement, which expressly confers enforcement jurisdiction also upon the Courts at Mumbai. A conjoint reading of Section 10.7(b) and 10.7(i) unequivocally demonstrates the intention of the parties that the entire arbitral process would be conducted at Mumbai. Even phrase "Court of competent jurisdiction" for seeking any emergency, interim or provisional relief under

Section 10.7(j) of the Agreement refers to seat of Court of Arbitration and must be interpreted contextually and harmoniously.

(h) That in the present case parties have meticulously construed a dispute resolution mechanism centered at Mumbai. Section 10.7(b) fixes the seat of arbitration at Mumbai and Section 10.7(i) designates Court in Mumbai for enforcement thereof. Thus the only interpretation of Court of competent jurisdiction that is consistent with the scheme is with reference to the Court that has been made competent by the parties own agreement i.e., seat of arbitration at Mumbai. That invoking the jurisdiction of this Court by the applicant is erroneous.

Hence, seeks for dismissal of Section 9 petition solely on the ground of want of jurisdiction.

6. Sri.Harish Narasappa, learned Senior counsel appearing for the applicant on the other hand reiterating the contents of the main petition, the objections filed by the applicant to the application in I.A.No.4/2025 and the written synopsis submitted:

(a) that principles regarding seat of arbitration to have exclusive jurisdiction is inapplicable in a case of international commercial arbitration. That in the instant case admittedly one of the parties to the agreement is from outside India. Therefore the agreement with regard to seat of arbitration excluding the jurisdiction of other Court cannot be applied to the facts of the instant case.

(b) The agreement itself contains contrary indicia. That there cannot be implied exclusion even when the seat is determined in the case of international arbitration. Section 9 does not come under supervisory jurisdiction. Supervision starts only after Arbitral Tribunal is constituted and the proceedings have commenced thereunder. Thus, existence of a designated seat of arbitration does not in law or in principle operate as a bar to parties seeking interim reliefs from the Courts of another jurisdiction, especially when the parties have agreed to do so.

(c) That the applicant company is having its registered office in Bengaluru, the agreement subject matter of the proceedings has been entered into at Bengaluru and that Non-compete clause contemplated under Section 6.5 of the said agreement was required to be performed and a decision in this regard was to be taken at Bengaluru within the jurisdiction of this Court. Therefore this Court alone has jurisdiction.

(d) There is a difference between "Supervisory jurisdiction" and "Supportive jurisdiction". As regards agreement for conducting of the arbitration under Section 10.7(b), it would fall within the purview of supervisory jurisdiction. As regards obtaining interim relief, it falls within the supportive jurisdiction as that of in the instant case before this Court.

(e) That Section 10.7 is framed to cover all possible scenario. 10.7(a) provides for disputes shall be referred

to and resolved through arbitration in accordance with London Court of International Arbitration India Rules.

(f) 10.7(b) specifies Mumbai as venue of the arbitration. Further 10.7(i) stipulates that the arbitral award will be entered and enforced before any Court of competent jurisdiction in Mumbai. However Section 10.7(j) is an exception providing option to any other party to seek emergency, interim, provisional relief prior to mediation and constitution of full Arbitral Tribunal from any Court of competent jurisdiction.

(g) That expression "emergency, interim and provisional relief" has to be given fullest meaning as the said clause envisages operation of two separate jurisdictions for two distinct stages within the arbitral process. Since the intention of the parties at the time of execution of the agreement was clear and unequivocal, they had consciously contemplated and agreed upon jurisdiction distinct from the venue for the limited purpose of seeking emergency, interim or provisional relief.

(h) Where the agreement contains a separate, self-contained clause exclusively governing emergency and interim reliefs and where the language employed is unambiguous, such clause must be interpreted and given effect to in its plain and ordinary meaning.

(i) Relying upon the Judgment of the Delhi High Court in the case of ***Cars24 Services Pvt. Ltd. Vs Cyber Approach Workspace LLP*** reported in ***SCC online***

2020 Del 1720 submitted that the contention of the respondent with regard to Mumbai Court alone having jurisdiction even to grant the interim relief to the exclusion of all other Courts is misconceived, as the scheme of contract itself contemplate multiple jurisdiction, one for the enforcement of arbitral award and another for emergency or interim relief. The determination of jurisdiction cannot rest on the mechanical equation of venue with the seat. That even in the cases where the venue and the seat are same, an express provision carved out for interim relief in the contract cannot be ignored. Parties have autonomy to choose and vest the jurisdiction.

(j) Referring to paragraphs 24 and 25 of the Judgment of the Apex Court in the case of **Mankatsu Impex Pvt. Ltd. Vs Airvisual Limited.** reported in **(2020)5 SCC 399**, learned Senior counsel submitted that the Apex Court has clarified the position with regard to agreement providing two different jurisdiction.

(k) Referring to Judgment of the Kolkatta High Court in the case of **Commercial Division, Bolo PDR Restaurants India Ltd. Vs Devyani International Ltd.,** submitted that where there is a forum selected especially under the Arbitration clause, then it should be given primacy ahead of the seat when it comes to the specific nature of the agreement.

(l) Thus he insisted that decisions in the case of ***Mankatsu, Cars24 and Bolopedia Red (supra)*** cumulatively would establish that where the parties have consciously structured their arbitration agreement to confer jurisdiction on specific Courts for defined stages of the arbitral process, such contractual intent must be given effect to.

(m) Referring to paragraph 21 of the Judgment of the Kolkatta High Court in the case of ***Home Vista Decor and Furnishing Pvt. Ltd. Vs Connect Residuary Pvt. Ltd.,*** submitted that a designated venue cannot by default or automatic operation be elevated to the status of a seat of arbitration.

(n) Thus, seeks for dismissal of the application in I.A.No.4/2025.

7. Heard and perused the records.

8. Points that arise for consideration is:

"Whether in the light of Section 10.7(j) of the agreement, the application under Section 9 of the Act, 1996 is maintainable before this Court, as sought to be contended by the applicant; or, in light of Section 10.7(b) and 10.7(i) of the agreement, does this Court lack jurisdiction, as insisted by the respondent?"

Analysis and Discussion:

9. Relevant for the purpose is Section 10.7 of the Agreement for Sale dated 09.10.2014 that provides for

the resolution of disputes through arbitration, which reads as follows:

Section 10.7 Arbitration:

(a) Any Dispute, including any question regarding this Agreement's or any Ancillary Agreement's existence, validity or termination, that cannot be resolved by mediation within sixty (60) calendar days of notice by one Party to the other Party of the existence of a Dispute shall be referred to and finally resolved by arbitration under the London Court of International Arbitration India Arbitration Rules ("LCIA Rules"), which LCIA Rules are deemed to be incorporated by reference into this Section 10.7. The arbitration shall be considered an international arbitration, and the Parties waive all rights to seek review of the award for errors of law or fact in any court, provided, however, either Party may seek judicial review for errors of Law of any award of any injunctive or other equitable relief.

(b) The arbitration shall be conducted in the English language in Mumbai, India

(c) Subject to subsection (d) below, there shall be three (3) arbitrators, one chosen by each Party, and the third, who shall act as chair, chosen by agreement of the Parties. If the Parties are unable to reach agreement on the third arbitrator within sixty (60) days of the selection of the second arbitrator, the third arbitrator will be chosen in accordance with the LCIA Rules.

(d) If after exchange of the notice of arbitration and the notice of response, it appears that no Party has demanded damages greater than One Hundred Twenty Million Rupees (INR 120,000,000), and that no Party has demanded equitable relief, there shall be a single arbitrator. Such arbitrator shall be chosen by agreement of the Parties or, if the Parties are unable to reach agreement on the arbitrator within sixty (60) calendar days of the notice of response, the arbitrator will be chosen in accordance with the LCIA Rules.

(e) The arbitral tribunal shall confer with the Parties at the outset of the arbitration to establish a timetable for the arbitration. Absent agreement of the Parties to a longer period of time, such timetable shall provide for hearings to commence within nine (9) months of the selection of the arbitral tribunal. At the request of either Party, the arbitral tribunal shall direct that a transcript be made of any hearing,

and may make provision for how the cost of such transcript shall be borne pending allocation of such cost in the award.

(f) The arbitral tribunal shall decide the merits of the Dispute in accordance with the Law governing this Agreement, without application of any principle of conflict of laws that would result in reference to a different law.

(g) Within ninety (90) calendar days of the conclusion of the hearings and completion of any post-hearing submissions that the arbitral tribunal shall determine to be necessary, the arbitral tribunal shall prepare and submit to the Parties its award. The award of the arbitrators may grant any relief appropriate under the applicable Law, including declaratory relief, injunctive relief and specific performance. The arbitral tribunal may, however, add to the actual damages awarded any additional amount specifically required to be added by any applicable Law.

(h) The arbitral tribunal may award the costs and expenses of the arbitration as provided in the LCIA Rules, but each Party shall bear its own attorney's fees.

(i) The award of the tribunal may be entered and enforced in any court of competent jurisdiction in Mumbai, India. Notwithstanding Section 10.7(h), a court called upon to enforce such an award shall require a Party resisting enforcement to pay the reasonable attorney fees and costs of the Party seeking enforcement.

(j) Any Party may seek emergency, interim or provisional relief prior to mediation or the appointment of a full arbitral tribunal from any court of competent jurisdiction, without prejudice to this Agreement or any Ancillary Agreement, to mediate or arbitrate in accordance with Section 10.6 or this Section 10.7. After appointment of a full arbitral tribunal, any request for such relief shall be addressed to the arbitral tribunal, which shall have the power to enter an interim award granting any emergency, interim or provisional relief to which a Party may be entitled under applicable Law".

10. Perusal of aforesaid terms of Section 10.7 indicates:

(a) that the parties have mutually agreed that arbitration shall be conducted at Mumbai, India.

(b) that the parties have agreed that the dispute shall be referred and finally resolved by arbitration under the

London Court of International Arbitration India, Arbitration Rules (LCIA) Rules;

(c) that the parties have agreed that the award of the Tribunal to be entered and enforced in any Court of competent jurisdiction in Mumbai, India.

(d) that liberty is reserved to the party to the agreement to seek emergency, interim, or provisional relief prior to mediation or the appointment of a full Arbitral Tribunal from any court of competent jurisdiction, without prejudice to the agreement or any ancillary agreement to mediate or arbitrate in accordance with Section 10.6 or Section 10.7.

11. The controversy thus is not about Mumbai being the place of arbitration; rather, it is, whether Mumbai being place of arbitration, the Courts at Mumbai have exclusive jurisdiction over all matters of arbitration, including seeking interim relief.
12. The uncertainty stems from conflicting interpretation and understanding between the parties with regard to Section 10.7(j) of the agreement, which provides that any party may seek ***emergency, interim, or provisional relief prior to mediation or the appointment of a full Arbitral Tribunal from any Court of competent jurisdiction, without prejudice to the agreement or***

any ancillary agreement to mediate or arbitrate in accordance with Section 10.6 or Section 10.7.

13. It is the vehement submission of Sri. Dhyan Chinnappa, learned Senior counsel appearing for the respondent, that once the seat of arbitration has been mutually agreed between the parties to be at Mumbai, the courts at Mumbai alone have exclusive jurisdiction, even for the purpose of granting emergency, interim, or provisional reliefs. Any other interpretation would defeat the intentions and the agreement entered into between the parties.
14. *Per contra*, Sri. Harish Narasappa, learned Senior counsel appearing for the applicant, submitted that notwithstanding the parties agreeing that Mumbai to be the place of arbitration, in view of a specific provision made under clause (j) of Section 10.7 providing an option to the parties to approach any Court of competent jurisdiction for the purpose of availing emergency, interim, or provisional relief, courts at Mumbai would not assume exclusive jurisdiction; the Court at Bengaluru also have jurisdiction to entertain the application under Section 9 of the Act, 1996.

Position of Law:

15. As both sides have extensively referred to and relied upon various judgments of the Apex Court and of other High Courts it is necessary to advert to the position of law with regard to the "seat" of arbitration and the "venue" of arbitration.
16. In light of divergent views arising regarding the correctness of the decision of the three-judge Bench in the case of ***Bhatia International Vs Bulk Trading S.A.***, reported in **(2002) 4 SCC 105**, pertaining to the interpretation of clause (2) of Section 2 of the Act, 1996 and the applicability of Part I of the Act, 1996, upon reference, the Constitution Bench of the Apex Court in the case of **BALCO (supra)** while answering the reference adverted to the following points;
1. *Does section 2(2) bar application of Part I to arbitration which take place outside India?*
 2. *Does the missing " only", indicate a deviation from article 1 (2) of the model law?*
 3. *Is section 2(2) in conflict with sections 2(4) and 2(5)?*
 4. *Does section 2(7) indicate that Part I applies to arbitrations held outside India?*
 5. *Does section 48(1)(e), Arbitration and Conciliation Act, 1996 recognizing the jurisdiction of Indian courts to annul a foreign award, falling within Part II?*
 6. *Interim measures, etc., by Indian courts where the seat of Arbitration is outside India.*

7. *Is an inter-partes suit for interim relief maintainable?*

17. In the conclusion at paragraphs 194 to 198 the Apex Court has answered the reference as under:

Conclusion

194. *In view of the above discussion, we are of the considered opinion that the Arbitration Act, 1996 has accepted the territoriality principle which has been adopted in the UNCITRAL Model Law. Section 2(2) makes a declaration that Part I of the Arbitration Act, 1996 shall apply to all arbitrations which take place within India. We are of the considered opinion that Part I of the Arbitration Act, 1996 would have no application to international commercial arbitration held outside India. Therefore, such awards would only be subject to the jurisdiction of the Indian courts when the same are sought to be enforced in India in accordance with the provisions contained in Part II of the Arbitration Act, 1996. In our opinion, the provisions contained in the Arbitration Act, 1996 make it crystal clear that there can be no overlapping or intermingling of the provisions contained in Part I with the provisions contained in Part II of the Arbitration Act, 1996.*

195. *With utmost respect, we are unable to agree with the conclusions recorded in the judgments of this Court in Bhatia International [(2002) 4 SCC 105] and Venture Global Engg. [(2008) 4 SCC 190] 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.*

196. *We conclude that Part I of the Arbitration Act, 1996 is applicable only to all the arbitrations which take place within the territory of India.*

197. *The judgment in Bhatia International [(2002) 4 SCC 105] was rendered by this Court on 13-3-2002. Since then, the aforesaid judgment has been followed by all the High Courts as well as by this Court on numerous occasions. In fact, the judgment in Venture Global Engg. [(2008) 4 SCC 190] has been rendered on 10-1-2008 in terms of the ratio of the decision in Bhatia International [(2002) 4 SCC 105]. Thus, in order to do complete justice, we hereby order, that the law now declared by this Court shall apply prospectively, to all the arbitration agreements executed hereafter.*

198. *The reference is answered accordingly.*

18. Pertinent to the purpose of the present case is to refer to the discussion and analysis by the Apex Court, particularly while answering point No.4 at paragraph 88, wherein the Apex Court clarified the applicability of Part I with reference to "domestic arbitration", "international arbitration", "domestic award" and "foreign award" and at paragraphs 96 to 100 clarified the term "Court" and its jurisdiction with reference to "Seat of Arbitration" as under:

88. *Having considered the aforesaid submissions, we are of the opinion that the views expressed by the learned counsel for the appellants are not supported by the provisions of the Arbitration Act, 1996. Section 2(7) of the Arbitration Act, 1996 reads thus:*

"2. (7) *An arbitral award made under this Part shall be considered as a domestic award."*

In our opinion, the aforesaid provision does not, in any manner, relax the territorial principle adopted by the Arbitration Act, 1996. It certainly does not introduce the concept of a delocalised arbitration into the Arbitration Act, 1996. It must be remembered that Part I of the Arbitration Act, 1996 applies not only to purely domestic arbitrations i.e. where none of the parties are in any way "foreign" but also to "international commercial arbitrations" covered within Section 2(1)(f) held in India. The term "domestic award" can be used in two senses: one to distinguish it from "international award", and the other to distinguish it from a "foreign award". It must also be remembered that "foreign award" may well be a domestic award in the country in which it is rendered. As the whole of the Arbitration Act, 1996 is designed to give different treatments to the awards made in India and those made outside India, the distinction is necessarily to be made between the terms "domestic awards" and "foreign awards". The scheme of the Arbitration Act, 1996 provides that Part I shall apply to both "international arbitrations" which take place in India as well as "domestic arbitrations" which would normally take place in India. This is clear from a number of provisions contained in the Arbitration Act, 1996 viz. the Preamble of the said Act, proviso and the explanation to Section 1(2), Sections 2(1)(f), 11(9), 11(12), 28(1)(a) and 28(1)(b). All the aforesaid provisions, which incorporate the term "international", deal with pre-award situation. The term "international award" does not occur in Part I at all. Therefore, it would appear that the term "domestic award" means an

award made in India whether in a purely domestic context i.e. domestically rendered award in a domestic arbitration or in the international context i.e. domestically rendered award in an international arbitration. Both the types of awards are liable to be challenged under Section 34 and are enforceable under Section 36 of the Arbitration Act, 1996. Therefore, it seems clear that the object of Section 2(7) is to distinguish the domestic award covered under Part I of the Arbitration Act, 1996 from the "foreign award" covered under Part II of the aforesaid Act; and not to distinguish the "domestic award" from an "international award" rendered in India. In other words, the provision highlights, if anything, a clear distinction between Part I and Part II as being applicable in completely different fields and with no overlapping provisions.

.....

96. Section 2(1)(e) of the Arbitration Act, 1996 reads as under:

"2. Definitions.—(1) *In this Part, unless the context otherwise requires—*

*(a)-(d)****

(e) 'Court' means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;"

We are of the opinion, the term "subject-matter of the arbitration" cannot be confused with "subject-matter of the suit". The term "subject-matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise

supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located.

97. *The definition of Section 2(1)(e) includes "subject-matter of the arbitration" to give jurisdiction to the courts where the arbitration takes place, which otherwise would not exist. On the other hand, Section 47 which is in Part II of the Arbitration Act, 1996 dealing with enforcement of certain foreign awards has defined the term "court" as a court having jurisdiction over the subject-matter of the award. This has a clear reference to a court within whose jurisdiction the asset/person is located, against which/whom the enforcement of the international arbitral award is sought. The provisions contained in Section 2(1)(e) being purely jurisdictional in nature can have no relevance to the question whether Part I applies to arbitrations which take place outside India.*

98. *We now come to Section 20, which is as under:*

"20. Place of arbitration.—(1) *The parties are free to agree on the place of arbitration.*

(2) *Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the Arbitral Tribunal having regard to the circumstances of the case, including the convenience of the parties.*

(3) *Notwithstanding sub-section (1) or sub-section (2), the Arbitral Tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property."*

A plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any "place" or "seat" within India, be it Delhi, Mumbai, etc. In the absence of the parties' agreement thereto, Section 20(2) authorises the tribunal to determine the place/seat of such arbitration. Section

20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.

99. The fixation of the most convenient "venue" is taken care of by Section 20(3). Section 20, has to be read in the context of Section 2(2), which places a threshold limitation on the applicability of Part I, where the place of arbitration is in India. Therefore, Section 20 would also not support the submission of the extra-territorial applicability of Part I, as canvassed by the learned counsel for the appellants, so far as purely domestic arbitration is concerned.

100. True, that in an international commercial arbitration, having a seat in India, hearings may be necessitated outside India. In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but it would not have the effect of changing the seat of arbitration which would remain in India. The legal position in this regard is summed up by Redfern and Hunter, *The Law and Practice of International Commercial Arbitration* (1986) at p. 69 in the following passage under the heading "The Place of Arbitration":

"The preceding discussion has been on the basis that there is only one 'place' of arbitration. This will be the place chosen by or on behalf of the parties; and it will be designated in the arbitration agreement or the terms of the reference or the minutes of proceedings or in some other way as the place or 'seat' of the arbitration. This does not mean, however, that the Arbitral Tribunal must hold all its meetings or hearings at the place of arbitration. International commercial arbitration often involves people of many different nationalities, from many different countries. In these circumstances, it is by no means unusual for an Arbitral Tribunal to hold meetings—or even hearings—in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses.... It may be more convenient for an Arbitral Tribunal sitting in one country to conduct a hearing in another country—for instance, for the purpose of taking evidence.... In such circumstances, each move of the Arbitral Tribunal does not of itself mean that the seat of arbitration changes. The seat of the arbitration remains the place initially agreed by or on behalf of the parties."

This, in our view, is the correct depiction of the practical considerations and the distinction between "seat" [Sections 20(1) and 20(2)] and "venue" [Section 20(3)]. We may point out here that the distinction between "seat" and "venue" would be quite crucial in the event, the arbitration

agreement designates a foreign country as the "seat"/"place" of the arbitration and also selects the Arbitration Act, 1996 as the curial law/law governing the arbitration proceedings. It would be a matter of construction of the individual agreement to decide whether:

(i) the designated foreign "seat" would be read as in fact only providing for a "venue"/"place" where the hearings would be held, in view of the choice of the Arbitration Act, 1996 as being the curial law, OR

(ii) the specific designation of a foreign seat, necessarily carrying with it the choice of that country's arbitration/curial law, would prevail over and subsume the conflicting selection choice by the parties of the Arbitration Act, 1996.

19. While answering point No.6 the Apex Court, declining to treat Section 9 of the Act 1996 as a stand-alone provision capable of being invoked, regardless of the seat of arbitration at paragraphs 155, 156, 157, 158, 159,163 and 164 has held as under;

Interim measures, etc. by the Indian courts where the seat of arbitration is outside India

155. *We have earlier noticed the submissions made by the learned counsel for the parties wherein they had emphasised that in case the applicability of Part I is limited to arbitration which take place in India, no application for interim relief would be available under Section 9 of the Arbitration Act, 1996, in an arbitration seated outside India. It was further emphasised that in such circumstances, the parties would be left remediless. Dr Singhvi, in order to get out of such a situation, had submitted that remedy under Section 9 would still be available. According to Dr Singhvi, Section 9 is a stand alone provision which cannot be effected by the limit contained in Section 2(2). He submits that the provisions contained in Section 9 do not impede the arbitral process. Its only purpose is to provide an efficacious, preservatory, interim, conservatory, emergent relief necessary for protecting the subject-matter of arbitration, pending the conclusions of the proceedings. He also emphasised that interim orders of foreign courts are not, ipso facto or ipso jure, enforceable in India and, absent Section 9, a party will be remediless in several real life situations. He, therefore, urged that this Court could give a purposive interpretation of Section 9 to ensure that the courts in India have the jurisdiction to take necessary measures for preservation of assets and/or to*

prevent dissipation of assets. Dr Singhvi submitted that the decision in *Bhatia International* [(2002) 4 SCC 105] is correct, insofar as it relates to the grant of interim injunction under Section 9 of the Arbitration Act, 1996. He did not say before us that the courts in India would have any power to annul the award under Section 34 of the Arbitration Act, 1996, in matters where arbitrations have taken place abroad. But at the same time, he canvassed that the provisions contained in Section 9 cannot be equated with the provisions contained in Section 34. The remedy under Section 9 is interim and subservient to the main arbitration proceedings, whereas remedy under Section 34 would interfere with the final award. Furthermore, annulment of the award under Section 34 would have extra-territorial operation whereas Section 9 being entirely asset focused, would be intrinsically territory focused and intra-territorial in its operation. He submitted that the ratio in *Bhatia International* [(2002) 4 SCC 105] on the core issue i.e. grant of interim measures under Section 9, is correct. Although, he was not much concerned about the other issues, of annulment or enforcement of the award, he has reiterated the submissions made by the other learned counsel, on Sections 2(2), 2(1)(f) and 2(5).

156. We are unable to accept the submissions made by the learned counsel. It would be wholly undesirable for this Court to declare by process of interpretation that Section 9 is a provision which falls neither in Part I or Part II. We also do not agree that Section 9 is a *sui generis* provision.

157. Schematically, Section 9 is placed in Part I of the Arbitration Act, 1996. Therefore, it cannot be granted a special status. We have already held earlier that Part I of the Arbitration Act, 1996 does not apply to arbitrations held outside India. We may also notice that Part II of the Arbitration Act, 1996, on the other hand, does not contain a provision similar to Section 9. Thus, on a logical and schematic construction of the Arbitration Act, 1996, the Indian courts do not have the power to grant interim measures when the seat of arbitration is outside India. A bare perusal of Section 9 would clearly show that it relates to interim measures before or during arbitral proceedings or at any time after the making of the arbitral award, but before it is enforced in accordance with Section 36. Section 36 necessarily refers to enforcement of domestic awards only. Therefore, the arbitral proceedings prior to the award contemplated under Section 36 can only relate to arbitrations which take place in India. We, therefore, do not agree with the observations made in *Bhatia International* [(2002) 4 SCC 105] in para 28 that "The words 'in accordance with Section 36' can only go with the words 'after the making of the arbitral award'." It is clear that the words "in accordance with Section 36" can have no reference to an application made "before" or "during the arbitral proceedings".

The text of Section 9 does not support such an interpretation. The relevant part of the provisions is as under: (SCC p. 122, para 28)

"28. ... '9. Interim measures, etc. by court.—A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court...."

A bare look at the aforesaid provision would indicate that there is no break up of the sentence in between the two commas at the beginning and end of the sentence. Therefore, the sentence cannot be broken into three parts as it is done in para 28 of Bhatia International [(2002) 4 SCC 105] . The arbitral proceedings mentioned in the aforesaid provision cannot relate to arbitration which takes place outside India.

158. *Therefore, we have no hesitation in declaring that the provision contained in Section 9 is limited in its application to arbitrations which take place in India. Extending the applicability of Section 9 to arbitrations which take place outside India would be to do violence to the policy of the territoriality declared in Section 2(2) of the Arbitration Act, 1996.*

159. *It was next submitted that if the applicability of Part I is limited to arbitrations which take place in India, it would leave many parties remediless in a number of practical situations.*

163. *In our opinion, the aforesaid judgment in Reliance Industries Ltd. [(2002) 1 All ER (Comm) 59 : (2002) 1 Lloyd's Rep 645] does not lead to the conclusion that the parties were left without any remedy. Rather the remedy was pursued in England to its logical conclusion. Merely because the remedy in such circumstances may be more onerous from the viewpoint of one party is not the same as a party being left without a remedy. Similar would be the position in cases where parties seek interim relief with regard to the protection of the assets. Once the parties have chosen voluntarily that the seat of the arbitration shall be outside India, they are impliedly also understood to have chosen the necessary incidents and consequences of such choice. We, therefore, do not find any substance in the submissions made by the learned counsel for the appellants, that if applicability of Part I is limited to arbitrations which take place in India, it would leave many parties remediless.*

164. *If that be so, it is a matter to be redressed by the legislature.*

20. Subsequent to the aforesaid judgment of the Apex Court defining the distinction with regard to “seat” and that “venue” of arbitrations, and clarity being provided to the effect that a foreign award can only be challenged in the courts of the country where the arbitration was legally seated, and Indian courts only a passive choice under Part II, either to enforce or refuse to enforce the foreign awards within India, and also clarifying that section 2(2) of 1996 Act makes a declaration that Part I of 1996 Act shall apply to all arbitration which take place in India and that Part I of 1996 Act would have no application to international commercial arbitration held outside India, the Law Commission proposed amendments to sections 2(2), 2(2-A), 20, 28 and 31 of the Act 1996, especially to section 2(2), allowing Indian courts to grant interim reliefs under section 9 of the Act 1996 even in respect of foreign-seated arbitration subject to the terms of the agreement.
21. In the case of ***Indus Mobile Distribution Pvt. Ltd., (supra)***, wherein despite there being an arbitration agreement providing for Mumbai to be the place for conducting arbitration proceedings and for all disputes and differences of any kind arising out of the agreement to be subject to the exclusive jurisdiction of the courts of Mumbai, applications seeking interim relief under section 9 and appointment of an arbitrator under Section 11 of the

Act, 1996 were made before the courts at Delhi. Apex Court taking note of amendment to Sections 2(2), 2(2-A), 20, 28 and 31 of the Act 1996, which were effected subsequent to Judgment in **BALCO** at paragraphs 13, 16, 19 and 20 has held as under:

13. *This Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration. (See para 138.)*

16. *It may be mentioned, in passing, that the Arbitration and Conciliation Act, 1996 has been amended in 2015 pursuant to a detailed Law Commission Report. The Law Commission specifically adverted to the difference between "seat" and "venue" as follows:*

"40. The Supreme Court in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] decided that Parts I and II of the Act are mutually exclusive of each other. The intention of Parliament that the Act is territorial in nature and Sections 9 and 34 will apply only when the seat of arbitration is in India. The seat is the "centre of gravity" of arbitration, and even where two foreign parties arbitrate in India, Part I would apply and, by virtue of Section 2(7), the award would be a "domestic award". The Supreme Court recognised the "seat" of arbitration to be the juridical seat; however, in line with international practice, it was observed that the arbitral hearings may take place at a location other than the seat of arbitration. The distinction between "seat" and "venue" was, therefore, recognised. In such a scenario, only if the seat is determined to be India, Part I would be applicable. If the seat was foreign, Part I would be inapplicable. Even if Part I was expressly included 'it would only mean that the parties have contractually imported from the Arbitration Act, 1996, those provisions which are concerned with the internal conduct of their arbitration and which are not inconsistent with the mandatory provisions of the [foreign] Procedural law/Curial law.' The same cannot be used to confer jurisdiction on an Indian Court. However, the decision in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] was expressly given prospective effect and applied to arbitration agreements executed after the date of the judgment.

41. While the decision in *BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] is a step in the right direction and would drastically reduce judicial intervention in foreign arbitrations, the Commission feels that there are still a few areas that are likely to be problematic.

(i) Where the assets of a party are located in India, and there is a likelihood that that party will dissipate its assets in the near future, the other party will lack an efficacious remedy if the seat of the arbitration is abroad. The latter party will have two possible remedies, but neither will be efficacious. First, the latter party can obtain an interim order from a foreign court or the Arbitral Tribunal itself and file a civil suit to enforce the right created by the interim order. The interim order would not be enforceable directly by filing an execution petition as it would not qualify as a "judgment" or "decree" for the purposes of Sections 13 and 44-A of the Code of Civil Procedure (which provide a mechanism for enforcing foreign judgments). Secondly, in the event that the former party does not adhere to the terms of the foreign order, the latter party can initiate proceedings for contempt in the foreign Court and enforce the judgment of the foreign Court under Sections 13 and 44-A of the Code of Civil Procedure. Neither of these remedies is likely to provide a practical remedy to the party seeking to enforce the interim relief obtained by it.

That being the case, it is a distinct possibility that a foreign party would obtain an arbitral award in its favour only to realise that the entity against which it has to enforce the award has been stripped of its assets and has been converted into a shell company.

(ii) While the decision in *BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] was made prospective to ensure that hotly negotiated bargains are not overturned overnight, it results in a situation where courts, despite knowing that the decision in *Bhatia International* [*Bhatia International v. Bulk Trading S.A.*, (2002) 4 SCC 105] is no longer good law, are forced to apply it whenever they are faced with a case arising from an arbitration agreement executed pre-*BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810].

42. The above issues have been addressed by way of proposed amendments to Sections 2(2), 2(2-A), 20, 28 and 31."

19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai

courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

20. *It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. [B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly.*

22. The Apex Court in the case of **BGS SGS Soma J.V.** (*supra*), dealing with questions as to the maintainability of appeals under Section 37 of the Act, 1996 arising out of an agreement designating at New Delhi or Faridabad as the "seat" of arbitration proceedings, requiring determination of the actual location of "seat" of arbitration, and consequent upon which a petition under Section 34 of the Act 1996 was to be filed, at paragraph 61 held;

" 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.at

23. Reiterating the aforesaid principles of law in the case of **Arif Azim company** the Apex Court at paragraph 77 has held as under:

"E. Conclusion

77. From the above exposition of law, the following position of law emerges:

77.1. Part I of the 1996 Act and the provisions thereunder only applies where the arbitration takes place in India i.e. where either **(I)** the seat of arbitration is in India **OR (II)** the law governing the arbitration agreement are the laws of India.

77.2. Arbitration agreements executed after 6-9-2012 where the seat of arbitration is outside India, Part I of the 1996 Act and the provisions thereunder will not be applicable and would fall beyond the jurisdiction of Indian courts.

77.3. Even those arbitration agreements that have been executed prior to 6-9-2012 Part I of the 1996 Act will not be applicable, if its application has been excluded by the parties in the arbitration agreement either explicitly by designating the seat of arbitration outside India or implicitly by choosing the law governing the agreement to be any other law other than Indian law.

77.4. The moment "seat" is determined, it would be akin to an exclusive jurisdiction clause whereby only the jurisdictional courts of that seat alone will have the jurisdiction to regulate the arbitral proceedings. The notional doctrine of concurrent jurisdiction has been expressly rejected and overruled by this Court in its subsequent decisions.

77.5. The "Closest Connection Test" for determining the seat of arbitration by identifying the law with which the agreement to arbitrate has its closest and most real connection is no longer a viable criterion for determination of the seat or situs of arbitration in view of the Shashoua Principle. The seat of arbitration cannot be determined by formulaic and unpredictable application of choice of law rules based on abstract connecting factors to the underlying contract. Even if the law governing the contract has been expressly stipulated, it does not mean that the law governing the arbitration agreement and by extension the seat of arbitration will be the same as the *lex contractus*.

77.6. *The more appropriate criterion for determining the seat of arbitration in view of the subsequent decisions of this Court is that where in an arbitration agreement there is an express designation of a place of arbitration anchoring the arbitral proceedings to such place, and there being no other significant contrary indicia to show otherwise, such place would be the "seat" of arbitration even if it is designated in the nomenclature of "venue" in the arbitration agreement.*

77.9. *We do not for a moment say that, the Closest Connection Test has no application whatsoever, where there is no express or implied designation of a place of arbitration in the agreement either in the form of "venue" or "curial law", there the closest connection test may be more suitable for determining the seat of arbitration.*

77.10. *Where two or more possible places that have been designated in the arbitration agreement either expressly or impliedly, equally appear to be the seat of arbitration, then in such cases the conflict may be resolved through recourse to the doctrine of forum non conveniens, and the seat be then determined based on which one of the possible places may be the most appropriate forum keeping in mind the nature of the agreement, the dispute at hand, the parties themselves and their intentions. The place most suited for the interests of all the parties and the ends of justice may be determined as the "seat" of arbitration."*

24. Sri Harish Narasappa, learned Senior Counsel, appearing for the applicant, while distinguishing the aforesaid position of law and insisting that the same is not applicable to the facts of the present case, heavily relied upon the Judgment of the Apex Court in the case of **Mankatsu Impex Pvt. Ltd. Vs Airvisual Ltd.**, (*supra*) wherein the Apex Court, dealing with an arbitration clause providing for courts at New Delhi to have jurisdiction with regard to the law governing the terms of the agreement and Hong Kong to be the seat of arbitration for resolving the dispute, at paragraphs 25 and 27 has held as under:

25. *Clause 17.1 of MoU stipulates that MoU is governed by the laws of India and the courts at New Delhi shall have jurisdiction. The interpretation to Clause 17.1 shows that the substantive law governing the substantive contract are the laws of India. The words in Clause 17.1, "without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction" has to be read along with Clause 17.3 of the agreement. As per Clause 17.3, the parties have agreed that the party may seek provisional, injunctive or equitable remedies from a court having jurisdiction before, during or after the pendency of any arbitral proceedings. In BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , this Court held that : (SCC p. 636, para 157)*

"157. ... on a logical and schematic construction of the Arbitration Act, 1996, the Indian courts do not have the power to grant interim measures when the seat of arbitration is outside India."

If the arbitration agreement is found to have seat of arbitration outside India, then the Indian courts cannot exercise supervisory jurisdiction over the award or pass interim orders. It would have, therefore, been necessary for the parties to incorporate Clause 17.3 that parties have agreed that a party may seek interim relief for which the Delhi courts would have jurisdiction.

27. *The words in Clause 17.1, "without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction" do not take away or dilute the intention of the parties in Clause 17.2 that the arbitration be administered in Hong Kong. The words in Clause 17.1 do not suggest that the seat of arbitration is in New Delhi. Since Part I is not applicable to "international commercial arbitrations", in order to enable the parties to avail the interim relief, Clause 17.3 appears to have been added. The words, "without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction" in Clause 17.1 is to be read in conjunction with Clause 17.3. Since the arbitration is seated at Hong Kong, the petition filed by the petitioner under Section 11(6) of the Act is not maintainable and the petition is liable to be dismissed.*

25. He also referred to the Judgment of the High Court of Kolkatta, in the case of **Homevista Décor and Furnishing Pvt. Ltd., and anr Vs Connect Residuary Pvt. Ltd., reported in 2023 SCC online Cal 1405** which, while dealing with an application under Section 11 of the

Act, 1996 in respect of an arbitration agreement providing a mechanism for settlement of disputes designating Kolkatta as the venue, at paragraphs 21 and 22 has held as under:

Conclusion

21. *Contractual interpretation necessitates taking into consideration all clauses and relevant factors to propound the proper intention between the parties. The rule of harmonious construction must be applied so that a panoramic meaning can be given to any agreement. The law with respect to arbitration clauses, as laid down in BGS SGS SOMA (supra) and Mankastu Impex (supra), is not alien to such interpretive principles. In light of the Apex Court's decisions in these two judgments, other clauses have to be scrutinized, when a location has been mentioned as 'venue' or 'place', to fathom if such a location can be dignified with the status of 'seat'. In my opinion, a clause opting a place as 'venue' or 'place' read with another clause which mentions courts of another location to have jurisdiction over disputes that may arise, inhibits the promotion of such 'venue' to 'seat'. The intention that emerges from an aggregate understanding of such clauses is that the 'venue' or 'place' was to be a convenient location for holding of arbitration seatings. The courts of the place selected as having exclusive jurisdiction over disputes should be considered as 'seat' and having jurisdiction to entertain applications under the Act.*

22. *In the facts of this case, Exhibit 2 of the MRA mentions that the arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, and the venue of such arbitration shall be in Kolkata. However, it cannot be analysed in seclusion of the other clauses. Due regard must be paid to other clauses, if any, which may act as a 'contrary indicia' to suggest that the parties intended the venue to not be seat of the arbitral proceedings. It is clear that Clause 25 contained in the MRA which confers exclusive jurisdiction on the courts in Mumbai in respect of any and all disputes arising out of the agreement, is a 'contrary indicia' and shall proscribe the upgradation of 'Kolkata' from being a mere 'venue' to that of 'seat'. The courts at Mumbai, in my opinion, possess the jurisdiction to entertain the instant petition and other applications under the Act. Correspondingly, this court does not have jurisdiction to entertain the instant petition.*

26. He further relied upon the judgment of the Delhi High Court, in the case of **Cars24 Services Pvt. Ltd., (supra)**,

wherein dealing with a petition preferred under Section 11(5) of the Act 1996 seeking the appointment of an arbitrator, arising out of an agreement specifically conferring exclusive jurisdiction for appointment of an arbitrator on a court of competent jurisdiction at Haryana, while seat of arbitration has been fixed as New Delhi, paragraphs 40, 53, 59, and 60 has held as under:

40. *A reading of the aforesaid decisions, no doubt, reveals that preeminence has been accorded by the Supreme Court to the contractually determined "seat of arbitration", while deciding the issue of the court which would be possessed of territorial jurisdiction to deal with petitions relating to the arbitral proceedings, whether preferred under Section 9, 11 or 34. As already noticed hereinabove, however, none of these decisions involved a case in which the contract contained an exclusive jurisdiction clause and a separate seat of arbitration clause, and the two clauses conferred jurisdiction on courts located at different territorial locations.*

53. *As such, the Supreme Court held that once the seat of arbitration has been fixed as Hong Kong, if exclusive jurisdiction, for obtaining interim relief, was required to be vested in courts at New Delhi, the agreement had necessarily to specifically so state. It was for this reason, opined the Supreme Court, that Clause 7.3 had been particularly inserted in the agreement which, apart from the exclusive jurisdiction clause i.e. Clause 7.1, specifically provided for recourse to courts at New Delhi, for obtaining interim relief. That clause, according to the Supreme Court, however, could be of no assistance in determining the controversy before it, as the Supreme Court was concerned not with an application under Section 9, but with an application for appointment of an arbitrator under Section 11. Exclusive jurisdiction to seek recourse to courts at New Delhi having been contractually restricted to applications for obtaining interim relief, the Supreme Court held that the locus of the court possessing Section 11 jurisdiction would have to be determined on the basis of the contractually fixed seat of arbitration i.e. Hong Kong.*

59. *Where, therefore, the seat of arbitration is at place X, and exclusive jurisdiction over the subject matter of the suit is conferred on courts at place Y, a petition under Section 11 would unquestionably lie before the courts at place X. The*

present case, however, is different, as the exclusive jurisdiction conferred by the arbitration agreement is not in respect of the subject matter of the suit but specifically for appointment of an arbitrator. It would be doing violence to the said clause, therefore, if this Court were to treat the exclusive jurisdiction clause as limited to the subject matter of the suit, and exercise Section 11 jurisdiction contrary to the mandate thereof.

60. *It is trite that a court cannot re-write a contract between the parties. Where the contract between the parties, as in the present case, confers exclusive jurisdiction, for appointment of an arbitrator, on courts at Haryana, any petition, under Section 11, would have to be preferred before the High Court of Punjab and Haryana, and not before this Court. There is no decision, to which my attention has been invited, which persuades me to take a different view.*

27. Learned Senior counsel also relied upon the judgment rendered by the High Court of Justice, Queen's Bench Division Commercial Court in the case of ***U&M Mining Zambia LTD. Vs Konkola Copper Mines PLC*** reported in ***2013 EWHC 260 (Comm)***, wherein the issue involved was if the seat of arbitration was in England the respondent was entitled to use the local Courts at Zambia to obtain interim remedies. The contract subject matter of the said proceedings provided place of arbitration at England. Ancillary contract called Footwall and Hanging Wall agreement provided for Zambian Courts to have exclusive jurisdiction. The place of performance of the contract was in Zambia and award if any was to be enforced in Zambia. It is under the said circumstances the Court therein held

the LCIA Arbitration Rules adopted by the parties in their arbitration agreement implicitly recognized parties right to apply to the State Court before formation of Arbitral Tribunal.

28. From an analysis of the aforesaid precedents cited by both sides, it is clear that:

A. Once parties have mutually agreed and designated a particular place to be a “seat” of arbitration, the Court that exercises supervisory power over the arbitration of that place would have exclusive jurisdiction.

B. Even if parties have merely agreed on a “venue,” without designating it as a “seat,” with clarity as to the applicable body of rules governing the arbitration, and in the absence of any other significant indication to the contrary, the agreed and designated “venue” shall be treated as the “Juridical seat” of the arbitration proceedings.

C. Whenever a question regarding the “seat of arbitration” is determined and concluded, all petitions and applications to be filed under the provisions of Part I of the Act 1996, whether under Sections 9, 11, 34 or 37, shall be preferred before the Court within which the “seat of arbitration” is located.

D. When no such seat is designated or determined, an application under Section 9 may be

preferred before a Court in which part of the cause of action arises, in a case where the parties have not agreed on the seat of arbitration, and before such seat may have been determined on the facts of a particular case by the Arbitral Tribunal under Section 20(2) of the Act.

SEAT OF ARBITRATION AND EXCLUSIVE JURISDICTION WITH REFERENCE TO FACTS OF CASE ON HAND:

29. The next question that requires consideration is whether, in the instant case, the parties have agreed and fixed Mumbai to be the “seat” of arbitration.
30. There is no dispute that, in terms of Section 10.7(b) of the agreement, the parties have mutually agreed that arbitration shall be conducted at Mumbai, India.
31. In terms of Section 10.7(a) the parties have agreed that the dispute shall be referred and finally resolved by arbitration under the London Court of International Arbitration India, Arbitration Rules (LCIA) Rules.
32. In terms of Section 10.7(i) the parties have agreed that the award of the Tribunal shall be entered and enforced in any Court of competent jurisdiction in Mumbai, India.
33. In terms of Section 10.7(j) liberty is reserved to the party to the agreement to seek emergency, interim, or provisional relief prior to mediation or the appointment of a

full Arbitral Tribunal from any Court of competent jurisdiction, without prejudice to the agreement or any ancillary agreement to mediate or arbitrate in accordance with Section 10.6 or Section 10.7.

34. In view of the aforesaid specific provisions in the agreement, the consequential question that requires to be answered is whether *the parties have designated and treated Mumbai to be "juridical seat" of arbitration, having exclusive jurisdiction, or have treated Mumbai to be mere "venue" of arbitration?*
35. Apposite here to refer to paragraphs 31, 32, 38, 39, 40, 44, 45, 47, 48, 50, 53, 60 and 61 of the judgment of the Apex Court in the case of **BGS SGS Soma (Supra)** wherein the Apex Court, referring to the provisions of the Arbitration Act, 1940 and the Act, 1996 with regard to the definition of "Court", "place of arbitration" and "Jurisdiction" and providing a test for determination of the "juridical seat" of the arbitration proceedings, has held as under;

31. It will thus be seen that the new provisions contained in Sections 20 and 31(4) of the Arbitration Act, 1996 are a replication of Articles 20 and 31(3) of the Uncitral Model Law, in which pride of place is given to the juridical seat of the arbitral proceedings. However, the definition of "court" in Section 2(1)(e) of the Arbitration Act, 1996 continues the definition contained in the Arbitration Act, 1940, but replaces any and every civil court by only the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary civil jurisdiction. Section 42 of the Arbitration Act, 1996 also substantially follows the drill of Section 31(4) of the Arbitration Act, 1940.

32. It can thus be seen that given the new concept of "juridical seat" of the arbitral proceedings, and the importance given by the Arbitration Act, 1996 to this "seat", the arbitral award is now not only to state its date, but also the place of arbitration as determined in accordance with Section 20. However, the definition of "court" contained in Section 2(1)(c) of the Arbitration Act, 1940, continued as such in the Arbitration Act, 1996, though narrowed to mean only principal civil court and the High Court in exercise of their original ordinary civil jurisdiction. Thus, the concept of juridical seat of the arbitral proceedings and its relationship to the jurisdiction of courts which are then to look into matters relating to the arbitral proceedings — including challenges to arbitral awards — was unclear, and had to be developed in accordance with international practice on a case by case basis by this Court. "

.....

38. A reading of paras 75, 76, 96, 110, 116, 123 and 194 of BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] would show that where parties have selected the seat of arbitration in their agreement, such selection would then amount to an exclusive jurisdiction clause, as the parties have now indicated that the courts at the "seat" would alone have jurisdiction to entertain challenges against the arbitral award which have been made at the seat. The example given in para 96 buttresses this proposition, and is supported by the previous and subsequent paragraphs pointed out hereinabove. The BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] judgment, when read as a whole, applies the concept of "seat" as laid down by the English judgments (and which is in Section 20 of the Arbitration Act, 1996), by harmoniously construing Section 20 with Section 2(1)(e), so as to broaden the definition of "court", and bring within its ken courts of the "seat" of the arbitration [Section 3 of the English Arbitration Act, 1996 defines "seat" as follows: "**3. The seat of the arbitration.**— In this Part "**the seat of the arbitration**" means the juridical seat of the arbitration designated—(a) by the parties to the arbitration agreement, or (b) by any arbitral or other institution or person vested by the parties with powers in that regard, or (c) by the Arbitral Tribunal if so authorised by the parties, or determined, in the absence of any such designation, having regard to the parties' agreement and all the relevant circumstances."It will be noticed that this section closely approximates with Section 20 of the Indian Arbitration Act, 1996. The meaning of "Court" is laid down in Section 105 of the English Arbitration Act, 1996 whereby the Lord Chancellor may, by order, make provision allocating and specifying proceedings under the Act which may go to the High Court or to county courts.] .

39. However, this proposition is contradicted when para 96 of BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] speaks of the concurrent jurisdiction of courts within whose jurisdiction the cause of action arises wholly or in part, and Courts within the jurisdiction of which the dispute resolution i.e. arbitration, is located.

40. Para 96 of BALCO case [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] is in several parts. First and foremost, Section 2(1)(e), which is the definition of "court" under the Arbitration Act, 1996 was referred to, and was construed keeping in view the provisions in Section 20 of the Arbitration Act, 1996, which give recognition to party autonomy in choosing the seat of the arbitration proceedings. Secondly, the Court went on to state in two places in the said paragraph that jurisdiction is given to two sets of courts, namely, those courts which would have jurisdiction where the cause of action is located; and those courts where the arbitration takes place. However, when it came to providing a neutral place as the "seat" of arbitration proceedings, the example given by the five-Judge Bench made it clear that appeals under Section 37 of the Arbitration Act, 1996 against interim orders passed under Section 17 of the Arbitration Act, 1996 would lie only to the courts of the seat — which is Delhi in that example — which are the courts having supervisory control, or jurisdiction, over the arbitration proceedings. The example then goes on to state that this would be irrespective of the fact that the obligations to be performed under the contract, that is the cause of action, may arise in part either at Mumbai or Kolkata. The fact that the arbitration is to take place in Delhi is of importance. However, the next sentence in the said paragraph reiterates the concurrent jurisdiction of both courts.

...

44. If paras 75, 76, 96, 110, 116, 123 and 194 of BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] are to be read together, what becomes clear is that Section 2(1)(e) has to be construed keeping in view Section 20 of the Arbitration Act, 1996, which gives recognition to party autonomy — the Arbitration Act, 1996 having accepted the territoriality principle in Section 2(2), following the UNCITRAL Model Law. The narrow construction of Section 2(1)(e) was expressly rejected by the five-Judge Bench in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] . This being so, what has then to be seen is what is the effect Section 20 would have on Section 2(1)(e) of the Arbitration Act, 1996.

45. It was not until this Court's judgment in *Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760]* that the provisions of Section 20 were properly analysed in the light of the 246th Report of the Law Commission of India titled, "Amendments to the Arbitration and Conciliation Act, 1996" (August, 2014) (hereinafter referred to as "the Law Commission Report, 2014"), under which Sections 20(1) and (2) would refer to the "seat" of the arbitration, and Section 20(3) would refer only to the "venue" of the arbitration. **Given the fact that when parties, either by agreement or, in default of there being an agreement, where the Arbitral Tribunal determines a particular place as the seat of the arbitration under Section 31(4) of the Arbitration Act, 1996, it becomes clear that the parties having chosen the seat, or the Arbitral Tribunal having determined the seat, have also chosen the courts at the seat for the purpose of interim orders and challenges to the award.**

(emphasis supplied by this Court)

...

47. In fact, the Law Commission Report, 2014 also recommended an amendment in the definition of "court" under Section 2(1)(e) of the Arbitration Act, 1996, so that in the case of international commercial arbitrations held in India, the High Court alone should be the "court" for the purposes of the Arbitration Act, 1996, even where such a High Court does not exercise ordinary original jurisdiction. The recommendation made by the Law Commission, which was followed, leading to an amendment of the Arbitration Act, 1996, is as follows:

"26. It is recommended that in case of international commercial arbitrations, where there is a significant foreign element to the transaction and at least one of the parties is foreign, the relevant "court" which is competent to entertain proceedings arising out of the arbitration agreement, should be the High Court, even where such a High Court does not exercise ordinary civil jurisdiction. It is expected that this would ensure that international commercial arbitrations, involving foreign parties, will be heard expeditiously and by commercial oriented Judges at the High Court level. ..."

Amendment of Section 2

1. In Section 2 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act)—

(ii) In sub-section (1), clause (e), after the words "court means"— add sub-section (i) beginning with the words "in the case of an arbitration other than international commercial

arbitration", before the words "the Principal civil court of Original Jurisdiction"

In sub-section (1), clause (e) replace sub-clause (ii) by following:

'1. (e)(ii) in the case of an international commercial arbitration, the High Court exercising jurisdiction over the Principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any court of a grade inferior to such High Court, or in cases involving grant of interim measures in respect of arbitrations outside India, the High Court exercising jurisdiction over the court having jurisdiction to grant such measures as per the laws of India, and includes the High Court in exercise of its ordinary original civil jurisdiction.'

[Note.—This is to solve the problem of conflict of jurisdiction that would arise in cases where interim measures are sought in India in cases of arbitrations seated outside India. This also ensures that in international commercial arbitrations, jurisdiction is exercised by the High Court, even if such High Court does not exercise ordinary original civil jurisdiction.]”

48. The aforesaid amendment carried out in the definition of "Court" is also a step showing the right direction, namely, that in international commercial arbitrations held in India, the High Court alone is to exercise jurisdiction over such proceedings, even where no part of the cause of action may have arisen within the jurisdiction of such High Court, such High Court not having ordinary original jurisdiction. In such cases, the "place" where the award is delivered alone is looked at, and the High Court given jurisdiction to supervise the arbitration proceedings, on the footing of its jurisdiction to hear appeals from decrees of courts subordinate to it, which is only on the basis of territorial jurisdiction which in turn relates to the "place" where the award is made. In the light of this important change in the law, Section 2(1)(e)(i) of the Arbitration Act, 1996 must also be construed in the manner indicated by this judgment.

(emphasis supplied by this

Court)

...

50. In fact, subsequent Division Benches of this Court have understood the law to be that once the seat of arbitration is chosen, it amounts to an exclusive jurisdiction clause, insofar as the courts at that seat are concerned.

.....

(emphasis in original)

53. *In Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760]* , after clearing the air on the meaning of Section 20 of the Arbitration Act, 1996, the Court in para 19 (which has already been set out hereinabove) made it clear that the moment a seat is designated by agreement between the parties, it is akin to an exclusive jurisdiction clause, which would then vest the courts at the "seat" with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

Tests for determination of "seat"

60. *The judgments of the English courts have examined the concept of the "juridical seat" of the arbitral proceedings, and have laid down several important tests in order to determine whether the "seat" of the arbitral proceedings has, in fact, been indicated in the agreement between the parties. The judgment of Cooke, J., in Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] , states:*

"34. London arbitration is a well-known phenomenon which is often chosen by foreign nationals with a different law, such as the law of New York, governing the substantive rights of the parties. This is because of the legislative framework and supervisory powers of the courts here which many parties are keen to adopt. When therefore there is an express designation of the arbitration venue as London 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, to my mind, that London is the juridical seat and English Law the curial law. In my judgment it is clear that either London has been designated by the parties to the arbitration agreement as the seat of the arbitration, or, having regard to the parties' agreement and all the relevant circumstances, it is the seat to be determined in accordance with the final fall back provision of Section 3 of the Arbitration Act."

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.

(emphasis supplied by this Court)

36. Viewed in the light of the aforesaid settled principles of law, what emerge from the facts in the instant case are;

(a) that the parties have agreed that Mumbai is the place where the arbitration proceedings are to be conducted.

(b) that they have agreed on the Rules governing the arbitral proceedings, namely the London Court of International Arbitration India Rules.

(c) that they have also agreed that the award shall be entered and enforced before a court of competent jurisdiction at Mumbai.

(d) that there is no other clause in the agreement indicating that any other court is vested with jurisdiction with regard to any of the process of arbitration proceedings.

37. These elements in the agreement meet the requirement of test for determination of Mumbai as a "Juridical seat" as held by the Hon'ble Apex Court in **BGS SGS Soma (Supra)** as extracted hereinabove.

38. This brings to the consideration of the question whether clause (j) of Section 10.7 of the agreement constitutes

significant contrary indicia to hold that Mumbai not being the juridical seat of arbitration.

39. Read carefully, clause (j) of Section 10.7 provides an option for a party to seek emergency, interim, or provisional relief prior to mediation or the appointment of full arbitral tribunal from any court of competent jurisdiction.

40. The said clause (j) of Section 10.7 in the considered view of this Court, does not indicate that the parties have chosen or designated any specific court of another location to have jurisdiction over the dispute that may arise, indicating exclusion of the jurisdiction of the Court of competent jurisdiction in Mumbai. The said clause only provides an option for the parties to seek emergency interim relief prior to mediation or appointment of a full Arbitral Tribunal. This by itself, in the considered view of this Court do not constitute a significant contrary indicia to take away the status of Mumbai as the "Juridical Seat" of the arbitral proceedings.

41. Another aspect of the matter to be borne in mind is the nature of the interim relief being sought. What is being claimed is payment of consideration towards the applicant

performing a non-compete obligation, which the applicant claims to have performed and adhered to for a period of ten years between 07.11.2014 and 07.11.2024. Even the nature of the relief being sought and the cause of action averred to seek such relief, it would not indicate that the Court at Mumbai, which is the designated seat of arbitration, is not competent to grant such a relief. Merely because the registered office of the applicant is situated at Bengaluru, and it has performed and fulfilled its obligation of non-compete clause at its registered office would not oust the jurisdiction of the court at the chosen designated seat of arbitration, which is Mumbai, particularly in the absence of any clause conferring jurisdiction on any specific court of a specific location.

42. Even the judgments referred to and relied upon by the learned Senior Counsel for the respondents do not dispute the settled position of law, with regard to the “seat of arbitration” clause as well as the “exclusive jurisdiction” clause in the agreement to be given primacy. Indeed, even the said judgments emphasize the need for determination of “seat of arbitration” by taking into consideration all the

terms of understanding and agreement between the parties.

CONCLUSION:

43. For aforesaid reasons and analysis, this Court is of the considered view that the parties to the agreement in the instant case have consciously and deliberately chosen and designated "Mumbai", India to be the "Juridical Seat" of arbitration proceedings and the competent court at Mumbai alone has exclusive jurisdiction over all the matters including to seek any emergency, interim and provisional relief, and that there is no other significant indication to the contrary. Resultant, the present petition under Section 9 of the Act, 1996 is not maintainable before this Court.

Points raised above are answered accordingly. Consequently, the following:

ORDER

(i) Application in I.A.No.4/2025 filed by the respondent is ***allowed***.

(ii) Resultant Arbitration Petition filed by the applicant under Section 9 of the Act, 1996 stands disposed of as not maintainable for want of jurisdiction.

(iii) Applicant is at liberty take appropriate steps under Section 9 of the Act, 1996 before the jurisdictional Court at Mumbai.

(iv) No order as to cost.

**Sd/-
(M.G.S. KAMAL)
JUDGE**

SBN