A EITZEN BULK A/S

v.

ASHAPURA MINECHEM LTD. & ANR.

(Civil Appeal No. 5131-33 of 2016)

B MAY 13, 2016

[FAKKIR MOHAMED IBRAHIM KALIFULLA AND S.A. BOBDE, JJ.]

Arbitration and Conciliation Act, 1996 – Part I – Foreign award, C *where arbitration is not held in India and is governed by foreign law – Enforcement – Application of Part I of the Act to the Foreign award – Held: Where the parties choose a juridical seat of Arbitration outside India and provide that the law which governs Arbitration would be a law other than Indian law, Part I of the Act would not have any application – Mere choosing of the juridical seat of* D *Arbitration attracts the law applicable to such location – It would not be necessary to specify which law would apply to the Arbitration proceedings, since the law of the particular country would apply* ipso jure *– On facts, dispute between the parties arising out of contract of affreightment – By arbitration clause, the parties chose* E *to exclude the application of Part I to the Arbitration proceedings between them by choosing London as the venue for Arbitration and by making English law applicable to Arbitration – Thus, the award debtor not entitled to challenge the award by raising objections u/s. 34 before a court in India – Proceedings u/s. 34, dismissed as untenable – Judgment of the High Court enforcing the Foreign* F *Award under Part II of the Act is correct and upheld.*

Disposing of the appeals, the Court

HELD: 1.1 The clause 28, Arbitration Clause in the Contract evinces such an intention by providing that the English Law would apply to the Arbitration. The clause expressly provides that Indian G **Law or any other law would not apply by positing that English Law would apply. The intention is that English Law would apply to the resolution of any dispute arising under the law. This means that English Law would apply to the conduct of the Arbitration. It must also follow that any objection to the conduct of the Arbitration**

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or the Award would also be governed by English Law. Clearly, this implies that the challenge to the Award must be in accordance with English Law. There is thus an express exclusion of the applicability of Part I to the instant Arbitration by Clause 28. In fact, Clause 28 deals with not only the seat of Arbitration but also provides that there shall be two Arbitrators, one appointed by the charterers and one by the owners and they shall appoint an Umpire, in case there is no agreement. It may be noted that the Arbitration and Conciliation Act, 1996 makes no provision for Umpires and the intention is clearly to refer to an Umpire contemplated by Section 21 of the English Arbitration Act, 1996. It is thus, clear that the intention is that the Arbitration should be conducted under the English law, i.e. the English Arbitration Act, 1996. It may also be noted that Sections 67, 68 and 69 of the English Arbitration Act provide for challenge to an Award on grounds stated therein. The intention is thus, clearly to exclude the applicability of Part I to the instant Arbitration proceedings. [Para 27] [643-B-E]

1.2 By Clause 28, the parties chose to exclude the application of Part I to the Arbitration proceedings between them by choosing London as the venue for Arbitration and by making English law applicable to Arbitration. It is well settled that where the parties choose a juridical seat of Arbitration outside India and provide that the law which governs Arbitration will be a law other than Indian law, part I of the Act would not have any application and, therefore, the award debtor would not be entitled to challenge the award by raising objections under Section 34 before a Court in India. A Court in India could not have jurisdiction to entertain such objections under Section 34 in such a case. The mere choosing of the juridical seat of Arbitration attracts the law applicable to such location. In other words it would not be necessary to specify which law would apply to the Arbitration proceedings, since the law of the particular country would apply *ipso jure*. [Paras 32, 33] [647-C-E]

1.3 The judgment of the Gujarat High Court holding that award debtor's objections under Section 34 of the Act are tenable before a Court in India that is the Court in Gujarat is contrary to law. The proceedings under Section 34, which occurs in Part I,

A **are dismissed as untenable. The judgment of the Bombay High Court enforcing the Foreign Award under Part II of the Arbitration Act is correct and upheld. [Para 34] [648-D-E]**

Bhatia International v. Bulk Trading S.A. and another **2002 (2) SCR 411:(2002) 4 SCC 105;** *Union of India* B *v. Reliance Industries Limited and others* **2015 (10) SCR 85:(2015) 10 SCC 213;** *Harmony Innovation Shipping Limited v. Gupta Coal India Limited and another* **2015 (2) SCR 697:(2015) 9 SCC 172;** *Balco v. Kaiser Aluminium Technical Services Inc.* **2012 (12) SCR 327:(2012) 9 SCC 552;** *Reliance Industries Limited and* C *another v. Union of India* **2014 (6) SCR 456 : 2014 (7) SCC 603 – referred to.**

Case Law Reference

2002 (2) SCR 411	**referred to**	**Para 25**
D **2015 (10) SCR 85**	**referred to**	**Para 25**
2015 (2) SCR 697	**referred to**	**Para 25**
2012 (12) SCR 327	**referred to**	**Para 25**
2014 (6) SCR 456	**referred to**	**Para 28**

E CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5131-33 OF 2016.

From the Judgment and Order dated 22.09.2010 of the High Court of Gujarat at Ahmedabad in SCA No. 12021/2009, 22.09.2010 in LPA No. 2469/2009, 22.09.2010 in CA No. 13324/2009.

F WITH

C. A. Nos. 5136, 5134-35 of 2016

CC Nos. 3266 and 3382 of 2013

G Siddharth Dave, Ms. Jemtiben Ao, Senthil Jagadeesan, E. C. Agrawala, Ms. Jyoti Mendiratta for the appearing parties.

The Judgment of the Court was delivered by

S. A. BOBDE, J. 1. Leave granted in SLP (C) Nos.2210-2212/2011, SLP (C) Nos.3959/2012 and SLP (C) No.7562-7563/2016.

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2. The dispute in these appeals, arises out of the Contract of Affreightment dated 18.1.2008 (hereinafter referred as 'the Contract'). Eitzen Bulk A/S of Denmark (hereinafter referred to as 'Eitzen') entered into the contract with Ashapura Minechem Limited of Mumbai (hereinafter referred to as 'Ashapura') as charterers for shipment of bauxite from India to China. The Charter party contains an Arbitration Clause as follows:-

"Clause No. 28

Any dispute arising under this C.O.A. is to be settled and referred to Arbitration in London. One Arbitrator to be employed by the Charterers and one by the Owners and in case they shall not agree then shall appoint an Umpire whose decision shall be final and binding, the Arbitrators and Umpire to be Commercial Shipping Men. English Law to apply. Notwithstanding anything to the contrary agreed in the C.O.A., all disputes where the amount involved is less then USD 50,000/- (fifty thousand) the Arbitration shall be conducted in accordance with the Small Claims Procedure of the L.M.A.A."

(emphasis supplied)

3. Disputes having arisen between the parties, the matter was referred to Arbitration by a sole Arbitrator. The Arbitration was held in London according to English Law. Ashapura Minechem was held liable and directed to pay a sum of 36,306,104 US$ together with compound interest at the rate of 3.75 % per annum. In addition they were directed to pay 74,135 US$ together with compound interest at the rate of 3.75% per annum and another sum of 90,233.66 Pounds together with compound interest at the rate of 2.5% per annum vide Award of the Sole Arbitrator dated 26.5.2009.

Proceedings in Gujarat

4. Before Arbitration had commenced, Ashapura filed a suit alongwith an application for injunction before the Civil Judge at Jamkhambalia, Gujarat praying inter-alia that the Contract and the Arbitration Clause contained therein was illegal, null and void, ab-initio. Though initially an interim injunction was granted, the learned Civil Judge dismissed the suit for want of jurisdiction vide order dated 12.1.2009. The appeal filed by Ashapura before the Gujarat High Court was dismissed as

withdrawn on 2.7.2009.

5. In London, Mr. Tim Marshal, who was appointed as Arbitrator, held that Ashapura was in repudiatory breach and awarded Eitzen Bulk an amount of 36,306,104.00 $ plus interest, as stated above.

6. Having failed to stall the Arbitration and then having failed in the Arbitration proceedings, Ashapura resorted to Section 34 of the Arbitration Act and filed objections in India in respect of the Award passed in London. These proceedings were filed before the District Judge, Jamnagar for setting aside the Foreign Award made in London. A Misc. Civil Application No. 101/2009 for injunction restricting Eitzen Bulk from enforcing the Award in foreign jurisdictions outside India was also moved. The District Judge, Jamnagar on 24.8.2009 dismissed the application for injunction seeking restraint on enforcement of the Award.

7. From 14.7.2009 to 3.8.2009 Eitzen applied for enforcement of the Award in the countries of Netherlands, USA, Belgium, UK. The Courts in various jurisdictions have held the Award to be enforceable as a judgment of the Court.

8. On 14th July, 2009, the appellant filed proceedings in Netherlands Court seeking a declaration that the award dated 26th May, 2009 is enforceable as a judgment of the Court. The respondent appeared in the said proceedings and filed their objections. The Netherlands Court, however, declared that the award is enforceable as a judgment of the Court on 17th March, 2010.

9. On 24th July, 2009, the United States District Court for Southern State of New York declared the award dated 26th May, 2009 enforceable as a judgment of that court. The proceedings filed by the appellant were contested by the respondent.

10. On 27th July, 2009, the appellant filed present proceedings under Sections 47 to 49 of Part II of the Arbitration Act for enforcing the award dated 26th May, 2009 on the ground that the respondent was carrying on business within the jurisdiction of this Court and has its registered office and corporate office and assets within the territorial jurisdiction of this Court.

11. On 29th July, 2009, the Antwerp Court declared the award dated 26th May, 2009 enforceable as a judgment of the Court. The said proceedings were contested by the respondent. On 3rd August, 2009,

the English High Court declared the award dated 26th May, 2009 enforceable as a judgment of the Court.

12. Against the rejection of the application for injunction Ashapura filed a petition under Articles 226 and 227 of the Constitution of India before the High Court of Gujarat at Ahmadabad for a Writ of Certiorari to quash and set aside the Order dated 24.8.2009 rendered by the District Judge, Jam-Khambalia and for a direction not to enforce the execution of the judgment dated 24.7.2009. Ashapura inter-alia contended that the Award cannot be enforced or executed since their objections under Section 34 were pending. A learned Single Judge who heard the petition however, observed that the issues before him were inextricably connected with the issues of jurisdiction of the Court in the Section 34 application and the contentions of Eitzen opposing the said Section 34 application. The Single Judge, therefore, set aside the Order dated 24.8.2009 and remanded the matter for fresh decision in accordance with law by Order dated 3.9.2009. In Letters Patent Appeal filed by Eitzen the Division Bench of the High Court of Gujarat directed the District Judge to consider all contentions by its Order dated 29.10.2009.

13. Eitzen however questioned the very jurisdiction of a Court in India to decide objections under Section 34 of the Arbitration Act in respect of a Foreign Award by way of a Writ Petition. They prayed for issue of a Writ of Prohibition and an Order restraining the learned District Judge at Jam-Khambhalia from adjudicating Ashapura's application under Section 34 of the Arbitration and Conciliation Act, 1996 against the Foreign Award dated 26.5.2009.

14. A learned Single Judge issued notice and stayed further proceedings before the Jamnagar Court on 20.11.2009. Ashapura however filed LPA No. 2469 of 2009 challenging the Order of the learned Single Judge dated 20.11.2009. The Division Bench which heard the appeal has held by Judgment and Order dated 22.9.2010, that Ashapura is entitled to challenge the Foreign Award under Section 34 of Part I of the Arbitration Act. It has further held that the territorial jurisdiction is a mixed question of fact and law and is required to be decided by the Trial Court on the basis of the Plaint and Written Statement and Evidence before it. This judgment was questioned by way of SLP (C) Nos. 2210-2212 of 2011 filed by Eitzen.

Proceedings in Maharashtra

15. On 27.7.2009, Eitzen filed Arbitration Petition No. 561/2009

A under Sections 47 to 49 of the Arbitration Act for enforcing the Foreign Award in the Bombay High Court, within whose jurisdiction Ashapura carries on business and has a registered office. The Award was also received by Ashapura within the jurisdiction of the Bombay High Court. This petition for enforcement was filed on the basis that Part I of the B Arbitration Act has no application to a Foreign Award made in London under English Law. The petition for enforcement of a Foreign Award was accompanied by Notice of Motion No. 3143 of 2009 under Section 49 (3) of the Arbitration Act for securing their claim under the ex-parte Award dated 26.5.2009.

C 16. The learned Single Judge held that since the parties had agreed that the juridical seat of the Arbitration in this case would be at London and English Law would apply there was an express and in any case an implied, exclusion of Part I of the Arbitration Act.

17. Ashapura filed Notice of Motion No. 3975 of 2009 claiming that since proceedings had already been initiated under Part I before the D Gujarat High Court, the Bombay High Court had no jurisdiction in the matter by virtue of Section 42 of the Arbitration Act. A learned Single Judge of the Bombay High Court vide order dated 05.10.2011 dismissed the Notice of Motion and held that Part I of the Arbitration Act was excluded by the parties and therefore Section 42, which occurs in Part I, E had no application to the present case. The learned Single Judge also directed that the petition be heard on merits. This decision is questioned by Ashapura in SLP (C) No. 3959 of 2012.

18. The learned Single Judge of the Bombay High Court has allowed Arbitration Petition No. 561 of 2009 of Eitzen for enforcing the Foreign F Award dated 26.5.2009.

19. As a preliminary objection, it was contented before the Bombay High Court that this Court had passed an Order on 27.2.2012 ordering status quo on further proceedings and, therefore, the Hon'ble Court ought not to proceed in the matter. That this Order was to operate upto G 16.4.2012 and was thereafter extended till 22.8.2012. The High Court rejected this contention on the ground that the Order of status quo had not been extended. We have examined the matter and find that there was no Order of this Court restraining the High Court from hearing the matter in October, 2015.

H 20. The High Court has also rejected the contention of Ashapura

under Section 42[1] of the Arbitration Act, rightly; that since an application under Section 34 of the Arbitration Act, which is an application contemplated by Part I of the Arbitration Act, has been made before the Court in Gujarat and that Court alone has jurisdiction over the Arbitration proceedings and all subsequent applications must be made to that Court alone. This contention was rejected by the High Court on the ground that Section 42 occurs in Part I of the Arbitration Act and in its view since Part I itself had no application to the Foreign Award, Section 42 would have no application either. The moot question thus arises is whether Part I of the Arbitration Act has any application to the Foreign Award in this case where the proceedings were held in London and the Arbitration was governed by English Law.

Before this Court

21. We thus have, on the one hand, the decision of the Gujarat High Court holding that a Court in India has jurisdiction under Section 34 to decide objections raised in respect of a Foreign Award because Part I of the Arbitration Act is not excluded from operation in respect of a Foreign Award and on the other, a decision of the Bombay High Court holding that Part I is excluded from operation in case of a Foreign Award and thereupon directing enforcement of the Award. The decisions of the Gujarat High Court are questioned by Eitzen by way of SLP (C) Nos.2210-2212/2011. The decisions of the Bombay High Court are questioned by Ashapura by way of SLP (C) Nos.7562-7563/2016. Interim order dated 05.10.2011 passed by the High Court of Judicature at Bombay in Notice of Motion No. 3975 of 2009 in Arbitration Petition No. 561 of 2009 is under challenge in appeal arising out of SLP (C) No. 3959 of 2012.

22. Apparently Ashapura had a similar dispute with Armada (Singapore) Pvt. Ltd. Armada had, similarly filed an application for enforcement of the foreign award in its favour under Section 42 of the Arbitration Act being Arbitration Petition Nos.1359 and 1360 of 2010 before the Bombay High Court. Ashapura has raised similar objection to the enforcement of the Foreign Award by way of Notice of Motion. By

[1] Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

A Notices of Motion Nos. 2390 and 2444 of 2012 Ashapura had contended that the Bombay High Court cannot entertain the application in view of the Section 42 of the Arbitration Act. Both these Notices of Motion were dismissed by the learned Single Judge of the Bombay High Court. Ashapura has challenged the said dismissal by way of filing SLP Nos.....of 2016 [CC Nos.3266 and 3382 of 2013] before this Court.
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23. It may be noted at the outset that since proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, the SICA Act) are pending before the Board for Industrial and Financial Reconstruction (BIFR), though the Bombay High Court has ordered execution of the Award, it has held that Eitzen would not be entitled to
C take any step in execution of the Award or seek any relief in violation of Section 22 of the SICA Act without permission from the BIFR.

The main question

24. Thus, the main question on which contentions were advanced
D by the learned counsel for the parties is whether Part I of the Arbitration Act is excluded from its operation in case of a Foreign Award where the Arbitration is not held in India and is governed by foreign law.

25. Shri Prashant S. Pratap, learned senior counsel appearing for Eitzen submitted that the main issue is covered by a decision of this
E Court in **Bhatia International v. Bulk Trading S.A. and another**[2] and two recent decisions of this Court in **Union of India v. Reliance Industries Limited and others**[3] and **Harmony Innovation Shipping Limited v. Gupta Coal India Limited and another**[4]. We have not considered the decision in the **Balco v. Kaiser Aluminium Technical Services Inc.**[5] since the decision in that case does not govern Arbitration
F agreements entered prior to 6.9.2012 and the contract in the instant case is dated 18.1.2008.

26. According to the learned counsel, Clause 28, which is the Arbitration Clause in the Contract, clearly stipulates that any dispute under the Contract "is to be settled and referred to Arbitration in London".
G It further stipulates that English Law to apply. The parties have thus clearly intended that the Arbitration will be conducted in accordance

[2] (2002) 4 SCC 105
[3] (2015) 10 SCC 213
[4] (2015) 9 SCC 172
H [5] (2012) 9 SCC 552

with English Law and the seat of the Arbitration will be at London. A

27. The question is whether the above stipulations show the intention of the parties to expressly or impliedly exclude the provisions of Part I to the Arbitration, which was to be held outside India, i.e., in London. We think that the clause evinces such an intention by providing that the English Law will apply to the Arbitration. The clause expressly provides that B Indian Law or any other law will not apply by positing that English Law will apply. The intention is that English Law will apply to the resolution of any dispute arising under the law. This means that English Law will apply to the conduct of the Arbitration. It must also follow that any objection to the conduct of the Arbitration or the Award will also be C governed by English Law. Clearly, this implies that the challenge to the Award must be in accordance with English Law. There is thus an express exclusion of the applicability of Part I to the instant Arbitration by Clause 28. In fact, Clause 28 deals with not only the seat of Arbitration but also provides that there shall be two Arbitrators, one appointed by the charterers and one by the owners and they shall appoint an Umpire, D in case there is no agreement. In this context, it may be noted that the Indian Arbitration and Conciliation Act, 1996 makes no provision for Umpires and the intention is clearly to refer to an Umpire contemplated by Section 21 of the English Arbitration Act, 1996. It is thus clear that the intention is that the Arbitration should be conducted under the English law, i.e. the English Arbitration Act, 1996. It may also be noted that E Sections 67, 68 and 69 of the English Arbitration Act provide for challenge to an Award on grounds stated therein. The intention is thus clearly to exclude the applicability of Part I to the instant Arbitration proceedings.

28. This is a case where two factors exclude the operation of Part I of the Arbitration Act. Firstly, the seat of Arbitration which is in London F and secondly the clause that English Law will apply. In fact, such a situation has been held to exclude the applicability of Part I in a case where a similar clause governed the Arbitration. In **Reliance Industries Limited and another v. Union of India**[6], this Court referred to judgments of some other jurisdictions and observed in paragraphs 55 to G 57 as follows:-

> ***"55.*** *The effect of choice of seat of arbitration was considered by the Court of Appeal in C v. D. This judgment has been*

[6] 2014 (7) SCC 603 H

A *specifically approved by this Court in Balco and reiterated in Enercon. In C v. D, the Court of Appeal has observed: (Bus LR p. 851, para 16)*

"Primary conclusion

B *16. I shall deal with Mr Hirst's arguments in due course but, in my judgment, they fail to grapple with the central point at issue which is whether or not, by choosing London as the seat of the arbitration, the parties must be taken to have agreed that proceedings on the award should be only those permitted by English law. In my view they must be taken to have so* C *agreed for the reasons given by the Judge. The whole purpose of the balance achieved by the Bermuda form (English arbitration but applying New York law to issues arising under the policy) is that judicial remedies in respect of the award should be those permitted by English law and only those so permitted. Mr Hirst could not say (and did not say) that English* D *judicial remedies for lack of jurisdiction on procedural irregularities under Sections 67 and 68 of the 1996 Act were not permitted; he was reduced to saying that New York judicial remedies were also permitted. That, however, would be a recipe for litigation and (what is worse) confusion which cannot* E *have been intended by the parties. No doubt New York law has its own judicial remedies for want of jurisdiction and serious irregularity but it could scarcely be supposed that a party aggrieved by one part of an award could proceed in one jurisdiction and a party aggrieved by another part of an* F *award could proceed in another jurisdiction. Similarly, in the case of a single complaint about an award, it could not be supposed that the aggrieved party could complain in one jurisdiction and the satisfied party be entitled to ask the other jurisdiction to declare its satisfaction with the award. There would be a serious risk of parties rushing to get the first* G *judgment or of conflicting decisions which the parties cannot have contemplated."*

56. *The aforesaid observations in C v. D were subsequently followed by the High Court of Justice, Queen's Bench Division, Commercial Court (England) in Sulamerica Cia Nacional de* H *Seguros SA v. Enesa Engelharia SA — Enesa. In laying down*

the same proposition, the High Court noticed that the issue in that case depended upon the weight to be given to the provision in Condition 12 of the insurance policy that "the seat of the arbitration shall be London, England". It was observed that this necessarily carried with it the English Court's supervisory jurisdiction over the arbitration process. It was observed that:

"this follows from the express terms of the Arbitration Act, 1996 and, in particular, the provisions of Section 2 which provide that Part I of the Arbitration Act, 1996 applies where the seat of the arbitration is in England and Wales or Northern Ireland. This immediately establishes a strong connection between the arbitration agreement itself and the law of England. It is for this reason that recent authorities have laid stress upon the locations of the seat of the arbitration as an important factor in determining the proper law of the arbitration agreement."

57. In our opinion, these observations in Sulamerica case are fully applicable to the facts and circumstances of this case. The conclusion reached by the High Court would lead to the chaotic situation where the parties would be left rushing between India and England for redressal of their grievances. The provisions of Part I of the Arbitration Act, 1996 (Indian) are necessarily excluded; being wholly inconsistent with the arbitration agreement which provides "that arbitration agreement shall be governed by English law". Thus the remedy for the respondent to challenge any award rendered in the arbitration proceedings would lie under the relevant provisions contained in the Arbitration Act, 1996 of England and Wales. Whether or not such an application would now be entertained by the courts in England is not for us to examine, it would have to be examined by the court of competent jurisdiction in England."

29. We are in agreement with the above observation and in this clause 28 in the present case must be intended to have a similar effect that is to exclude the applicability of Part I of the Indian Arbitration and Conciliation Act since the parties have chosen London as the seat of Arbitration and further provided that the Arbitration shall be governed by English Law. In this case the losing side has relentlessly resorted to

A apparent remedies for stalling the execution of the Award and in fact even attempted to prevent Arbitration. This case has become typical of cases where even the fruits of Arbitration are interminably delayed. Even though it has been settled law for quite some time that Part I is excluded where parties choose that the seat of Arbitration is outside
B India and the Arbitration should be governed by the law of a foreign country.

30. Mr. Divan attempted to persuade us to accept the possibility that Part I is not excluded and in any case not wholly excluded in such a case, but the law is too well settled and with good reasons, for us to take any other view. We do not wish to endorse "a recipe for litigation and
C (what is worse) confusion"[7].

31. When the judgment in Reliance was sought to be indirectly reviewed in another case under the same agreement and between the same parties, this Court reiterated its earlier view and observed in **Union of India v. Reliance Industries Limited and others** in para 18 as
D follows:-

> *"18. It is important to note that in para 32 of Bhatia International itself this Court has held that Part I of the Arbitration Act, 1996 will not apply if it has been excluded either expressly or by necessary implication. Several*
> E *judgments of this Court have held that Part I is excluded by necessary implication if it is found that on the facts of a case either the juridical seat of the arbitration is outside India or the law governing the arbitration agreement is a law other than Indian law. This is now well settled by a series of decisions*
> F *of this Court [see Videocon Industries Ltd. v. Union of India, Dozco India (P) Ltd. v. Doosan Infracore Co. Ltd., Yograj Infrastructure Ltd. v. Ssang Yong Engg. and Construction Co. Ltd., the very judgment in this case reported in Reliance Industries Ltd. v. Union of India and a recent judgment in Harmony Innovation Shipping Ltd. v. Gupta Coal India*
> G *Ltd.]."*

We see no reason to take a different view. In Bhatia International's case, this Court concluded as follows:

> *"To conclude, we hold that the provisions of Part I would*

H [7] C vs. D (2008 Bus LR 843)

apply to all arbitrations and to all proceedings relating thereto. Where such arbitration is held in India 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 provision, in Part I, which is contrary to or excluded by that law or rules will not apply."

32. We are thus of the view that by Clause 28, the parties chose to exclude the application of Part I to the Arbitration proceedings between them by choosing London as the venue for Arbitration and by making English law applicable to Arbitration, as observed earlier. It is too well settled by now that where the parties choose a juridical seat of Arbitration outside India and provide that the law which governs Arbitration will be a law other than Indian law, part 1 of the Act would not have any application and, therefore, the award debtor would not be entitled to challenge the award by raising objections under Section 34 before a Court in India. A Court in India could not have jurisdiction to entertain such objections under Section 34 in such a case.

33. As a matter of fact the mere choosing of the juridical seat of Arbitration attracts the law applicable to such location. In other words it would not be necessary to specify which law would apply to the Arbitration proceedings, since the law of the particular country would apply *ipso jure*. The following passage from *Redfern and Hunter on International Arbitration* contains the following explication of the issue:-

"It is also sometimes said that parties have selected the procedural law that will govern their arbitration, by providing for arbitration in a particular country. This is too elliptical and, as an English court itself held more recently in Breas of Doune Wind Farm it does not always hold true. What the parties have done is to choose a place of arbitration in a particular country. That choice brings with it submission to the laws of that country, including any mandatory provisions of its law on arbitration. To say that the parties have 'chosen' that particular law to govern the arbitration is rather like saying that an English woman who takes her car to France

A *has 'chosen' French traffic law, which will oblige her to drive on the right-hand side of the road, to give priority to vehicles approaching from the right, and generally to obey traffic laws to which she may not be accustomed. But it would be an odd use of language to say this notional motorist had opted for 'French traffic law'. What she has done is to choose to go to France. The applicability of French law then follows automatically. It is not a matter of choice.*

Parties may well choose a particular place of arbitration precisely because its lex arbitri is one which they find attractive. Nevertheless, once a place of arbitration has been chosen, it brings with it its own law. If that law contains provisions that are mandatory so far as arbitration are concerned, those provisions must be obeyed. It is not a matter of choice any more than the notional motorist is free to choose which local traffic laws to obey and which to disregard."

D 34. In this view of the matter, the judgment of the Gujarat High Court holding that Ashapura's objections under Section 34 of the Arbitration Act are tenable before a Court in India that is the Court at Jam-Khambalia, Gujarat is contrary to law. The proceedings under Section 34, which occurs in Part I, are liable to be dismissed as untenable. E The Civil Appeals of Eitzen are liable to succeed and are, therefore, allowed. The judgment of the Bombay High Court dated 03.12.2015 enforcing the Foreign Award under Part II of the Arbitration Act is correct and liable to be upheld.

35. In view of the above findings, appeals filed by Eitzen Bulk A/S, F arising out of SLP (C) Nos. 2210-2212 of 2011 are allowed; appeals filed by Ashapura Minechem Ltd., arising out of SLP (C) Nos. 7562-7563 of 2016 are dismissed; appeal arising out of SLP (C) No. 3959 of 2012 (filed by Ashapura Minechem Ltd.) is dismissed.

36. Permission to file SLP (C) No....of 2016 [CC No. 3266 of G 2013 - filed by Ashapura Minechem Ltd.] and SLP (C) No....of 2016 [CC No. 3382 of 2013 - filed by Ashapura Minechem Ltd.] is rejected. No costs.

Nidhi Jain Appeals disposed of.