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

Judgment reserved on: 11.11.2024

Judgment pronounced on: 02.05.2025

\+ **O.M.P.(E.F.A.)(COMM.) 13/2019**

NINE RIVERS CAPITAL LIMITED .....Decree Holder/Petitioner

Through: Mr. Darpan Wadhwa, Sr. Adv. with Mr. Manik Dogra, Mr. Viral Mehta, Mr. Shahezad Kazi, Ms. Zahra Aziz, Ms. Ishita Mathur, Ms. Shweta Sahu, Mr. Gladwin Issac, Mr. Dhruv Pande, Mr. Amer Vaid and Ms. Divita Vyas, Advs.

versus

GOKUL PATNAIK AND ANR. .....Judgment Debtors/Respondents

Through: Mr. Ritin Rai, Sr. Adv. with Mr. Anand Varha, Ms. Apoorva Pandey and Ms. Adyasha Nanda, Advs. for R-1.

Mr. Pawan Bhushan, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J

1. This is a petition filed under Sections 44, 47 and 49 of the Arbitration and Conciliation Act, 1996 (for brevity "*the Act*") and Order XXI read with

Section 151 of the Code of Civil Procedure, 1908 (for brevity "*the Code*") seeking enforcement and execution of the final arbitration award dated 24.06.2019 made by learned arbitral tribunal in Singapore International Arbitration Centre (for brevity "*SIAC*") in Arbitration No. 133 of 2017 under the Arbitration Rules of the SIAC (6th Edition, 1st August, 2016).

FACTUAL BACKGROUND

2. The brief facts of the case are that the petitioner/judgment holder, Nine Rivers Capital (a Mauritius-incorporated company) entered into a Share Subscription and Shareholders Agreement (for brevity "*SSSA*") on 04.03.2010 regarding an investment of Rs. 300 million, with respondent No.1/judgment debtor No.1 - Gokul Patnaik (an Indian citizen), respondent No.2/judgment debtor No.2 - Katra Finance Ltd. (a Mauritius company) and a promoter group, to invest in Global Agrisystem Pvt. Ltd. (an Indian company) (for brevity "*GAPL*").

3. The SSSA outlined the terms under which the petitioner, referred to as the "*Investor*", would subscribe to the following securities in GAPL:

A. 100 equity shares of face value Rs.10/-, each at a premium of Rs.15.7/-, for an aggregate sum of Rs.2,570/- ("*Investor Equity Shares*");

B. 3,000,000 Cumulative Compulsorily Convertible Preference Shares of GAPL (for brevity "*CCPS*") bearing 6.67% dividend per annum, having a face value of Rs.30/- each at a premium of Rs.70/- per CCPS ("*Investor CCPS*").

4. It defined GAPL as the "*Company*". It identified Mr. Patnaik and Katra Finance Limited as the "*Promoter*". Additionally, the "*Promoter Group*"

included Gokul Patnaik Associates Private Limited, Gokul Patnaik (HUF), Mr. Sunil Kumar Sharma, Katra Holding Private Limited and Mr. Ramesh Vangal, a resident of Singapore.

5. The SSSA included provisions for a "*Qualified Exit*", which required the parties to undertake necessary actions for an Initial Public Offering of GAPL's equity shares or to pursue a strategic sale to a third party, contingent upon meeting specified conditions. One key condition for this Qualified Exit was that the minimum valuation of GAPL should be Rs.4,000,000,000/-.

6. Furthermore, Section 16.5 of the SSSA stipulated that if the Qualified Exit was not achieved by 31.03.2014, Nine Rivers, as the Investor, would have the following rights:

A. sell all, or a portion, of its securities to any Third Party purchaser of its choosing without the Right of First Refusal to the Promoter(s); and/or

B. by service of a Notice in the specified form, to drag along all or a portion of the securities held by the Promoter(s) to offer the same to the Third Party purchaser, provided that the securities of the Promoter(s) that are dragged along should be sold to any Third Party purchaser on the same terms and conditions as those of the Investor ("*Drag Along Right*").

7. Section 16.5.3 of the SSSA allowed the promoters to make an unconditional and nonbinding first offer to purchase the investor's securities within 21 days of receiving a Drag Along Notice. If the promoters opted to exercise this Right of First Offer (for brevity "*ROFO*"), they were required to inform the investor of the offer price and provide relevant information as specified

in the SSSA.

8. By the deadline of 31.03.2014, a Qualified Exit had not been achieved. Consequently, the petitioner exercised its Drag Along Right, prompting the respondent No.2 to elect to exercise its ROFO.

9. This transaction was formalized in an agreement known as the 2014 Share Purchase Agreement (for brevity "*SPA*"), under which respondent No.2 agreed to purchase the "*Sale Securities*" from the petitioner for a total purchase consideration of Rs.302,500,000/-, along with additional amounts as stipulated in the agreement.

10. The SPA was executed by respondent No.1, respondent No.2 and GAPL. In this agreement, the "*Promoters*" were defined as respondent No.1 and respondent No.2 (the Purchaser), with the Promoter Group having no role. Respondent No.2 ultimately did not purchase the Sale Securities as per the SPA, leading to negotiations that resulted in amendments to the payment terms, documented in the Addendum Agreement dated 04.12.2015. This amendment was signed by Mr. Ramesh Vangal, representing both himself and respondent No.2 and by respondent No.1 on behalf of GAPL and the Promoter Group played no role.

11. Despite these amendments, neither Mr. Vangal nor respondent No.2 completed the purchase of the Sale Securities. Between June and September 2016, the petitioner attempted to negotiate the sale of the Sale Securities via email with Mr. Vangal and others, but no sale occurred.

12. On 07.10.2016, the petitioner issued a Notice of Default to respondent Nos. 1 and 2, claiming that the Promoter Group had agreed to purchase the Sale Securities but had defaulted under Clause 8.1 of the SPA. The petitioner requested the Promoter Group to rectify the default and proceed with the

purchase. They later acknowledged that the Notice of Default should have identified only the Purchasers as defined in the 2015 Amendment. Clause 8.1 of the SPA reads as under:

> *"8.1* ***Default.*** *Unless the Seller, in its sole discretion, decides to extend the Closing Date in accordance with Clause 4.1, if the Purchase fails to purchase all of the Sale Securities by paying the Purchase Consideration to the Seller by the Stop Date or the Long Stop Date or the Default Long Stop Date (as applicable) in accordance with this Agreement (a "Default"), then, the Seller, in its sole discretion, shall have the right to:*
>
> *8.1.1 exercise any other rights and remedies under law, equity and / or the Principal Investment Agreement; and/or*
>
> *8.1.2 sell (whether through the Drag Along Right, the Investor Put Option or otherwise any or all of the Sale Securities to any Person (including a competitor)."*

13. Section 17.2.2.1 of the SSSA also provided for the Investor Put Option, which reads as under:

> *"17.2.2.1* ***Investor Put Option:*** *Notwithstanding and in addition to such remedies as may be provided under the terms of this Agreement or by Applicable Laws, the Promoters jointly and severally agree that on the occurrence of an Event of Default, the Investor may at its sole discretion, without prejudicing or restricting any of its other rights, including its right to claim damages on any basis and Drag Along Right as envisaged in Section 17.2.1 have the option (Investor Put*

Option) to serve a notice on the Company and the Promoters giving particulars of such occurrence and call upon the Promoters jointly and severally to (a) purchase all or part of the Investor Securities at a price per Share which will give an IRR of 25% per annum to the Investor and (b) to accomplish the completion of the transaction within a period of 90 (ninety) days from the date of issue of notice from the Investor in this regard."

14. On 16.12.2016, the petitioner sent a Investor Put Option Notice to respondent Nos. 1 and 2 and GAPL under section 17.2.2.1 of the SSSA, demanding the purchase of the Investor Securities for Rs.132,90,00,000/-. However, the respondents did not comply with this notice, prompting the petitioner to initiate arbitration seeking the Put Option Amount and other relief, based on the arbitration agreement in clause 11.12 of the 2014 SPA, as amended by the 2015 Amendment. Clause 11.12 reads as under:

"11.12 ***Arbitration.***

11.12.1 In the event a dispute arises out of or in relation to or in connection with the interpretation or implementation of this Agreement, the Parties (the "Disputing Parties") shall attempt in the first instance to resolve such dispute through good faith consultations between the Disputing Parties.

11.12.2 If the dispute is not resolved through such consultations within seven (7) Business Days (or such longer period as the Disputing Parties may agree to in writing) then any of the Disputing Parties may, by notice in writing to the other Disputing Party, refer the dispute to binding arbitration to be

settled by an arbitral tribunal comprising an Arbitrator ("Arbitral Tribunal") which will hold its sessions in Singapore under the rules of Singapore International Arbitration Centre (the "Rules") and the sole arbitrator shall be appointed by Singapore International Arbitration Centre, Singapore. The Arbitral Tribunal shall conduct its sessions and render its decision(s) in English.

11.12.3 The arbitral award made and granted by the Arbitral Tribunal shall be final, binding and incontestable and may be used as a basis for judgment thereon in Mauritius, India or elsewhere. Such award shall be treated as a "foreign award" for purposes of the Indian Arbitration and Conciliation Act, 1996 and the Parties agree that Part 1 (except section 9) of the Indian Arbitration and Conciliation Act, 1996 is expressly excluded. Each Party shall bear its own costs of arbitration.

11.12.4 The Arbitral Tribunal duly constituted in accordance with the terms of this Agreement shall remain in effect until a final arbitration award has been issued by the Arbitral Tribunal. The arbitrators shall be bound by strict rules of law in making their decision and shall not be entitled to render a decision ex aequo et bono.

11.12.5 None of the Parties shall be entitled to commence or maintain any action in a court of law upon any matter in dispute arising from or in relation to this Agreement except for the enforcement of an arbitral award granted pursuant to this Agreement.

11.12.6 During the period of submission of arbitration and thereafter until the granting of the award, the Parties shall, except in the event of termination, continue to perform all their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

11.12.7 Neither the Parties nor the members of the Arbitral Tribunal may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of each of the others."

15. The arbitration commenced on 05.05.2017 and was conducted under the SIAC Rules, with Singapore as the seat of arbitration. A sole arbitrator was appointed by the Vice President of the Court of Arbitration of the SIAC on 26.02.2018. The learned arbitrator rendered his award on 24.06.2019, concluding the arbitration process.

16. The learned Arbitral Tribunal reviewed the pleadings and oral evidence, determining that both the judgment debtors violated their obligations under the SPA and rendered the final arbitration award dated 24.06.2019. The award records that:

"1. The First Respondent, Mr Patnaik, and the Second Respondent, Katra Finance are jointly and severally required to purchase the Investor Securities, as defined in the SSSA, held by the Claimant Nine Rivers pursuant to the Put Option contained in Section 17.2.2.1 of the SSSA for a total consideration of INR 1,329,000,000 (in words one billion three hundred and twenty nine million Indian Rupees).

2. All other claims are dismissed.

3. Each party is to bear its own costs incurred in this arbitration.

4. Each of the First Respondent, Mr Patnaik, the Second Respondent Katra Finance and the Claimant, Nine Rivers are to pay one third of the costs of the arbitration as determined by the Registrar in the sum of Singapore Dollars 254,797.22 (in words, two hundred and fifty four thousand, seven hundred and ninety seven Singapore Dollars and twenty two cents).”

17. Respondent No.1 filed a suit in the Singapore High Court challenging the said arbitration award, which was dismissed by the Singapore International Commercial Court (for brevity “*SICC*”) in its judgment dated 12.11.2020, titled as ***Gokul Patnaik v. Nine Rivers Capital Ltd., (2020) SGHC(1) 23***.

18. Since the respondent Nos. 1 and 2 have not complied with the arbitral award, the present petition has been filed by the petitioner and the substantial prayer read as under:

“(a) Enforce the foreign Award dated June 24, 2019 rendered by Mr. Charles Manzoni, QC in the arbitration proceedings bearing SIAC Case Reference No. ARB 133/17/KRW as a decree of this Hon'ble Court;

(b) Execute such decree of this Hon'ble Court;

(c) Direct the Judgment Debtors to jointly and severally purchase the 67,53,342 equity shares of GAPL (as they now stand after conversion of the CCPS constituting the Sale Securities into equity shares) for a total consideration of INR 132,90,00,000 (Indian Rupees One Hundred and Thirty Two Crores and Ninety Lakhs Only);

(d) By ensuring that the Judgment Debtor No. 1 pays one third of the costs of the arbitration as determined by the Registrar of the SIAC in the sum of SGD 84,932.41 (Singapore Dollars Eighty Four Thousand, Nine Hundred and Thirty Two and Forty One Cents) to the Judgment Holder;

(e) By ensuring that the Judgment Debtor No. 2 pays one third of the costs of the arbitration as determined by the Registrar of the SIAC in the sum of SGD 84,932.41 (Singapore Dollars Eighty Four Thousand, Nine Hundred and Thirty Two and Forty One Cents) to the Judgment Holder;

(f) Direct the Judgment Debtors to file their respective affidavits declaring to this Hon'ble Court the details of all their properties and assets whether within or outside India and whether held singly or jointly with any other party along with material details of all existing encumbrances and charges on each of such property and assets including the date(s) on which such encumbrances and charges were created;

(g) Pass appropriate orders of injunction restraining the Judgment Debtors from directly or indirectly selling, transferring, creating any third party right or interest in, or otherwise in any manner encumbering or dealing with all or any of their property and assets in India or outside India, including, but not limited to, the shares in GAPL held, and which may come to be held, by the Judgment Debtors;

(h) Issue against the Judgment Debtors, warrants of attachment of their movable and immovable assets/properties of

whatsoever nature and wheresoever situated including investments, bank accounts and order for sale of the said assets/properties and further order the payment of the sale consideration so realized to the Judgment Holder for satisfaction of the Award;

(i) Appoint and direct any person or officer, as this Hon'ble Court may be pleased, to perform all acts required to be performed for the execution of the decree, at the cost and expense of the Judgment Debtors;

****"*

19. *Vide* the order dated 19.04.2021 passed by this Court, respondent No.3 was impleaded as a party to the present enforcement petition. It was further clarified that the same is only for the purposes of considering an order for directing her to disgorge the said shares.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1

20. Mr. Rai, learned senior counsel appearing on behalf of respondent No.1, has made the following submissions to oppose the enforcement petition:

I. The Enforcement Petition is not maintainable before this Court for want of jurisdiction.

21. Respondent No.1 challenges the maintainability of the enforcement petition before the Court due to the lack of territorial jurisdiction. The petitioner seeks to enforce a foreign arbitral award dated 24.06.2019, arising from arbitration conducted under Clause 11.12.2 of the SPA, which was governed by Indian law and specified exclusive jurisdiction to the courts at Mumbai

for disputes related to the SPA.

22. According to Clause 11.9 of the SPA, the exclusive jurisdiction to adjudicate the enforceability of the arbitral award, which is a dispute "*arising under or in relation to*" the SPA, lies with the courts in Mumbai. Therefore, the enforcement petition filed by the petitioner is beyond the territorial jurisdiction of this Hon'ble Court. The submissions highlight that Sections 47 and 49 of the Act outline a two-stage process for the enforcement of foreign awards, where the Court first determines the enforceability of the award before it can be executed as a decree.

23. The distinction between the enforceability and execution of a foreign award is crucial, as the issues considered during enforcement under Sections 47 and 48 differ from those at the execution stage under Section 49.

24. He submits that Hon'ble Supreme Court in ***Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2001) 6 SCC 356*** and in ***Union of India v. Vedanta Ltd., (2020) 10 SCC 1***, held that there will be separate proceedings for enforcement and execution, particularly when exclusive jurisdiction has been conferred to specific courts by agreement. The enforcement petition under Section 47 must be filed in the High Court that has jurisdiction over the subject matter of the arbitral award, which, in this case, is Mumbai.

25. He argues that the petitioner's reliance on ***Rishima SA investments LLC v. Shristi Infrastructure Development Corporation Ltd., 2021 SCC OnLine Del 3341***, to assert jurisdiction in this Court is misplaced, as it did not consider the effect of an exclusive jurisdiction clause. He contends that the current case is distinguishable from the precedents where the location of assets was relevant, emphasizing that the enforceability of the award must be determined before any execution can occur.

II. The Arbitral Tribunal under the SPA lacked jurisdiction to make an Arbitral Award directing specific performance of the put-option under the separate and independent SSSA.

26. The petitioner alleged a default under Clause 8 of the SPA on 07.10.2016, and subsequently invoked arbitration under Clause 11.12 of the SPA through a notice of arbitration dated 02.05.2017. Throughout the arbitration proceedings, the petitioner sought specific performance of Clause 17.2.2.1 of the SSSA, arguing that the SSSA was incorporated by reference within the SPA. However, the learned arbitral tribunal rejected this argument in paragraphs 92-93 of the Award.

27. Clause 2.2 of the SPA explicitly states it does not override or alter any provisions of the SSSA, indicating that the remedies of the petitioner under the SSSA remain separate and intact. Clauses 8.1.1 and 8.2 of the SPA provide rights and remedies in the event of a purchaser's failure to buy shares but do not allow for the enforcement of the Put Option under the SPA. This distinction further highlights that the remedies available under the SSSA and the SPA are independent.

28. The learned arbitral tribunal constituted under the SPA rejected all claims raised by the petitioner, despite acknowledging that the purchasers had breached the SPA. Interestingly, the learned arbitral tribunal awarded specific performance of the SSSA, stating that the SPA's arbitration clause was "*widely drawn*", which was not part of the original case of the petitioner. This interpretation is stated to be absurd and perverse, rendering key clauses of both the SPA and SSSA ineffective. The finding that the promoters breached the Put Option under the SSSA and the direction for

specific performance is argued to be beyond the scope of the arbitration, warranting refusal of enforcement under Section 48(1)(c) of the Act.

29. The petitioner references the Hon'ble Supreme Court's judgment in ***Vijay Karia v. Prysmian Cavi E Sistemi, (2020) 11 SCC 1***, emphasizing that if a jurisdictional ground to resist enforcement is established, there is no discretion to enforce the award. The "*Centre of Gravity*" test is cited to determine jurisdiction when multiple arbitration agreements exist. Furthermore, the issue of the jurisdiction of the learned arbitral tribunal should be determined *de novo* by the enforcing court, rather than relying on the decision of the learned arbitral tribunal. This principle has been upheld in various Supreme Court cases, reinforcing the need for independent assessment of jurisdictional matters in international commercial arbitration.

III. The Arbitral Award is in violation of the principles of natural justice under Section 48(1)(b) of the Act.

30. The learned arbitral tribunal derives its jurisdiction from the SPA, however, has allowed the claims under SSSA, which was not the original case of the petitioner. The petitioner invoked arbitration under Clause 11.12 of the SPA via a notice of arbitration and all pleadings submitted to the learned arbitral tribunal sought specific performance of Clause 17.2.2.1 of the SSSA, asserting that the SSSA was incorporated by reference within the SPA. Notably, the petitioner did not argue that Clause 11.12 was broad enough to encompass disputes arising under the SSSA, consistently maintaining that the dispute was solely under the SPA.

31. The learned arbitral tribunal independently established the argument that Clause 11.12 of the SPA could cover disputes under the SSSA, without

giving respondent No.1, an opportunity to address this interpretation. Had respondent No.1 been allowed to respond, he could have argued that the language of Clause 11.12 limited its scope to the SPA and that specific performance of the SSSA could only be pursued through the provisions outlined in the SSSA itself. During oral submissions, the learned arbitral tribunal briefly questioned the counsel for respondent No.1 about the scope of Clause 11.12, but this inquiry was made without prior notice or the opportunity for respondent No.1 to prepare a detailed response.

32. Furthermore, while the learned arbitral tribunal set up a case for the petitioner that had not been previously pleaded, it denied respondent No.1 the chance to amend his defence, citing the delay of the amendment and the potential lack of evidence. This raises concerns about fairness and adherence to basic principles of justice, which are fundamental to public policy in India.

33. The petitioner references the Hon'ble Supreme Court's judgment in ***Vijay Karia (supra)***, which emphasizes that enforcement of an award must be refused when new points are introduced by the arbitrator that were not argued by either party. This principle, derived from the case of ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131***, supports the argument that the award violates fundamental principles of natural justice. Consequently, enforcement of the award should be denied under Section 48(1)(b) of the Act because respondent No.1 was unable to present his case.

IV. The Arbitral Award is in contravention to the public policy of India under Section 48(2)(b) of the Act.

34. The arbitral award acknowledged the requirement for RBI permission to enforce the specific performance of the Put Option, recognizing that the transaction would involve the transfer of shares from Nine Rivers Capital (a Mauritius company) to Gokul Patnaik (an Indian citizen). While the arbitral award rejected argument of respondent No.1 that the Put Option and the SPA violated applicable FEMA regulations, it still emphasized the necessity of obtaining RBI permission for the share transfer. In contrast, no such permission would be required for Katra Finance Ltd., another Mauritius company, as the statutory rules prohibit the sale of securities by a non-resident to an Indian resident without RBI approval.

35. The petitioner incorrectly contended that the issue of RBI permission was moot based on the judgment in ***Cruz City 1 Mauritius Holdings v. Unitech Ltd., 2017 SCC OnLine Del 7810)***, which involved different facts where shares were sold between non-residents. The judgment clarified that any remittance of money recovered from enforcement of the award would still require compliance with regulatory provisions. The award's reasoning regarding the necessity of RBI permission was supported by the Hon'ble Supreme Court in ***Vijay Karia (supra)***, which recognized the RBI's jurisdiction under the FEMA rules. Therefore, enforcement of the award without RBI permission would violate fundamental policy and fall under Section 48(2)(b) of the Act.

36. The award is characterized as contingent, meaning it can only be enforced if RBI permission is granted. Any attempt to enforce the award without such permission could render it contrary to public policy. The objections under Section 48 of the Act must be addressed before the award can be recognized as a decree under Section 49 of the Act. The Hon'ble Supreme Court has

previously ruled in ***Chandnee Widyavati Madden v. Dr. C.L. Katial, (1964) 2 SCR 495***, that if a decree is contingent upon regulatory approval, it cannot be executed without obtaining that approval. This principle applies equally to permissions contemplated within the award.

NO SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 3

37. Mr. Bhushan, learned counsel appearing on behalf of respondent No.3, states that respondent No.3 is not a judgment debtor in the present enforcement proceedings. The Court allowed her impleadment as a party to the enforcement petition, noting that she received shares from respondent No.1 without consideration and ordered that the *status quo* regarding these shares be maintained.

38. Respondent No.3 contends that the application for her impleadment was based on a mistaken assertion that the arbitral award entitled the petitioner to recover Rs.132,90,00,000/- from the judgment debtors. She emphasizes that the amount recoverable is yet to be determined and is contingent upon an application to the RBI under the FEMA Rules, 2019.

39. The primary contention of respondent No.3 is to contest the claim that the arbitral award entitles the petitioner to recover the specified amount. The Hon'ble Supreme Court has previously ruled in ***Shri Har Govind v. Shri Aziz Ahmed & Anr., (1969) 2 SCC 524***, that if regulatory approval is necessary, a decree can be granted subject to the regulator's decision, but the Court cannot assist in obtaining such permission. Additionally, if regulatory approval is denied, the Court cannot enforce the decree.

40. Respondent No.3 asserts that the operative part of the arbitral award is not enforceable without RBI approval as required under the FEMA Rules, 2019. Even if the arbitral award is deemed enforceable under Section 48 of the Act and attains the status of a decree, the executing Court can only execute the decree with the following specific stipulations:

A. No payment is due under the decree without RBI permission for the purchase of shares as per the Put Option, and

B. Any application to the RBI must include a fair market valuation of the shares *in praesenti* as mandated by Rule 21 of the FEMA NDI Rules, 2019.

SUBMISSIONS ON BEHALF OF PETITIONER

41. Mr. Wadhwa and Mr. Dogra, learned senior counsels appearing on behalf of petitioner, have made the following submissions to support the enforcement petition:

I. The Enforcement Petition is maintainable before this Court.

42. The arbitration proceedings took place in Singapore, governed by the Singaporean law and were conducted according to the SIAC Rules. The award was made in Singapore and is recognized as a foreign award under the New York Convention, which applies in India as per Section 44 of the Act. Consequently, the award is enforceable in India under Chapter I of Part II of the Act as it was made outside India. According to the Arbitration Agreement, Article 32.11 of the SIAC Rules and Section 19B of the Singapore International Arbitration Act, 1994, the award is final and binding on the parties. It can be enforced in India as a decree of the court under

Section 49 of the Act.

43. The petition is maintainable before this Court because respondent No.1 resides and works in New Delhi, India. Further, it is stated that respondent No.1 has declared in the affidavit of assets filed before this Court that his assets are located within the jurisdiction of this Court, including shares in GAPL, which has its registered office in New Delhi.

44. It is a settled position of law that enforcement proceedings of a foreign award lie where the assets of the judgment debtor are situated. Reliance is placed on ***Brace Transport Corporation of Monrovia, Bermuda v. Orient Middle East Lines Ltd, Saudi Arabia, 1995 Supp (2) SCC 280 (paras 13-15).***

45. The definition of "*Court*" in the Explanation to Section 47 of the Act significantly differs from that in Section 2(1)(e) of the Act. Section 2(1)(e) refers to the "*subject-matter of arbitration*", establishing jurisdiction based on the seat of arbitration. In contrast, the Explanation to Section 47 refers to the "*subject-matter of the arbitral award*", indicating jurisdiction based on the location of the asset or person against whom the enforcement of the arbitral award is sought. This means that a court enforcing a foreign award focuses on the relief specified in the award. This interpretation was upheld by this Court in ***Rishima SA investments LLC (supra) (para 51)***.

46. Clause 11.9 of the SPA which provides for the exclusive jurisdiction of the courts at Mumbai has to be read along with Clause 11.12.3, which specifies that the foreign award is final, binding and enforceable in Mauritius, India, or elsewhere, indicating that the award can be enforced globally, not just in Mumbai courts. While the language suggests that disputes regarding the SPA fall under the jurisdiction of Mumbai courts, once the SIAC Award is

issued, all disputes are considered resolved, leaving only the enforcement of the award as the remaining issue. Therefore, Clause 11.9 is deemed inapplicable post-award.

47. Further, claim of respondent No.1 that separate proceedings are necessary for the recognition, enforcement and execution of the SIAC Award is unfounded. The Hon'ble Supreme Court in ***Fuerst Day Lawson Ltd. (supra) (para 31),*** clarified that a single proceeding is sufficient for both the enforceability and execution of a foreign award, allowing the enforcing court to address the entire matter. This was further supported in ***LMJ International Ltd. v. Sleepwell Industries Co. Ltd., (2019) 5 SCC 302 (para 17)***, where the Court stated that Section 48 of the Act does not require a fragmented approach to the execution of foreign awards.

II. <u>The Arbitral Tribunal acted within the ambit of its jurisdiction and the Arbitral Award does not contain decisions on matters beyond the scope of the arbitration.</u>

48. Respondent No.1 has challenged the jurisdiction of the learned arbitral tribunal, claiming it decided matters beyond the scope of the arbitration.

49. These very arguments of respondent No.1 have been dismissed by both the learned arbitral tribunal and the SICC and respondent No.1 contends that Section 48 of the Act allows for a re-argument of the issue, despite it being previously raised and rejected. Reliance is placed on ***Cruz City 1 (supra) (paras 44-45)***, wherein this Court acknowledged that principles of res judicata and issue estoppel are relevant in enforcement matters, stating that a party should not be allowed to relitigate the same issue unless they can demonstrate special circumstances.

50. Respondent Nos. 1 and 2 had an obligation to purchase securities under the SPA, which was not fulfilled, leading to a cause of action based on this failure. This default allowed the petitioner to exercise rights under Clause 17.2.2.1 of the SSSA, as referenced in Clause 8.1 of the SPA, which includes rights against both respondent Nos. 1 and 2. The fact that these rights originated in the SSSA does not mean that the tribunal established under the SPA lacked jurisdiction to enforce them or that the dispute could only be arbitrated under the SSSA. The breach of the SPA, as outlined in Clause 8.1, entitles the petitioner to the rights preserved under Clause 17.2.2.1 of the SSSA.

51. Thus, the learned arbitral tribunal correctly interpreted the arbitration clause in the 2014 SPA being clause 11.12, which broadly covers all disputes "*arising out of*" the 2014 SPA. This interpretation aligns with the Hon'ble Supreme Court's ruling in ***Renusagar Power Co. Ltd. v. General Electric Co., (1984) 4 SCC 679 (para 25(2)),*** which supports the wide scope of such clauses.

52. Respondent No.1 contends that, as a "*promoter*" but not a "*purchaser*" under the SPA, he cannot be held liable under the SSSA's Investor Put Option. However, the learned arbitral tribunal rejected this argument, finding respondent No.1 liable as a "*promoter*" for purchasing shares under the Put Option and as an "*indemnifier*" for defaults by others. The learned arbitral tribunal noted that while it could not hold respondent No.2 liable for damages due to lack of proof, the choice of the petitioner to enforce the Put Option was valid.

53. The centre of gravity test proposed by respondent No.1 is not applicable in this case. This test is typically used to identify the agreement under which a

dispute arises, focusing on the jurisdiction clause that is closest to the cause of action. However, it is not intended to determine the jurisdiction clause related to the relief sought. In this instance, the cause of action stems from a default under Clause 8.1 of the SPA, which explicitly grants the petitioner the right to exercise "*any rights and remedies available to it*" under the SSSA. Therefore, the centre of gravity test does not apply here.

54. Further, the arguments of respondent No.1 do not challenge the jurisdiction of the learned arbitral tribunal, however, seek to contest its interpretation of the terms of the contracts, which is not permissible at this stage of the proceedings. Reliance is placed on ***Ssangyong Engineering & Construction Co. Ltd. (supra).***

III. ***The Arbitral Award is in due compliance of the principles of natural justice under Section 48(1)(b) of the Act.***

55. Respondent No.1 is contesting the arbitration award, arguing that the rejection by the learned arbitral tribunal of his amendment application at threshold on 11.02.2019, violated the principles of natural justice.

56. Learned counsel for the petitioner counters this claim by pointing out several inconsistencies in the argument of respondent No.1, namely:

A. The amendment application was filed on the first day of the final hearings, despite the arbitration process having started in May 2017, and respondent No.1 having previously submitted his defense and witness statements. Hence, the amendment application was not filed at the threshold.

B. The learned arbitral tribunal did not entirely reject the amendment application and it accepted one of the three submissions made by

respondent No.1.

C. The transcript from the hearing indicates that both parties were given sufficient opportunity to present their arguments regarding the amendments and only after hearing the arguments, the application was rejected.

D. Furthermore, the SICC on the same arguments has ruled that there was no breach of natural justice, confirming that both parties had fully made their respective submissions.

57. Additionally, respondent No.1 raised an argument claiming that the learned arbitral tribunal determined the issue of jurisdiction based on an interpretation of the arbitration clause in the SPA that the petitioner allegedly did not present and which respondent No.1 claimed was not put to it to answer. However, during the oral hearing on 11.02.2019, the learned arbitral tribunal explicitly noted that the jurisdiction clause was "*widely drawn*" and the same was also included in the arbitral award. Therefore, it is incorrect for respondent No.1 to assert that they had no opportunity to respond to this statement during the arbitration.

58. According to the applicable standard for breaches of natural justice under Section 48(1)(b), as held in ***Vijay Karia (supra) (para 81)***, a failure to address an argument that is central to the case constitutes a breach. The learned arbitral tribunal established its jurisdiction based on the reasoning that the "*dispute*" or "*cause of action*" arose from a breach of the SPA, an argument specifically presented in the Reply to the Statement of Defence of the petitioner. The petitioner made this submission before the Tribunal on at least two occasions:

A. In the Reply to the Statement of Defence, where it was argued that

Clause 17.2.2.1 of the SSSA was incorporated by reference under Clause 8.1 of the SPA.

B. During oral hearings on February 11-13, 2019, as recorded in the hearing transcripts.

59. Further, a comprehensive reading of jurisdiction in the arbitral award confirms that the finding of the learned arbitral tribunal was based on the breach of the SPA. This interpretation has also been upheld by the SICC in its judgment.

60. Section 48(1)(b) of the Act is designed to protect against egregious conduct by the tribunal, not to shield a party from its own strategic failures. The Hon'ble Supreme Court's ruling in the ***Vijay Karia case (supra)*** reinforces that the inability of a party to present its case must arise from factors outside their control.

IV. The Arbitral Award is not in contravention to the public policy of India under Section 48(2)(b) of the Act.

61. Respondent No.1 challenges the arbitration award, claiming that the requirement to purchase securities from the petitioner, a foreign investor, for an "*assured return*" violates the Foreign Exchange Management Act, 1999 (for brevity "*FEMA*") and contravenes the fundamental policy of Indian law.

62. The Explanation to Section 48(2)(b) of the Act clarifies that an arbitration award is considered in conflict with Indian public policy only if it violates the fundamental principles of Indian law. This Court in ***Cruz City 1 (supra) (para 97)***, established that a mere violation of a statutory provision does not meet the high standard for being deemed in conflict with public policy. This view was further reinforced in ***Vijay Karia (supra) (paras 87-88)***, as

established in ***Renusagar Power Co. Ltd. (supra)***, where the Court stated that the "*fundamental policy of Indian law*" refers to breaches of legal principles or legislation that are essential to Indian law and cannot be compromised.

63. Section 17.2.2.1 of the SSSA, which contains the Put Option clause, is a valid contingent clause under Indian law and FEMA, rather than an optionality clause with an assured return. It states that the invocation of this clause depended on specific events, particularly the failure of Mr. Ramesh Vangal and respondent No.2 to purchase the Sale Securities by a set date, an event beyond the control of the petitioner.

64. The learned arbitral tribunal also concluded that the Put Option clause was contingent upon the actions of the purchaser and promoters, a finding based on the interpretation of the SPA, which cannot be challenged in enforcement proceedings under Section 48 of the Act. It also determined that the 2014 SPA was not void under FEMA and did not violate Section 23 of the Indian Contract Act, 1872 (for brevity "*ICA*"). This interpretation is supported by the decisions in ***Cruz City 1 (supra) (para 120), Vijay Karia (supra)*** and ***Banyan Tree Growth Capital L.L.C. v. Axiom Cordages Ltd. & Ors., 2020 SCC OnLine Bom 781 (para 91)***.

65. Respondent No.1 incorrectly states that the claim of the petitioner for damages was rejected while the specific performance claim was allowed. The learned arbitral tribunal noted that the petitioner, by exercising its right to put its Sale Securities under the SSSA instead of seeking damages or specific performance of the SPA, could not claim damages for the SPA breach. The learned arbitral tribunal found that any loss from not selling the Sale Securities at the SPA price (approximately Rs.30 crores) was mitigated

by the put option, which provided around Rs.132 crores. Thus, respondent No.1 was not liable for damages.

66. Regarding specific performance, the learned arbitral tribunal stated that exercising the put option prevents an order for specific performance of the original sale under the SPA. The direction for transferring Sale Securities was seen as consequential and not dependent on any obligation from the petitioner. The learned arbitral tribunal recognized that the petitioner could not collect awarded amounts while retaining the Sale Securities for future sale. This view was supported by this Court in ***Rishima SA Investments LLC (supra) (paras 63-65)***.

67. The nature of the relief granted by the learned arbitral tribunal, affirming the valid exercise of the put option, does not impact the enforceability of the arbitral award. Reliance is placed on ***NTT Docomo Inc. v. Tata Sons Ltd., 2017 SCC OnLine Del 8078 (para 16)***, ***Cruz City 1 (supra) (para 4)*** and ***Banyan Tree Growth Capital L.L.C. (supra) (para 24)*** to urge that the arbitral tribunals have often labeled relief as damages while directing parties to exercise the put option under relevant agreements.

68. In enforcement proceedings under Section 48 of the Act, the role of the Court is to assess the enforceability of a foreign award based on specific grounds in that section, not to review procedural compliance related to executing the award. The Hon'ble Supreme Court cases cited by respondent No.3, such as ***Shri Har Govind (supra)*** and ***Chandnee Widyavati Madden (supra)***, pertain to domestic awards and the impact of lacking regulatory approvals on their execution. They do not support the idea that missing regulatory approvals, like those from the Reserve Bank of India (for brevity "*RBI*"), affect the recognition and enforcement of a foreign award in India.

69. The arbitral award is fundamentally a monetary award and any lack of regulatory approval for fund remittance is a procedural issue that does not invalidate or make the award non-enforceable. Such concerns arise only during the remittance phase. The Hon'ble Supreme Court in ***Vijay Karia (supra),*** stated that even if the RBI acts under FEMA, it does not render a foreign award void due to regulatory violations. The learned arbitral tribunal also noted that this does not make the SPA void from the outset.

70. The response of the RBI to the application of respondent No.1 is deemed unreliable, as it merely suggests that the situation was avoidable due to non-compliance with FEMA rules. This response lacks reasoning and fails to address the findings of the arbitral tribunal and relevant Hon'ble Supreme Court and High Court decisions regarding the validity of put options as contingent clauses under Indian law. Therefore, this correspondence cannot be relied upon in enforcement proceedings of a foreign award under Section 48 of the Act.

V. The scope of judicial review in enforcement proceedings is limited.

71. The grounds for challenging a foreign award are very limited and reviewing the merits of the award is not allowed, as established in ***Renusagar Power Co. Ltd. (supra) (para 37)***. Section 48 of the Act does not permit a "*second look*" at the award, as noted in ***Shri Lal Mahal Ltd. v. Progetto Grano Spa, (2014) 2 SCC 433 (para 45)***. Recently, the Hon'ble Supreme Court in ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2024) 7 SCC 197 (para 17)***, emphasized that minimal judicial intervention in foreign awards is standard, and any interference must be based solely on the specific grounds

outlined in Section 48, reiterating that a merits based review is not permissible.

72. In line with the principle of minimal judicial intervention, the Hon'ble Supreme Court in ***Vijay Karia (supra) (para 50)*** reaffirmed the "*pro-enforcement bias*" of the New York Convention, as reflected in Section 48 of the Act. The Court stated that the burden of proof for parties seeking to enforce a foreign award now lies with those objecting to its enforcement. It emphasized that foreign awards cannot be invalidated by merely questioning the arbitrator's interpretation of the parties' agreement under the guise of public policy.

73. It is stated that the arbitral tribunals possess the exclusive authority to interpret contracts and their interpretations are typically upheld by supervisory courts under Section 48 of the Act. Once a tribunal has made a determination regarding contract interpretation and this has been confirmed by the supervisory court, it is impermissible for a party to re-litigate those interpretation issues in subsequent enforcement proceedings. Section 48 primarily addresses procedural grounds for challenging an arbitral award, rather than re-evaluating the merits of the interpretations of the arbitral tribunal.

74. Further supporting the pro-enforcement approach, this Court in ***Cruz City 1 (supra) (paras 26-29, 39)*** noted that Section 48 of the Act uses the term "*may*" instead of "*shall*". This wording grants the enforcement court discretion to favor the enforcement of a foreign award, even in the presence of grounds that could justify refusing enforcement.

VI. <u>Respondent No. 3 has no locus standi to object to the</u>

enforcement petition.

75. Respondent No.3 is not a party to the arbitration agreement under the SPA and is not bound by the arbitral award. The order dated 19.04.2021 passed by this Court allowed the impleadment of respondent No.3 solely to consider an order for her to disgorge shares transferred to her without consideration by respondent No.1. This was based on the application of the petitioner regarding the transfer of shares.

76. According to Section 48(1) of the Arbitration Act, only the "*party against whom the foreign award is invoked*" can file objections to its enforcement. In this case, the petitioner is invoking the arbitral award against respondent No.1 and respondent No.2, not respondent No.3. Therefore, respondent No.3 has no legal standing to object to the enforcement of the arbitral award.

77. Further, the stand of respondent No.3 is the same as respondent No.1.

ANALYSIS AND FINDINGS

78. I have heard learned counsel for the parties and perused the material available on record.

I. Maintainability of the Enforcement Petition

79. The issue of maintainability of the enforcement petition under the Act, particularly in the context of jurisdiction, is crucial. The petitioner seeks to enforce a foreign arbitral award in this Court, while the respondents challenge the maintainability on the grounds of lack of territorial jurisdiction, as the SPA specifies exclusive jurisdiction to the courts of Mumbai.

80. The SPA specifies that any disputes related to the agreement must be

adjudicated in Mumbai. The respondents assert that this clause should govern the enforcement proceedings as well. However, the petitioner contends that the respondents reside and work in New Delhi and their assets are located within this jurisdiction.

81. Section 44 of the Act defines a "*foreign award*" and provides the basis for enforcement in India. Section 47 of the Act outlines the procedure for enforcement of foreign awards, requiring the court to be satisfied that the award is enforceable. Section 49 of the Act states that a foreign award shall be deemed to be a decree of the court, if it is enforceable under the Act.

82. Section 47 of the Act reads as under:

> *"47. Evidence.—*
>
> *(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court—*
>
> *(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;*
>
> *(b) the original agreement for arbitration or a duly certified copy thereof; and*
>
> *(c) such evidence as may be necessary to prove that the award is a foreign award.*
>
> *(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in*

India.

Explanation.—In this section and in the sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court."

83. The issue with respect to territorial jurisdiction in a case of an exclusive jurisdiction clause is no longer *res integra*. The Coordinate Bench of this Court in ***Rishima SA Investments LLC (supra)***, this Court allowed enforcement in Delhi despite an exclusive jurisdiction clause, emphasizing that the location of assets and the residence of the judgment debtor can confer jurisdiction on the court where the enforcement petition is filed. The relevant paragraph reads as under:

"67. Mr. Nayar is right in his contention that none of the averments have been denied by Respondent No. 1 and even in EA 375/2019 as well as in the Civil Appeal No. 5696/2019 before the Supreme Court, Respondent No. 1 has never controverted the existence of assets in Delhi. Clearly, therefore once the assets of Respondent No. 1 are located in Delhi, in view of the various judgments referred to above, and having held that the Award in question is a money Award, I have no hesitation in holding that this Court has the territorial jurisdiction to entertain the present petition. Accordingly, the question of territorial jurisdiction is decided in favour of the

Petitioner."

84. The Hon'ble Supreme Court as well in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552***, held that the enforcement of a foreign award can be pursued in any court where the judgment debtor resides or has assets. The relevant paragraph reads as under:

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

85. In addition, while interpreting the Foreign Awards (Recognition and Enforcement) Act, 1961, the Hon'ble Supreme Court in ***Brace Transport Corporation of Monrovia, Bermuda (supra)*** held that enforcement proceedings of a foreign award lie where the assets of the judgment debtor are situated. The relevant paragraph reads as under:

> *"13. Before we deal with the facts of the case before us, a statement of some broad principles is necessary. The New York*

Convention speaks of "recognition and enforcement" of an award. An award may be recognised, without being enforced; but if it is enforced, then it is necessarily recognised. Recognition alone may be asked for as a shield against re-agitation of issues with which the award deals. Where a court is asked to enforce an award, it must recognise not only the legal effect of the award but must use legal sanctions to ensure that it is carried out. In the Law and Practice of International Commercial Arbitration by Redfern and Hunter (1986 Edn.) it is said (at pages 337 and 338):

> *"A party seeking to enforce an award in an international commercial arbitration may have a choice of country in which to do so; as it is sometimes expressed, the party may be able to go forum shopping. This depends upon the location of the assets of the losing party. Since the purpose of enforcement proceedings is to try to ensure compliance with an award by the legal attachment or seizure of the defaulting party's assets, legal proceedings of some kind are necessary to obtain title to the assets seized or their proceeds of sale. These legal proceedings must be taken in the State or States in which the property or other assets of the losing party are located.*
>
> ***
>
> *Where it becomes necessary to enforce an international award, the position is different. The first step is to determine the country or countries in which enforcement*

is to be sought. In order to reach this decision the party seeking enforcement needs to locate the State or States in which the losing party has (or is likely to have) assets available to meet the award."

86. The Hon'ble Supreme Court in ***Fuerst Day Lawson Ltd. (supra),*** particularly in paragraph 31, clarified that a single proceeding is sufficient for both the enforceability and execution of a foreign award. The same was further clarified by the Hon'ble Supreme Court in ***LMJ International Ltd. (supra),*** wherein it held that given the legislative intent of expeditious disposal of arbitration proceedings, and limited interference of the courts, the maintainability of the enforcement petition, and the adjudication of the objections filed, are required to be decided in a common proceeding. The relevant paragraph reads as under:

"17. Be that as it may, the grounds urged by the petitioner in the earlier round regarding the maintainability of the execution case could not have been considered in isolation and dehors the issue of enforceability of the subject foreign awards. For, the same was intrinsically linked to the question of enforceability of the subject foreign awards. In any case, all contentions available to the petitioner in that regard could and ought to have been raised specifically and, if raised, could have been examined by the Court at that stage itself. We are of the considered opinion that the scheme of Section 48 of the Act does not envisage piecemeal consideration of the issue of maintainability of the execution case concerning the foreign awards, in the first place; and then the issue of enforceability

thereof. Whereas, keeping in mind the legislative intent of speedy disposal of arbitration proceedings and limited interference by the courts, the Court is expected to consider both these aspects simultaneously at the threshold. Taking any other view would result in encouraging successive and multiple round of proceedings for the execution of foreign awards. We cannot countenance such a situation keeping in mind the avowed object of the Arbitration and Conciliation Act, 1996, in particular, while dealing with the enforcement of foreign awards. For, the scope of interference has been consciously constricted by the legislature in relation to the execution of foreign awards. Therefore, the subject application filed by the petitioner deserves to be rejected, being barred by constructive res judicata, as has been justly observed by the High Court in the impugned judgment."

87. On perusal, I am of the view that while the SPA contains an exclusive jurisdiction clause for Mumbai, but, the presence of the respondents in New Delhi and the location of assets provided in the enforcement petition give sufficient grounds for this Court to exercise jurisdiction. Therefore, this Court has jurisdiction to entertain the petition.

II. Jurisdiction of the Arbitral Tribunal

88. In the present case, the respondents challenge the jurisdiction of the arbitral tribunal constituted under the SPA, arguing that it exceeded its authority by directing specific performance of the Put Option under the SSSA.

89. The arbitration clause in the SPA stipulates that disputes arising out of or in

connection with the agreement shall be settled by arbitration under the rules of the SIAC.

90. The issue for consideration is whether the learned arbitral tribunal correctly interpreted the arbitration clause in the SPA to include disputes related to the SSSA in delivering the arbitral award.

91. The Hon'ble Supreme Court in ***Renusagar Power Co. Ltd. (supra),*** held that the arbitration clauses should be interpreted broadly to encompass all disputes arising out of the contractual relationship. The Court emphasized that the intention of the parties should guide the interpretation of the arbitration agreement. In the said case, the jurisdiction of the arbitral tribunal was upheld as it was found to cover disputes arising from the entire contractual framework, including related agreements. The relevant paragraph reads as under:

> *"39. As regards the third claim of compensatory damages it is true that Renusagar is being saddled with this liability as tortfeasor, a stake-holder and/or a constructive trustee, but, in our view, that aspect by itself will not justify a conclusion that the same is not covered by the arbitration clause because the question is not whether the claim lies in tort but the question is whether even though it has lain in tort it "arises out of" or is "related to" the contract, that is to say, whether it arises out of the terms of the contract or is consequential upon any breach thereof. As explained earlier, this claim is based on and is consequential upon and by way of corollary to the non-payment of the two detained amounts by Renusagar to G.E.C. in breach of the terms of the contract. In other words, it is clear that*

before adjudicating upon this claim the adjudicating authority will have first necessarily to adjudicate upon first two claims preferred by G.E.C. and only if it is found that G.E.C. is entitled to receive the first two amounts which ought to have been paid by Renusagar under the terms of the contract but which Renusagar had failed to pay that this third claim could, if at all, be allowed to G.E.C. In the real sense, therefore, this claim is directly, closely and inextricably connected with the terms and conditions of the contract, the payments to be made thereunder and the breaches thereof and as such will have to be regarded as a claim "arising out of" or "related to" the contract. As we shall point out presently this Court in one of its decisions has laid down the test for determining the question in such cases and the test is whether recourse to the contract, by which both the parties are bound, would be necessary for the purpose of determining whether the claim in question was justified or otherwise and this test, as indicated above, is clearly satisfied with regard to the third claim in the instant case."

92. Further, in ***Shri Lal Mahal Ltd. (supra),*** the Hon'ble Supreme Court emphasized that if the parties have agreed to arbitrate disputes arising out of a contract, the tribunal must respect that agreement unless there are compelling reasons to find otherwise. In ***Vijay Karia (supra)*** as well, the Hon'ble Supreme Court upheld the interpretation of the arbitral tribunal, reinforcing the principle that the tribunal has the authority to determine the scope of its jurisdiction.

93. The learned arbitrator in the arbitral award held that the arbitration jurisdiction in the present case is affirmed based on the 2014 SPA. The dispute arises because respondent No.2 failed to purchase the Sale Securities as required by the SPA and thus, constitutes a default under Clause 8.1 of the SPA. The petitioner has the right to exercise its entitlements under the SSSA due to this failure. The arbitration clause in the 2014 SPA is broadly defined, covering disputes related to its interpretation and implementation. The learned arbitrator concluded that the current dispute, including obligations under the Put Option Notice, stems from the 2014 SPA, thus establishing jurisdiction.

94. The relevant paragraphs of the arbitral award read as under:

> *"88. The Arbitration Agreement in the 2014 SPA is widely drawn. It covers a dispute which:*
>
> > *".. arises out of or in relation to or in connection with the interpretation or implementation of this Agreement..."*
>
> *The clause covers disputes which arise out of the 2014 SPA, and therefore not only disputes as to the operation, or meaning, or breach of the 2014 SPA.*
>
> *89. In my view there can be no doubt that this dispute arises out of the 2014 SPA. That agreement provided for the purchase of the Sale Securities by the Purchasers (as defined in that Agreement) pursuant to a deemed exercise of a Drag Along Right contained in the SSSA. Clause 8 of the 2014 SPA provided for what was to happen in the event that there was a failure to purchase the Sale Securities in accordance with the 2014 SPA, and it allowed Nine Rivers to exercise any other*

rights and remedies that it had, including any such remedies under the SSSA.

90. That is in fact what happened, in that following the failure to purchase the Sale Securities in accordance with the 2014 SPA, Nine Rivers purported to exercise the rights that the 2014 SPA preserved, by the service of the Put Option Notice. But its entitlement to do so arose out of the failure by the Purchasers (as defined in the 2014 SPA. and as amended in the 2015 Amendment) to purchase the Sale Securities in accordance with the terms of the 2014 SPA. Therefore, it follows that the dispute in this case. including as to whether the Respondents have any obligations under the Put Option Notice, arise out of the 2014 SPA."

95. These very findings of the learned arbitrator were challenged before the SICC, which upheld the jurisdiction of the arbitral tribunal to deal with the claim made by the petitioner as awarded in the arbitral award. The relevant paragraphs read as under:

"84. Taking the way in which the claim was pleaded and the findings in the Award, it is evident that the arbitration agreement covered all the matters forming the claim which formed the findings against Mr Patnaik in the Award. It is clear that the Arbitrator could determine whether Mr Vangal and Katra Finance had failed to meet their obligations under the 2014 SPA, as amended, and whether that amounted to a Default under clause 8.1 of the 2014 SPA. Equally, the Arbitrator could decide whether Nine Rivers was entitled, by

the express terms of clause 8.1 of the 2014 SPA, to exercise rights and remedies under the SSSA and that those rights included the Investor Put Option under section 17.2.2.1 of the SSSA.

85. On that basis, it is evident that the issues of whether Nine Rivers had exercised its Investor Put Option Rights under section 17.2.2.1 of the SSSA and was entitled to relief under that provision arose "out of or in relation to or in connection with the implementation of" the 2014 SPA.

86. Mr Patnaik wrongly sought to limit the jurisdiction of the Arbitrator to a claim for an indemnity under clause 9 of the 2014 SPA. The jurisdiction of the Arbitrator was much wider and included the grant of relief which was expressly referred to under clause 8.1 of the 2014 SPA and included relief against Mr Patnaik as a Promoter under the SSSA.

87. Accordingly, for the reasons set out above, which reflect the reasons of the Arbitrator, the Arbitrator had jurisdiction to deal with the claim made by Nine Rivers as awarded in the Award. It follows that the application to set aside the Award under Article 34(2)(a)(iii) of the Model Law fails."

96. On perusal, I am of the view that **t**he arbitration clause in the SPA should be interpreted broadly to include disputes arising under the SSSA, as both agreements are part of the same contractual framework. It has been correctly interpreted by the learned arbitrator and the SICC, that the disputes "*arises out of*", "*in relation to*" and "*in connection with*" the SPA include the claims and disputes under SSSA. It is pertinent to note that Clause 8.1 of the SPA

includes the Investor Put Option which is also included in Section 17.2.2.1 of the SSSA. Thus, I find no infirmity in the interpretation of the learned arbitrator and the SICC, as it aligns with the established legal principles regarding the scope of arbitration clauses.

97. Further, this Court in ***Cruz City 1 (supra),*** emphasized that the principles of res judicata and issue estoppel apply to enforcement proceedings. The Court held that if the tribunal has already determined its jurisdiction, that decision should not be re-litigated in enforcement proceedings. This case supports the notion that the jurisdictional findings of the arbitral tribunal are binding unless there is a clear error. The relevant paragraph reads as under:

> *"44. This brings this Court to the question as to what are the principles that must be followed by it in exercise of its discretion. It is not necessary to make an endeavour to exhaustively list out such principles assuming that the same is possible. However, clearly, principles akin to res judicata and issue of estoppel would be material. The Courts in United Kingdom have liberally imported the principles of res judicata and the doctrine of issue of estoppel while considering the question whether to enforce a foreign award. The rationale for importing such principles is compelling. Plainly, a party who has voluntary chosen a forum for its decision must be held bound by its decision. Thus, if a party has taken recourse to assail the award before the supervisory court, in normal circumstances, the said party ought not to be permitted to re-litigate the same issue unless the party is able to establish certain special circumstances or indicate good reasons."*

98. Additionally, the Hon'ble Supreme Court in ***Avitel Post Studioz Ltd. (supra)***, emphasized that minimal judicial intervention in foreign awards is the standard and any interference must be based solely on the specific grounds outlined in Section 48, reiterating that a merits based review is not permissible. The relevant paragraph reads as under:

> *"24. The above decision in Parsons & Whittemore Overseas Co. [Parsons & Whittemore Overseas Co. Inc. v. Societe Generale de L'industrie du Papier, 508 F 2d 969 (2d Cir 1974)] has been followed in various jurisdictions including the Supreme Court of India in Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] The articulation of the "forum State's most basic notions of morality and justice" has been legislatively adopted in the Indian Arbitration Act, 1996. The legal framework concerning enforcement of certain foreign awards in international commercial arbitration is contained in Part II of the said Act. In this jurisdiction, we must underscore that minimal judicial intervention to a foreign award is the norm and interference can only be based on the exhaustive grounds mentioned under Section 48. [Union of India v. Vedanta Ltd., (2020) 10 SCC 1] A review on the merits of the dispute is impermissible [Shri Lal Mahal Ltd. v. Progetto Grano SpA, (2014) 2 SCC 433 : (2014) 2 SCC (Civ) 1]."*

99. Therefore, the decision of the learned arbitral tribunal to direct specific enforcement of the Put Option under the SSSA was within its jurisdiction, as it was a necessary consequence of the breaches identified under the SPA.

Hence, the argument of the respondents that the learned arbitral tribunal exceeded its jurisdiction is, therefore, without merit.

III. Principles of Natural Justice under Section 48(1)(b) of the Act

100. Section 48 of the Act sets out the grounds on which enforcement of a foreign award can be refused and one of the grounds includes the applicability of the principles of natural justice. The relevant extract of Section 48 reads as under:

> *"48. Conditions for enforcement of foreign awards.—*
>
> *(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—*
>
> ***
>
> *(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or"*

101. The respondents assert that the arbitral proceedings violated principles of natural justice under Section 48(1)(b) of the Act, which provides that enforcement of a foreign award can be refused if the party against whom the award is invoked was not given a proper opportunity to present its case. The principle of natural justice is a fundamental aspect of all legal proceedings, including arbitration. It ensures that parties have a fair opportunity to present their case and that decisions are made impartially and after hearing the parties.

102. The learned arbitral tribunal rejected the application of respondent No.1 to

amend his defence on the grounds of delay and potential prejudice to the petitioner. Respondent No.1 contends that this rejection deprived him of the opportunity to fully present his case.

103. Respondent No.1 sought to amend his statement of defence to incorporate the detailed submissions with regard to the following three issues:

A. The notice of default dated 07.10.2016 and/or the Investor Put Option notice dated 16.12.2016 are vague and inadequate.

B. There was no satisfaction of the conditions precedent set out in Clause 5.1 of the SPA by any of the parties, and thus there could not have been any closing of the SPA under Clause 4 and consequently, no default under Clause 8 of the SPA.

C. The representations, warranties and covenants contained in Clause 7 of the SPA are ineffective without a certification of such representations, warranties and covenants in terms of Clause 5.1.2 of the SPA, as per the format specified in Schedule B of the SPA.

104. On perusal of the transcripts of the arbitral proceedings, the learned arbitrator gave both the parties sufficient opportunity to present their arguments regarding the amendments and only after hearing the arguments, the learned arbitral tribunal did not entirely reject the amendment application on threshold and it accepted amendment (A) and further gave detailed reasonings for rejection of amendment (B) and (C). Thus, it cannot be stated that the application was rejected at the threshold by the learned arbitrator. The relevant paragraphs of the transcripts of the arbitral proceedings read as under:

> *"ARBITRATOR: I'm against you on this point. I'm going to allow the amendment on this point. It seems to me this is an*

argument about the adequacy of a document that is already in existence, it does not raise new facts or matters other than submissions which were perfectly open to be made on the document itself. So I'm going to allow the amendment on the first point. We will turn now to the second point. Mr Dogra, is there anything you would like to say on the second point that starts at B? Let me help you, Mr Dogra. I don't need to trouble you on this. I'm going to disallow the second point. If you look at point B(vii), it identifies that the satisfaction notices which you allege for the first time are necessary, have to "be accompanied by documentary proof evidencing compliance with the relevant conditions precedent" and that has not been done. I simply don't know whether that is the case or not. I don't know what factual evidence would have been adduced. It seems to me that this is something which could and should have been raised right at the beginning, it has never been raised, and it is too late to raise this as what is in fact a factual issue and not simply a legal argument. So therefore I'm against you, I'm afraid, Mr Varma, on point B –

***

ARBITRATOR: No, you have made your application, I'm going to deal with it as I have. I'm going to disallow it, I'm afraid. I'm also going to disallow C. The reason is that, once again, this is a factual point about certification having been made, the reasons why it may or may not have been made, and I'm not going to allow you to run this argument either. Because it

seems to me that that also is an argument which could and should have been raised at the time of the defence, had it been an issue. It would cause prejudice to the claimant if it is now raised. That prejudice will either be because it is unable to adduce the evidence which it seems to me is necessary in order to rebut such an argument, if there is evidence, or alternatively, it would cause an unnecessary adjournment to these proceedings, neither of which I'm prepared to allow. Therefore I'm not going to allow you to run the second argument.

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ARBITRATOR: I have already ruled, Mr Varma. I asked you to put your application in, you have put your application in, it is a detailed application, I have read the authority which you have referred to and the quotations you have relied upon. Thank you for your submission. I'm afraid I'm against you. Thank you. We will treat the amendments that have been allowed as being set out in paragraphs A(i) through (v) of the application which Mr Varma has made."

105. Furthermore, the SICC on the same arguments has ruled that there was no breach of natural justice, confirming that both parties had fully ventilated their submissions. The relevant paragraphs read as under:

"123. In dealing with the application, the Arbitrator allowed one amendment but disallowed these two on the basis that the points should have been raised in the Statement of Defence but were being raised late and would cause prejudice to Nine Rivers if they were raised at that stage. That prejudice would

either be because Nine Rivers was unable to adduce the evidence which was necessary in order to rebut such an argument, if there is evidence, or alternatively it would cause an unnecessary adjournment to those proceedings. At one stage there was a suggestion by Mr Patnaik on this application that the Arbitrator had misdirected himself because Nine Rivers could not have adduced evidence but that was withdrawn because it was incorrect.

124. On the basis of the facts in this case, the decision which the Arbitrator made was evidently a case management matter well within his discretion and cannot be challenged.

125. Mr Patnaik's submission, as developed in oral submissions, is that this decision not to allow the amendments meant that Nine Rivers did not have the burden of showing that the rights under the 2014 SPA were valid and enforceable. He says that this was an "important and essential issue" and the fact that he was deprived of the opportunity to rely on this issue meant that there was not a fair hearing.

126. That is not a question of a breach of natural justice. It is a failure by him to plead those issues at the correct time. The points were raised late and slipped into opening submissions for the hearing. This led to Mr Patnaik having to make an application to amend which the Arbitrator disallowed. That decision cannot be challenged on natural justice grounds."

106. On perusal, I am of the view that the learned arbitral tribunal provided ample opportunity to respondent No.1 to present his case for the amendment

application and duly considered the same. The SICC also upheld the conduct of the learned arbitral tribunal, confirming that there was no breach of natural justice.

107. Respondent No.1 further claims that the learned arbitral tribunal introduced new points, regarding the scope of the arbitration clause without allowing him to respond adequately in paragraphs 88 and 89 of the arbitral award and hence, is violative of the principles of natural justice. The said paragraphs are extracted below:

> *"88. The Arbitration Agreement in the 2014 SPA is widely drawn. It covers a dispute which:*
>
> *".. arises out of or in relation to or in connection with the interpretation or implementation of this Agreement..."*
>
> *The clause covers disputes which arise out of the 2014 SPA, and therefore not only disputes as to the operation, or meaning, or breach of the 2014 SPA.*
>
> *89. In my view there can be no doubt that this dispute arises out of the 2014 SPA. That agreement provided for the purchase of the Sale Securities by the Purchasers (as defined in that Agreement) pursuant to a deemed exercise of a Drag Along Right contained in the SSSA. Clause 8 of the 2014 SPA provided for what was to happen in the event that there was a failure to purchase the Sale Securities in accordance with the 2014 SPA, and it allowed Nine Rivers to exercise any other rights and remedies that it had, including any such remedies under the SSSA.*

108. The issue for consideration before this Court is whether the respondents

were given a fair opportunity to present their arguments during the arbitration proceedings.

109. The Hon'ble Supreme Court in ***Vijay Karia (supra),*** emphasized that enforcement of an arbitral award must be refused if a party was not given a proper opportunity to present its case. The Court held that the principles of natural justice are paramount in arbitration proceedings and any failure to adhere to these principles can render the award unenforceable.

110. Further, in ***Ssangyong Engineering & Construction Co. Ltd. (supra),*** the Hon'ble Supreme Court reiterated that the principles of natural justice must be followed in arbitration proceedings. The Court ruled that if an arbitrator introduces new points that were not argued by either party, it violates the principles of natural justice and the award may be set aside on that ground. The relevant paragraph reads as under:

> *"51. Sections 18, 24(3) and 26 are important pointers to what is contained in the ground of challenge mentioned in Section 34(2)(a)(iii). Under Section 18, each party is to be given a full opportunity to present its case. Under Section 24(3), all statements, documents, or other information supplied by one party to the Arbitral Tribunal shall be communicated to the other party, and any expert report or document on which the Arbitral Tribunal relies in making its decision shall be communicated to the parties. Section 26 is an important pointer to the fact that when an expert's report is relied upon by an Arbitral Tribunal, the said report, and all documents, goods, or other property in the possession of the expert, with which he was provided in order to prepare his report, must first be made*

available to any party who requests for these things. Secondly, once the report is arrived at, if requested, parties have to be given an opportunity to put questions to him and to present their own expert witnesses in order to testify on the points at issue."

111. This Court in ***Cruz City 1 (supra)***, highlighted that the arbitral tribunal must ensure that both parties have a fair opportunity to present their arguments. The Court ruled that if a party is denied the opportunity to respond to new arguments or evidence introduced during the proceedings, it constitutes a violation of natural justice.

112. On perusal, I am of the view that the findings of the learned arbitrator in paragraphs 88 and 89 of the arbitral award are a natural consequence of the arbitral proceedings and cannot be termed as a new or alien point to the present arbitral proceedings. The claim that the learned arbitral tribunal introduced new points without allowing the respondents to respond is unfounded, as the inquiries of the learned arbitral tribunal were within the scope of the arbitral proceedings. Thus, this argument is also rejected.

IV. Public Policy of India under Section 48(2)(b) of the Act

113. The relevant extract of Section 48 reads as under:

"48. Conditions for enforcement of foreign awards.—

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(2) Enforcement of an arbitral award may also be refused if the Court finds that

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(b) the enforcement of the award would be contrary to

the public policy of India.

Explanation 1. - For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2. - For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute."

114. Another contention of the respondents is that the arbitral award contravenes public policy of India under Section 48(2)(b) of the Act, which provides that enforcement of a foreign award can be refused if it is found to be in contravention of the public policy of India. This includes awards that are contrary to the fundamental policy of Indian law, the interests of India or justice and morality.

115. The respondents contend that the decision of the arbitral requirement to enforce the Put Option and purchase securities for an "*assured return*" violates the provisions of FEMA, which regulates foreign investments in India. They argue that such a requirement is contrary to the fundamental policy of Indian law.

116. The issue before consideration is whether the arbitral award violates the

fundamental policy of Indian law, particularly concerning the FEMA.

117. The Hon'ble Supreme Court in ***Vijay Karia (supra)*** held that the enforcement of a foreign award can be refused if it is contrary to the public policy of India. The Court emphasized that public policy must be narrowly construed and should not be based on individual beliefs about justice. The mere contravention of law does not equate to a violation of public policy. The relevant paragraph reads as under:

> *"87. Before answering this question, it is important to first advert to the decision of the Delhi High Court in Cruz [Cruz City 1 Mauritius Holdings v. Unitech Ltd., 2017 SCC OnLine Del 7810 : (2017) 239 DLT 649] . The learned Single Judge was faced with a similar problem of a foreign award violating the provisions of FEMA. In an exhaustive analysis, the learned Single Judge referred to Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] and then held : (Cruz case [Cruz City 1 Mauritius Holdings v. Unitech Ltd., 2017 SCC OnLine Del 7810 : (2017) 239 DLT 649] , SCC OnLine Del paras 97-98, 102 & 110)*
>
> > *"97. It plainly follows from the above that a contravention of a provision of law is insufficient to invoke the defence of public policy when it comes to enforcement of a foreign award. Contravention of any provision of an enactment is not synonymous to contravention of fundamental policy of Indian law. The expression fundamental policy of Indian law refers to the principles and the legislative policy on which Indian*

Statutes and laws are founded. The expression "fundamental policy" connotes the basic and substratal rationale, values and principles which form the bedrock of laws in our country.

98. It is necessary to bear in mind that a foreign award may be based on foreign law, which may be at variance with a corresponding Indian statute. And, if the expression "fundamental policy of Indian law" is considered as a reference to a provision of the Indian statute, as is sought to be contended on behalf of Unitech, the basic purpose of the New York Convention to enforce foreign awards would stand frustrated. One of the principal objective of the New York Convention is to ensure enforcement of awards notwithstanding that the awards are not rendered in conformity to the national laws. Thus, the objections to enforcement on the ground of public policy must be such that offend the core values of a member State's national policy and which it cannot be expected to compromise. The expression "fundamental policy of law" must be interpreted in that perspective and must mean only the fundamental and substratal legislative policy and not a provision of any enactment.

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102. Although, this contention appears attractive, however, fails to take into account that there has been a

material change in the fundamental policy of exchange control as enacted under FERA and as now contemplated under FEMA. FERA was enacted at the time when the India's economy was a closed economy and the accent was to conserve foreign exchange by effectively prohibiting transactions in foreign exchange unless permitted. As pointed out by the Supreme Court in LIC v. Escorts Ltd. [LIC v. Escorts Ltd., (1986) 1 SCC 264] , the object of FERA was to ensure that the nation does not lose foreign exchange essential for economic survival of the nation. With the liberalisation and opening of India's economy it was felt that FERA must be repealed. FERA was enacted to replace the Foreign Exchange Regulation Act, 1947 which was originally enacted as a temporary measure. The Statement of Objects and Reasons of FERA indicate that FERA was enacted as the RBI had suggested and Government had agreed on the need for regulating, among other matters, the entry of foreign capital in the form of branches and concerns with substantial non-resident interest in them, the employment of foreigners in India, etc.

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110. The contention that enforcement of the award against Unitech must be refused on the ground that it violates any one or the other provision of FEMA, cannot be accepted; but, any remittance of the money recovered

from Unitech in enforcement of the award would necessarily require compliance of regulatory provisions and/or permissions."

118. The Bombay High Court in ***Banyan Tree Growth Capital L.L.C. (supra)*** upheld the enforcement of a foreign award involving a put option, stating that the mere existence of regulatory requirements does not render the award contrary to public policy. The Court emphasized that public policy must be interpreted in a manner that does not undermine the efficacy of arbitration. The relevant paragraphs read as under:

"95. This apart the position in law in this context as seen from the various judgments would clearly support this view, that the respondents contention that the put option deed is illegal under the FEMA and the notifications issued thereunder is an un-stateable and an untenable proposition. The following decisions would elucidate this legal position.

96. In POL India Projects Limited v. Aurelia Reederei Eugen Friederich GMBH (supra) a learned Single Judge of this Court (R.D. Dhanuka. J) also in the context of enforcement of a foreign award was interalia dealing with a similar argument opposing enforcement of an award. The contention of the award debtor was to the effect that under the provisions of Foreign Exchange Management (Guarantees) Regulations, 2000, a letter of guarantee could not have been executed in favour of the award creditor, without the prior permission of the RBI. It was contended that as there was a violation of regulation 3 thereof. The document being entered contrary to

law the document itself was illegal and an arbitral award based on an illegal document would be a nullity and in conflict with the public policy of India. The learned Single Judge referring to the decision of the Delhi High Court in SRM Exploration Private Limited (supra) as also to the decision of the Division Bench of this Court in Videocon Industries Ltd. v. in Intesa Sanpaolo S.P.A. rejected the contention of the award debtor interalia holding that even if such letter of guarantee was to be issued contrary to the provisions of the said regulations framed under FEMA, simplicitor violation of the provisions of the said regulations would not be illegal and contrary to the fundamental policy of Indian law.

97. The Supreme Court by its order dated 19 January 2018 (SLP (C) No. 32244/2017 rejected the challenge to it decision of the learned Single Judge of the Delhi High Court rendered in Cruz City 1 Mauritius Holdings v. Unitech Ltd. (supra) wherein the Court considering a similar contention as raised by the respondent therein in objecting to the enforcement of the foreign award held that the enforcement of a foreign award cannot be declined on the ground of any regulatory compliance or violation of a provision of FEMA. In paragraph 110 of this decision the learned Single Judge observed as under:

> *"110. The contention that enforcement of the award against Unitech must be refused on the ground that it violates any one or the other provision of FEMA, cannot be accepted, but any remittance of the money recovered*

from Unitech in enforcement of the award would necessarily require compliance of regulatory provisions and/or permissions"

98. In a recent decision of the Supreme Court in Vijay Karia v. Prysmian Cavi E Sistemi SRL the Supreme Court again approved the view of the learned Single Judge of the Delhi High Court in Cruz City 1 Mauritius Holdings v. Unitech Ltd. (supra), to hold that the Court would not refuse enforcement of a foreign award on the ground of violation of a FEMA regulation and that for any such violation the award cannot be said to be void.

99. As clearly seen from the authoritative pronouncement of the Supreme Court in Vijay Karia's case (supra) a challenge to the enforceability of a foreign award on the ground that the contract violates the provisions of FEMA and regulations made thereunder and/or if the award is enforced it may violate the provisions of FEMA is no more res integra. The respondents contentions questioning the enforceability of the arbitral award on the ground of violation of FEMA and/or the regulations made thereunder are thus required to be rejected."

119. Further, in ***Cruz City 1 (supra)***, the Coordinate Bench of this Court rejected the submission that the put option was an optionality clause with an assured return in the following paragraph:

"120. Unitech's contention that structure contemplated under the Keepwell Agreement read with the SHA provided an assured return at a predetermined rate to Cruz City and this

was a flagrant violation of FEMA and Regulations made thereunder, is also bereft of merit. The Put Option provided to Cruz City under the Keepwell Agreement could be exercised only within a specified time and was contingent on the Santacruz project not being commenced within the prescribed period. This was not an open ended assured exit option as is sought to be contended by Unitech. Cruz City had made its investment on a representation that the construction of the Santacruz Project would commence within a specified period. Plainly, if the construction of the Santacruz project had commenced within the specified period - that is, by 17.07.2010 - Cruz City would not be entitled to exercise the Put Option for exiting the investment. Further, the Put Option could only be exercised within a fixed time period of 180 days and the said option would be lost thereafter."

120. While compliance with regulatory requirements, such as those under FEMA, is essential, the existence of such requirements alone does not render the award unenforceable. The courts have consistently upheld the validity of awards that involve complex regulatory frameworks, provided they do not violate fundamental principles of justice. It is true that the arbitral award is a monetary decree and any lack of regulatory approval for fund remittance is a procedural issue that does not prevent the judgment holder from enjoying the fruits of the award.

121. The learned arbitral tribunal addressed these concerns and concluded that the SPA did not guarantee an assured return, but rather a negotiated price. The requirement for RBI approval for share transfers was acknowledged and the

findings of the learned arbitral tribunal were consistent with the law. The relevant paragraph of the arbitral award reads as under:

> *"133. I accept those submissions. Further, I also accept that the RBI can be asked for permission in respect of the Put Option, and that thus the question of whether Mr Patnaik is ultimately entitled, under FEMA and its regulations, to effect the transfer to which he has agreed under the SSSA, is more properly to be determined if and when enforcement of any award I may give is to be addressed. It is not something that makes the 2014 SPA, the 2015 Amendment or section 17.2.2.1 of the SSSA void ab initio."*

122. In the decision of ***Cruz City 1 (supra)***, the Coordinate Bench of this Court addressed the enforcement of an arbitral award under Section 48 of the Act. It emphasizes the need to consider FEMA regulations when dealing with arbitration matters, particularly in the context of foreign investments and compliance with Indian law. The decision was approved by the Hon'ble Supreme Court in ***Vijay Karia (supra)***.

123. On perusal, I am of the view that the present factual matrix is similar to the factual matrix of ***Cruz City 1 (supra)***, wherein the facts also involved the put option and there was another "Keepwell Agreement" in which Unitech, an Indian company, guaranteed another foreign company's obligations. It was argued that both the Keepwell Agreement and the put option, along with other related agreements, were structured to ensure a guaranteed return on equity. However, this arrangement was claimed to be illegal under the FEMA Regulations, as it contravened the provisions governing foreign investments in India. This Court held as follows:

"108. Having held that a simpliciter violation of any particular provision of FEMA cannot be considered synonymous to offending them fundamental policy of Indian law, it would also be apposite to mention that enforcement of a foreign award will invariably involve considerations relating to exchange control. The remittance of foreign exchange in favour of a foreign party seeking enforcement of a foreign award may require permissions from the Reserve Bank of India. There may also be a question whether the initial agreement pursuant to which a foreign award has been rendered required any express permission from RBI. However, as indicated earlier, the policy under FEMA is to permit all transactions albeit subject to reasonable restrictions in the interest of conserving and managing foreign exchange. India has not accepted full capital account convertibility as yet. Thus, there are transactions for which permission may not be forthcoming. Whereas certain transactions are permitted under FEMA and regulations made thereunder without any further permissions; other transactions may require express permission from the RBI. However, these considerations can be addressed by ensuring that no funds are remitted outside the country in enforcement of a foreign award, without the necessary permissions from the Reserve Bank of India. This would adequately address the issue of public interest and the concerns relating to foreign exchange management, which FEMA seeks to address."

124. As regards the letter of the RBI dated 22.06.2022 to respondent No.1, which

lacks substantive reasoning, cannot be given weightage at the stage of the enforcement proceedings as it does not provide a valid basis for objecting to the enforcement of the arbitral award in accordance with Section 48 of the Act. In ***Shri Lal Mahal Ltd. (supra)***, the Hon'ble Supreme Court clarified that the grounds for resisting enforcement under Section 48 of the Act must be substantial and cannot be based on mere procedural compliance issues. The relevant paragraph reads as under:

> *"45. Moreover, Section 48 of the 1996 Act does not give an opportunity to have a "second look" at the foreign award in the award enforcement stage. The scope of inquiry under Section 48 does not permit review of the foreign award on merits. Procedural defects (like taking into consideration inadmissible evidence or ignoring/rejecting the evidence which may be of binding nature) in the course of foreign arbitration do not lead necessarily to excuse an award from enforcement on the ground of public policy."*

125. For the said reasons, I am of the view that the enforcement of the arbitral award should not be denied unless it is shown to be fundamentally unjust or contrary to the core principles of justice and morality. Additionally, the FEMA regulations do not render the foreign arbitral award and such regulatory approval for fund remittance is a procedural issue that does not invalidate or make the award unenforceable. Hence, the arbitral award does not violate public policy.

CONCLUSION

126. In light of the above analysis, the petition is maintainable, the arbitral

tribunal acted within its jurisdiction, the principles of natural justice were duly complied with and the arbitral award does not contravene public policy and hence, the objections of the respondents are hereby dismissed.

127. The foreign arbitration award dated 24.06.2019 is hereby enforced as a decree of this Court.

128. Respondent No.1 and Respondent No.2 are directed to jointly and severally purchase the 67,53,342 equity shares of Global Agrisystem Pvt. Ltd. for a total consideration of Rs.132,90,00,000/-.

129. Respondent No.1 and Respondent No.2 shall bear their respective shares of the costs of the arbitration as determined in the arbitral award by the SIAC.

130. Each of the respondents are directed to file their affidavits disclosing their assets and properties under Order XXI Rule 41(2) read with Form No. 16A Appendix E of the Code of Civil Procedure, 1908.

131. An interim injunction is granted restraining each of the respondents from selling or transferring their assets, both movable and immovable, to the extent of Rs.132,90,00,000/-, till compliance with the arbitral award.

132. The petition is allowed and disposed of accordingly.

133. List for compliance on 10.07.2025.

JASMEET SINGH, J

MAY 02, 2025 / *shanvi*

Click here to check corrigendum, if any