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

**FAO (OS) No.193/2009**

Date of Hearing: 26.05.2009
Date of Decision: 16.07.2009

**MAX INDIA LIMITED** **…..Appellant**

Through Dr. A.M. Singhvi,
Senior Advocate with
Mr.Ruchin Midha,
Mr.Amit Bhandari and
Mr.Jaiveer Shergil

**Versus**

**GENERAL BINDING CORPORATION** **…..Respondent**

Through Mr. A.S. Chandhiok,
Senior Advocate with Mr.Tejas
Karia, Ms.Neha Bhasin,
Mr. Nitesh Kumar and
Mr.Sandeep Bajaj

**CORAM :-**
***THE HON'BLE MR.JUSTICE A.K.SIKRI**
**THE HON'BLE MR. JUSTICE V.K. JAIN**

1.Whether Reporters of Local papers may be allowed to see the Judgment?
2.To be referred to the Reporter or not?
3.Whether the judgment should be reported in the Digest?

**A.K. SIKRI, J.**

1. Certain disputes have emerged between the appellant and the respondent herein, which arise from the Agreement dated 25.8.2008 entered between the parties, known as 'Manufacture and Sale Agreement'. As this covenant contains an arbitration clause, the appellant herein

proposes to invoke the arbitration in accordance with the said Agreement. Pending this action the appellant moved an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for interim measures, *inter alia*, praying that the respondent be restrained from implementing the terms of Agreement entered into by it directly or through its holding company, viz., Cosmo Films regarding sale of its commercial print finishing business. Learned Single Judge has dismissed this application vide impugned orders dated 14.5.2009. Reason given is that as per the Agreement, the disputes are to be resolved though arbitration under Singapore International Arbitration Rules (SIAC Rules) and it is the courts in Singapore which have jurisdiction to settle any disputes that may arise out of or in connection with the said Agreement. Therefore, this Court lacks jurisdiction to entertain the application under Section 9 of the Act. Validity of this order is challenged in this appeal. Therefore, the only question which needs to be determined is as to whether application under Section 9 of the Act was maintainable in this Court or not.

**The Facts**

2. Having regard to the aforesaid scope of the present appeal though it is not necessary to spell out the details of the nature of disputes, a brief resume thereof would serve the purpose. The appellant, which is engaged in the business of manufacture, sale and marketing of variety of thermal lamination films, polypropylene films including bi-axially oriented

polypropylene (BOPP) films, had entered into two agreements both dated 25.8.2008 with the respondent. The respondent is a company registered under the laws of Delaware, USA. It is the subsidiary of Acco Brands Corporation and is engaged in the business of production, distribution of lamination, binding and office stationery and is a part of Acco Brands Group which deals in the manufacture of various office products, including films and lamination. On 25.8.2008 two agreements, namely, Coating Lines Sale Agreement between the appellant, GBC and two of its subsidiaries namely, Acco Brands Benelux B.V. and Hwa Seung GBC Co. Ltd., and another agreement, namely, Manufacture and Sale Agreement between the appellant and GBC were executed. Under the agreement, Max India agreed, *inter alia*, to manufacture products from Max India in quantities agreed therein, for a period of 10 years from the date of execution of the aforesaid agreement.

3. According to the appellant, the Agreement was executed between the appellant and the respondent on 'principal to principal basis.' This is evident from Clause 12 of the Agreement whereby the parties have agreed that during the non-complete period, neither party nor any of its affiliates shall market, sell or distribute the products in each other's territories marked as A and B in the Agreement. Thus, under clause 12.2 of the Agreement, GBC categorically agreed that during the non-compete period, neither GBC nor its affiliates shall market, sell or distribute the products, whether directly or indirectly, either by itself or for or through a

third party, in the Class B Territories listed in Schedule 6 of the Agreement. Such "Class B Territories" includes India. It is also stated under Clause 21.11 of the Agreement that the Agreement is personal to the parties and shall not be capable of assignment without prior approval of the other party. It is stated that under the said clause, the respondent is not permitted to assign the rights and obligations under the Agreement without providing a reasonable notice to the appellant and to an entity which is situated in India and competes with the appellant in the business of manufacture and/or sale of the products being manufactured and sold by the appellant, breach of which would lead to material breach under the agreement. It is further stated that, however, the appellant in February 2009 came to know from a press release dated 30.1.2009 available at the website of Cosmo Films, that the respondent through its holding company, i.e., Acco USA, has entered into an agreement with Cosmo Films under which the holding company of the respondent, namely, Acco USA has agreed to sell its GBC Commercial Print Finishing business.

4. According to the appellant, entry into such an agreement by the respondent through its holding company with Cosmo Films violated the terms of Article 21.11 of the Agreement by agreeing to transfer its entire business to Cosmo Films, an entity which is situated in India and competes with the appellant in the business of manufacture and/or sale of products such as bi-axially oriented polypropylene films and thermal lamination films being manufactured and sold by the appellant. This is

what has given rise to disputes between the parties and for seeking an interim protection to restrain the respondent from implementing the agreement entered into with Cosmo Films, the appellant filed application under Section 9 of the Act. In this application, *ex parte ad interim* injunction was granted on 20.3.2009 against the respondent restraining it from entering into any agreement either directly or indirectly with Cosmo Films till further orders. The appellant has invoked the arbitration at Singapore as well as per Article 19.2 of the Agreement.

5. The respondent when issued notice of the aforesaid application and injunction order chose to challenge the maintainability of the said application contending lack of jurisdiction in this Court. As mentioned above, this contention is accepted by the learned Single Judge which has led to dismissal of the appellant's application.

6. Since the question involved is a pure question of law decision whereof depends on the interpretation of Article 19 of the Agreement in the light of the provisions of the Act, as interpreted by the judgments of the Supreme Court which are taken note of by the learned Single judge in the impugned order, we may straightaway proceed to take note of the contention of the parties inasmuch as those very contentions which were advanced before the learned Single Judge were pressed into service by the counsel on either side before us as well. However, these contentions would be appreciated more appropriately by first taking note of Article 19, interpretation whereof is the centre of controversy. This Article reads as

under:-

> "19. **GOVERNING LAW AND DISPUTE RESOLUTION**
>
> 19.1 This agreement shall be governed and construed in accordance with the laws of Singapore and, subject to Article 19.2, the court of Singapore shall have jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.
>
> 19.2 Any dispute between the Parties arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration under the Singapore International Arbitration Centre rules ("SIAC Rules") as in force at the time of the dispute, which SIAC Rules shall be deemed to be a part of this Agreement by reference. The arbitration shall be conducted before one (1) arbitrator mutually appointed by the Parties, failing which Max India shall be entitled to appoint one (1) arbitrator and GBC shall be entitled to appoint one (1) arbitrator and the two (2) arbitrators so appointed shall jointly appoint a third arbitrator who shall preside as the chairman. Such arbitration shall be conducted in the English language. The venue of arbitration shall be at Singapore."

**Summary of undisputed position**

7. What follows from the facts taken note of above and the reading of Article 19, can be summarized as under:-

a) appellant is an Indian party whereas the respondent is a foreign company incorporated as per the laws of Delaware, USA.

b) though place of signing of the agreement is not specifically stipulated in the said Instrument, according to the appellant this agreement

was signed in Delhi.

c) the agreement is to be governed and construed in accordance with the laws of Singapore.

d) disputes between the parties arising out of or in connection with this agreement are supposed to be resolved by arbitration under the SIAC Rules and the venue of arbitration is fixed at Singapore, as per Article 19.2.

e) subject to Article 19.2, the courts of Singapore "shall have the jurisdiction to settle any disputes that may arise out of or in connection with this agreement".

8. It, thus, follows that it is not a domestic arbitration between the two Indian companies, parties to the agreement belong to two different countries and they have chosen a neutral venue, viz., Singapore for settlement of their disputes. For this purpose not only the dispute is to be resolved by SIAC as per SIAC Rules, the arbitration hearings are also to take place in Singapore and further, even the arbitral tribunal while resolving the disputes is supposed to apply laws of Singapore while construing the agreement. In case any matter is to be taken to courts, even that is to be settled by courts of Singapore which is vested with the necessary jurisdiction by the consent of the parties.

**Submissions: The Appellant**

9. Notwithstanding the aforesaid position emerging from the reading

of the Agreement, endeavour of the appellant is to establish that for the purpose of seeking an order of interim measure pending arbitration proceedings, application under Section 9 of the Act would be competent in this Court, i.e., courts in India. For making this proposition good, Dr. A.M. Singhvi, learned senior counsel for the appellant, paraphrased his submissions in the following manner:-

10. Even when arbitral proceedings were to be conducted by SIAC at Singapore applying laws of Singapore, jurisdiction of Indian courts was not "specifically excluded" in Article 19 of the Agreement. In the absence of such specific exclusion, court in India for limited purpose of issuing direction for interim measures, to protect the property in India shall have the requisite jurisdiction. This, according to the learned counsel, was the rationale behind the judgment of the Apex Court in ***Bhatia International*** **v.** ***Bulk Trading SA and Another*** (2002) 4 SCC 105 wherein the Court held that for emergent interim relief a party could approach a court of competent jurisdiction in India even when location of the arbitration was outside India. His submission was that judgment of this Court in ***Mariotte,*** wherein contrary view was taken, was specifically overruled. He also referred to the judgment of Andhra Pradesh High Court in the case of ***National Aluminum Company Limited*** **v.** ***Gerald Metals***, 2004 (2) Arbitration Law Reporter 382 as well as Madras High Court in ***ST-CMS Electric Company Limited*** **v.** ***Tamil Nadu Electricity Board*** (OAs No.419 and 420/2006) decided on 26.2.2007 wherein application under

Section 9 was held to be maintainable in identical circumstances, as prevailing in the instant case, following ***Bhatia International*** (supra). Referring to the recent judgment of the Supreme Court in ***Venture Global* v. *Stayam Computers Service Limited*** (2008) 4 SCC 190, he argued that principle laid down in ***Bhatia International*** (surpa) was expanded further by holding that even in respect of 'international awards' finally rendered, courts in India will have jurisdiction to entertain petition under Section 34 of the Act, challenging such an award. His submission that unless there is specific exclusion of jurisdiction of a particular court is not spelled out in the agreement, jurisdiction of Indian court could not be held to be ousted was based on another judgment of the Supreme Court in ***Laxman Prasad* v. *Prodigy*** (2008) 1 SCC 618. Expanding the aforesaid submissions Dr. Singhvi pointed out that in para 2 of ***Bhatia International*** (supra) it is clearly reflected that there was a contract between the parties which contained an arbitration clause according to which the arbitration was to be as per ICC Rules and venue of arbitration was agreed to be in Paris. According to him, the facts in the instant case are similar to those in the aforesaid judgment in the case of ***Bhatia International***. The respondent in ***Bhatia International*** (supra) had filed an application under Section 9 before the Addl. District Judge, Indore seeking interim injunctions against the appellant restraining them from selling/transferring their business, assets and properties. The appellant filed an application challenging the jurisdiction of the Court at Indore on the ground that Part I is not applicable to international commercial arbitrations. The Supreme Court,

while explaining the importance of Section 9 of the Act, held in para 31 of ***Bhatia International*** (supra) that:-

> "31. If a party cannot secure, before or during the pendency of the arbitral proceedings, an interim order in respect of items provided in Section 9(i) and (ii) the result may be that the arbitration proceedings may themselves get frustrated, e.g. by non appointment of a guardian for a minor or person of unsound mind or the subject matter of the arbitration agreement not being preserved. This could never have been the intention of the Legislature."

11. Dr. Singhvi further pointed out that the issue of jurisdiction in ***Bhatia International*** (supra) arose since Section 2(2) of the Act provides that Part I of the Act shall apply to all arbitrations held in India. The Supreme Court interpreted the said clause and held that the intention of the legislature was to make Part I compulsorily applicable to all arbitrations held in India, domestic or international. The Court in para 21 held that Section 2(2) of the Act was only to make emphasis for applicability of Part I to all arbitrations taking place in India, but the clause nowhere states that its applicability in cases of international commercial arbitrations has been excluded. Therefore, while Part I of the Act has been compulsorily made applicable to all arbitrations, it is equally applicable in cases of international commercial arbitrations unless parties expressly or implied agree to not apply the same under the agreement. The Supreme Court, while concluding in para 32 in ***Bhatia International***

(supra) held as follows:-

> "32. To conclude we hold that the provisions of Part I would apply to all arbitrations and to all proceedings relating thereto….. In cases of international commercial arbitrations held out of India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or rules will apply."

12. It was argued that in the instant case, a bare reading of all the provisions of the Agreement shows that none of the provisions of Part I of the Act has not been expressly or impliedly excluded. In the entire agreement, there is no provision which either expressly states that all or any of the provisions of Part I shall not apply or impliedly excludes their applicability in the instant case. Merely because the parties have under Clause 19 agreed to be governed by the SIAC Rules for the purpose of Arbitration and have agreed on the venue of arbitration to be at Singapore, does not exclude either expressly or impliedly, the applicability of Section 9 of Part I of the Act, which provides for the remedy of seeking interim protection from the court.

13. Referring to the case of ***ST-CMS Electric*** (supra) decided by the Madras High Court it is argued that the court has very categorically held that if the parties merely agree to be governed by a Foreign law, it cannot be taken to exclude, expressly or impliedly the applicability of Section 9

of the Act to prohibit a party from obtaining interim measures before a Court of Law. Dr. Singhvi further submitted that in the absence of use of the words like 'alone', 'exclusive', 'only' or such like words in the Agreement in the governing law clause in the instant case, it cannot be inferred that the agreement by parties to submit to one jurisdiction means exclusion of all other jurisdictions. Reference is made to the judgment of the Supreme Court in the case of ***ABC Laminart Pvt. Ltd. And Anr.* V. *A.P. Agencies, Salem***, (1989) 2 SCC 163 wherein the parties had agreed to be subject to the jurisdiction of Kaira jurisdiction, wherein the suit was filed by the respondent at Salem. The Supreme Court in the above case, while considering the issue of jurisdiction held in para 22 as under:-

> "22. …..The question then is whether it can construed to have excluded the jurisdiction of the Court at Salem. In the clause 'any dispute arising out of this sale shall be subject to Kaira jurisdiction' ex facie we do not find exclusive words like 'exclusive, 'alone', 'only' and the like. Can the maxim *'expressio unius est exclusion alterius'* be applied under the facts and circumstances of the case?..... The other terms and conditions are also not indicative of exclusion of other jurisdictions. …..That being the position it could not be said that the jurisdiction of court at Salem which court otherwise had jurisdiction under law through connecting factor of delivery of goods thereat, was expressly excluded."

14. He argued that the principle laid down in the above judgment was applied by the Supreme Court in the case of ***RSDV Finance Co. Pvt. Ltd.* V. *Shree Vallabh Glass Works Ltd.***, (1993) 2 SCC 130. The Supreme

Court in para 20 of ***Bhatia International*** (supra) further held:-

> "A court is one which would otherwise have jurisdiction in respect of the subject matter. Its definition does not provide that the Courts in India will not have jurisdiction in case of an international commercial arbitration…. An ouster of jurisdiction cannot be implied. An ouster of jurisdiction has to be express."

15. According to Dr. Singhvi in the instant case merely because the parties have agreed to be governed by Singapore laws and have agreed to submit to the jurisdiction of courts at Singapore, does not *ipso facto* oust the jurisdiction of the Courts in India to grant interim measures under Section 9 of the Act, in order to protect the subject matter of Arbitration at least till the time the Arbitral Tribunal commences the arbitration proceedings. This was considered and decided by the Supreme Court in paras 33 and 34 of ***Bhatia International*** (supra), which are reiterated hereunder:-

> "33. Faced with this situation Mr. Sen submits that, in this case the parties had agreed that the arbitration be as per the rules of ICC. He submits that thus by necessary implication Section 9 would not apply. In our view in such cases the question would be whether Section 9 gets excluded by the ICC Rules of Arbitration. Article 23 of the ICC Rules reads as follows:-
>
> 1. …..
>
> 2. …..
>
> 34. Thus, Article 23 of the ICC Rules permits

> parties to apply to a competent judicial Authority for interim and conservatory measures. Therefore, in such cases an application can be made under Section 9 of the Act."

16. He further referred to Article 9 of the UNCITRAL Model Law on International Commercial Arbitration, the provisions of which have been incorporated in the Singapore International Arbitration under Article 3, provides for interim measures by Court which reads as under:-

> "**Article 9**
>
> **Arbitration agreement and interim measures by court:**
>
> It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure"

17. He also drew our attention to a similar provision contained in the UNCITRAL Arbitration Rules 1976 (Appendix 27) under Article 26(3) which reads as under:-

> "A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement."

18. Thus, applying the principle laid down by the Supreme Court in para 34 of ***Bhatia International*** (supra) reproduced hereinabove. Contention of Dr. Sihgiv was that the Singapore International Arbitration

Act also permits parties to apply to a court for interim and conservatory measures. Therefore, applicability of Section 9 in Part I of the Act is not excluded under the Singapore law and this Court has the jurisdiction to grant interim measures under Section 9 of the Act to the appellant.

19. Dr. Singhvi also placed great reliance on the following passage in the case of ***Laxman Prasad* v. *Prodigy Electronics Ltd.*** (supra):-

> "**30.** We find considerable force in the submission of the learned counsel for the respondent Company. In our view, 'cause of action' and 'applicability of law' are two distinct, different and independent things and one cannot be confused with the other. The expression 'cause of action' has not been defined in the Code. If there is no cause of action, the plaint has to be rejected [Rule 11(a) of Order VII]. Stated simply, 'cause of action' means a right to sue. It consists of material facts which are imperative for the plaintiff to allege and prove to succeed in the suit……"

20. Based on that he submitted that in the present case the appellant received a signed copy of the contract from the respondent, which is reflected from an email dated August 28, 2008 sent by the respondent to the appellant. The execution of the said Agreement was concluded at New Delhi by signing of the Agreement by the appellant at his Corporate office at New Delhi. The appellant has categorically made an averment to this effect in para 16 of the petition before the learned Single Judge, which has not been specifically denied by the respondent in its application challenging the maintainability. Thus, with the conclusion of the execution of the Agreement at New Delhi, a part of cause of action has

arisen within the jurisdiction of this Court. In the case of ***ABC Laminart Pvt. Ltd.*** (supra) it was held by the Supreme Court that the conclusion of the execution of an agreement forms a part of cause of action. In the aforesaid case, the Supreme Court in its concluding para 31 held:-

> "31. …..Clause 18 provides for applicability of law and it specifically declares that the terms and conditions of agreement shall be interpreted in accordance with 'the laws of Hong Kong Special Administrative Region.' That in our judgment does not mean that a suit can be instituted only in Hong Kong and not in any other country. Territorial jurisdiction of a court, when the plaintiff intends to invoke jurisdiction of any court in India, has to be ascertained on the basis of the principles laid down in the Code of Civil Procedure…… 'Applicability of Hong Kong law', 'entering into an agreement in Hong Kong' or 'defendant residing in Ghaziabad (Uttar Pradesh)' or any of them does not take away the jurisdiction of Delhi High Court since a 'cause of action' at least in part can be said to have arisen in Delhi……"

21. On the basis of the aforesaid submissions Dr. Singhvi made a fervent plea that judgment of the learned Single Judge be set aside holding that application of the appellant under Section 9 of the Act was competent and the matter be remanded back to the learned Single Judge for decision on the said application on merits. He also submitted that since the interim injunction was operative during the pendency of the said application, same be revived in the meantime as certain steps may be taken by the respondent so as to make the relief sought by the appellant in the said application, infructuous. His submission was that Section 2(f) of the Act,

which defines "international arbitration" applies to the proceedings held abroad as well as held in India.

**Submissions: The Respondent**

22. Mr. Chandhiok appeared on behalf of the respondent and stoutly countered the submission of the appellants. He argued that on the plain reading of Article 19, it was manifest that intention of the parties was to confer exclusive jurisdiction on Singapore courts and therefore, to seek such an interim measure, appropriate forum has to be Singapore court. He pointed out that even Arbitral Tribunal could issue interim directions protecting the interest of the litigating parties as there was a specific power to this effect in SIAC Rules as well as Singapore Arbitration Act, 2001. Therefore, the appellant was not remediless, was his submission. He supported the reasons given by the learned Single Judge in the impugned judgment and also submitted that the situations dealt with by the Supreme Court in ***Bhatia International*** (supra) *or* ***Venture Global*** (supra) did not apply to the fact situation prevailing in the instant case wherein the message in Article 19 of the Agreement is loud and clear. He submitted that as per this Article, situs of dispute resolving machinery situate outside India and even law applicable was of other nation, namely, Singapore. Therefore, the provisions of Arbitration and Conciliation Act could not be invoked and consequently application under Section 9 was not maintainable in a court in India. He submitted that Section 2(f) of the Act specifically uses the expression "law in India" and therefore, had no

applicability. He, thus, argued that this Court was not a court of natural jurisdiction and even if the principle of forum convenience is applied, appellant could not foist jurisdiction on this Court. For this purpose he referred to Single Bench judgment of this Court in ***Moser Bear India Ltd.*** **v.** ***Koninklijke Philip Electronics NV & Ors.,*** 151 (2008) DLT 180. He also relied upon another Single Bench judgment of this Court in ***Nariman Films*** **v.** ***Dilip R. Mehta & Anr.,*** 124 (2005) DLT 506 for the proposition that even when more than one court had jurisdiction in the matter, parties could confer exclusive jurisdiction on any one court. He also sought to draw sustenance from the following judgments:-

*i)* ***Hardly Oil and Gas Limited*** **v.** ***Hindustan Oil Exploration Company Limited and Ors.,*** (2006) 1 GLR 658.

*ii)* ***Tamil Nadu Electricity Board*** **v.** ***Videocon Power Limited***, (Original Side Appeal No.270/2008 decided on 27.01.2009)

*iii)* ***National Thermal Power Corporation*** **v.** ***Singer Company and Others***, (1992) 3 SCC 551.

**Our Analysis: The Legal Position**

23. We have to keep in mind the aforesaid factual position which emerges in the present case and in the light of these admitted facts, legal position as contained in various judgments of the Supreme Court and the High Courts, on the basis of which arguments were advanced by the learned counsel for the parties, is to be considered. We deed it proper to

initiate our discussion on first principle.

24. All civil societies demand a proper, effective and independent judicial system to resolve the disputes that may arise. Resolution of disputes by Municipal Courts is, therefore, prevalent in all countries and independence of judiciary is endeavoured in democratic set ups. While courts are State machinery discharging sovereign function of judicial decision making, various alternate methods for resolving the disputes have also been evolved over a period of time. One of the oldest among these is the arbitration. This is a forum for dispute resolution in place of municipal court. Important feature of arbitration is that parties to the dispute voluntarily agree getting the disputes decided by one or more persons, rather than the Court. Though the Indian Arbitration and Conciliation Act, 1996 does not contain a definition of 'arbitration', Statement of Objects and Reasons contained therein gives an indication of the general principles on which arbitration is founded. These are:-

i. The object of arbitration is to ensure a fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.

ii. The parties should be free to agree how their disputes are resolved subject only to such safeguards as are necessary in the public interest.

iii. Intervention of the courts should be restricted.

25. Thus, in essence, the parties decide to get their disputes decided through arbitral tribunal, which is the forum chosen by them, rather than the Court. Though the main dispute between the parties is to be resolved through arbitration, courts do not totally go out of the picture. In a limited sense need for courts do arise. It may be for enforcement of the Award itself or when some emergent measures are to be taken. In cases of domestic arbitration the competency of a court which is to be approached can be determined applying the provisions contained in the CPC, particularly Section 20 thereof. However, different parameters would apply in cases relating to international arbitration. In deciding such an issue court has to keep in mind the nature of international arbitration which may be somewhat different from that of domestic arbitration. Following quote from the book of Gary B. Born is an apt reminder:-

> "At bottom, if generalizations must be made, international arbitration is not much different from democracy; it is nowhere close to ideal, but it is generally better than the alternatives. To those who have experienced it, litigation of complex international disputes in national courts is often distinctly unappealing. Despite the frustrating procedural complexities and other uncertainties, arbitration often offers the least ineffective way to finally settle the contentious disputes that inevitably arise when international transactions go awry." [Gary B. Born, *International Commercial Arbitration in the United States: Commentry and Materials*, NY: Transnational Publishers (2001)]."

26. International Commercial Arbitration is a hybrid. It begins as a private agreement between the parties. It continues by way of private

proceedings, in which the wishes of the parties are of great importance. Yet it ends with an award that has binding legal force and effect and which, on appropriate conditions, the courts of most countries of the world will recognize and enforce. The private process has a public effect, implemented with the support of the public authorities of each state and expressed through its national law. It usually involves five different legal systems and they are as under :-

1) The law governing the parties' capacity to enter into an arbitration agreement;

2) The law governing the arbitration agreement and the performance of that agreement;

3) The law governing the existence and proceedings of the arbitral tribunal – the "curial law" of the arbitration (the lex arbitri);

4) The law, or the relevant legal rules, governing the substantive issues in dispute – the "proper law of the contract"; and

5) The law governing recognition and enforcement of the award.

27. In this backdrop, we have to consider the question posed before us, namely, competency of this Court to entertain application for interim measure filed by the appellant.

**Our Analysis on Core Issues**

28. There is a fundamental and practical difference between the court proceedings on the one hand and the arbitration on the other. Should the parties wish to opt for arbitration with regard to a particular contract, in practice the decision must be taken where the contract is drafted and a clause must be inserted in the form of a contractual provision. No doubt, parties may agree for arbitration even if originally not agreed to, even after the dispute has actually arisen. However, generally and particularly in international arbitrations, important feature of arbitration is to decide before hand for settlement of disputes that may arise, through means of arbitration. In contrast, it is well known that courts are available to hear a case even in the absence of a particular clause referring to their jurisdiction. Another peculiar feature of arbitration, particularly international, is that parties may not only chose the arbitral forum which shall decide the dispute, but also the law that would govern the contract and also the arbitration proceedings. Whereas the territorial jurisdiction of a particular Court is governed by law, namely, Sections 16 to 24 of the Code of Civil Procedure, in case of international arbitration the litigating parties may agree to confer the jurisdiction on a particular arbitral tribunal as well as particular courts, including applicable law.

29. This principle was recognized by the Supreme Court in the case of ***Modi Entertainment Network and Another*** **v.** ***W.S.G. Cricket Pte. Ltd.,***

(2003) 4 SCC 341 in the following words:-

> "11. In regard to jurisdiction of courts under the Code of Civil Procedure (CPC) over a subject-matter one or more courts may have jurisdiction to deal with it having regard to the location of immovable property, place of residence or work of a defendant or place where cause of action has arisen. Where only one Court has jurisdiction it is said to have exclusive jurisdiction; where more courts than one have jurisdiction over a subject-matter, they are called courts of available or natural jurisdiction. The growing global commercial activities gave rise to the practice of the parties to a contract agreeing beforehand to approach for resolution of their disputes thereunder, to either any of the available courts of natural jurisdiction and thereby create an exclusive or non-exclusive jurisdiction in one of the available forums or to have the disputes resolved by a foreign court of their choice as a neutral forum according to the law applicable to that court. It is a well-settled principle that by agreement the parties cannot confer jurisdiction, where non exists, on a court to which CPC applies, but this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign court; indeed in such cases the English Courts do permit invoking their jurisdiction. Thus, it is clear that the parties to a contract may agree to have their disputes resolved by a Foreign Court termed as a 'neutral court' or 'court of choice' creating exclusive or non-exclusive jurisdiction in it."

30. In ***National Thermal Power Corporation*** **v.** ***Singer Company*** (supra) also the Apex Court held that in international commercial arbitration agreement the parties have liberty to make choice, expressly or by necessary implication of the proper or substantive law as well as procedure law to be applicable. The Court also held that in the absence of express choice, a presumption arises that the laws of a country where the

arbitration is to be held would be the proper law which presumption, of course, is rebuttable having regard to the true intention of the parties. The principles which are culled out from the reading of this judgment can be summarized as under:-

a) The express intention of the parties is generally decisive in determining the proper law of the contract. Only exception to this rule is that intention of the parties must be expressed bona fide and it should not be opposed to public policy.

b) In the absence of an express statement about the governing law, the inferred intention of the parties determines that law. True intention has to be discovered by applying "sound ideas of business, convenience and sense to the language of the contract itself". In such a case, selection of courts of a particular country as having jurisdiction in matters arising under the contract is usual, but not invariably, an intention of the parties that the system of law followed by those courts is the proper law by which they intend the contract to be governed.

c) Choice of place for submission to jurisdiction of the courts or for arbitration may prove to have little relevance for drawing an inference as to the governing law of contract unless supported in that respect by the rest of the contract and the surrounding circumstances.

d) Where the parties have not expressly or impliedly selected the proper law, the courts impute an intention by applying the objective test to determine what the parties would have as just and reasonable persons intended as regards the applicable law had they applied their minds to the question. The intention of the parties is to be gathered, in such a case, on the yardsticks of "reasonable man". Proper law of a contract is, thus, the law which the parties have expressly or impliedly chosen or which is imputed to them by reasons of its most closest and intimate connection to the contract.

e) Proper law of arbitration agreement is normally the same as the proper law of contract. It is only in exceptional cases that it is not so even where the proper law of contract is expressly chosen by the parties. Normal presumption is that the law of a country where the arbitration is agreed to be held is the proper law of arbitration agreement, though it is rebuttable presumption.

f) Importantly, the validity, effect and interpretation of the arbitration agreement are governed by its proper law.

g) The parties have the freedom to choose the law governing an international commercial arbitration agreement they may choose the substantive law governing arbitration as well as the procedure law governing the conduct of the arbitration.

h) Where the proper law of contract is expressly chosen by the parties such law must, in the absence of an unmistakable intention to the contrary, govern the arbitration agreement which, though collateral and ancillary to the main contract, is nevertheless part of such contract.

i) The arbitration proceedings are to be conducted in accordance with the law of the country in which the arbitration is held unless the parties have specifically chosen the law governing the conduct and procedure of arbitration. Normally, the appropriate courts of the seat of arbitration will have jurisdiction in respect of procedural matters concerning the conduct of arbitration.

j) The overriding principle is that the courts of the country whose substantive laws govern the arbitration agreement are the competent courts in respect of all matters arising under the arbitration agreement and the jurisdiction exercised by the courts of the seat of arbitration is merely concurrent and not exclusive and strictly limited to matters of procedure. All the matters in respect of arbitration agreement fall within the conclusive competence of the courts of the countries whose laws govern the arbitration agreement. The concept of party autonomy in international contracts is restricted by all systems of law so far as it is not compatible with the proper

law of the contract or the mandatory procedural rules of the place where the arbitration is agreed to be conducted or any overriding public policy.

k) The award rendered in the territory of a foreign State may be regarded as a domestic award in India where it is sought to be enforced by reason of Indian law being the proper law governing the arbitration agreement in terms of which the award was made.

l) An award is a foreign award not only because it is made in the territory of a foreign State, but because it is made in such a territory pursuant to an arbitration agreement not governed by the law of India. (This definition of foreign award, no doubt, was taken from the Foreign Awards Act, 1961). The same principle shall apply even when it is to be ascertained as to what would be the foreign award under the Act of 1996. The Court summed up the position in the following manner:-

> "51. In sum, it may be stated that the law expressly chosen by the parties in respect of all matters arising under their contract, which must necessarily include the agreement contained in the arbitration clause, being Indian law and the exclusive jurisdiction of the courts in Delhi having been expressly recognized by the parties to the contract in all matters arising under it, and the contract being most intimately associated with India, the proper law of arbitration and the competent courts are with India, the proper law of

> arbitration and the competent courts are both exclusively India, while matters of procedure connected with the conduct of arbitration are left to be regulated by the contractually chosen rules of the ICC to the extent that such rules are not in conflict with the public policy and the mandatory requirements of the proper law and of the law of the place of arbitration. The Foreign Awards Act, 1961 has n o application to the award in question which has been made on an arbitration agreement governed by the law of India."

31. In the present case we do not have even to labour to find out the intention of the parties inasmuch as express and specific provisions are made in the arbitration clause manifesting the intention which is loud and clear. The two parties herein, one Indian and other American, have chosen neutral arbitral tribunal, namely, SIAC. It is also made clear that the arbitration proceedings would be conducted as per the rules of SIAC. Not only this, even contract is to be governed by the laws of Singapore. To remove any shadow of doubt the Agreement between the parties specifically vests jurisdiction on Singapore Courts. Thus, not only the proper law of contract but the proper law of arbitration agreement, procedural as well as substantive, is that of Singapore. This is an "unmistakable intention" expressed by the parties governing the contract and arbitration proceedings. Consequences which follow are that the validity, effect and interpretation of arbitration agreement is governed by the laws of Singapore; the arbitration proceedings are to be conducted as per the laws of Singapore where the arbitration proceedings are going to

be held and therefore, even in the absence of specific provision, normally the jurisdiction in respect of procedural matters concerning the conduct of arbitration has to be of Singapore Courts. In the present case, however, the "overriding principle", which is also applicable is that it is the courts of Singapore only which will have the jurisdiction as substantive law governing the arbitration agreement is of that country and the agreement also states so loudly and clearly. This overriding principle mentioned in the Singer Company (supra) is stated in the following terms:-

> "**26.** …..But the overriding principle is that the courts of the country whose substantive laws govern the arbitration agreement are the competent courts in respect of all matters arising under the arbitration agreement, and the jurisdiction exercised by the courts of the seat of arbitration is merely concurrent and not exclusive and strictly limited to matters of procedure. All other matters in respect of the arbitration agreement fall within the exclusive competence of the courts of the country whose laws govern the arbitration agreement. [*See* Mustil & Boyd, *Commercial Arbitration*, 2nd edn.; Allen Redfern and Martin Hunter, *Law & Practice of International Commercial Arbitration*, 1986; Russel on Arbitration, 20th edn., (1982); Cheshire & North's *Private International Law*, 11th edn. (1987.]"

32. The words "conclusive competence of courts of the country whose laws govern the arbitration agreement" clinch the issues as applying this principle, Singapore Courts will have the 'jurisdiction'. Therefore, the contention of Dr. Singhvi based on ***ABC Laminart*** (supra) and ***Laxman Prasad*** (supra) that in the presence of the expression "conclusive"

occurring in the arbitration clause, jurisdiction of this Court cannot be ousted, would be of no avail. What is not to be forgotten is that ***ABC Laminart*** (supra) was a case dealing with jurisdiction of two municipal courts, i.e., Gujarat and Tamil Nadu and in that context observations were made that the jurisdiction of a particular court is to be treated as ousted in exceptional circumstances when both courts will have jurisdiction. However, even in that case the court was of the opinion that in appropriate cases maxim "*expressio unius est exclusio alterius"* may be applied. Present case would be a case of this nature. In so far as judgment of Supreme Court in ***Laxman Prasad*** (supra) is concerned, in that case, no doubt, contract between the company of Hong Kong and its Indian ex-employee, executed in Hong Kong was to be interpreted in accordance with the Hong Kong law, the Supreme Court opined that even if applicable law is Hong Kong law, that would not oust the territorial jurisdiction of Indian courts, if cause of action arise in Delhi. In this context the Supreme Court distinguished between "cause of action" and "applicability of law". That was a case where ex-employee had contravened the agreement by using the goodwill and passing on the trade name of the said company in a Trade Fare in Delhi. Thus, the grievance was against the aforesaid action of the defendant occurring in Delhi. Explaining that "cause of action" means a right to sue, the Court opined that right to sue in relation to the aforesaid grievance arose in Delhi and therefore, applying the principles laid down in the Code of Civil Procedure, territorial jurisdiction would be of Delhi court. It would be of

interest to take note of the manner in which judgments of the Supreme Court in ***Singer Company*** (supra) as well as ***British India Steam Navigation Co. Ltd.*** **v. Shanmughavilas** ***Cashew Industries*** (1990) 3 SCC 481 was distinguished. In this behalf, the Apex Court observed as under:-

> "41. The learned counsel for the appellant submitted that the ratio laid down in *British India Steam Navigation Co.* applies to the case on hand and the High Court of Delhi committed an error of law in not upholding the objection of the defendant that Indian court had no jurisdiction to deal with the matter.
>
> 42. We are unable to agree. Clause 3, as extracted hereinabove, clearly provided that the contract would be governed by English law. The High Court was, therefore, right in observing that the case is not relevant so far as the question raised in the present matter is concerned.
>
> 43. The counsel also referred to *National Thermal Power Corpn.* v. *Singer Co.* The parties in that case by an agreement had chosen the jurisdiction of one court to the exclusion of the other. Likewise, they also agreed as to the applicability of law. In the light of the fact situation, the Court held that the parties are bound by such agreement and it has to approach a court in consonance with the agreement. This judgment also does not help the appellant in the instant case."

33. We Judges don't create disputes. They get dropped at our doorsteps. While dealing with the issue, we adopt the tools provided to

us. Here the tool provided by the parties is the Agreement. They chose the forum, voluntarily. It was their choice, not foisted by the provisions of CPC. They decided to cross the borders so far as choice of forum for settlement of disputes is concerned. The manifest intention of the Agreement is to exclude the jurisdiction of Indian Courts. Now they should not feel epileptic about it.

34. In the present case, not only the substantive law but procedure law, which is to be applied, is that of Singapore. Furthermore, arbitration forum is at Singapore and courts of Singapore are conferred with jurisdiction to decide. It is this sting in Article 19 of the Agreement which is clinching. When the parties have consciously chosen the applicability of Singapore laws, procedural as well as substantive, including the law governing arbitration proceedings, by necessary implication Indian law, i.e., Arbitration and Conciliation Act, 1996 is excluded. In that case, how application under Section 9 of that Act is maintainable? Obviously not. As a fortiorari, this Court lacks jurisdiction to deal with such an application. Therefore, present case is more akin to what was held in ***Singer Company*** (supra) and ***British India Steam Navigation Co. Ltd.*** (supra).

35. Indisputably, main proceedings are to be held in Singapore - whether arbitration proceedings before SIAC or proceedings in the Court in connection with those arbitration proceedings. In these circumstances, the question is as to whether "incidental" proceedings can be held in

India. Answer is that only under limited circumstances created by ***Bhatia International*** (supra). However, this case would not fall within the four corners of ***Bhatia International*** (supra). To demonstrate this, we proceed to discuss ***Bhatia International*** (supra) which is the foundation stone of the entire case sought to be set up by the appellant. Court in that case held that Part I of 1996 Act (which contains Section 9 as well) would apply even to arbitration that takes place outside India. The Court was of the opinion that a reading of the provisions of the Arbitration and Conciliation Act, 1996 shows that it applies to arbitrations which are held in India between Indian nationals and to international commercial arbitrations whether held in India or out of India. Section 2(1)(f) defines an international commercial arbitration. The definition makes no distinction between international commercial arbitrations held in India or outside India. An international commercial arbitration may be held in a country which is a signatory to either the New York Convention or the Geneva Convention (hereinafter called "the convention country"). An international commercial arbitration may be held in a non-convention country. The said Act nowhere provides that its provisions are not to apply to international commercial arbitrations which take place in a non-convention country. Admittedly, Part II only applies to arbitrations which take place in a convention country. For coming to this conclusion the Court referred to definition of "Arbitration" as well as "International Commercial Arbitration" and other provisions. It noted that Section 2(1)(a) defines "arbitration" as meaning any arbitration whether or not

administered by a permanent arbitral institution. Thus, this definition recognizes that the arbitration could be under a body like the Indian Chamber of Commerce or the International Chamber of Commerce. Arbitrations under the International Chamber of Commerce would be held, in most cases, out of India. The submission of the appellants in the said case that Part I of the Act of 1996 does not apply if the arbitration takes place outside India was not accepted holding that such a situation may lead to the following:-

a) Amount to holding that the legislature has left a lacuna in the said Act. There would be a lacuna as neither Part I or II would apply to arbitrations held in a country which is not a signatory to the New York Convention or the Geneva Convention (hereinafter called "a non-convention country"). It would mean that there is no law, in India, governing such arbitrations.

b) Lead to an anomalous situation, inasmuch as Part I would apply to Jammu and Kashmir in all international commercial arbitrations but Part I would not apply to the rest of India if the arbitration takes place out of India.

c) Lead to a conflict between sub-section (2) of Section 2 on the one hand and sub-sections (4) and (5) of Section

2 on the other. Further, sub-section (2) of Section 2 would also be in conflict with Section 1 which provides that the Act extends to the whole of India.

d) Leave a party remediless inasmuch as in international commercial arbitration which take place out of India the party would not be able to apply for interim relief in India even though the properties and assets are in India. Thus a party may not be able to get any interim relief at all.

36. The aforesaid dicta of the Apex Court binds us as law declared under Section 141 of the Constitution. However, it would be important to note that Court was dealing with a situation where the arbitration was taking place outside India.

37. The conclusion recorded by the Supreme Court in para 32 of the said judgment provides categorical answer to the issue at hand. In para 32 the position was summarized as under:-

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

38. It is clear from the above that the Court applied provisions of Part I, or for that matter Section 9 thereof, to the international commercial arbitration held out of India, subject to a rider, namely, parties by agreement, express or implied, can exclude law or any of its provisions. In that case laws or rules chosen by the parties have to prevail. In the present case substantive as well as curial, i.e., procedural law chosen by the parties is that of Singapore and even the Courts of Singapore are accepted as the forum to agitate the matters which would come within the domain of Court proceedings. In para 31 of the said judgment, which was referred to by Dr. Singhvi with much emphasis, the Supreme Court observed is as under:-

> "**31.** If a party cannot secure, before or during the pendency of the arbitral proceedings, an interim order in respect of items provided in Section 9(i) and (ii), the result may be that the arbitration proceedings may themselves get frustrated e.g. by non-appointment of a guardian for a minor or person of unsound mind or the subject-matter of the arbitration agreement not being preserved. This could never have been the intention of the legislature."

39. However, we do not find such a situation in the present case. Not only the rules of SIAC provide that for interim measure arbitral tribunal can pass appropriate directions, even the Singapore Arbitration Act, 2001, which is the law applicable in the instant case, gives specific power to the Court for passing such interim measure.

40. When the parties chose that Courts at Singapore shall have the jurisdiction they were conscious of the fact that even if any interim measure would be needed during the pendency of arbitral proceedings, adequate remedy was provided in the SIAC Rules as well as Singapore Arbitration Act. Matter can be looked from another angle as well. What happens after the award is rendered by the Arbitral Tribunal? Such an award in the present case would normally be challenged in Singapore Court. Supreme Court judgment in ***Venture Global*** (supra) which permitted mixed foreign award challengeable under Section 34 of the Arbitration Act 1996 in an Indian Court also provides that provisions of Part I would be applicable to international commercial arbitration held out of India "unless any or all such provisions have been excluded by agreement between the parties, expressly or by implication". The manner in which Singapore laws, substantive as well as curial, are made applicable and jurisdiction is also conferred upon the Singapore Court, it amounts to exclusion of those provisions by necessary implication. It would, thus, be an incongruous situation where not only arbitration proceedings but all other judicial proceedings are to take place in Singapore and at the same time parties are permitted to have recourse to Indian Arbitration and Conciliation Act, 1996 in so far as invocation of Section 9 thereof is concerned. Once it is accepted that laws for interpretation of contract as well as arbitration proceedings which are to be applied are Singapore laws which means provisions of Singapore Arbitration Act, 2001 are applicable, can there be a situation where Indian

Arbitration and Conciliation Act, 1996 shall also apply at the same time (even to a limited extent of Section 9 thereof) as is sought to be contended. Answer has to be in the negative.

41. We arrive at same conclusion on the applicability of principle of **comity of jurisdictions** and **forum non-conveniens**.

42. This principle of Comity of Jurisdiction has been recognized and accepted by the Indian courts in various judgments. Comity of Jurisdiction is the courtesy one jurisdiction given by enforcing the laws of another jurisdiction. Comity is granted out of respect, deference, or friendship, rather than as an obligation. In American Constitutional Law comity has arisen in two ways. Historically important, although less common in the modern era, was the failure of comity in interstate relations. In the modern context comity is usually an issue that involves the federal courts' willingness (or unwillingness) to rule on a state law in the absence of decision by a state court on the same issue.

43. The concept of comity has also led to the modern doctrine of abstention, which stems from the notion that the state and federal courts are equally obligated to enforce the United States Constitution. *Justice Sandra Day O'Connor* noted in ***Brockett*** v. ***Spokane Arcades, Inc.*** (1985) that:-

> "This Court has long recognized that concerns for comity and federalism may require federal courts to abstain from deciding federal constitutional issues that are entwined with the interpretation of state law…. Where uncertain questions of state law must

> be resolved before a federal constitutional question can be decided, federal courts should abstain" from reaching a decision on federal issues "until a state court has addressed the state questions" (pp.27-28)."

44. This principle has been recognized by Indian courts as well in various judgments (See ***Tamil Nadu Mercantile Bank Share Holders Welfare Association*** v. ***S.C. Sekhar & Ors.,*** (2009) 2 SCC 784).

45. Again, in ***National Mineral Development Corporation*** v. ***Government of India & Ors.*** (WP (C) No. 8004/2007 decided on 18.2.2008), this Court referred to various judgments of the US courts as well as its own earlier judgments while accepting the doctrine of Comity of Jurisdiction. Relevant observations contained in the said judgment runs as under :-

> "20. In ***Hartford Fire Ins. Co.*** v. ***Cal***. 509 U.S. 764, it was observed that the comity of courts refers to a situation where judges decline to exercise jurisdiction over matters more appropriately adjudged elsewhere."

46. Similarly, on grounds of comity and pursuant to federal law, the Supreme Court has generally refused to allow federal courts to intervene in pending cases in state courts in the absence of showing of bad faith harassment.

47. Comity is a tool for co-operation. But it can also be a tool for exclusion. *Forum non conveniens* (Latin for "inconvenient forum" or

"inappropriate forum") (FNC) is a discretionary power of mostly common law courts to refuse to hear a case that has been brought before it. The Courts may refuse to take jurisdiction over matters where there is a more appropriate forum available to the parties. In the present case, having regard to the scope and spirit behind Article 19 of the Agreement we feel that arbitration proceedings in Singapore or the courts at Singapore are appropriate forum even for the purpose of seeking interim measure.

48. When we understand this fundamental object of arbitration in the context of jurisdiction, as a corollary, it needs to be accepted that the principles governing the jurisdiction would remain the same on the basis of which it is to be determined as to whether a particular court will have jurisdiction to entertain the dispute or not, in case matter was to be agitated before the Court rather than arbitration. Those principles would apply in the matters related to arbitration as well. While keeping these fundamental in mind, we proceed to determine the question of jurisdiction in the present case where Court in India, for that matter Delhi High Court, is approached by the appellant seeking interim measure pending arbitration between the parties. We have already given the narration of important facts. We have also stated the undisputed facts in para 7 above. In the light thereof and keeping in view the contours of international arbitration, we proceed to answer this issue of jurisdiction.

49. The case of ***ST-CMS Electric Company Ltd.*** (supra) decided by a learned Single Judge of Madras High Court reveals that both the parties in

the said case were Indian parties and the substantive law, which was to be applied, was also Indian law. It was only the arbitration proceedings which were governed by English law. Thus, it is only proper law of arbitration, which was English law and not the proper law of contract, which was Indian law. It was in this context the Court held that jurisdiction of Indian Court was not excluded. Because of this distinguishing feature the said judgment would not apply to the instant case and therefore, it is not necessary for us to comment as to whether the view taken therein is correct or not.

50. In ***National Aluminum Company Ltd.*** (supra), which is a decision of Andhra Pradesh High Court, no doubt, not only the English law was applicable to proceedings of arbitration; venue of arbitration was also London (England); disputes out of the contract were to be decided by English Courts and contract was to be governed in accordance with the laws of England, still the Andhra Pradesh High Court decided that application under Section 9 of the Arbitration and Conciliation Act shall be maintainable in court of law in India. To arrive at this conclusion the Court referred to and relied upon the judgment of the Supreme Court in ***Bhatia International*** (supra). With respect, we feel that the distinguishing features, because of which ***Bhatia International*** (supra) would not apply, have not been properly appreciated by the Andhra Pradesh High Court. Though the judgment in ***Singer Company*** (supra) is referred to, there is no discussion thereupon except mentioning that the

said case was considered by the Supreme Court in ***Bhatia International*** (supra). A proper insight into the principle laid down in ***Singer Company*** (supra) would have brought out the distinguishing feature. In view of our reasons given above, we respectfully disagree with the view taken by Andhra Pradesh High Court.

51. In ***National Highways Authority of India & Anr. v. Bumihiway DDB Ltd. (JV) & Ors.***, (2006) 10 SCC 763, it was opined :-

> "44…The parties have entered into a contract after fully understanding the import of the terms so agreed to from which there cannot be any deviation. The Courts have held that the parties are required to comply with the procedure of appointment as agreed to and the defaulting party cannot be allowed to take advantage of its own wrong."

Equally the parties are required to adhere to the forum they have chosen for redressal of their grievances.

52. In view of our aforesaid discussion, we are of the opinion that the conclusion arrived at by the learned Single Judge is justified and does not call for any interference. We, therefore, do not find any merit in this appeal, which is accordingly dismissed with costs.

**(A.K. SIKRI)**
**JUDGE**

July 16, 2009
hp.

**(V.K. JAIN)**
**JUDGE**