IN THE HIGH COURT AT CALCUTTA

(Ordinary Original Civil Jurisdiction)

COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 2 of 2021

In CS 109 of 2020

Orissa Metaliks Pvt. Ltd.

Versus

SBW Electro Mechanics Import Export Corporation.

Mr. Jishnu Chowdhury

Mr. Ratul Das

Mr. Niladri Banerjee

Mr. Deepankar Thakur

… for the respondent/plaintiff.

Mr. Debarshi Dutta

Mr. Rajarshi Dutta

Mr. Vikas Baisya

Mr. Aayush Kevlani

Mr. Sarbajit Mukherjee

… for the petitioner/defendant.

Hearing Concluded On : 13.04.2023

Judgment on : 22.06.2023

Krishna Rao, J.:

1. The defendant has filed the present application under Section 45 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as Act of 1996) praying for referring the instant suit to arbitration in terms of Clause 19 of the agreement and for dismissal of the suit.

2. The plaintiff has filed the suit against the defendant for recovery of amount of Rs. 11,93,93,474/- along with interest at the rate of 18% per annum on account of rejection of defective goods supplied by the defendant, difference in weight of the goods supplied, liquidated damage due to delay in supply of goods, loss and damages suffered due to supply of defective and incomplete products.

3. The plaintiff and the defendant entered into a Purchase Agreement No. OMPL-BF2-IM-0003 dated 27th October, 2016 for design, manufacturing and supply of centrifugal blower, Model D1600-3, its allied accessories for 350 cum, blast furance-2 to be installed at the premises of OMPL.

4. The plaintiff has made payment of the entire contract price of USD 18,00,000 to the defendant but the defendant failed to deliver the goods in terms of the contract. The defendant failed to supply goods of the required quality and the consignments supplied were short in weight by 36.338 MT. The equipment that is the blower and its efficiency and function was dependent on weight of the material. The equipment supplied by the defendant was deficient weight and become unusable.

5. When the plaintiff attempted to assemble the equipment and put it to use, the following transpired:

> *a. On 1st December, 2018, there was smoke observed from the PLC panel present in the blower control room, subsequent to which the blower tripped.*
>
> *b. 1st December, 2018 itself, fire was observed in the soft starter panel, which again resulted in blower tripping.*
>
> *c. Excess consumption of coke was required to maintain furnace hearth temperature which showed inherent manufacturing defect.*
>
> *d. Excess consumption of power and coke as a result of the manufacturing deficiency.*

6. The defendant has filed the instant application for referring the matter for arbitration on the ground that the supply of goods by the defendant was in terms of the agreement dated 27th October, 2016 and Clause 19 of the said agreement provides for arbitration, the suit is not maintainable and the dispute is to be referred for arbitration in terms of Section 45 of the Arbitration and Conciliation Act, 1996.

7. Mr. Jishnu Chowdhury, Learned counsel representing the plaintiff submits that the plaintiff has filed the instant suit on the ground that the purported agreement allegedly entered between the parties is vague, uncertain and incapable of being made certain therefore it is invalid and thus the plaintiff has no recourse to arbitration.

8. Mr. Chowdhury submits that as per the agreement, the venue of the arbitration is at Singapore while the law governing arbitration would be the "International Arbitration Law". There is nothing known as the International Arbitration Laws and submits that:

a. *The venue of the arbitration is Singapore and the parties have agreed to the same.*

b. *The parties have consciously agreed not to allow Singapore laws to govern the arbitration. The substantive and procedural laws governing arbitration is not law of Singapore.*

c. *Parties have agreed that international arbitration laws will govern. There is nothing known as International Arbitration laws.*

d. *Without contrary indicia or a contrary intention, if it was simply stated that the arbitration would be held at Singapore, then, Singapore laws would have govern the arbitration, it would be substantive law and procedural law.*

e. *The parties have agreed that international arbitration law would apply, in the absence of any body of law known as the International arbitration laws, the agreement is null and void. The agreement is also inoperative and incapable of being performed. There cannot be arbitration without any governing law. Since, the governing law has nexus to enforcement, setting aside, interim reliefs, applicability in numerous countries etc.*

9. Mr. Chowdhury relied upon the following judgements:

a. *AIR 1997 Cal 397 (ITC Classic Finance Ltd vs. Grapco Mining and Co. Ltd.).*

b. *AIR 1990 Cal 59 (Kanpur Agra Transport Corp. vs. United India Insurance Co. Ltd.).*

c. *AIR 1967 Cal 168 (M/s. Teamco Pvt. Ltd vs. TMS Mani).*

10. Mr. Chowdhury submits that in the present case there cannot be any arbitration with international arbitration laws. The arbitration agreement is vague and indefinite and the Court cannot refer the parties to an arbitration.

11. Mr. Debarshi Dutta with Mr. Rajarshi Dutta, Learned Advocates representing the defendant submits that the Clause 19 of the contract is absolutely workable and cannot be questioned before this Court. There is no element of vagueness and/or uncertainty in Clause 19 of the contract, as regard the intent of the parties to arbitrate in the event any dispute arising out of the contract. He submits that Section 45 of the Arbitration and Conciliation Act, 1996 mandates that a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in Section 44 of the of 1996, shall, at the request of one of the parties or person claiming through or under him, referred the parties to arbitration. He submits that the only exception for refusing to refer the parties to arbitration is when the judicial authority finds that the agreement is prima facie found to be null and void, inoperative or incapable of being performed.

12. Mr. Debarshi Dutta with Mr. Rajarshi Dutta submit that the plaintiff cannot question the arbitration agreement on the alleged ground that the same is invalid, which does not fall within any of the exception under Section 45 of the Act of 1996 for this court to refuse to refer the parties to arbitration. He submits that the expression *"the venue of arbitration shall be Singapore"* in the contract has to be understood in

the context that there is no contrary indicia in the contract about *"seat"* of arbitration.

13. Mr. Debarshi Dutta with Mr. Rajarshi Dutta submit that whenever there is designation of a place of arbitration in an arbitration clause as being the *"venue"* of the arbitration proceedings, the expression *"arbitration proceedings"* would make it clear that the *"venue"* is really the *"seat"* of the arbitral proceedings as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place.

14. Mr. Debarshi Dutta with Mr. Rajarshi Dutta submit that the fact that the arbitral proceedings *"shall be held"* at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that the place is the seat of the arbitral proceedings. This coupled with there being no other significant contrary indicia that the stated venue is merely a *"venue"* and not the *"seat"* of the arbitral proceedings. They submits that in an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that *"the venue"* so stated, would be the seat of the arbitral proceedings.

15. Mr. Debarshi Dutta with Mr. Rajarshi Dutta relied upon the following decisions:

a. (2014) 11 SCC 639 (World Sports Group (Mauritius) Limited vs. MSM Saatellite (Singapore) Pte. Limited).

b. *(2014) 5 SCC 1 (Enecorn (India) Limited and Others vs. Encorn GMBH and Another).*

c. *(2020) 5 SCC 399 (Mankastu Impex Private Limited vs. Airvisual Limited).*

16. Clause 19 of the agreement dated 27th October, 2016 reads as follows:

19:00 <u>DISPUTES AND ARBITRATION:</u>

> *"All disputes and differences, whatsoever, arising between us and yourselves in connection with the contract which cannot be settled through mutual negotiations in good faith either of us may give the other notice in writing of the existence of such a disputes/differences. The same shall be settled in accordance with the provisions of the International Arbitration laws.*
>
> *The Arbitrator should be a person qualified to be appointed as the Arbitrator under the provision. The award of the Arbitrator shall be final and binding on both the parties and the person claiming under them. Work under the contract shall continue, so far as may be reasonably practical, during the arbitration proceedings and no payments which may or shall become due shall be withheld on account of such proceedings. The venue of the arbitration shall be Singapore."*

17. Section 44 and 45 of the Arbitration and Conciliation Act, 1996 reads as follows:

> ***"44. Definition.—****In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—*
>
> > *(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and*
> > *(b) in one of such territories as the Central Government, being satisfied that reciprocal*

> *provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.*
>
> ***45. Power of judicial authority to refer parties to arbitration.*** *—Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."*

18. International Arbitration is arbitration between companies or individuals in different states, usually by including a provision of future dispute in contract. Arbitration agreements and arbitral award are enforced under the United Nations Convention on the Recognition of Enforcement of Foreign Arbitral Awards of 1958. The International Centre for the Settlement of Investment Dispute also handles arbitration, but it is limited to investor-state dispute settlement.

The New York Convention was drafted under the auspices of the United Nations and has been ratified by more than 150 countries, including most major countries involved in significant international trade and economic transactions. The New York Convention requires the states that have ratified it to recognise and enforce international arbitration agreements and foreign arbitral award issued in other contracting states, subject to certain limited exception. These provisions of the New York Convention, together with the large number of contacting states, have created an international legal regime that

significantly favours the enforcement of international arbitration agreement and awards. It was preceded by the 1927 Convention on the execution of Foreign Arbitral Awards in Geneva.

19. In the plaint, the plaintiff had made an averment to the effect in paragraph 14 which reads as follows:

> *"14. The plaintiff states that the purported arbitration agreement allegedly entered between the parties is vague, uncertain and incapable of being made certain therefore it is invalid. Consequently, the plaintiff has no recourse to arbitration."*

20. In the case of ***World Sport Group (Mauritius) Limited (Supra),*** the Hon'ble Supreme Court held that :

> *"27. The First Schedule to the Act sets out the different articles of the New York Convention on the Recognition and Enforcement of the Foreign Arbitral Awards, 1958. Article II of the New York Convention is expected hereinbelow:*
>
> *"1. Each contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.*
>
> *2. The term 'agreement in writing 'shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.*
>
> *3. The Court of a contracting state, when seized of an action in a manner in respect of which the*

parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, referred the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."

It is clear from Clauses 1, 2 and 3 of the New York Convention as set out in the first schedule to the Act that the agreement referred to in Section 44 of the Act is an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen in or which may arise between them. Thus, the Court will decline to refer the parties to arbitration only if it is finds that the arbitration agreement is null and void, inoperative and incapable of being performed.

34. Albert Jan Van Den Berg in an article titled "The New York Convention, 1958 – An overview published in the website of ICCA referring to Article II (3) of the New York Convention States:

"The words 'null and void' may be interpreted as referring to those cases where the arbitration agreement is affected by some invalidity right from the beginning, such as lack of consent due to misrepresentation, duress, fraud or undue influence,

The words 'inoperative 'can be said to cover those cases where the arbitration agreement has ceased to have effect, such as revocation by the parties.

The words 'incapable of being performed' would seem to apply to those cases where the arbitration cannot be effectively set into motion. This may happen where the arbitration clauses is too vaguely worded, or other terms of the contract contradict the parties' intention to arbitrator, as in the case of the so-called co-equal forum selection clauses. Even in these cases, the courts interpret the contract provision in favour of arbitration."

21. There is no element of vagueness and uncertainly in Clause 19 of the contract, as regard the intent of the parties to arbitrate in the event of any dispute arising out of the contract. Section 45 of the Arbitration and Conciliation Act, 1996, mandates that a Judicial Authority, when seized of an action in a manner in respect of which the parties have made an agreement referred to Section 44 of the Act of 1996, shall, at the request of one of the party or person claiming to or under the agreement, referred to parties to arbitration is when the Judicial Authority finds that the said agreement is prima facie found to be null and void, inoperative or incapable of being performed. In the present case, the plaintiff has only mentioned that the purported arbitration agreement allegedly entered between the parties is vague, uncertain and incapable of being made certain therefore it is invalid. Clause 19 of the contract contains no ambiguity and clearly evinces the intention of the parties to arbitrate. The question raised by the plaintiff does not fall within the exception under Section 45 of the Act of 1996.

22. In the case of ***Enercon (India) Ltd. and Others (supra),*** the Hon'ble Supreme Court held that:

> *"**97.** This now clears the decks for the crucial question i.e. is the "seat" of arbitration in London or in India. This is necessarily so as the location of the seat will determine the courts that will have exclusive jurisdiction to oversee the arbitration proceedings. Therefore, understandably, much debate has been generated before us on the question whether the use of the phrase "venue shall be in London" actually refers to designation of the seat of arbitration in London.*

> ***133.*** *We also do not find any merit in the submission of Dr Singhvi that the close and the most intimate connection test is wholly irrelevant in this case. It is true that the parties have specified all the three laws. But the Court in these proceedings is required to determine the seat of the arbitration, as the respondents have taken the plea that the term "venue" in the arbitration clause actually makes a reference to the "seat" of the arbitration.*
>
> ***135.*** *In the present case, even though the venue of arbitration proceedings has been fixed in London, it cannot be presumed that the parties have intended the seat to be also in London. In an international commercial arbitration, venue can often be different from the seat of arbitration. In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but this would not bring about a change in the seat of the arbitration. This is precisely the ratio in Braes of Doune. Therefore, in the present case, the seat would remain in India.*

23. In the present case also, the venue of arbitration proceeding has been fixed at Singapore, it cannot be presumed that the parties intended the seat to be also in Singapore. The Supreme Court in the case of ***Encorn (India) Ltd. (Supra)*** already held that in an international commercial arbitration, venue can often be different from the seat of arbitration and in such cases the hearing of the arbitration will be conducted at the venue fixed by the parties but this would not bring about change in the seat of the arbitration.

24. In the case of ***Mankastu Impex Private Ltd. (Supra),*** genre Supreme Court held that:

> *"**19.** The seat of arbitration is a vital aspect of any arbitration proceedings. Significance of the seat of arbitration is that it determines the applicable law when*

deciding the arbitration proceedings and arbitration procedure as well as judicial review over the arbitration award. The situs is not just about where an institution is based or where the hearings will be held. But it is all about which court would have the supervisory power over the arbitration proceedings. In Enercon (India) Ltd. v. Enercon GmbH, the Supreme Court held that : (SCC pp. 43 & 46, paras 97 & 107)

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

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

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

> ***22.*** *As pointed out earlier, Clause 17.2 of MoU stipulates that the dispute arising out of or relating to MoU including the existence, validity, interpretation, breach or termination thereof or any dispute arising out of or relating to it shall be referred to and finally resolved by the arbitration administered in Hong Kong. The words in Clause 17.2 that "arbitration administered in Hong Kong" is an indicia that the seat of arbitration is at Hong Kong. Once the parties have chosen "Hong Kong" as the place of arbitration to be administered in Hong Kong, the laws of Hong Kong would govern the arbitration. The Indian courts have no jurisdiction for appointment of the arbitrator."*

25. As per Clause 19 of the agreement provided that all disputes and differences, whatsoever, arising between the parties in connection with the contract which cannot be settled through the mutual negotiation in good faith, the same shall be settled in accordance with the provisions of the International Arbitration Law and the venue of arbitration shall be Singapore. Whenever there is a designation of a place of arbitration in an arbitration clause as being the *"venue"* of the arbitration proceeding, the expression "*arbitration proceeding*" make it clear that the venue is really the seat of the arbitral proceeding. The language has to be contrasted with the language such as Tribunal are to meet or have witnesses, experts or the parties where only hearing are to take place in the venue which may lead to confusion, other things being equal, that the venue so stated is not the seat of arbitral proceeding, but only a convenient place of meeting. The arbitral proceedings shall be held at a particular venue would also indicate that the parties intended to anchor arbitral proceeding to a particular place, signifying thereby, that the place is the seat of the arbitral proceedings. This,

coupled with there being no other significant contrary indicia that the venue is merely a venue and not the seat of the arbitral proceedings, would then conclusively show that such a clause designates a seat of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be in indicia that the venue so stated would be the seat of the arbitral proceedings.

26. In the case reported in ***(2020) 4 SCC 234 (BGS -vs- NHPC Limited),*** the Hon'ble Supreme Court held that:

> ***"60.*** *The judgments of the English courts have examined the concept of the "juridical seat" of the arbitral proceedings, and have laid down several important tests in order to determine whether the "seat" of the arbitral proceedings has, in fact, been indicated in the agreement between the parties. The judgment of Cooke, J., in Shashoua [Shashoua v. Sharma, states:*
>
> > *"34. London arbitration is a well-known phenomenon which is often chosen by foreign nationals with a different law, such as the law of New York, governing the substantive rights of the parties. This is because of the legislative framework and supervisory powers of the courts here which many parties are keen to adopt. When therefore there is an express designation of the arbitration venue as London and no designation of any alternative place as the seat, combined with a supranational body of rules governing the arbitration and no other significant contrary indicia, the inexorable conclusion is, to my mind, that London is the juridical seat and English Law the curial law. In my judgment it is clear that either London has been designated by the parties to the arbitration agreement as the seat of the arbitration, or, having regard to the parties' agreement and all the relevant circumstances, it is the seat to be determined in accordance*

with the final fall back provision of Section 3 of the Arbitration Act."

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

62. *In Enercon GmbH v. Enercon (India) Ltd., the arbitration clause between the parties read as follows:*

> *"18.3. All proceedings in such arbitration shall be conducted in English. The venue of the arbitration proceedings shall be London. The arbitrators may (but shall not be obliged to) award costs and reasonable expenses (including reasonable fees of counsel) to the party(ies) that substantially prevail on merit. The provisions of the Indian Arbitration and Conciliation Act, 1996 shall apply."*

63. *The Court in Enercon GmbH began its discussion on the "seat" of the arbitration by referring to Shashoua, and then referring to "The Conflict of Laws", Dicey, Morris & Collins, 14th Edn. as follows:*

> *"58. Moreover, as Cooke, J. noted, this conclusion is consistent with the views expressed in The Conflict of Laws, Dicey, Morris & Collins, 14th Edition at ¶16-035 where the authors state that the seat "is in most cases sufficiently indicated by the country chosen as the place of the arbitration. For such a choice of place not to be given effect as a choice of seat, there will need to be clear evidence that the parties … agreed to choose another seat for the arbitration and that such a choice will be effective to endow the courts of that country with jurisdiction to supervise and support the arbitration".*
>
> *59. Apart from the last sentence in Clause 18.3 (i.e. "The provisions of the Indian Arbitration and Conciliation Act, 1996 shall apply"), it seems to me that the conclusion that London is the "seat" of*

any arbitration there-under is beyond any possible doubt. Thus, the main issue is whether this last sentence is to be regarded as "significant contrary indicia" (using the language of Cooke, J.) so as to place the "seat" of the arbitration in India. A similar issue was considered by Saville, J. in Union of India v. McDonnell Douglas [Union of India v. McDonnell Douglas Corpn., (1993) 2 Lloyd's Rep 48] which, of course, pre-dates the English 1996 Act. The arbitration agreement in that case provided as follows:"In the event of a dispute arising out of or in connection with this agreement…the same shall be referred to an Arbitration Tribunal…The arbitration shall be conducted in accordance with the procedure provided in the Indian Arbitration Act of 1940 or any enactment or modification thereof. The arbitration shall be conducted in the English language…The seat of the arbitration proceedings shall be London, United Kingdom." Saville, J. expressed the view that the arguments on both sides were "finely balanced" but in effect concluded that the reference to the Indian Arbitration Act, 1940 did not have the effect of changing the "seat" of the arbitration designated by the parties. Rather, the phrase referring to the 1940 Act was to be reconciled with the rest of the clause by reading it as referring to the internal conduct of the arbitration as opposed to the external supervision of the arbitration by the courts."

64. *The Court in Enercon GmbH then held that although the word "venue" is not synonymous with "seat", on the facts of that case, London — though described as the "venue" — was really the "seat" of the arbitration. This was for the reason that London was a neutral place in which neither party worked for gain, and in which no part of the cause of action arose. It was thus understood to be a neutral place in which the proceedings could be "anchored". Secondly, the Court stressed on the expression "arbitration proceedings" in Clause 18.3, which the Court held to be an expression which included not just one or more individual hearings, but the arbitral proceedings as a whole, culminating in the making of an award. The Court held:*

"63. Second, the language in Clause 18.3 refers to the "arbitration proceedings". That is an expression which includes not just one or more individual or particular hearings but the arbitration

proceedings as a whole including the making of an award. In other words the parties were anchoring the whole arbitration process in London right up to and including the making of an award. The place designated for the making of an award is a designation of seat. Moreover the language in Clause 18.3 does not refer to the venue of all hearings "taking place" in London. Clause 18.3 instead provides that the venue of the arbitration proceedings "shall be" London. This again suggests the parties intended to anchor the arbitration proceedings to and in London rather than simply physically locating the arbitration hearings in London. Indeed in a case where evidence might need to be taken or perhaps more likely inspected in India it would make no commercial sense to construe the provision as mandating all hearings to take place in a physical place as opposed to anchoring the arbitral process to and in a designated place. All agreements including an arbitration agreement should be construed to accord with business common sense. In my view, there is no business common sense to construe the arbitration agreement (as contended for by EIL) in a manner which would simply deprive the arbitrators of an important discretion that they possess to hear evidence in a convenient geographical location.

64. Third, Joseph QC submitted that the last sentence of Clause 18.3 can be reconciled with the choice of London as the seat. First, he submitted that it can be read as referring simply to Part II of the Indian 1996 Act i.e. the enforcement provisions. Edey QC's response was that if that is all the last sentence meant, then it would be superfluous. However, I do not consider that any such superfluity carries much, if any, weight. Alternatively, Joseph QC submitted that it can be read as referring only to those provisions of the Indian 1996 Act which were not inconsistent with the English 1996 Act."

82. *On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more*

individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration."

In the present case in the contract, it is mentioned that the venue of arbitration shall be at Singapore. In view of the judgment of **BGS (supra),** the contract has to be understood that there is no contrary indica in the contract about seat of arbitration.

27. The judgments relied by the respondent/ plaintiff are not applicable in the facts and circumstances of the present case.

28. In view of the above prayer (a) of Notice of Motion is allowed.

29. **G.A. 2 of 2021** is **disposed of**. Consequently, **C.S. No. 109 of 2020** is thus **dismissed**.

(Krishna Rao, J.)