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

% Order reserved on: **16.09.2026**
Order delivered on: **18.09.2026**

\+ CS(COMM) 1008/2026, I.A. 25198/2026, I.A. 25199/2026 & I.A. 25200/2026

HINDUSTAN SHIPYARD LIMITED .....Plaintiff

versus

M/S ANADOLU DENIZ INSAAT KIZAKLARI SANAYI VE TICARET A.S. & ANR. ....Defendants

Advocates who appeared in this case:

For the Plaintiff: Mr. Tushar Mehta, Solicitor General of India with Mr. Manu Nair, Mr. Siddhartha Datta, Ms. Suhani Dwivedi, Mr. Neelabh Shreesh, Ms. Riya Basu, Ms. Trisha Mukherjee, Mr. Madhav Goel, Mr. Chetan Kabra, Mr. Aryan Roy and Ms. Priyansh Dixit, Advocates.

For the Defendants: Mr. Rajiv Nayar and Mr. Sandeep Sethi, Senior Advocates with Mr. Aseem Chaturvedi, Mr. Kingshuk Banerjee, Mr. Shivank Diddi, Ms. Saher Naqvi, Ms. Fatema, Mr. Kindkhabwala, Ms. Sanjana Lal, Mr. Krisna Gambhir and Ms. Shreya Sethi, Advocates for D-1.
Dr. Amit George, Mr. Shashwat Kabi, Ms. Rupam Jha, Ms. Tanushree Gupta, Mr. Arnav Bhansali and Mr. Adhishwar Suri, Advocates for D-2/ICA

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

TUSHAR RAO GEDELA, J.

I.A. 25199/2026 (Application under Order XXXIX Rules 1 and 2, CPC)

1. This is an application filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as *"CPC"*) seeking interim reliefs as prayed for.

2. The plaintiff has filed the present suit under Section 37 of the Specific Relief Act, 1963 seeking a declaration and permanent injunction restraining defendant no.1 from proceeding with the arbitral proceedings initiated *vide* request for arbitration dated 07.08.2026 filed before the defendant no.2 being Indian Council of Arbitration (hereinafter referred to as the *'ICA'*) Case No.INTARB-0035. It further assails the direction issued by ICA *vide* email dated 19.08.2026 (hereinafter referred to as *"impugned letter"*).

CONTENTIONS ON BEHALF OF THE PLAINTIFF:-

3. Brief facts culled out of the suit shorn of unnecessary details are as under:

3.1. A Collaborator Contract (hereinafter referred to as *"the CC"*) is stated to have been entered into by the plaintiff and the defendant no.1 on 20.03.2020 for collaboration in design, and supply of Key Machinery Equipment, technical assistance, and project implementation towards the five Fleet Support Ships (hereinafter referred to as *"the FSS"*) for the Indian Navy.

3.2. *Vide* the communication letter dated 16.08.2023, the Cabinet Committee on Security (hereinafter referred to as "the *CCS*") approved the said FSS Project, however, decided that the same would be executed through an indigenous industry without the involvement of defendant no.1.

Subsequently, *vide* the letter dated 23.08.2023, the Ministry of Defence (hereinafter referred to as "the *MoD*") directed the plaintiff to initiate contract termination proceedings with defendant no.1.

3.3. Pursuant thereto, the plaintiff terminated the CC *vide* the letter dated 24.08.2023 invoking Article 23.8 of the said contract. In order to settle the pending issues, the plaintiff claims to have sought amicable resolution and initiated the settlement meetings at Visakhapatnam. Despite several efforts, the settlement meetings between both the parties failed.

3.4. It is stated that after a gap of almost 30 months, defendant no.1's counsel, *vide* letter dated 10.06.2026, addressed the plaintiff regarding the existence of an arbitration agreement in the CC, wherein, the parties agreed to resolve any disputes in accordance with the rules of arbitration of the ICA, and proposed amendment of Article 25.1(b) to substitute defendant no.2/ICA with Mumbai Centre for International Arbitration (hereinafter referred to as *"MIAC"*). In response thereto, the plaintiff through its counsel, declined the request on the basis that there existed no arbitrable disputes between the parties which could be referred to the arbitration.

3.5. On 08.07.2026, defendant no.1 through its counsel is stated to have invoked arbitration and proposed the name of its nominee arbitrator. Having received no response in affirmation, defendant no.1 filed its Statement of Claim (hereinafter referred to as "the *SoC*") before the defendant no.2 on 07.08.2026. Defendant no.2, on 11.08.2026, registered ICA Case No.INTARB-0035. *Vide* the email dated 19.08.2026, defendant no.2 directed the plaintiff to file its Statement of Defence (hereinafter referred to as "the *SoD*") along with its nominee arbitrator.

3.6. Being aggrieved by the said email, the plaintiff has filed the present suit.

4. Adumbrating the facts of the suit briefly, Mr. Tushar Mehta, learned Solicitor General for India submitted as under:

4.1. At the outset, the learned Solicitor General submitted that the entering into of the CC with the defendant no.1 itself was a sovereign act of the Government of India (hereinafter referred to as the *'GoI'*) undertaken through the plaintiff as an instrumentality of the MoD.

4.2. Equally, he would submit that the termination of the said CC was itself a sovereign act/decision of the GoI carried out pursuant to the decision of the CCS dated 16.08.2023, and the decision dated 23.08.2023 communicated by the MoD.

4.3. Learned Solicitor General laid great emphasis on the fact that the CC was in respect of design and supply of Key Machinery Equipment (KME), technical assistance, and project implementation towards the construction of five FSS for the Indian Navy.

4.4. He emphatically stated that the contract was not a pure commercial contract, rather, was inextricably linked to national maritime security, and naval readiness, and thus, matter pertaining to both national and internal security of the nation.

4.5. Mr. Mehta, learned Solicitor General stated that the CC was entered into and executed with the approval of GoI as undisputedly defendant no.1 is a Turkish company.

4.6. Drawing attention of this Court to the CC, in particular Article 23 therein, he contended that Article 23.8 provides that if the purpose of the

CC become impossible as a result of any GoI prohibition, the Collaborator, i.e., the defendant no.1 shall not be entitled to claim for payment of the contract price, but would be entitled to retain all amounts already paid and received together with all amounts that already agreed and due as per Article 3.7 of the CC. He would submit that defendant no.1 was also entitled to be paid in full for work in progress up to the point where work has been undertaken until the date of termination. According to the learned Solicitor General and having regard to Article 23.8, the action of termination taken by the plaintiff is in consonance with the said provisions.

4.7. In order to support the aforesaid contention, learned Solicitor General referred to the decision dated 23.08.2023 of the MoD, whereby, the National Security Council Secretariat accorded concurrence to proceed with the project without involvement of defendant no.1, with the clarification that assistance on account of specialist services, whereof required, may be sought from friendly foreign countries. It was also noted in the said decision that the project would be executed through indigenous industry without involvement of defendant no.1, and the approval was accorded by the CCS to initiate contract termination proceedings with defendant no.1 by requesting the plaintiff to undertake the necessary steps to achieve the same. He would contend that it is in pursuance to the said sovereign decision that the plaintiff by the communication letter dated 24.08.2023 terminated the CC with immediate effect in terms of Article 23.8 of the CC.

4.8. In order to impress that the entire action was purely predicated on the decision rendered by the sovereign, and the further decision of the sovereign to proceed with the said project, learned Solicitor General referred to a document at page 217 dated 25.08.2023 appended to the plaint, which is a press note released by the MoD exercising its clear intention to proceed with the said project.

4.9. Learned Solicitor General next submitted that though the plaintiff terminated the CC with defendant no.1, by the letter dated 06.09.2023 it sought amicable resolution and invited defendant no.1 to visit Vishakhapatnam for amicable resolution. Pursuant to such intention, the plaintiff vide the letter dated 13.10.2023 also extended a proposal to return 0.5% advance amount paid at Stage 1 (Article 3.7) amounting to Rs.18 Crores. In order to support and substantiate the aforesaid proposal, learned Solicitor General had submitted that the Stage Payment Schedule is contained in Article 3.3 of the CC, which clearly delineates the stage payment on execution of the CC. According to learned Solicitor General, since the execution of the project never proceeded beyond the execution of the contract, the offer/proposal of the plaintiff was clearly in consonance with Article 3.3 of the CC.

4.10. Despite certain objections raised by the defendant no.1, learned Solicitor General stated that vide letter dated 13.11.2023, plaintiff issued a fresh proposal, whereby, plaintiff agreed to consider dropping its demand of refund of advance of USD 2 million, and in addition, would consider payment of USD 2 million to defendant no.1. It was further clarified in the second part of the fresh proposal that the said proposal was made in good faith and not linked to any stage payment.

4.11. However, learned Solicitor General submitted that the defendant no.1 did not respond favorably to such proposal, which according to him, was well within the confines of Article 23.8 of the CC.

4.12. Emphasizing that the decision of termination is based on a sovereign decision of the GoI, learned Solicitor General emphatically submitted that the nature of such decision is clearly not arbitrable. In order to substantiate and sustain the need for ad-interim injunction sought in the present suit, learned Solicitor General invited attention to the SoC submitted by the defendant no.1 with the ICA.

4.13. By referring to the claims, learned Solicitor General stated that defendant no.1 is seeking a declaration that the termination of the CC by plaintiff is wrongful, and constitutes a repudiatory breach by the plaintiff. According to the learned Solicitor General this by itself is non-arbitrable for the reason that the termination is on the basis of a sovereign decision by the GoI. Learned Solicitor General also referred to the letter dated 08.07.2026 of the defendant no.1, whereby, defendant no.1 sought invocation of arbitration in terms of Article 25.1(b) of the CC calling upon the plaintiff to nominate its nominee arbitrator or concur to the appointment of one Mr. John Fellas as the Sole Arbitrator.

4.14. Learned Solicitor General stated that on the submission of the SoC, the ICA/defendant no.2 issued the impugned letter, which is assailed in the present suit, and the declaration has been sought for it to be declared as null and void. He forcefully contended that the provisions of Article 23.8 of the CC is an exception to Article 25, which provides for arbitration, and thus the impugned letter issued by the defendant no.2 requiring plaintiff to file its SoD, and nominate its nominee arbitrator both by or before 19.09.2026, is clearly without jurisdiction, and non est in law.

4.15. Inviting attention to Article 25.1 of the CC, learned Solicitor General laid great emphasis on the word "may" occurring therein, to submit that it is well settled that where arbitration agreement use the word "may", such clause of arbitration is not a mandatory procedure prescribed for the parties to adopt in case of a dispute. In other words, he contended that the use of the word "may" in such circumstances would indicate that the arbitration itself is not *sine qua non* for dispute resolution.

4.16. In order to substantiate the aforesaid submission, he relied upon the judgement of the Supreme Court in ***BGM & M-RPL-JMCT (JV) v. Eastern Coalfields Ltd., 2025 SCC OnLine SC 1471***, particularly paras 27 to 31, which are extracted hereunder:

> *"**27.** Now, the question which arises for our consideration is whether Clause 13 constitutes an arbitration agreement or it is just an enabling provision for parties to agree to refer the dispute(s) for settlement through arbitration.*
>
> ***28.** Clause 13 in its first paragraph sets out intent to avoid litigation and advises the contractor to make effort to settle the dispute at the company level. Second paragraph sets out the procedure for raising the dispute/claim for settlement at the company level. It provides that the contractor should make request in writing to the Engineer-in-charge for settlement of disputes/claims within 30 days of arising of the cause of dispute/claim failing which it shall not be entertained by the company. Thereafter, clause 13 provides for a two-stage procedure for resolution of the dispute. In the first stage, dispute is to be referred to Area CGM, GM. If difference persists, the dispute is to be referred to a committee constituted by the owner. If difference continues to persist, the second stage procedure becomes applicable. According to which, if the dispute or difference relates to the interpretation and application of the provisions of commercial contracts between Central Public Sector Enterprises CPSEs/Port Trusts inter se, or is between CPSEs and Government Departments/Organizations (excluding disputes concerning railways, income tax, Customs and Excise departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013-DPE (GM)/FTS-1835 dated 22-05-2018. However, in case of parties other than Govt. Agencies, the redressal of the dispute may be sought through arbitration as per 1996 Act.*

29. The High Court opined that use of the words "may be sought through Arbitration…" indicate that at the stage of entering the contract, parties were not ad idem that inter se dispute shall be resolved through arbitration, therefore the said clause would not constitute an arbitration agreement.

30. The argument of the learned counsel for the appellant is that clause 13 provides option to the parties, which include any of one of the parties, to seek dispute resolution through arbitration and, therefore, it is nothing but an arbitration clause. According to him, use of the word "may" in clause 13 does not provide choice to the parties to agree, or not to agree, for arbitration, rather it is a choice given to either of the parties to seek a settlement through arbitration and, therefore, when one party exercises the option, the other party cannot resile from the agreement. In that sense, according to him, clause 13 is an arbitration agreement.

31. We do not agree with the aforesaid submission because clause 13 does not bind parties to use arbitration for settlement of the disputes. Use of the words "may be sought", imply that there is no subsisting agreement between parties that they, or any one of them, would have to seek settlement of dispute(s) through arbitration. It is just an enabling clause whereunder, if parties agree, they could resolve their dispute(s) through arbitration. In our view, the phraseology of clause 13 is not indicative of a binding agreement that any of the parties on its own could seek redressal of inter se dispute(s) through arbitration. We are, therefore, of the considered view that the High Court was justified in holding that clause 13 does not constitute an arbitration agreement."

4.17. Apart from the aforesaid arguments, learned Solicitor General strenuously contended that the decision of the GoI and the consequent letter of termination issued by the plaintiff would clearly fall within the expression "sovereign decision" and would be insulated from any dispute resolution by way of arbitration between two entities. For the said proposition, Mr. Mehta learned Solicitor General relied upon the judgement of the Supreme Court in ***Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1***, where according to him, the clear distinction has been drawn by the Supreme Court as to what constitutes a "sovereign decision' in contradistinction to any other functions that a State as a "Sovereign" may perform. Learned Solicitor General also relied on the following judgements in support of the aforesaid submissions:

i. Celebi Ground Handling India (P) Ltd. v. Union of India, 2025 SCC OnLine Del 5128

ii. MSA Global LLC Oman v. Engineering Projects India Ltd., 2025 SCC OnLine Del 9617

iii. Manohar Lal Sharma v. Narendra Damodardas Modi, (2019) 3 SCC 25

4.18. Thus, given the above facts and submissions, the learned Solicitor General prayed that this Court may pass appropriate interim orders as prayed for in the application.

CONTENTIONS ON BEHALF OF DEFENDANT NO.1:-

5. Appearing for the defendant no.1, Mr. Rajiv Nayar, learned senior counsel stoutly refuted the submissions of the plaintiff. He would submit as under:

5.1. At the outset, Mr. Nayar, learned senior counsel emphatically contended that this Court would not have the requisite territorial jurisdiction to try and adjudicate the present suit. He would submit that undeniably, the CC was signed and executed in Vishakhapatnam; the project under the CC was to be performed at Vishakhapatnam; the letter of termination was issued by the plaintiff from Vishakhapatnam; the plaintiff and the defendant no.1 held meetings at Vishakhapatnam for amicable resolution of disputes, at the instance of the plaintiff. Though, it may be of no consequence for the purpose of instituting a suit, even the plaintiff is located at Vishakhapatnam. He submitted that it is not disputed that the defendant no.1 is located in Turkey, and has no office, etc., in any part of India. Therefore, none of the ingredients of Section 20 of the CPC are at all met with. Thus, according to the learned senior counsel, no cause of action muchless a part of cause of action has arisen in Delhi.

5.2. In continuation of the above, learned senior counsel would draw attention to para 91 of the plaint to submit that merely by clever drafting, jurisdiction cannot be conferred upon this Court if no cause of action has arisen within the local limits. He forcefully contended that merely because defendant no.2/ICA is located would not give rise to any cause of action inasmuch as defendant no.2 is only a body which facilitates the proceedings regarding arbitration of parties which approach it. Thus, the role of defendant no.2/ICA in the entire controversy is irrelevant. Even the alleged sovereign decision of GoI at Delhi is also not relevant as the termination letter has been issued by the plaintiff, and not GoI. He would contend that the issue of national security, etc., is a bogey raised for the first time in the suit, and is conspicuous by its absence in any of the earlier correspondences, solely for the purpose of filing the present suit. Thus, according to learned senior counsel, no cause of action, even in part, has at all arisen within the local limits of the territorial jurisdiction of this Court.

5.3. In the same context, Mr. Nayar drew attention to para 93 of the plaint to submit that the said statements too would be irrelevant for the purposes of ascertaining territorial jurisdiction of this Court. He would emphatically submit that the mere location of defendant no.2 at Delhi, and the alleged decision of CCS at Delhi, are not core to the *lis*. He forcefully contended that these are false assertions purporting to propose as if the arbitration proceedings are pending at Delhi to confer territorial jurisdiction to this Court, is clearly contrary to Article 25.1 (d) of the CC.

5.4. In the aforesaid context, learned senior counsel drew attention to Article 25.1(d) of the CC to submit that unequivocally, the seat and venue of arbitration proceedings is conferred at Vishakhapatnam. According to him, this would clearly oust the jurisdiction of Delhi, though there is none, expressly. He submitted that it is settled law that parties to an arbitration agreement can mutually agree for the seat and venue of arbitration proceedings, which would be binding upon the parties. He categorically stated that the principles of ouster clearly apply even to arbitration. Additionally, learned senior counsel would also submit that there is no other Article in the CC conferring jurisdiction upon any Court in India, thus, leading to the irresistible conclusion that jurisdiction, if any, to entertain any suit, if at all, would be within Vishakhapatnam, exclusively. Thus, the present suit is not maintainable for want of territorial jurisdiction. In this regard learned senior counsel would rely upon the judgement of the Supreme Court in ***BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234***.

5.5. Additionally, learned senior counsel referred to and extensively read the judgement of the Supreme Court in ***J&K Economic Reconstruction Agency v. Rash Builders India (P) Ltd., 2026 SCC OnLine SC 596*** to submit that the Supreme Court has unequivocally reiterated that the seat of arbitration, if designated by the agreement of parties and is encapsulated in the arbitration agreement, then courts of that place alone would have exclusive jurisdiction to entertain all proceedings arising out of the arbitration. He emphasized that the Supreme Court considered such designation as an exclusive jurisdiction to exclude all other courts, even those where the cause of action may have arisen. He has also contended that the Supreme Court has also expounded the *"closest and most intimate connection test"*, to identify the place most closely connected with the arbitration in those cases where the seat is not expressly designated. Such is not the situation obtaining in the present CC where seat of arbitration is expressly envisaged.

5.6. Relying on the judgement of ***J&K Economic Reconstruction Agency*** *(supra)*, learned senior counsel referred to paras 91, 93 and 95 of the suit to submit that reading the said paragraphs cumulatively and meaningfully, it is clear that the cause of action stated in the said paragraphs clearly indicate that they are closely and intimately related to the arbitration or the arbitration proceedings itself. In such circumstances, he would contend that applying the aforesaid judgement and having regard to the fact that the cause of action has arisen in Vishakhapatnam, this Court would not have any territorial jurisdiction to adjudicate the suit.

5.7. The aforesaid contention was reiterated by Mr. Nayar by referring to the prayers in the suit, which too, clearly relate only and only to the arbitration and the arbitration proceedings initiated by the defendant no.1. In such circumstances, according to him, there cannot be any doubt that the prayers in the plaint are based on cause of action directly relatable to the arbitration as envisaged in Article 25.1 of the CC, and the proceedings initiated thereafter. Thus, the cause of action having arisen outside the local limits of the territorial jurisdiction of this Court, the suit would not be maintainable in Delhi.

5.8. Yet another argument of Mr. Nayar was in relation to Rule 18 of the ICA Rules. He would contend that as per Article 25.1(b) of the CC, the rules of ICA were required to be followed in case of a party seeking invocation of arbitration. In regard thereto, he would submit that the parties by consent agreed for a procedure prescribed under the ICA Rules and Rule 18 left it open to the parties to agree to the place of arbitration to be held anywhere in India. This rule was complied with by the parties in conferring seat of arbitration at Vishakhapatnam. He emphasized that once both the parties conferred the seat of arbitration at Vishakhapatnam, no court in Delhi would have the territorial jurisdiction to entertain any proceeding in relation thereto, including the present suit. He also relied on the judgement of the Supreme Court in ***Mankastu Intex Pvt. Ltd. vs. Air Visual Limited*, *2020 (5) SCC 399***, particularly paragraphs 17 to 21, which are extracted hereunder:

> *"**17.** In the present case, Clause 17 of MoU is a relevant clause governing the law and dispute resolution. Clause 17 reads as under:*
>
> *17. Governing law and dispute resolution*
>
> *17.1. This MoU is governed by the laws of India, without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction.*
>
> *17.2. Any dispute, controversy, difference or claim arising out of or relating to this MoU, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered in Hong Kong.*
>
> *The place of arbitration shall be Hong Kong.*
>
> *The number of arbitrators shall be one. The arbitration proceedings shall be conducted in English language.*
>
> *17.3. It is agreed that a party may seek provisional, injunctive, or equitable remedies, including but not limited to preliminary injunctive relief, from a court having jurisdiction, before, during or after the pendency of any arbitration proceeding.*
>
> ***18.** The learned counsel for the petitioner has submitted that a perusal of Clause 17.1 of MoU makes it clear that the petitioner and the respondent have only agreed that the proper law of the contract to be laws of India and MoU is clearly silent on the proper law and the curial law of the arbitration and therefore, Clause 17.1 would govern the proper law and the curial law. According to the petitioner, there is no express or implied exclusion either in Clause 17 or under the entire MoU of the non-applicability of the laws of India and/or the applicability of the*

laws of Hong Kong or any other country. The contention of the petitioner is that in the absence of the clear stipulation as to the proper law and curial law of the arbitration, laws of India should be taken as the proper law and curial law under MoU and under no circumstances, the terms in Clause 17.1 of MoU be undermined or diluted.

***19.** The seat of arbitration is a vital aspect of any arbitration proceedings. Significance of the seat of arbitration is that it determines the applicable law when deciding the arbitration proceedings and arbitration procedure as well as judicial review over the arbitration award. The situs is not just about where an institution is based or where the hearings will be held. But it is all about which court would have the supervisory power over the arbitration proceedings. In Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , the Supreme Court held that : (SCC pp. 43 & 46, paras 97 & 107)*

"[T]he location of the seat will determine the courts that will have exclusive jurisdiction to oversee the arbitration proceedings. It was further held that the seat normally carries with it the choice of that country's arbitration/curial law."

(emphasis supplied)

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

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

He emphasized that the Supreme Court observed that the situs is not just about where an institution is based or where the hearings will be held, but all about which court would have the "supervisory power" over the "arbitration proceedings".

5.9. Learned senior counsel also contended that the claim of the defendant no.1 is only for damages on account of wrongful termination of the CC and not specific performance. Learned senior counsel drew attention to the prayer clause in the SoC submitted by the defendant no.1 to corroborate the contention that the claims are only in the nature of damages and compensation. He would also contend that in case the submission of the plaintiff that the decision impugned in the present suit is not arbitrable is believed, then, it would result in an anomaly. This is for the reason that the defendant no.1 would be deprived from the right to adjudication of its claims through arbitration, and in case the defendant so chooses to file a suit, the plaintiff is likely to take an objection that the same is not maintainable having regard to the existence of an arbitration clause. According to learned senior counsel, this cannot be countenanced.

5.10. Mr. Nayar also submitted that no prejudice would be caused to the plaintiff if it participates in the arbitration proceedings, firstly, since it is the preferred and the only mode of dispute resolution, secondly, the Rules of ICA also contain Rule 16 which provisions are akin to Section 16 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "*the Act*"), and the plaintiff can avail of the said provisions, and thirdly, Section 48 of the Act provides adequate measure to safeguard the plaintiff. According to learned senior counsel, this Court may not interfere at all in a case where the parties have chosen a particular mode of dispute resolution.

5.11. In the aforesaid context, learned senior counsel also drew attention to the provisions of Section 5 of the Act to submit that the legislature has in its wisdom clearly barred interference by the Civil Courts in arbitration matters. It is contended that the provisions of Section 5 of the Act clearly require minimal interference by Courts in relation to mutually agreed dispute resolution by arbitration. Even otherwise, according to learned senior counsel, there are enough safeguards in Sections 16 and 48 of the Act. In this regard, learned senior counsel pointed out to paras 5, 6, 8, 12 and 13 of the reply dated 15.07.2026 issued by the plaintiff in response to the notice dated 08.07.2026 under Section 21 of the Act invoking arbitration by the defendant no.1. Read cumulatively, learned senior counsel would contend that these narrations are clearly within the scope of the Arbitral Tribunal under Section 16 of the Act or Rule 16 of the ICA Rules. According to him, undeniably, the Arbitral Tribunal has the necessary and proper authority to decide on its own jurisdiction and the plaintiff can raise these very objections in the arbitration. Learned senior counsel would stoutly contend that having regard to the nature and narrow scope of interference as per Section 5 of the Act, coupled with adequate safeguards in place in terms of Section 16 of the Act and Rule 16 of the ICA Rules, this Court may not interfere in the proceedings initiated by the defendant no.1.

5.12. Alternatively, Mr. Nayar also submitted that in case the plaintiff has any apprehension of technical or institutional bias as regards ICA in the context of Mr.N.G. Khaitan heading the same and he being the partner of the law firm representing the defendant no.1 before ICA, defendant no.1 is ready and willing to proceed with the arbitration under the aegis of MIAC. This was clearly conveyed to the plaintiff in written by the defendant no.1 *vide* the letter dated 10.06.2026.

5.13. Responding to the submission of the learned Solicitor General that the word "may" employed in Article 25.1 is not mandatory, but directory which only provides that the parties, if so they choose, may opt for or out of arbitration, based on the judgement of the Supreme Court in ***BGM & M-RPL-JMCT (JV)*** *(supra)*, learned senior counsel would submit that Article 25.1(b) makes it mandatory by employing the word "shall". He would submit that contrary to the aforesaid submission, it is the plaintiff by its communication dated 14.09.2023 sought amicable resolution of the disputes as envisaged in Article 25.1(a) and also offered proposals for consideration and acceptance by the defendant no.1. Article 25.1 envisages that upon failure of parties to amicably resolve the disputes under Article 25.1(a), the parties shall be referred to arbitration. Thus, according to Mr. Nayar, learned senior counsel while the disputes may or may not be resolved amicably, which is at the discretion of the parties, the unresolved dispute has to be mandatorily referred to arbitration. It is in this context, learned senior counsel would submit that the judgement in ***BGM & M-RPL-JMCT (JV)*** *(supra)* relied upon by the plaintiff is not applicable.

5.14. Mr. Nayar, learned senior counsel referred to Section 7 of the Act to submit that the plaintiff does not dispute that the Arbitration Agreement encapsulated in Article 25 of the CC is indeed valid and binding on the parties. Having regard to the said admission, the plaintiff cannot now turn around to insist that it can approach the Civil Court for orders/directions which the Arbitral Tribunal is fully empowered to pass.

5.15. Referring to Article 23.8 of the CC, Mr. Nayar would submit that even if one were to agree with the submissions of the plaintiff, the claims arising on such eventuality as envisaged under the said Article, necessarily would require determination/adjudication by a neutral party/institution. He would submit that in case such determination is left to the plaintiff alone, it would violate the principle of *"nemo judex in causa sua"* i.e. no person can be a judge in his own cause. Moreover, he would contend that the said provision of the CC does not bar any claim other than those envisaged under it. Thus, there being no proscription or prohibition in a party raising claims other than those referred to in Article 23.8 of CC, the issue of arbitrability or otherwise of any of the claims in the SoC will have to be purely decided by the Arbitral Tribunal. Thus, on this ground too, he would submit that this Court may not interfere in the arbitral proceedings.

5.16. Thus, in the aforesaid circumstances, Mr. Nayar, learned senior counsel prays that no interim orders of any nature be passed.

6. Mr. Sandeep Sethi, learned senior counsel also appeared for the defendant no.1 and addressed the following arguments:

6.1. He would contend that there is a clear distinction between "sovereign decision" and "sovereign functions". While on one hand, according to him, sovereign functions are those which would be arbitrable, while sovereign decisions may be non-arbitrable. Learned senior counsel gave examples to explain the aforesaid distinctions. In that context, he relied upon ***Vidya Drolia*** *(supra)*, particularly paras 50 and 76, to draw the distinction between the two aforesaid expressions. In this regard, Mr. Sethi, learned senior counsel would refer to Article 23.7 of the CC to submit that neither the GoI nor the Turkish Government has either prohibited or banned defendant no.1 in which case alone the provisions of Article 23.8 would become applicable. He would contend that no other situation or event than the one envisaged in Article 23.7 has been made a point of trigger for provisions of Article 23.8 to come into effect. Thus, according to him, the issue of wrongful termination not being based on Article 23.7 of the CC, can be considered and decided by the Arbitral Tribunal.

6.2. Learned senior counsel also extensively referred to the judgement in ***BGS SGS SOMA JV*** *(supra)* which laid down the legal prescription of what would constitute a seat in arbitration agreement in contradistinction to a venue. Placing reliance on paras 34, 50 and 53 of the said judgement, learned senior counsel would contend that only the courts at Vishakhapatnam would have exclusive jurisdiction to deal with any matter or dispute arising in relation to the CC. The said paras of the judgement are extracted hereunder:

> *"**34.** The Court in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] then went on to refer to several English judgments and specifically italicised several parts of the judgment in Shashoua v. Sharma [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] as follows : (BALCO case [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , SCC p. 614, para 110)*
>
> *"110. Examining the fact situation in the case, the Court observed as follows:*
>
> *'The basis for the court's grant of an anti-suit injunction of the kind sought depended upon the seat of the arbitration. An agreement as to the seat of an arbitration brought in the law of that country as the curial law and was analogous to an exclusive jurisdiction clause. Not only was there agreement to the curial law of the seat, but also to the courts of the seat having supervisory jurisdiction over the arbitration, so that, by agreeing to the seat, the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of the arbitration.*
>
> *Although, "venue" was not synonymous with "seat", in an arbitration clause which provided for arbitration to be conducted in accordance with the Rules of the ICC in Paris (a supranational body of rules), a provision that "the venue of arbitration shall be London, United Kingdom" did amount to the designation of a juridical seat.…'*
>
> *In para 54, it is further observed as follows:*

'There was a little debate about the possibility of the issues relating to the alleged submission by the claimants to the jurisdiction of the High Court of Delhi being heard by that court, because it was best fitted to determine such issues under the Indian Law. Whilst I found this idea attractive initially, we are persuaded that it would be wrong in principle to allow this and that it would create undue practical problems in any event. On the basis of what I have already decided, England is the seat of the arbitration and since this carries with it something akin to an exclusive jurisdiction clause, as a matter of principle the foreign court should not decide matters which are for this Court to decide in the context of an anti-suit injunction.'

In making the aforesaid observations in Shashoua case [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] , the Court relied on the judgments of the Court of Appeal in C v. D [C v. D, 2008 Bus LR 843 : 2007 EWCA Civ 1282 (CA)] ."

(emphasis in original)

xx xx xx

***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. In Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , this Court approved the dictum in Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] as follows : (Enercon case [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , SCC p. 55, para 126)*

"126. Examining the fact situation in the case, the Court in Shashoua case [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] observed as follows:

'The basis for the court's grant of an anti-suit injunction of the kind sought depended upon the seat of the arbitration. An agreement as to the seat of an arbitration brought in the law of that country as the curial law and was analogous to an exclusive jurisdiction clause. Not only was there agreement to the curial law of the seat, but also to the courts of the seat having supervisory jurisdiction over the arbitration, so that, by agreeing to the seat, the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of the arbitration.

Although, "venue" was not synonymous with "seat", in an arbitration clause which provided for arbitration to be conducted in accordance with the Rules of the ICC in Paris (a supranational body of rules), a provision that "the venue of arbitration shall be London, United Kingdom" did amount to the designation of a juridical seat.…'

In para 54, it is further observed as follows:

'There was a little debate about the possibility of the issues relating to the alleged submission by the claimants to the jurisdiction of the High Court of Delhi being heard by that Court, because it was best fitted to determine such issues under the Indian law. Whilst I found this idea attractive initially, we are persuaded that it would be wrong in principle to allow this and that it would create undue practical problems in any event. On the basis of what I have already decided,

England is the seat of the arbitration and since this carries with it something akin to an exclusive jurisdiction clause, as a matter of principle the foreign court should not decide matters which are for this Court to decide in the context of an anti-suit injunction.'"

(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."*

Thus, this Court may not have the requisite territorial jurisdiction to adjudicate the present suit.

6.3. Apart from the above, learned senior counsel referred to a judgement of the Supreme Court in ***Kvaerner Cementation India Limited vs. Bajranglal Agarwal & Anr., (2012) 5 SCC 2014*** in support of the contention that it is well settled that under Section 16 of the Act, the Arbitral Tribunal has been conferred the power to rule on its own jurisdiction including ruling on any objection with respect to existence or validity of the arbitration agreement itself. He would submit that the said judgement is also an exposition for the principle that no Civil Court would pass any injunction against an arbitral proceeding.

6.4. Learned senior counsel also relied upon ***Rampur Distillery and Chemicals Co. Ltd. vs. Union of India*** reported in ***1995 (32) DRJ 733*** to submit that the plaintiff is mandated to clearly state valuations for each of the reliefs separately and the court should not be left to decipher on its own as to the exact amount of court fee paid. In order to substantiate the said argument, learned senior counsel referred to para 96 of the plaint to submit that no such distinction has been drawn.

6.5. He also relied upon the judgement of the Supreme Court in ***Madhyamam Broadcasting Limited vs. Union of India & Ors., (2023) 13 SCC 401***, particularly paragraphs 86 and 89, and that of this Court in ***Lifewell Diagnostics Private Limited vs. Micron Laboratory, 2026 SCC OnLine Del 1583***, particularly paras 3, 7 and 18. Relevant paragraphs of both the judgements relied upon by the learned senior counsel are extracted hereunder:

<u>Madhyamam Broadcasting Limited vs. Union of India & Ors., (2023) 13 SCC 401:</u>

> *"**86.** The following principles emerge from the above judgments:*
> ***86.1.** The party affected by the decision must establish that the decision was reached by a process that was unfair without complying with the principles of natural justice;*
> ***86.2.** The State can claim that the principles of natural justice could not be followed because issues concerning national security were involved;*
> ***86.3.** The courts have to assess if the departure was justified. For this purpose, the State must satisfy the Court that firstly, national security is involved; and secondly, whether on the facts of the case, the requirements of national security outweigh the duty of fairness. At this stage, the court must make its decision based on the component of natural justice that is sought to be abrogated; and*
> ***86.4.** While satisfying itself of the national security claim, the courts must give due weightage to the assessment and the conclusion of the State. The courts cannot disagree on the broad actions that invoke national security concerns — that is, a question of principle such as whether preparation of terrorist activities by a citizen in a foreign country amounts to a threat of national security. However, the courts must review the assessment of the State to the extent of determining whether it has proved through cogent material that the actions of the aggrieved person fall within the principles established above.*
> ***xx xx xx***
> ***89.** This prong requires an analysis of the legitimacy of the aim that restricts rights. The aim must be of sufficient importance to override fundamental rights. At this stage, the State is required to discharge the burden of proving that the action is in furtherance of an aim that is legitimate. The State is also required to discharge the additional burden of proving that the action is indeed in furtherance of the legitimate aim that is contended to be served. The Union of India claims that the reasons and the documents cannot be disclosed in the interest of national security and confidentiality of intelligence inputs. The State at this stage is required to prove that confidentiality and national security are legitimate aims, and that the purposes of confidentiality and national security are served by non-disclosure.."*

<u>Lifewell Diagnostics Private Limited vs. Micron Laboratory, 2026 SCC OnLine Del 1583</u>

*"**3.** The petitioner relies upon Clause 29 of the agreement, which contains the provision for dispute resolution, for seeking appointment of an arbitrator. The said Clause 29 of the agreement reads in the following manner:*

"xxx xxx xxx

29. **DISPUTE RESOLUTION:**

a. In the event of any dispute or difference arising in relation to this Agreement, its interpretation, performance or any other matter, the same shall be decided by amicable discussion between the Parties.

b. In the event of the Parties being unable to resolve the dispute by amicable discussions as above or within a period of 30 days or such further time as the Parties may be agreed will be free to avail their legal remedies.

c. In the event of the Parties being unable to resolve the dispute by amicable discussions as above or within such further time as the Parties may mutually agree, the dispute may be referred to the arbitration in terms hereof.

d. Arbitration shall be conducted as follows:

(i) All proceedings in any arbitration shall be conducted in English;

(ii) The arbitration shall be done by the Sole Arbitrator appointed jointly by the parties, failing which, in accordance with the provisions contained in the Arbitration and Conciliation Act, 1996;

(iii) The arbitration award shall be final and binding on the Parties, and the Parties agree to be bound thereby and to act accordingly;

(iv) The arbitral Tribunal may award to a Party that substantially prevails on the merits its costs and reasonable expenses (including reasonable fees of its counsel);

(v) The venue and seat of such arbitration tribunal shall be at Delhi and

(vi) The Arbitration Proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any re-enactment or modification or amendment thereof.

(vii) The existence of any dispute or difference or the initiation or continuance of the arbitration proceedings shall not postpone or delay the performance by the Parties of their respective obligations under this Agreement.

xxx xxx xxx"

xx xx xx

***7.** Section 2(b) of the Arbitration Act defines an arbitration agreement to mean an agreement referred to in Section 7 of the Arbitration Act. In terms of Section 7 of the Arbitration Act, an arbitration agreement is an agreement by and between the parties to submit to arbitration, all or certain disputes which have arisen or which may arise between them. Further, while Section 7(2) of the Arbitration Act stipulates that an arbitration agreement may be in the form of Arbitration Clause in a contract or in the form of a separate agreement, Section 7(3) of the Arbitration Act clearly states that an arbitration agreement between the parties shall be in writing.*

xx xx xx

***18.** Mere use of the prefix "may", which is followed by a detailed binding adjudicatory mechanism, shall not make the dispute resolution clause in the present case as a non-binding Arbitration Clause. Thus, a comprehensive, harmonious and wholesome construction of Clause 29 makes clear the intent of the* *parties to refer the disputes to arbitration, in the eventuality the same are not resolved amicably."*

6.6. Thus, in the aforesaid circumstances, Mr. Sethi, learned senior counsel prays that no interim orders of any nature be passed which may interfere with the arbitral proceedings.

CONTENTIONS ON BEHALF OF DEFENDANT NO.2:-

7. Dr. Amit George, learned counsel appearing for defendant no.2/ICA has handed over the Bench a letter dated 12.08.2026 of Dr. N.G. Khaitan stating, *inter alia*, that upon consideration of the issue, he felt it appropriate to place the matter before the Members of the Arbitration Committee of the ICA to undertake the appointment process in accordance with Rule 31(1) of the ICA Rules of Arbitration in order to ensure complete independence, transparency, and avoidance of any conflict of interest. Thus, Dr. George, learned counsel would submit that the question of some technical bias, if any, expressed by the plaintiff also stands removed. He would submit that being an institution, it would not like to address any arguments based on merits at this stage.

REJOINDER ON BEHALF OF THE PLAINTIFF:-

8. Mr. Tushar Mehta, learned Solicitor General further stated as under:

8.1. Mr. Mehta, learned Solicitor General stated that the Court must clearly distinguish between what would constitute "subject matter of the arbitration" and "subject matter of the suit". According to him, a subject matter which pertains to any action taken or purported to be taken in terms of the provisions of the Act before a court for purposes envisaged in Sections 9, 11, 14, 15, 34, 36 and 37 would fall within the purview of "subject matter of the arbitration". Such legal redressal may have to be instituted in courts exercising jurisdiction in accordance with the seat of jurisdiction conferred in the arbitration agreement which may be construed as courts exercising "supervisory jurisdiction". According to the learned Solicitor General, this Court is not exercising any such "supervisory jurisdiction" while entertaining the present suit. Learned Solicitor General emphasized that in the present case, it is the subject matter of suit which is more relevant than the subject matter of the arbitration.

8.2. In relation to the aforesaid submission, learned Solicitor General invited attention to prayer clause (b) to submit that the said relief is one which would be strictly falling within the expression "subject matter of a suit", and not arbitration. In order to substantiate the said issue, he referred to Section 20(c) of the CPC, which clearly contemplates not only jurisdiction vested with the court in whose jurisdiction cause of action has wholly arisen, but also a court where part of cause of action may have arisen. In the present case, learned Solicitor General would submit that the issue of non-arbitrability is directly connected with the sovereign decision taken by the GoI requiring the plaintiff to terminate the CC in terms of Article 23.8 of the CC. He would submit that the said decision has been taken by the GoI in Delhi after deliberating upon the decision by the CCS in Delhi. It was only upon such a decision that the GoI required the plaintiff to terminate the CC. Thus, one of the causes of action has clearly arisen in Delhi conferring the necessary jurisdiction upon this Court to adjudicate the present suit.

8.3. Learned Solicitor General stoutly contended that insofar as the prayers sought in the plaint are concerned, this Court is clearly not exercising any supervisory jurisdiction envisaged under the provisions of the Arbitration Act, and thus, the suit would clearly be maintainable.

8.4. Mr. Mehta, learned Solicitor General referred to Sections 2(a) to (e) read with Section 2(3) of the Act to submit that the provisions when read cumulatively would carve out an exception from the rigours of Section 5 of the Act. He emphatically urged that Section 2(3) clearly envisaged disputes which are not arbitrable. That, read as an exception to Section 5, would clearly permit applicability of Section 20 of the CPC to decide the arbitrability or otherwise of the decision taken by the sovereign. In support of the aforesaid contention, the learned Solicitor General relied upon the opinion rendered by a learned Former Judge of the Supreme Court in "O.P. Malhotra on the Law & Practice of Arbitration and Conciliation", Third Edition. Thus, having regard to the fact that the sovereign decision was taken at Delhi, this Court clearly would have the necessary jurisdiction to adjudicate the present suit. Additionally, he would submit that at the same time the plaintiff is not giving up the challenge to the letter of the ICA. He submitted that the defendant no.2 is situated within the local limits of the territorial jurisdiction of this Court which too would fulfil the ingredients of Section 20 of the CPC.

8.5. Regarding submissions made by the defendant no.1 in respect of Section 16, he would submit that contrary to the submissions of the defendant no.1, in the SoC there is a clear challenge to the termination of the CC by the plaintiff, and the claims are not merely for damages alone. He would submit that though there is no dispute with the proposition, and the ratio laid down by the Supreme Court regarding seat and venue of arbitration, however, once the challenge has been laid by the defendant no.1 to the termination, which is predicated on the sovereign decision, such claim itself is non-arbitrable in terms of the judgement of the Supreme Court. Once such a claim is clearly non-arbitrable, this Court is not precluded from entertaining and adjudicating the present suit or passing appropriate interim orders. Thus, interference by this Court is warranted.

ANALYSIS AND CONCLUSION:-

9. This Court has heard extensive and elaborate arguments of Mr. Mehta learned Solicitor General for the plaintiff, Mr Rajiv Nayar and Mr Sandeep Sethi, learned senior counsel for the defendant no.1, and Dr. Amit George for the defendant no.2, examined the record and considered the judgements relied upon by the parties.

10. Before adverting to and examining the issue on other important aspects and objections raised by the defendants, it is deemed appropriate to first examine as to whether the termination of the CC by the plaintiff *vide* the communication letter dated 24.08.2023 is non arbitrable, *per se*, basis the sovereign decision.

11. In order to appreciate the contours as to why and under what circumstances the plaintiff was required to issue the termination notice dated 24.08.2023 to the defendant no.1, it may be necessary to examine certain Articles of the CC. Article 23, particularly Article 23.7 and 23.8 are significant and are extracted hereunder:

> *"23.7 **Termination on account of prohibition or ban by either of the Indian Govt or Turkish Govt.** In the event of COLLABORATOR being prohibited by either the Turkish Govt and / or Indian Govt in the performance of this contract, the COLLABORATOR shall, upon giving HSL written notice, promptly assign this contract to a mutually agreeable affiliate company in accordance with provisions of clause 31.1 hereinafter. Any such prohibition shall not constitute an event of Force Majeure. The parties shall, in good faith, use their best endeavours to ensure a smooth transition with minimum disruption to the performance of this Contract. Any such assignment shall not impact upon this contract price.*

> ***23.8*** *<u>In the event that the performance of this contract becomes impossible as a result of any such Governmental prohibition</u>, the COLLABORATOR shall not be entitled to claim for payment of the contract price, but shall be entitled to retain an amount already paid and received together with au amounts that already agreed and due as per Article 3. 7 Of this Contract. The COLLABORATOR shall also be entitled to be paid in full for work in progress beyond the last stage payment upto the point where work has been undertaken until the date of termination under this sub article, subject to assessment of work completed or equipment purchased, delivered and mutual agreement between the parties."*
>
> (emphasis supplied)

12. Article 23 of the CC provides for various modes of termination of the contract by either of the parties in a prescribed manner. Articles 23.7 envisages a situation where in the event the defendant no.1 is either prohibited or banned by the governments of either Turkey or India, the defendant no.1 was mandated to assign the CC to a mutually agreeable affiliate company. This is not the case of any of the parties to the suit.

13. Article 23.8 provides that in the event the performance of the CC becomes impossible as a result of "any such governmental prohibition", the defendant no.1 would not be entitled to a claim for payment of the contract price, however would be entitled to retain all amounts already paid and received together with all amounts that are agreed and due as per Article 3.7 of the CC. It also provides that the defendant no.1 would be entitled to what is expressed as "stage payment".

14. From a plain reading of Article 23.8, it appears that "any such governmental prohibition" is in consonance with the event referred to in Article 23.7. However, what is relevant to be considered is the expression "any such governmental prohibition" is bereft of any words or expression linking it to Article 23.7 alone. The said expression appears to be well thought of and deliberate by the author of the CC. In other words, the expression "any such governmental prohibition" is open ended and does not limit itself only to the event arising as envisaged in Article 23.7. The words "any such" amply suggests that there could exist myriad

situations or events that may arise during the subsistence of the CC, which may trigger action under Article 23.8, other than those specifically covered by Article 23.7. Expressed differently, the "governmental prohibition" is neither circumscribed nor limited by the event specified in Article 23.7. The expression "any such governmental prohibition" specifically used in Article 23.8 manifests expansive powers of the government to take decisions, which may be required in the interests of the nation, and certainly cannot be limited only to such events or situations covered by Article 23.7. It is also beyond cavil that the CC has been executed between two entities of two different countries and as such the Court cannot ignore or have a periscopic view of the differing global geo politics which may have an impact upon the CC too, particularly when the CC is respecting Defence Procurement or intrinsically attached to any of the armed forces. It may be noted that the CC pertains to construction of five FSS for the Indian Navy which are, goes without saying, essential and crucial to building national security and strategic military development. In that background, it may be appropriate to now consider the communications leading to the termination of the CC by the plaintiff.

15. What triggered the termination is the communication dated 23.08.2023 issued by the GoI. The said communication dated 23.08.2023 is extracted hereunder:

MOST IMMEDIATE

MF-SP/11901/FSS/CFA/Pt-1
Government of India
Ministry of Defence
Department of Defence

229(A), South Block, New Delhi
Dated 23rd August, 2023

Subject: Approval of Cabinet Committee on Security (CCS) for procurement of five (05) Fleet Support Ships (FSS) for the Indian Navy from M/s Hindustan Shipyard Ltd (HSL)-regarding.

Please refer to above cited project which have been approved by Cabinet Committee on Security (CCS) in its meeting held on 16.08.2023.

2. A contract for design collaboration for above project was signed between M/s HSL and M/s Anadolu Shipyard, Turkey on 20 Mar 2020 with concurrence of MEA and DDP, MoD.

3. During Inter Ministerial Consultation(IMC) on the project, National Security Council Secretariat(NSCS) accorded concurrence to proceed with the case without involvement of M/s Anadolu, Turkey. NSCS further mentioned that assistance towards specialist services, wherever necessary, may be sought from friendly foreign countries towards execution of the project.
The Cabinet Note was accordingly modified and it was mentioned in the Cabinet Note that the project would be executed through indigenous industry without any further involvement of M/s Anadolu Shipyard, Turkey. A detail brief on collaborator contract was also enclosed as annexure to the Cabinet Note wherein it was mentioned that the contract with M/s Anadolu Shipyard, Turkey would be terminated in accordance with Article 23.8 of the contract signed between M/s HSL and M/s Anadolu Shipyard, Turkey.

4. As CCS has already accorded approval to the project in its meeting held on 16th August,2023, therefore CMD-HSL is hereby requested to initiate contract termination proceedings with M/s Anadolu Shipyard, Turkey at the earliest.

This issues with the approval of Defence Secretary

23/08/23
(S.Khajuria)
Director (Navy Acquisition)
Ph: 011-23012392

Cmde Hemant Khatri, IN(Retd),
Chairman & Managing Director,
Hindustan Shipyard Limited,
Gandhigram, Visakhapatnam-530005

Copy to :
1. Joint Secretary(NS), DDP, Room No.134B, South Block, New Delhi
2. Cmde(SP)-IV, Dte of Ship Production, IHQ MoD(Navy)

16. It is not disputed that the execution of the CC is with the approval and concurrence of the Ministry of External Affairs (MEA) and the Department of Defence Production (DDP), MoD. In the absence of such specific approval or concurrence from the MEA, DDP and MoD, the CC could not have been executed at all. Thus, clearly, the approval, and equally the withdrawal or rescindment of such approval would invariably have a direct impact on the subsistence of the said CC. In that context, the role of the plaintiff is limited and circumscribed. The plaintiff is, undoubtedly, bound to act in pursuance of any such decision taken by the GoI. From the letter dated 23.08.2023, it is manifest that the GoI, in its opinion, deemed it appropriate and fit to accord concurrence to proceed with the project, however, without the involvement of the defendant no.1, and accordingly

communicated its intent clearly and unambiguously to the plaintiff. The GoI also further manifested its intention to move away from defendant no.1 by requiring the plaintiff to initiate procedure for termination as envisaged in Article 23.8. In pursuance to such mandate, the plaintiff issued the termination letter dated 24.08.2023.

17. At this juncture, it may be significant to consider whether the said decision of the GoI is a "decision by the Sovereign". In order to appreciate the said point, it would do well to consider the judgement of the Supreme Court in ***Vidya Drolia*** *(supra)*, particularly, para 50 read with para 76, which are extracted hereunder:

> *"**50.** Sovereign functions of the State being inalienable and non-delegable are non-arbitrable as the State alone has the exclusive right and duty to perform such functions. [Ajar Raib, "Defining Contours of the Public Policy Exception — A New Test for Arbitrability", Indian Journal for Arbitration Law, Vol. 7 (2018) p. 161.] For example, it is generally accepted that monopoly rights can only be granted by the State. Correctness and validity of the State or sovereign functions cannot be made a direct subject-matter of a private adjudicatory process. Sovereign functions for the purpose of Arbitration Act would extend to exercise of executive power in different fields including commerce and economic, legislation in all forms, taxation, eminent domain and police powers which includes maintenance of law and order, internal security, grant of pardon, etc. as distinguished from commercial activities, economic adventures and welfare activities. [Common Cause v. Union of India, (1999) 6 SCC 667 : 1999 SCC (Cri) 119 and Agricultural Produce Market Committee v. Ashok Harikuni, (2000) 8 SCC 61.] Similarly, decisions and adjudicatory functions of the State that have public interest element like the legitimacy of marriage, citizenship, winding up of companies, grant of patents, etc. are non-arbitrable, unless the statute in relation to a regulatory or adjudicatory mechanism either expressly or by clear implication permits arbitration. In these matters the State enjoys monopoly in dispute resolution."*
>
> *xx xx xx*
>
> ***76.** In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:*
> ***76.1.** (1) When cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.*
> ***76.2.** (2) When cause of action and subject-matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.*

__76.3.__ <u>(3) When cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.</u>
76.4. *(4) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).*
76.5. *These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject-matter is non-arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non-arbitrable.*
76.6. *However, the aforesaid principles have to be applied with care and caution as observed in Olympus Superstructures (P) Ltd. [Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651] : (SCC p. 669, para 35)*

"35. … Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration (Keir v. Leeman [Keir v. Leeman, (1846) 9 QB 371 : 115 ER 1315]). Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (Soilleux v. Herbst [Soilleux v. Herbst, (1801) 2 Bos & P 444 : 126 ER 1376] , Wilson v. Wilson [Wilson v. Wilson, (1848) 1 HL Cas 538] and Cahill v. Cahill [Cahill v. Cahill, (1883) LR 8 AC 420 (HL)])."

(emphasis supplied)

18. ***Vidya Drolia*** *(supra)* has clearly defined that the decisions taken by the State i.e., the GoI in certain matters are sovereign functions, which are inalienable and non-delegable, and are thus, non arbitrable. It also noted various fields where the sovereign functions including maintenance of law and order, internal security, and grant of pardon, etc. Surely, if internal security is a sovereign function, then national security, and matters related to defence procurement for the armed forces would clearly fall within the expression "sovereign function", and the decision taken in such context could be expressed as "sovereign decision", particularly in the context of decisions relating to whether to go ahead with a particular foreign entity or not, having regard to the ever changing and differing geo politics. It needs

no iteration that para 76.3 brooks of no ambiguity of non arbitrability intrinsically inhering in sovereign functions and decisions.

19. Undoubtedly, the CC pertains to defence procurement and/or ancillary or incidental to the development of strategic defence assets, particularly pertaining to the Indian Navy. The CC is respecting construction and development of five FSS to enhance the "*blue water*" capabilities of the Indian Navy to ensure global presence. The CC is clearly and inextricably interlinked and intertwined with defence and security of the nation. It cannot be disputed that the CC could not have been executed unless an approval was accorded by the GoI, which alone, under Article 23.8 of the CC, had the right and jurisdiction to take decisions that might be required in certain circumstances. The domain for such a decision lies exclusively with the GoI. Thus, what was accorded or approved by the GoI could alone have been rescinded or revoked exclusively by it. The plaintiff could not have but implemented the decision dated 23.08.2023 communicated by the MoD.

20. Having regard to the above analysis and facts, it is clear that the decision of the GoI dated 23.08.2023 is a "decision of the Sovereign", and in view of the ratio in ***Vidya Drolia*** *(supra)*, "non arbitrable", *per se*.

21. In the aforesaid backdrop, it is imperative to examine the termination letter dated 24.08.2023 issued by the plaintiff. The said letter dated 24.08.2023 is reproduced hereunder:

Hindustan Shipyard Ltd.
(A Govt. of India Undertaking - Ministry of Defence)
Gandhi gram
Visakhapatnam - 530 005 (INDIA)
BUSINESS DEVELOPMENT DEPT
(An ISO 9001:2015 Company)

हिन्दुस्तानशिपयार्डलि.
(भारत सरकार का उपक्रम रक्षा मंत्रालय)
गांधीग्राम
विशाखपट्टणम – 530 005 (भारत)
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BD/FP/FSSCNT/2023053 24 Aug 2023

DOCUMENT -3

Mr. Cevat Rifat Atilhan,
Managing Director
Anadolu Deniz Insaat Kizaklari
Sanayi Ve Ticaret Anonim Sirketi,
Tersaneler Caddesi No. 22,
Tuzla, Istanbul, Turkey – PK 34944

Termination Notice of Collaborator Contract between M/s HSL and M/s Anadolu Deniz Insaat Kizaklari SanayiVe Ticaret Anonim Sirketi.

Sir,

1. HSL had entered into a Collaborator Contract no BD/FP/FSSCNT/2001135 dated 20 Mar 20 with M/s. Anadolu Deniz Insaat Kizaklari SanayiVe Ticaret Anonim Sirketi **(Anadolu)**, for Collaboration in design, supply of Key Machinery Equipment, technical assistance and project implementation towards the construction of Five Fleet Support Ships **(FSS)** for Indian Navy.

2. M/s HSL has received approval of Government of India to proceed with construction of FSS without any involvement of M/s Anadolu Shipyard, Turkey. Further, GoI has also directed HSL to initiate Collaborator Contract termination proceedings with M/s Anadolu shipyard, Turkey at the earliest.

3. In view of the foregoing, we are issuing this notice for termination of the Collaborator Contract between M/s HSL and M/s Anadolu, Turkey with immediate effect under the conditions mentioned at Article 23.8 of the subject contract.

4. It is requested that this notice be responded within next fifteen (15) days and a team be deputed to workout jointly the activities related to termination smoothly and speedily.

Regards,

For Hindustan Shipyard Limited,

G. Venkat

(Capt G Venkateswarlu, *IN* (Retd))
General Manager
Business Development Department

COMMERCIAL IN CONFIDENCE

22. It brooks no ambiguity that the plaintiff conveyed that the decision to terminate the CC was purely predicated on the decision of the GoI in terms of Article 23.8. This Court has already examined and analysed the effect and purport of Article 23.8, and has also formed a *prima facie* opinion that the decision of the

GoI dated 23.08.2023 is a "sovereign decision". It is also clear that once such communication was received, the plaintiff has no option or choice other than to implement the decision. Thus, the termination by the plaintiff predicated on the sovereign decision of the GoI, would, in the humble opinion of this Court, *prima facie* be, non arbitrable.

23. The ratio in ***Vidya Drolia*** *(supra)* appears to be not only reiterating the principle in sub-section (3) of Section 2 of the Act but appears to be in consonance with the same. In the humble opinion of this Court, decisions taken by the Sovereign in relation to its sovereign functions would be some such disputes/issues which would clearly fall within the scope of "non-arbitrable matters", and thus, cannot be subject matter of a dispute resolution between two private entities. It cannot be fathomed that a decision taken by a Sovereign in such matters, particularly in matters relating to national security, two contractual parties bound by an agreement would have the right, authority or jurisdiction to call for or question such sovereign decisions.

24. Learned Solicitor General had referred to Section 2(a) and 2(e) of the Act to submit that the subject matter of arbitration is distinct from the subject matter of the suit. He had argued that while the subject matter of an arbitration may require supervisory jurisdiction conferred upon the principal Civil Court of Original jurisdiction for the purposes of exercising powers under Section 9, 14, 15, 34, 36 and 37, while the subject matter of a suit would be governed by the provisions of Section 20 of the CPC as in the present case. He contended that in the present case the subject matter of the suit is more relevant than the subject matter of the arbitration. Learned Solicitor General also emphasised that in the present case, this Court is not called upon to exercise the supervisory jurisdiction.

25. In consonance to the aforesaid submission learned Solicitor General had also referred to Section 2(3) of the Act to submit that plainly sub-section (3) excludes non-arbitrable or excepted matters from the purview of the Act. According to the learned Solicitor General, the provision of Section 2(3) of the Act is a clear exception to the provisions under Section 5 of the Act, and thus, this Court would not be violating the law laid down by the Supreme Court holding that there should be minimal judicial interference in arbitration matters. He had also relied upon the commentary in "O.P. Malhotra on the Law & Practice of Arbitration and Conciliation", III Edition authored by Justice Indu Malhotra (Retd.) in support of the aforesaid submissions.

26. This Court has perused the commentary of the learned author and deems it fit to extract the same hereunder:-

> " ***SECTION 2(3)***
>
> *This sub-section saves those disputes from the applicability of Part-1 which are covered by any law for the time being in force by virtue of which, they may not be submitted to arbitration. It operates in the context of the mandate of Section 5 of the Arbitration and Conciliation Act, 1996 according to which, in matters governed by Part-I, no judicial authority shall intervene except where so provided in Part-I, notwithstanding any other law for the time being in force.*
>
> *The non obstante clause in Section 5 would imply that the 1996 Act will override any law providing for the procedure for resolution of a dispute covered by it, as long as there is an arbitration agreement.*
>
> *Section 2(3) restricts the overriding effect apparent in Section 5. A bare reading of this provision clarifies that the provisions of the Act of 1996 have not been given overriding effect over any other law, where the jurisdiction of arbitration has been excluded. For instance, a dispute between a landlord and tenant is to be decided under the exclusive jurisdiction of the Rent Tribunal, and the jurisdiction of the arbitral tribunal is excluded. [National Textile Corporation (DP & R) Ltd. (The) & Anr. vs. The Rent Control Appellate Tribunal & Ors., RLW 2011 (4) Raj 2803]*
>
> *This provision plainly means that Part-I of the Act shall not affect any other law for the time being in force, by virtue of which certain disputes may not be submitted to arbitration. To put it differently, if any law which is for the time being in force were to provide, either expressly, or by necessary implication, that the specified disputes may not be submitted to arbitration, in that case, inspite of the*

non obstante provision in Section 5 of the Act, that law has been saved by virtue of Section 2(3) of the Act of 1996. To that extent, the bar against the judicial authority in terms of Section 5 of the Act of 1996, to try matters specified by such law would stand lifted. [Central Warehousing Corporation (A Govt. of India Undertaking) vs. Fortpoint Automotive Pvt. Ltd. A Private Limited Company, Incorporated under Companies Act, 1956, 2010 (1) Bom CR 560 : 2010 (1) All MR 497 : 2010 (1) Mh LJ 658]

In the case of Sh. Veena vs. Seth Industries, it was held that Section 41 of the Presidency Small Cause Courts Act, 1882, falls within the ambit of Section 2(3) of the Act of 1996. As a result of which, even if the Licence Agreement contains an arbitration agreement, the exclusive jurisdiction of the Courts of Small Causes under Section 41 of the Act of 1882 is not affected in any manner. It was held that an arbitration agreement in such cases would be invalid and inoperative, on the principle that it would be against public policy to allow the parties to contract out of the exclusive jurisdiction of the Small Causes Courts by virtue of Section 41 of the Act of 1882. [Smt. Veenawd/o Naresh Seth and SuchitNaresh Seth by his mother and natural guardian Smt. Veenawd/o Naresh Seth vs. Seth Industries Limited, a company which was incorporated under the Companies Act, 1956 and Ors., 2011 (2) Mh LJ 226].”

27. Having examined the aforesaid commentary rendered by the learned author, it appears that sub-section (3) of Section 2 would not affect any other law by virtue whereof certain disputes may not be submitted to arbitration. Equally, it appears that Section 2(3) carves out an exception to the provision of Section 5 of the Act in respect of any other law where the jurisdiction of arbitration has been excluded. Though in the present case there is no such law falling within the purview of Section 2(3) of the Act, however, having regard to the fact that ***Vidya Drolia*** *(supra)* has unequivocally held that sovereign decisions/functions are inalienable and non-delegable, thus, non-arbitrable as a consequence, in the opinion of this Court, a decision of the Sovereign, would *ex facie*, be covered under Section 2(3) and be deemed to be an exception to the provision of Section 5 of the Act. Thus, to the aforesaid extent, this Court would not be violating or in conflict with the decisions of the Supreme Court where Courts are proscribed from judicial interference in matters governed by Part I of the Act except where it is provided.

This distinction is also clear from the fact that judicial interference by the Civil Courts in arbitration matters are circumscribed only in respect of Sections 9, 14, 15, 34, 36 and 37 of the Act. In the present case, the matter pertaining to sovereign decision and falling within the purview of Section 2(3) of the Act, the prohibition or proscription under Section 5 of the Act would not be applicable.

28. Much was argued on the lack of territorial jurisdiction of this Court to entertain the present suit. In that, no cause of action muchless a part of cause of action, had at all arisen within the local limits of the territorial jurisdiction exercised by this Court. It was forcefully contended that none of the parties to the CC were located at Delhi; the CC was entered into and executed at Visakhapatnam; the performance of the works of the project under the CC was itself to be executed at Visakhapatnam; the letter of termination was communicated by the plaintiff from Visakhapatnam; the letter dated 13.10.2023 proposing amicable resolution was sent by the plaintiff from Visakhapatnam; the meetings between the officials of the parties were held at Visakhapatnam. It was also contended that mere location of defendant no.2, which is only an institution providing institutional arbitration services under the ICA Rules, by itself would not confer territorial jurisdiction upon this Court inasmuch as the administrative facilitation and communication are not the cause of action at all for the institution of the present suit. Reliance was also placed on the relevant paragraphs of the suit in order to substantiate the aforesaid submissions. Thus, according to the defendant no.1, this Court lacks the requisite territorial jurisdiction to entertain the suit.

29. Insofar as the aforesaid submissions are concerned, it may be significant to note that the suit is at a nascent stage and even if this Court were to examine the said submissions, such scrutiny may fall within the purview of the provisions of

Order VII Rule 11 of the CPC. It is trite that while examining issues under Order VII Rule 11 of the CPC the Court is proscribed from considering any material other than the plaint and documents in support filed by the plaintiff, and such examination is insulated from the purview of the defence or the grounds raised by the defendants in the written statement or the documents filed therewith. In the present case, no such written statement could have been filed since, summons are yet to be issued. At this stage, the Court is to consider only the averments in the plaint and deem that all the facts stated therein are correct.

30. In the above background, it may be relevant to consider paras 91, 93 and 95 of the plaint, on which extensive reliance was placed by the defendant no.1 to submit that by way of a clever drafting the plaintiff has attempted to confer jurisdiction upon this Court when none is available. At the first blush, the arguments of learned senior counsel for the defendant no.1 appear to be attractive, however, are not persuasive. This is for the reason that in case this Court were to examine the said objections and submissions through the prism of Order VII Rule 11 CPC then the averments in para 91, 93 and 95, *prima facie* at this stage, appear to confer requisite territorial jurisdiction upon this Court. For clarity, para 91, 93 and 95 of the plaint are extracted hereunder:-

> *"91. The Plaintiff submits that this Hon'ble Court has territorial and subject-matter jurisdiction to entertain and adjudicate the present suit. The cause of action has arisen, in part, within the territorial jurisdiction of this Hon 'ble Court and the reliefs sought concern arbitration proceedings administered by Defendant No.2 in New Delhi and sovereign decisions taken in New Delhi.*
>
> *xx xx xx*
>
> *93. Defendant No. 2 has its office at Room No. 112, 1st Floor, Federation House, Tansen Marg, New Delhi - 110001, within the territorial jurisdiction of this Hon 'ble Court. The decision of the Cabinet Committee on Security, which is the central act giving rise to the present dispute, was taken in New Delhi.*
>
> *xx xx xx*

95. The cause of action for the present suit arose on the following dates and events: (a)On 10 June 2026, when Counsel for Defendant No. l first wrote after a gap of over two years proposing amendment of the arbitration clause; (b) On 25 June 2026, 15 July 2026, and 19 August 2026, when the Plaintiff through its Counsel denied the existence of any arbitration agreement and any arbitrable dispute; (c) On 7 August 2026, when the Counsel for Defendant No. 1 filed the Request for Arbitration before Defendant No. 2; (d) On 11 August 2026, when Defendant No. 2 registered the said arbitration as Case No. INTARB-0035; (e) On 20 August 2026, when Counsel for Defendant No.1 for the first time disclosed to Counsel for the Plaintiff that the Request for Arbitration has been filed."

31. Para 91 of the plaint asserts that a part of cause of action has arisen within the territorial jurisdiction of this Court as the reliefs sought concern arbitration proceedings administered by defendant no.2 in New Delhi, and sovereign decisions have also been taken in New Delhi. Para 93 of the plaint asserts that defendant no.2 has its office in Delhi within the territorial jurisdiction of this Court and that the decision of the CCS, which is stated to be the core act giving rise to the instant dispute, was also taken at New Delhi. Para 95 of the plaint is in respect of various causes of action having arisen requiring the plaintiff to institute the present suit. Since material assertions/averments conferring territorial jurisdiction are contained in the plaint particularly in the aforesaid paragraphs, at this stage, the Court is required to treat such averments as correct unless contradicted by the defendants by filing a substantive written statement and leading evidence thereof. That stage is yet to arrive. It would be premature for this Court to reject the suit under provision of Order VII Rule 11 CPC at the threshold by disbelieving certain portions of the plaint. In this context, the judgement of the Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366*** summarizing the law as laid down in ***Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512*** would be worthwhile to consider. The relevant portion in ***Dahiben*** *(supra)* adverting to ***Liverpool & London*** *(supra)* is extracted hereunder:-

> *"**23.11.** The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)*
>
> > *"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."*

32. The ratio laid down in ***Liverpool & London*** *(supra)* brooks no ambiguity. The averments in the plaint, at this stage, are to be taken on their face value. *Ergo*, as of now it is premature for this Court to conclusively determine that this Court lacks the requisite territorial jurisdiction to adjudicate or entertain the present suit.

33. Another forceful argument of the learned senior counsel was regarding contradictory stands taken by the plaintiff. In that, though during the arguments, the plaintiff has purported to project as if it is not submitting itself to the arbitral procedure prescribed under Article 25 of the CC, yet, the plaintiff has clearly contradicted itself while issuing the letter dated 08.07.2026 under Article 25.1(a) of CC offering amicable resolution of the dispute indicating initiation of resolution of disputes under the Arbitration Agreement. Learned counsel had stoutly submitted that once having initiated a dispute resolution process under the arbitration agreement envisaged in Article 25 of the CC, the plaintiff cannot be permitted to take a contradictory stand before this Court. The plaintiff, according to defendant no.1, cannot approbate and reprobate at the same time.

34. The aforesaid argument appears to be sustainable on the face of it, however, it is to be noted that the termination itself proceeds on the recitals in Article 23.8 which was predicated on the sovereign decision dated 23.08.2023. Even if it is

assumed, for the time being, that the plaintiff indeed issued a communication for resolution of dispute, it is clear from the reading of Article 23.8 that the said sums of money paid or to be paid to a collaborator/defendant no.1 was already encapsulated in the same article itself. That by itself would not affect or impact the fact that the said termination dated 24.08.2023 was solely based on the sovereign decision which is clearly non-arbitrable as analyzed above. Therefore, at this stage, it may be premature to render a definitive finding in regard to the aforesaid submission.

35. Learned senior counsel for the defendant no.1 had emphatically referred to the provisions of Section 16 of the Act and also relied upon Rule 16 of the ICA Rules to submit that both the provisions provide adequate legal remedies to the plaintiff before the Arbitral Tribunal to raise the objection regarding the very jurisdiction of the Arbitral Tribunal itself. According to the learned senior counsel, it is trite that the Arbitral Tribunal is competent to rule on its own jurisdiction, and come to a conclusion that it has no jurisdiction over the claims and reject the same on such finding. Learned senior counsel had emphasized that when the Arbitral Tribunal is vested with the appropriate jurisdiction in terms of the Arbitration Act, such examination of identical issues ought not to be examined by the Civil Courts. Reliance was placed on ***J&K Economic Reconstruction Agency*** *(supra)*, ***BGS SGS SOMA JV*** *(supra),* ***Kvaerner Cementation*** *(supra),* ***Mankastu Intex*** *(supra)* in support of the submissions.

36. While the aforesaid submission and the law laid down by the Supreme Court cannot be quarreled with, however, having regard to the aforesaid analysis regarding non-arbitrability of the sovereign decision *ab initio*, may, *prima facie* render the exercise under Section 16 of the Act unviable. The inalienability and the

non-delegable nature in terms of ***Vidya Drolia*** *(supra),* clearly indicates that the insulation from arbitral interference, available to the sovereign decision inheres in the Sovereign, *ab initio* and at all times to come.

37. Much emphasis was laid on the seat of arbitration at Vishakhapatnam being exclusionary to the territorial jurisdiction of this Court. The judgements of the Supreme Court in ***J&K Economic Reconstruction Agency*** *(supra)*, ***BGS SGS SOMA JV*** *(supra),* ***Kvaerner Cementation*** *(supra),* ***Mankastu Intex*** *(supra)*, were relied upon in support of the aforesaid contention. It was hotly contested that once an arbitration agreement confers the venue and seat of arbitration on a particular place, only those courts within whose local limits of territorial jurisdiction such a place is situated alone would have supervisory jurisdiction in matters related to such arbitration. It is noted, with great humility, that the judgements relied upon by the defendant no.1 pertain to exercise of supervisory jurisdiction of civil courts respecting matters relating to arbitration where the seat and venue of arbitration are specified as also those where such seat or venue are not specified. While there can be no quarrel with the law laid down by the Supreme Court in all the aforesaid judgements, however, the principle and essential issue which is core to the very termination letter issued by the plaintiff is the decision of the sovereign which, in the humble analysis afore-noted is the distinctive and decisive factor on account whereof the aforesaid decisions may not be applicable. It is also relevant to note that none of those decisions examined the issue which has arisen in the present suit i.e. whether a sovereign decision is at all arbitrable and as to which court would have the territorial jurisdiction to entertain such suits. In the present case, this Court has not only examined as to whether the termination letter dated 24.08.2023 is completely predicated on the sovereign decision dated 23.08.2023, but also has

considered as to whether the averments in the plaint taken at their face value, at this stage, do indeed indicate facts falling within Section 20 of the CPC thereby conferring territorial jurisdiction on this Court. Having been satisfied on the aforesaid two essential aspects, this court is of the considered opinion that the ratio of the aforesaid judgements may not be applicable.

38. In the present case, as analyzed in the preceding paragraphs, this Court is not exercising a supervisory jurisdiction, however, is considering an issue which arises out of a sovereign decision which has been held to be inalienable, non-delegable and non-arbitrable by the Supreme Court in ***Vidya Drolia*** *(supra)*. That read alongwith the analysis/interpretation of the effect and interplay between Section 2(3) and 5 of the Act, would clearly demonstrate the distinction between the present case, and those before the Supreme Court where the aforesaid proposition has been laid.

39. Mr. Sethi, learned senior counsel had relied upon the judgement in ***Madhyamam Broadcasting*** *(supra)* to submit that in cases where the State claims that principle of natural justice could not be followed on account of national security, the courts are required to assess if the departure was justified and satisfied itself that, firstly, national security is involved, and secondly on facts the requirement of national security outweigh the duty of fairness. In this context, having regard to the fact that this Court has *prima facie* opined the decision of the GoI to be within the expression "sovereign decision" based on the assessment that the project to be executed under the CC relates to and concerns itself with security of the nation from external threats and being relatable to defence procurement, the proposition in the judgement is met with. It is pertinent to note that in para 86.4, the Supreme Court has, aside the aforesaid observation, given preference and

precedence that the courts must give due weightage to the assessment and conclusion of the State and that a Court cannot disagree on the broad actions that invoke national security concerns.

40. Thus, having regard to the detailed examination of facts and law, and the analysis, it appears that, *prima facie,* the plaintiff has a strong case. The balance of convenience, at this stage, appears to be tilted in favour of the plaintiff. The plaintiff may suffer irreparable loss and injury in case *ad-interim* directions are not passed.

41. Since this Court is, *prima facie*, of the opinion that the decision dated 23.08.2023 of the MoD, GoI falls within the ambit of a "decision of the sovereign" in the context of matters relatable to or concerning the security of the nation and would be "inherently non-arbitrable *ab initio*", it would be in the interests of justice to keep the e-mail dated 19.08.2026 issued by the defendant no.2 in ICA Case No.INTARB-0035, in abeyance till the next date of listing.

42. Issue notice.

43. Notice is accepted by Mr. Aseem Chaturvedi, learned counsel for the defendant no.1 and Dr. Amit George, learned counsel for the defendant no.2.

44. The defendants shall file their replies to the present application within three weeks. Rejoinder thereto, within three weeks thereafter.

45. List before the Joint Registrar (Judl.) on 17.11.2026 and before the Court on 08.12.2026.

46. Needless to observe that the aforesaid observations do not tantamount to expression on merits and are only a *prima facie* view.

<u>I.A. 25198/2026 (seeking permission to file dim/unclear documents)</u>

47. This is an application filed by the plaintiff seeking permission to file certain dim/unclear documents and/or documents without requisite font size and/or requisite left margin and/or requisite line spacing.

48. For the reasons stated therein, the same is allowed, However, clear/true typed/ translated copies of dim/unclear documents with proper margin be filed within two weeks with an advance copy to the defendants.

49. Accordingly, the application stands disposed of.

I.A. 25200/2026 (exemption from initiating pre-institution litigation)

50. This is an application filed by the plaintiff seeking exemption from instituting pre-litigation Mediation under Section 12A of the Commercial Courts Act, 2015.

51. As the present matter contemplates urgent interim relief, in light of the judgement of the Supreme Court in ***Yamini Manohar vs. T.K.D. Keerthi: (2024) 5 SCC 815***, exemption from the requirement of pre-institution Mediation is granted.

52. The application stands disposed of

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53. Let the plaint be registered as a suit.

54. Issue Summons.

55. Summons is accepted by Mr. Aseem Chaturvedi, learned counsel for the defendant no.1 and Dr. Amit George, learned counsel for the defendant no.2 and waives issuance of formal summons to the defendants.

56. Written Statement shall be filed by the defendants within 30 days from the date along with an Affidavit of Admission/Denial of the documents of the plaintiff, without which the Written Statement shall not be taken on record.

57. Liberty is granted to the plaintiff to file Replication, if any, within 30 days from the receipt of the Written Statement. Along with the Replication filed by the plaintiff, an Affidavit of Admission/Denial of the documents of the defendants be filed by the plaintiff, without which the Replication shall not be taken on record.

58. In case any Party is placing reliance on a document, which is not in their power and possession, its details and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

59. If any of the Parties wish to seek inspection of any documents, the same shall be sought and given within the prescribed timelines.

60. List before the Joint Registrar (Judl.) on 17.11.2026 and before the Court on 08.12.2026.

TUSHAR RAO GEDELA
(JUDGE)

SEPTEMBER 18, 2026
anj/Sumit/rl