IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2025

Pronounced on : 22.09.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P. (Com.Div.) Nos.285, 452 & 453 of 2024
and
A.Nos.3748, 3749, 3750, 3752, 3754, 4969, 5209, 5211 to 5213, 5215, 5216, 5563, 5565, 5569, 5571, 5607, 6056 & 6059 of 2024, 161, 2563 & 2566 of 2025
and
O.A. Nos.501 to 503, 815 & 816 of 2024

Arb.O.P. (Com.Div.) No.285 of 2024:

PI OPPORTUNITIES FUND - I,
Having its address at #134, Doddakannelli,
Next to Wipro Corporate Office, Sarjapur Road,
Bangalore, Karnataka - 560 035.
Rep. by its autorized signatory
Mr. Vardaan Ahluwalia ... Petitioner

Vs.

1. FINANCIAL SOFTWARE AND SYSTEMS PVT. LTD.,
A Company registered under the Companies Act, 1956,
Having its address at "Saradha",
Ground Floor No.42, Third Main Road,
Gandhi Nagar, Adyar, Chennai, Tamil Nadu - 600 020,
Rep. by its Directors.

2. NAGARAJ V. MYLANDLA
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020.

3. SHARADA MYLANDLA,
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020.

4. RUDHRAAPATHY J
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020.

5. FSS Employees' Welfare Trust,
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020. ... Respondents

Prayer: This Petitions is filed under Sections 47 to 49 of the Arbitration and Conciliation Act, seeking for the following reliefs:

a. Declare that the Final Award dated 05.07.2024, passed in SIAC Arbitration No. 098 of 2022 under the SIAC Rules by the Arbitral Tribunal comprising Ms Koh Swee Yen SC (Presiding Arbitrator), Mr David Joseph KC and Mr Ramakrishnan Viraraghavan SC is enforceable in accordance with Sections 47 and 49 of the Act and deem it to be a decree of this Hon'ble Court;

b. Direct Respondent Nos. 2 and 3 to jointly and severally pay an amount of INR 6,614,000,000 as damages, together with interest at 5.33% p.a. from the date of the Final Award until the date of the full and final payment;

c. Direct respondent Nos.2 and 3 to jointly and severally pay pre-

award interest on the damages amounting to INR 1.063,373,551 together with interest at 5.33% p.a. from the date of the Final award until the date of the full and final payment;

d. Direct Respondent Nos. 2 and 3 to jointly and severally pay the costs amounting to INR 48,834,947.03 + SGD 757,693.22 equivalent to INR 46,795,133.3 (converted at the rate of 61.76 per SGD as on 5 July 2024) + GBP 32,044.39 equivalent to INR 3,412,365.56 (converted at the rate of 106.49 per GBP as on 5 July 2024) + USD 128,418.54 equivalent to INR 10,723,719 (converted at the rate of 83.50 per USD as on 5 July 2024) together with interest at 5.33% p.a. from the date of the Final Award until the date of the full and final payment;

e. Direct the Respondents to render full cooperation with respect to any Strategic Sale to be implemented by the Petitioner;

f. Direct Respondent Nos. 2 to 5 to sell their shares pursuant to a Strategic Sale as implemented by the Petitioner and to distribute the proceeds in accordance with Annexure 12 of SASHA;

g. costs for the present petition in favour of the Petitioner.

For Petitioner : Mr.Vijay Narayanan, SC

Assisted by
Anuj Berry
Shalaka Patil
Shilpa Singh Sengar
Harash Khanchandani
For P. Giridharan
H. Siddarth
M. Karthik

For Respondents : Mr T.K Bhaskar

for Fox Mandal & Associates
Assisted By A Revanth
S. Aravindan
K. Yugantara
Counsel for Respondent 1

Nishanth Kadur
Ashish Kabra
Ansh Desai
For P. Rajkumar Jhabakh
Counsel for Respondent 2

Anirudh Krishnan
Adarsh Subramanian
Anuraag Rajagopalan
S.Nivethithaa
Counsel for Respondent 3

S. Eshwar
M/s Aanchal M Nichani
Counsel for Respondent 4

S.S Rajesh
Counsel for Respondent 5

Arb.O.P. (Com.Div.) No.452 of 2024:

MILLENNA FVCI LTD.
Having its address at Apex House, Bank Street,
28, Cybercity, Ebene 72201, Mauritius,
Rep. by its authorized signatory / Power of Attorney,
Mr. Srinivasan Balaraman ... Petitioner

Vs.

1. FINANCIAL SOFTWARE AND SYSTEMS PVT. LTD.,
A Company registered under the Companies Act, 1956,
Having its address at "Saradha",

Ground Floor No.42, Third Main Road,
Gandhi Nagar, Adyar, Chennai, Tamil Nadu - 600 020,
Rep. by its Directors.

2. NAGARAJ V. MYLANDLA
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020.

3. SHARADA MYLANDLA,
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020.

4. RUDHRAAPATHY J
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020.

5. FSS Employees' Welfare Trust,
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020. ... Respondents

Prayer: Petitions filed under Sections 47 to 49 of the Arbitration and Conciliation Act, seeking for the following reliefs:

a. Declare that the Final Award dated 05.07.2024, passed in SIAC Arbitration No. 098 of 2022 under the SIAC Rules by the Arbitral Tribunal comprising Ms Koh Swee Yen SC (Presiding Arbitrator), Mr David Joseph KC and Mr Ramakrishnan Viraraghavan SC is enforceable in accordance with Sections 47 and 49 of the Act and deem it to be a decree of this Hon'ble Court;

b. Direct Respondent Nos. 2 and 3 to jointly and severally pay an amount of INR 2,804,000,000 as damages, together with interest at

5.33% p.a. from the date of the Final Award until the date of the full and final payment;

c. Direct respondent Nos.2 and 3 to jointly and severally pay pre-award interest on the damages amounting to INR 450,816,364.93 together with interest at 5.33% p.a. from the date of the Final award until the date of the full and final payment;

d. Direct Respondent Nos. 2 and 3 to jointly and severally pay the costs amounting to INR 130,000 + SGD 300,614.78 + GBP 35,092.94 + USD 511,154.87 together with interest at 5.33% p.a. from the date of the Final Award until the date of the full and final payment;

e. Direct the Respondents 1 to 5 to render full cooperation with respect to any Strategic Sale to be implemented by the Petitioner;

f. Direct Respondent Nos. 2 to 5 to sell their shares pursuant to a Strategic Sale as implemented by the Petitioner and to distribute the proceeds in accordance with Annexure 12 of SASHA;

g. costs for the present petition in favour of the Petitioner.

For Petitioner : Mr.Srinath Sridevan, SC
for Suhrith Parthasarathy
Amrutha Sathyajith
G Gayathri
Simran Jalan

For Respondents : Mr T.K Bhaskar
for Fox Mandal & Associates
Assisted By A Revanth
S. Aravindan
K. Yugamtara
Counsel for Respondent 1
Nishanth Kadur
Ashish Kabra
Ansh Desai

For P. Rajkumar Jhabakh
Counsel for Respondent 2
Anirudh Krishnan
Adarsh Subramanian
Anuraag Rajagopalan
S.Nivethithaa
Counsel for Respondent 3
S. Eshwar
M/s Aanchal M Nichani
Counsel for Respondent 4
S.S Rajesh
Counsel for Respondent 5

Mr.Rahul M.Shankar
for R6 & R7 in A.No.161/25

Arb.O.P. (Com.Div.) No.453 of 2024:

1. NYLIM Jacob Ballas India (FVCI) III LLC,
A Company registered under the laws of Mauritius,
Having its registered address at 4th Floor,
Ebene Heights, 34 Cybercity, Ebene,
Republic of Mauritius - 72201,
Rep. by its Power of Attorney Holder,
Mr. Yogesh Gulati

2. NYLIM Jacob Ballas India Fund III LLC,
A Company registered under the laws of Mauritius,
Having its registered address at 4th Floor,
Ebene Heights, 34 Cybercity, Ebene,
Republic of Mauritius - 72201,
Rep. by its Power of Attorney Holder,
Mr. Yogesh Gulati ... Petitioners

Vs.

1. FINANCIAL SOFTWARE AND SYSTEMS PVT. LTD.,
A Company registered under the Companies Act, 1956,
Having its address at "Saradha",

Ground Floor No.42, Third Main Road,
Gandhi Nagar, Adyar, Chennai, Tamil Nadu - 600 020,
Rep. by its Directors.

2. NAGARAJ V. MYLANDLA
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020.

3. SHARADA MYLANDLA,
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020.
4. RUDHRAAPATHY J
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020.

5. FSS Employees' Welfare Trust,
Having residence at "Saradha" Ground Floor No.42,
Third Main Road, Gandhi Nagar,
Adyar, Chennai, Tamil Nadu - 600 020. ... Respondents

Prayer: Petitions filed under Section 47 to 49 of the Arbitration and Conciliation Act, seeking for the following reliefs:

a. Declare that the Final Award dated 05.07.2024, passed in SIAC Arbitration No. 098 of 2022 under the SIAC Rules by the Arbitral Tribunal comprising Ms Koh Swee Yen SC (Presiding Arbitrator), Mr David Joseph KC and Mr Ramakrishnan Viraraghavan SC is enforceable in accordance with Sections 47 and 49 of the Act and deem it to be a decree of this Hon'ble Court;

b. Direct Respondent Nos. 2 and 3 to jointly and severally pay an amount of INR 1870,000,000 as damages, together with interest at 5.33% p.a. from the date of the Final Award until the date of the full and final

payment;

c. Direct respondent Nos.2 and 3 to jointly and severally pay pre-award interest on the damages amounting to INR 30,06,51,427.39 together with interest at 5.33% p.a. from the date of the Final award until the date of the full and final payment;

d. Direct Respondent Nos. 2 and 3 to jointly and severally pay the costs amounting to INR 3,576,791 + SGD 202,862.297 equivalent to INR 12,528,775.5 (converted at the rate of 61.76 per SGD as on 5 July, 2024) + GBP 33,193.456 equivalent to INR 3,534,771.13 (converted at the rate of 106.49 per GBP as on 5th July, 2024) + USD 323,860 equivalent to INR 27,042,342.7 (converted at the rate of 83.50 per USD as on 5th July 2024) together with interest at 5.33% p.a. from the date of the Final Award until the date of the full and final payment;

e. Direct the Respondents to render full cooperation with respect to any Strategic Sale to be implemented by the Investors;

f. Direct Respondent Nos. 2 to 5 to sell their shares pursuant to a Strategic Sale as implemented by the Petitioner and to distribute the proceeds in accordance with Annexure 12 of SASHA;

g. costs for the present petition in favour of the Petitioner.

For Petitioners : Mr.Adarsh Ramanujan

For Respondents : Mr T.K Bhaskar
for Fox Mandal & Associates
Assisted By A Revanth
S. Aravindan
K. Yugamtara
Counsel for Respondent 1

Nishanth Kadur
Ashish Kabra
Ansh Desai
For P. Rajkumar Jhabakh
Counsel for Respondent 2

Anirudh Krishnan
Adarsh Subramanian
Anuraag Rajagopalan
S.Nivethithaa
Counsel for Respondent 3
S. Eshwar
M/s Aanchal M Nichani
Counsel for Respondent 4
S.S Rajesh
Counsel for Respondent 5

COMMON ORDER

These petitions have been filed by the respective petitioners seeking for enforcement of the foreign arbitral award dated 05.07.2024 passed in their favour against the respondents 2 & 3.

2. The first respondent/Financial Software and Systems (FSS) is a digital payment services company and it has two principal business divisions, namely, CashTech and PayTech. The respondents 2, 3 and 4 are the founders of the Company. The company carries on business of providing online, real time, electronic transaction processing and payment systems including Automated Teller Machines (ATMs), Point of

Sale terminals (PoS), ATM sharing between banks, international and domestic interchanges such as MasterCard, Visa and others. The company also provides payment gateway and other value added service, such as, mobile top-up, etc.

3. The second respondent is an individual residing in India and a promoter and the Managing Director of the first respondent company. The third respondent is the wife of the second respondent and is also a promoter and Director of the first respondent company. The fourth respondent is also a promoter of the first respondent company together with the respondents 2 and 3. The respondents 2, 3 and 4 hold 25.98%, 5.95% and 7.81% of the shareholdings respectively in the first respondent Company. The fifth respondent is the FSS Employees' Welfare Trust, a Trust incorporated under the provisions of the Indian Trust Act, 1882.

4. The respective petitioners acquired shares in the first respondent Company (Financial Software and Systems Pvt. Ltd.) through the Share Acquisition and Shareholder's Agreement dated 10.10.2014, amended on 01.11.2014 and 02.07.2018 (in short “SASHA”). The dispute between the petitioners and the respondents arose out of the investors' exit from

the first respondent Company.

5. Clause 19 of the SASHA contains an exit waterfall mechanism available to the investors, subject to the applicable laws. Under the SASHA, the following exit methods were made available to the investors:

a) Qualified Initial Public Offering (QIPO): Efforts to complete QIPO before the cut-off date of 31.03.2016. If QIPO does not occur: Exit waterfall mechanism is made available to the investors under clause 19 of the SASHA. The Qualified Initial Public Offering (QIPO) is an exit route, where investors sell their shares when the Company lists on a public stock exchange, subject to agreed threshold or conditions;

b) Exit waterfall:

Stage	**Description**
Clause 19.1 (Secondary Sale)	Investors may issue Secondary Sale Initiation Notice informing the Company and the Promoters of the Investors decision to require them to find a buyer at or above the Exit Price. Process involves (i) Joint appointment of an investment banker, (ii) Investment banker identifies the buyer, and (iii)Upon identification of the buyer, completion of sale.
Clause 19.2 (Buy-back)	If Secondary Sale does not take place, Investors can collectively require Company to buy back their shares, subject to applicable law.
Clause 19.3 (IPO)	If Secondary Sale and / or Buy-Back does not yield an exit, Investors have the right but not an

Stage	Description
	obligation to cause an IPO.
Clause 19.6 (Strategic Sale) read with Clause 24.6 (a)	If Company fails to provide an exit under Clause 19, or is in Material Breach, Investors may implement a Strategic Sale.

6. The respective petitioners seek two substantive claims; first, they seek damages for breach of Clause 19.1 of the SASHA; and the second, they claim for specific performance of Clause 19.6 of the SASHA. They state that Clause 19.1 imposes an absolute obligation on the respondents 2 and 3 to procure a secondary sale, however, the respondents 2 and 3 breached the absolute obligation as the secondary sale did not happen. On this basis, the respective petitioners claim damages to be quantified in a sum equivalent to the exit price. In respect of specific performance, they assert that their rights under Clause 19.6 of the SASHA to implement a strategic sale pursuant to Clause 19.6(b)(ii) of the SASHA owing to alleged material breaches of the SASHA.

7. Before the arbitration, which culminated in passing of the award in favour of the respective petitioners, the contentions of the respective petitioners were as follows:

a) Despite numerous efforts over several years

(including secondary sale attempt), the Company and the promoters failed to provide an exit to the investors;

b) Scope of obligations under clause 19.1 of the SASHA: It imposes an absolute obligation to procure a secondary sale at exit price;

c) A valid secondary sale initiation notice was issued in the year 2020-21;

d) The correct construction of material breach and permissible remedies under clause 24.6 is that there was material breach in not procuring the investors an exit.

8. However, the second and third respondents, who are the main contesting respondents, raised the following objections before the arbitral Tribunal to the arbitral claim made by the respective petitioners against the respondents:

a) No absolute obligation existed under clause 19.1 of the SASHA to provide an exit for the investors.

b) No proper secondary sale notice was issued by the respective petitioners.

c) The investors had waived their rights by

participating in the agreed split-sale strategy adopted by the first respondent Company.

d) Only after invocation of clause 19.3 of SASHA i.e., if secondary sale and / or buy back does not yield an exit, clause 19.6 (b) viz., implementation of strategic sale gets attracted;

e) Liability of the respondents was capped under clause 22 of SASHA;

f) No valid material for breach of affirmative vote matters occurred to enable the respective petitioners to make an arbitral claim against the respondents;

g) The remedies provided under clause 24.6 of the SASHA were altered and could not be pursued simultaneously.

9. The arbitral award dated 05.07.2024, passed in favour of the respective petitioners against the respondents, largely accepted the respective investors claim, by rendering the following findings:

a) clause 19.1 of the SASHA imposed an absolute obligation;

b) material breach existed as per clause 24.4 (c), (d) and (e) of SASHA;

c) awarded damages (exit price) against surrender of shares;

d) ordered that if damages are not paid within 90 days, strategic sale may be implemented on investors;

e) Through the clarification order dated 22.08.2024, the arbitral Tribunal further clarified that while the investors have validly exercised their rights under clause 24.6 (a) and clause 24.6 (c) of the SASHA, the investors are entitled to only one remedy, as the remedies under clause 24.6 of the SASHA are alternative remedies. Consequently, the investors could not get both reliefs viz.,

(i) Termination of rights under clause 24.6 (c) of the SASHA; and

(ii) Strategic sale under clause 24.6 (a) of the SASHA.

10. The respective petitioners (Investors) have filed these petitions

seeking for enforcement of the foreign arbitral award dated 05.07.2024 before this Court in terms of Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 (in short "the Act") and have prayed for conversion of the foreign arbitral award dated 05.07.2024 into a decree as per Section 49 of the Act to enable them to execute the foreign arbitral award dated 05.07.2024.

11. The following objections have been raised by the second and third respondents, which they claim, will fall under Section 48 of the Act for challenging the enforcement of the foreign arbitral award dated 05.07.2024;

a) The award is vitiated by fraud and it has been passed in violation of public policy of India;

b) The award, is in violation of the public policy of India;

i. since it fails to consider the second and third respondents' submission of buy back;

ii. as it has Granted reliefs, which contravenes the Indian Companies Act;

c) The arbitral Tribunal's findings that investors did not elect for

termination of rights under clause 24.6 of the SASHA at the cost of strategic sale is without notice to parties is contrary to settled principles of election and underlying facts. The award was made without providing parties an opportunity to present their case and therefore, it violates the public policy of India;

d) The arbitral Tribunal failed to consider the material issue that the alleged unauthorized obligation, power or authority must relate to a specific affirmative vote matter listed in annexure IV of the SASHA. The award, hence, violates the public policy of India;

e) The award grants relief contrary to the provisions of the Indian Specific Relief Act and hence, violates the public policy of India;

f) The arbitral Tribunal failed to consider the material issue of the investors, waiving their rights to pursue a secondary sale as per clause 19.1 of the SASHA. Hence, the award violates the public policy of India;

g) The arbitral Tribunal failed to consider the material issue of whether the investors' interpretation of the limitation of liability in Clause 22 of SASHA violates the public policy of India;

h) The arbitral Tribunal failed to consider the material issue of considering the wholesale payment business to be adopted while computing the EBITDA of the PayTech Business unit when calculating

the Company's enterprises value. Hence, the award violates the public policy of India;

i) The arbitral Tribunal failed to consider the parties' agreed position that clause 19.6 and clause 24.4(c) of SASHA were to be read harmoniously and consequentially, the award violates the public policy of India;

12. Mr. Anirudh Krishnan, learned counsel appearing for the third respondent in support of the second respondent's objections to the enforcement of the arbitral award submits that the award grants relief contravening the provisions of the Indian Company Law and hence, the award violates the fundamental policy of Indian Law. In support of the said contention, Mr. Anirudh Krishnan drew the attention of this Court to the provisions of Sections 66, 67, 68 and 70 of the Indian Companies Act, 2013.

13. Relying upon the aforesaid Sections of the Indian Companies Act, 2013, Mr.Anirudh Krishnan would submit as follows:

a) Reduction of short term capital is permitted only with the approval of the National Company Law Tribunal and after notice to

creditors and regulators;

b) There is an embargo on the Companies from purchasing its own share except as provided under the Indian Companies Act, 2013;

c) Section 68 of the Indian Companies Act, 2013 allows buy-back of shares by the Company subject to strict limits - Maximum 25% of paid up capital and free reserves, use of approved sources, solvency declaration and compliance with debt -equity ratio;

d) Bars buy back if the Company has defaulted on certain obligations or non compliance with the accounting standards.

14. Mr.Anirudh Krishnan, learned counsel, after referring to clause 19 of SASHA would submit that it requires both the Company and Promoters to make best efforts to secure an exit for the investors. He would submit that clause 19.1 of SASHA provides a mechanism for the secondary sale of the investors' shares at the exit price and clause 19.2 of SASHA provides for buy back mechanism. But, it is explicitly "subject to applicable law".

15. Mr.Anirudh Krishnan, learned counsel, would rely upon the following decisions in support of the contention that the Company Law

provisions prohibiting the return of capital / buy back (unless sanctioned by statute) is linked to public interest of protecting creditors and other stakeholders:

a) MacDougal Vs. Jersey Imperial Hotel Co. Ltd. reported in (1864) 2 H & M 568;

b) Barclays Bank plc Vs. British Commonwealth Holdings plc (1995) B.C.C. 19; and

c) Collector of Moradabad Vs. Equity Insurance Co. Ltd. 1947 SCC Online Oudh CC 87.

16. Mr.Anirudh Krishnan, learned counsel, after drawing the attention of this Court to the award, would submit that the award effectively grants for buy back, which is in violation of the provisions of Sections 66, 67, 68 and 70 of the Indian Companies Act, 2013 and therefore, the award is opposed to fundamental policy of Indian Law.

17. Mr.Anirudh Krishnan, learned counsel further submits that there is no discretion vested with the National Company Law Tribunal under the provisions of the Indian Companies Act, 2013, to dispense with the statutory requirements prescribed under Sections 66, 67, 68 and 70 of

the Indian Companies Act, 2013. Hence, the award passed without obtaining permission from the National Company Law Tribunal is opposed to the Fundamental Policy of the Indian Law.

18. Mr.Anirudh Krishnan, learned counsel, would further submit that the relief granted under the award viz., buy back of shares / return of capital is illegal as per provisions of Indian Companies Act, 2013, and he would further submit that since the award requires the Company to pay damages to investors against the surrender of shares, it is in substance, a purchase/ buy back, regardless of the "surrender" label. He would further submit that the transaction that the award requires to be performed will effect an illegal buy-back.

19. Mr.Anirudh Krishnan, learned counsel further submits that enforcement of a statutorily void transaction is illegal, as according to him, the buyback of shares under Section 68 of the Indian Companies Act, 2013, without the permission of the National Company Law Tribunal is illegal.

20. Mr.Anirudh Krishnan, learned counsel would further submit that the Singapore High Court could not have adjudicated this issue since this is a question of Indian public policy. According to him, public policy is inherently a concept unique to each State and the Indian Company Law cannot form part of Singapore's public policy.

21. Mr.Anirudh Krishnan, learned counsel would therefore submit that, the Singapore Courts' finding rendered in the case of challenging arbitral award has no bearing for the objections raised by the respondents in these petitions as those objections will have to be tested independently by this Court as it involves violation of the fundamental policy of the Indian Law and not Singapore Law. He would submit that this Court will have to test the award from the lens of Indian public policy, which, according to him, is beyond the limit of Singapore Courts.

22. Mr.Anirudh Krishnan, learned counsel would further submit that the failure to consider the material issue by the arbitral Tribunal amounts to violation of the most basic notions of justice and morality. He would submit that the Arbitral Tribunal, having failed to consider the material issue viz., “Whether the putative award of damages against the

surrender of shares is a buy back or not", the Singapore High Court has, however, erroneously held in its decision rendered in the challenge made by the respondents to the arbitral award that the aforesaid issue was impliedly considered by the arbitral Tribunal and the said finding is arbitrary and is perverse with no justification.

23. Mr.Anirudh Krishnan, learned counsel, would further submit that the findings of Singapore Court are irrelevant for this Court. He would submit that Indian Law explicitly recognizes “two bites at the cherry”. The two bites are, contesting the award before the seat Court as well as the enforcement Court. The cherry is the award. He would submit that transnational issue estoppel does not apply in India. Even the Singapore Court of Appeals recognizes that public policy is to be considered from domestic parameters, i.e., this Courts tests the award from the lens of Indian Public Policy, which is beyond the remit of Singapore Courts.

24. Mr.Anirudh Krishnan, learned counsel, would further submit that the investors have sought both strategic sale and termination of rights simultaneously, which is impermissible under SASHA. Clause 24.6 of

SASHA makes it clear that the investors could elect only one of the three disjunctive rights, namely, (a) Strategic sale; or (b) Buy-back/purchase; or (c) Termination of Rights. Thus, there is no dispute between the parties that the investors had invoked and were given effect to the termination under Clause 24.6(c). However, the Arbitral Tribunal under the impugned arbitral award has erroneously found Clause 24.6 to be disjunctive and providing for alternative rights in favour of the investors. But, in the correction and interpretation order, the Arbitral Tribunal has confirmed that only one remedy can be granted and since both were sought on the same date, the arbitral Tribunal has erroneously held that Investors did not elect one to the exclusion of the other. He would further submit that the investors have consistently given effect to Termination of Rights severely prejudicing the respondents 2 and 3 and therefore, they have elected to exercise only the termination of rights given to them. He would further submit that the investors have been controlling the management starting from 11.04.2022, when they exercised their Termination of Rights. They have even obtained interim reliefs before the emergency arbitrator by exercising Termination of Rights. He would therefore submit that the arbitral award has been passed contrary to the settled principles of doctrine of election, which violates fundamental policy of

Indian Law. He would submit that the investors invoked termination and acted upon it, while also seeking for strategic sale. Having derived the benefit of termination, the investors are estopped from being granted the right of strategic sale. According to him, the respondents 2 and 3 were denied an opportunity to argue the doctrine of election and display on facts as how the investors had in fact elected termination of rights and not strategic sale. According to him, the Arbitral Tribunal gave a finding on election by itself without any submission in relation thereof by the investors.

25. Mr.Anirudh Krishnan, learned counsel, would further submit that Section 16(b) of the Specific Relief Act mandates that a party who has breached an essential term of the contract, cannot obtain specific performance. According to him, notwithstanding the breach committed by the investors, who had invoked termination of rights (example, excluding respondents from management and board participation), the Arbitral Tribunal allowed the investors to pursue specific performance in the form of strategic sale, in direct contravention of Section 16(b) of the Specific Relief Act. Section 16(b) of the Specific Relief Act makes it clear that a party approaching this Court must come with clean hands for

seeking an equitable relief. He would further submit that the Arbitral Tribunal has arrived at a finding that the investors have elected one relief over another without the investors having made such a claim and without giving an opportunity to the respondents. According to him, the Arbitral Tribunal's action of arriving at a decision that was not based on the parties' pleaded case is a breach of natural justice and results in denial of an opportunity of being heard.

26. Mr.Anirudh Krishnan, learned counsel, in support of his aforementioned submissions, would rely upon the following authorities:

a) Trevor and Another Vs. Whitworth and Another reported in (1887) 12 App. Cas. 409; House of Lords;

b) Progress Property Co. Ltd. Vs. Moogarth Group Ltd. reported in (2010) UKSC 55;

c) Vijay Karia Vs. Prysmian Cavi E Sistemi SRL reported in 2020 (11) SCC 1.

27. Mr.Nishanth Kadur, learned counsel appearing for the second respondent, who adopts the submissions made by Mr.Anirudh Krishnan, learned counsel appearing for the third respondent, in addition to those

submissions, would also submit that the respective petitioners have played fraud on the respondents 2 & 3 by suppressing / concealing the E&Y (Ernst & Young) report from the respondents 2 & 3. According to him, as seen from the supporting documents, E&Y report has been deliberately concealed from the respondents 2 & 3.

28. Mr.Nishanth Kadur, learned counsel appearing for the second respondent, also drew the attention of this Court to Section l28 of the Companies Act, 2013. According to him, the first respondent and the respective petitioners (investors) have refused to provide the respondents 2 & 3 a copy of the E&Y report. Therefore, the provisions of Section 128 of the Companies Act, 2013, which do not impose any such restriction for inspection of the company's records has been violated by the petitioners and the first respondent.

29. Learned counsel appearing for the second respondent also submitted that after the statutory auditor (S.Viswanathan LLP) resigned, the first respondent identified M/s.G.Sekar Associates (GS) to be the statutory auditor to the first respondent – Company. Learned counsel for the second respondent submits that despite a clear conflict of interest,

since GSA's founder-partner Mr.G.Sekar's son is married to the daughter of Mr.Sivakumar.G, who was the Head of Finance for the first respondent – Company till February, 2022, M/s.G.Sekar Associates (GSA) was appointed as the statutory auditor. Therefore, the exit price determined by the Arbitral Tribunal cannot be a true assessment, which does not suffer from any bias.

30. Learned counsel appearing for the second respondent would also submit that the request made by the respondents 2 & 3 for change of statutory auditor was also not acceded to by the first respondent.

31. Learned counsel appearing for the second respondent would also submit that owing to the first respondent as well as the respective petitioners not providing with E&Y report to the respondents 2 & 3, an oppression and mismanagement petition came to be filed before the National Company Law Tribunal requesting inter alia an interim relief seeking a direction for handing over a copy of the E&Y report to the respondents 2 & 3. The appointment of the M/s.G.Sekar Associates (GSA) was also challenged before the National Company Law Tribunal. Learned counsel appearing for the second respondent would submit that

the proceeding before the National Company Law Tribunal seeking for providing of E&Y report is still pending. Therefore, the deliberate concealing of the E&Y report by the petitioners and the first respondent would amount to fraud being played upon the respondents 2 & 3 by the petitioners and the first respondent.

32. According to the learned counsel appearing for the second respondent, if the E&Y report was not concealed to the respondents 2 & 3 and was taken into consideration by the Arbitral Tribunal, EBITDA of the first respondent Company would have resulted in a reduction in the enterprise value and consequently, the total damages. According to him, this contention has also not been denied by the respective petitioners and the first respondent – Company.

33. Learned counsel appearing for the second respondent would also submit that the petitioners (investors) and the fourth respondent have colluded together to get an arbitral award in petitioners' favour. The petitioners (investors) did not claim any relief of damages as against the fourth respondent in the arbitration proceedings. According to him, the fourth respondent, who is also a Promoter of the first respondent –

Company alongside the respondents 2 & 3, is also equally responsible. But, the petitioners have deliberately not made the arbitral claim against the fourth respondent as they have colluded with the fourth respondent for the purpose of obtaining a false relief before the Arbitral Tribunal.

34. Learned counsel appearing for the second respondent would submit that the fourth respondent's remuneration was increased by a whopping 82% in March 2023 to INR 3.2 crores retrospectively for FY 2022-23, without any discussions or deliberations or reasons. In addition to the massive increase in his fixed + variable pay, a special cash bonus of INR 4 Crores was paid to the fourth respondent and INR 5 Crores to Mr.V.Balasubramanian for their contributions in FY 2023-2024 and FY 2024-2025. According to him, a separate sum of INR 60 Crores was also sought to be released to the fourth respondent, Mr.V.Balasubramanian, Mr.Anand Mitkari and other Company personnel, who co-operated with the investors in achieving their goal of a strategic sale.

35. Learned counsel appearing for the second respondent would submit that the failure to raise a public policy ground before the seat court is irrelevant for the proceedings before the enforcement court. He would

submit that fraud is a public policy ground under Section 48 of the Act. From various decisions rendered by the constitutional courts, he would submit that the failure to raise the ground of fraud before the arbitral proceedings as well as before the Singapore High Court will not in any manner affect the rights of the parties to raise such a ground before the enforcement court.

36. Learned counsel appearing for the second respondent would submit that only based on bald statements, the exit price has been determined by the Arbitral Tribunal, which is in the form of damages.

37. On the other hand, Mr.Vijay Narayanan, learned Senior Counsel, appearing for the petitioner in Arb.O.P.(Com.Div) No.285 of 2024, would submit as follows:

(a) The grounds available under Section 48 of the Act, are watertight. He would submit that no ground outside Section 48 of the Act, can be looked into.

(b) The enforcement Court cannot re-appreciate and re-examine the merits of the foreign arbitral

award and it cannot have a second look at the foreign arbitral award under Section 48 of the Act, by rendering a different contractual interpretation than the one already given under the foreign arbitral award.

(c) The grounds available under Section 48 of the Act, for resisting enforcement of foreign arbitral award are narrower than the grounds available for challenging the award before the seat Court.

(d) The power to set aside an award vests only with the Courts at the seat of arbitration, which exercises "supervisory or primary jurisdiction over the award". The jurisdiction of this Court, where enforcement is sought, is a secondary jurisdiction, limited to the question of whether the award is enforceable in that particular jurisdiction or not.

(e) The application of "public policy of India" doctrine for the purpose of Section 48(2)(b) of the Act, would be more limited than the

application of the same expression in respect of the domestic award.

(f) Parties ought not to re-litigate issues, which have been or ought to have been raised before the seat court.

(g) The sensible invocation of the doctrine of transnational issue estoppel can also help to alleviate the problem of inconsistent judicial outcomes and limits the extent to which matters determined by a court of competent jurisdiction can be re-litigated, thus reducing the wastage of time, effort and resources.

(h) Mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.

(i) Poor reasoning by which a material issue or claim is rejected can never fall under Section 48 of the Act. If the Foreign Arbitral Award has

considered the essential issues and has addressed the same in the award, which, by implication, would mean that the other issue / issues raised had been implicitly rejected.

(j) The foreign arbitral award has considered all the objections raised by the respondents 2 & 3 and therefore, Section 48 of the Act, does not get attracted.

(k) The foreign arbitral award is also not induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the Act and hence, the foreign arbitral award is enforceable.

(l) The foreign arbitral award is not contrary to the Public Policy of India, since it has not contravened with the fundamental policy of the Indian law.

(m) The foreign arbitral award is also not in conflict with the most basic notions of morality.

38.In support of his contentions, Mr.Vijay Narayanan, learned Senior Counsel appearing for the petitioner in Arb.O.P.(Com.Div)

No.285 of 2024, relied upon the following authorities:

(i) ***Vijay Karia vs. Prysmian Cavi E Sistemi SRL,*** reported in *(2020) 11 SCC 1*.

(ii) ***Cruz City 1 Mauritius Holdings v. Unitech Limited,*** reported in ***2017 SCC OnLine Del 7810.***

(iii) ***Government of India vs. Vedanta Ltd.,*** reported in ***(2020) 10 SCC 1.***

(iv) ***Shri Lal Mahal Ltd. vs. Progetto Grano Spa,*** reported in ***(2014) 2 SCC 433.***

(v) ***Gemini Bay Transcription (P) Limited. vs. Integrated Sales Service Ltd.,*** reported in ***(2022) 1 SCC 753.***

(vi) ***Avitel Post. vs. HSBC PI,*** reported in ***(2024) 7 SCC 197.***

(vii) ***EIG vs. Mcnally,*** reported in ***2021 SCC OnLine Cal 2915.***

(viii) ***Mercator Ltd. vs. Dredging Corporation of India Ltd.,*** *reported in* ***2024 SCC OnLine Del 3075.***

(ix) ***Banyan Tree Growth Capital LLC vs. Axiom***

Cordages Limited and others, reported in ***2020 SCC OnLine Bom 781.***

(x) ***Nine Rivers Capital Limited vs. Gokul Patnaik and another,*** reported in ***2025 SCC OnLine Del 2898.***

(xi) ***Carpatsky Petroleum Corporation vs PJSC Ukrnafta, (2020) EWHC 769 (Comm).***

(xii) ***The Republic of India vs. Deutsche Telekom AG,*** reported in ***(2023) SGCA(I) 10.***

(xiii) ***OPG Power Generation Pvt. Ltd. vs. Enexio Power Cooling Solutions India Pvt. Ltd.,*** reported in ***(2025) 2 SCC 417.***

(xiv) ***Ssangyong Engg. & Construction Co. Ltd. vs. NHAI,*** reported in ***(2019) 15 SCC 131.***

(xv) ***Avitel Post Studioz Ltd., vs. HSBC PI Holdings (Mauritius) Ltd.,*** reported in ***(2021) 4 SCC 713.***

(xvi) ***Renusagar Power Co. Ltd. vs. General Electric Co.,*** reported in ***1994 Supp (1) SCC 644.***

(xvii) ***Armada (Singapore) Pte. vs. Ashapura Minechem Ltd.,*** reported in ***2015 SCC OnLine Bom 4783.***

(xviii) ***Daiichi Sankyo Company Limited vs. Malvinder Mohan Singh,*** reported in ***2018 SCC OnLine Del.***

(xix) ***Nobel Resource Ltd., vs. Dharni Sampda Private Ltd.,*** reported in ***2019 SCC OnLine Bom 4415.***

(xx) ***Aircon Beibars FZE vs. Heligo Charters Private Limited,*** reported in ***2022 SCC OnLine Bom 329.***

39. Mr.Srinath Sridevan, learned Senior Counsel appearing for the petitioner in Arb.O.P.(Comm.Div.) No.452 of 2024 has adopted the arguments advanced by Mr.Vijay Narayanan, learned Senior Counsel appearing for the petitioner in Arb.O.P. (Com.Div.) No.285 of 2024 and in addition to those arguments, he would submit as follows:

(a) Section 48(2)(b) of the Act states that enforcement of a foreign arbitral award may be refused if "the enforcement of the arbitral award would be contrary to the public policy of India", whereas Section 34(2)(b)(ii) provides that a

domestic award may be set aside if "the arbitral award is in conflict with the public policy of India". According to the learned Senior Counsel, the distinction is deliberate and material. He would submit that in a proceeding under Section 48 of the Act, what is examined is not the intrinsic validity of the award, but whether its enforcement would violate the fundamental public policy or not.

(b) The enforcement is against the respondents 2 & 3, not against the Company (R1). The damages awarded are to be paid by them. Therefore, there is no question of the Company (R1) paying consideration towards the petitioner surrendering its shares.

(c) The relief sought for in the present enforcement petition is primarily the strategic sale, in the event damages are not paid, which, in any event, has not been paid within the date prescribed in the award.

(d) To fall within the purview of Section 48(2)(b)(ii) of the act, the foreign arbitral award must contravene a fundamental and non-derogable principle or core value for the enforcement to be refused.

(e) The contention of the respondents 2 & 3 that reading Clause 19.1 of SASHA is an absolute obligation would cause a prohibited buyback has been raised only at a belated stage i.e., in their post-hearing reply submissions dated 09.02.2024 before the Arbitral Tribunal. **Therefore, the said contention demonstrates that the issue was neither a foundational plea nor a live controversy throughout the arbitration, but rather an afterthought urged at the fag end of the proceedings**.

(f) The Singapore High Court considered the buyback issue in detail and identified the following two limbs of the respondents 2 & 3's case:

(i) Construing Clause 19.1 of SASHA was absolute as impermissible, because it contradicted Clause 19.2 of SASHA and effectively imposed a buyback obligation, and

(ii) Such interpretation would be unenforceable under Indian law.

And rejected the aforesaid two limbs and has held that the Arbitral Tribunal has consciously adopted the respective petitioner's interpretation and that awarding damages with a consequential surrender of shares did not equate to a statutory buyback.

(g) The petitioners never elected one remedy to the exclusion of the other. Both remedies under Clause 24.6 and termination of rights under sub-clause (c) and strategic sale under sub-clause (a) of SASHA were invoked simultaneously on 11.04.2022. The Tribunal expressly considered this issue and after, analysing the notices of

termination and strategic sale, the notice of arbitration and the statement of claim, concluded that it was "difficult to conclude that the respective petitioners have already made an election to pursue one remedy and not the other when both remedies are sought on the same day. Therefore, the Arbitral Tribunal held that the remedies are disjunctive in nature that the petitioners had not made election at the time of invocation and by granting strategic sale as the final relief, gave effect to one remedy, while letting the other lapse. Therefore, the fundamental policy has not been violated.

(h) The objection with regard to the doctrine of "Election" was never raised by the respondents 2 & 3 before the Singapore High Court and therefore, they cannot now be introduced at the enforcement stage under Section 48 of the Act.

(i) Section 16(b) of the Specific Relief Act bars specific performance only where the respective

petitioners had committed a breach of an essential term of the contract. The Arbitral Tribunal made no finding, nor was any evidence led, that the respective petitioners had breached the SASHA. On the contrary, the Tribunal found that the respective petitioners were entitled to enforce their contractual rights, including, termination and strategic sale.

(j) The Arbitral Tribunal has come to the conclusion that the respondents 2 & 3 are in material breach of Clause 13.4(3) of SASHA; in any event, there has been no failure to identify specific affirmative vote matter (AVM).

(k) The Arbitral Tribunal addressed the issue and found that the very act of delegation itself was contrary to the protections enshrined in Clause 13.4(3) read with Annex 4(aa) of SASHA.

(l) Reopening of contractual interpretation and re-appreciating evidence is not permissible under Section 48 of the Act.

(m) The Arbitral Tribunal has rightly rejected the split sale plea by holding that the notice of 18th September, 2020 was validly invoked as Clause 19.1 and that no waiver could be inferred in light of Clause 29.5 of SASHA, which forecloses implied waiver without written consent. The Singapore High Court rejected the argument that the Tribunal failed to consider the waiver defence. The Court held that an Arbitral Tribunal is not obliged to expressly address every argument; an issue may be resolved implicitly through factual findings.

(n) Respondents 2 & 3's reliance on Sections 10(b) and 14(1)(a) of the pre-2018 Specific Relief Act to argue that specific performance is barred when damages are adequate, is misplaced. The 2018 amendments, which removed this bar, apply retrospectively. Consequently, Section 14(1)(a) no longer bars specific performance where damages may be adequate. Instead, specific

performance is now the rule, and damages are available only in addition, under Section 21 of the Specific Relief Act.

(o) The respondents 2 & 3 admit to having knowledge of the existence and findings of the E&Y report as early as on 30.01.2023 i.e., while the arbitration was still ongoing and before their filing of the statement of defence.

(p) At no stage during the arbitration did the respondents 2 & 3 contest the petitioner's valuation on the basis of alleged irregularities in the first respondent's financials. No questions were also put to the respective petitioners' witnesses in respect of E&Y report. On the contrary, the valuations relied upon by the Tribunal were drawn from the first respondent's audited financials for FY 2020, which were common to all parties. The respondents 2 & 3 had also not raised the plea of fraud before the Singapore High Court. Therefore, the

allegations of fraud levelled under Section 48(2)(b) of the Act by the respondents 2 & 3 are unsustainable.

40. The very same authorities relied upon by Mr.Vijay Narayanan, learned Senior Counsel appearing for the petitioner in Arb.O.P. (Com.Div.) No.285 of 2024 were also relied upon by Mr.Srinath Sridevan, learned Senior Counsel appearing for the petitioner in Arb.O.P.(Comm.Div.) No.452 of 2024.

41. Mr.Adarsh Ramanujan, learned counsel appearing for the petitioners in Arb.O.P.(Com.Div.) No.453 of 2024, adopts the arguments made by Mr.Vijay Narayanan, learned Senior Counsel appearing for the petitioner in Arb.O.P.(Com.Div) No.285 of 2024. In addition to that, he would submit as follows:

(a) The respondents 2 & 3 have raised several additional grounds under Section 48 of the Act, before this Court. Such additional grounds could have also been raised before the Singapore High Court by the respondents 2 & 3.

(b) The UNCITRAL model law on international

commercial arbitration (UNCITRAL Model Law) forms the basis for both the Arbitration Act in India and the Singapore International Arbitration Act, which applies to arbitrations in Singapore involving a foreign party.

(c) Particularly, Article 34(2) of the UNCITRAL Model Law sets out the grounds on which an award can be set aside and forms the basis for both Sections 34/48 of the Indian Arbitration Act and the corresponding Section 24 of the Singapore International Arbitration Act. It is self-evident that the grounds in Sections 48(1)(a)-(d), 48(2) are in *pari materia* with Section 24 of the Singapore International Arbitration Act.

(d) Where the grounds are *pari materia*, it was always open to the respondents 2 & 3 to have raised additional grounds before the Singapore High Court. However, they did not raise such grounds, despite having the full opportunity and

evidently did not consider these grounds adequate for a challenge before the seat court. They also chose not to appeal the decision of the Singapore High Court, dated 21.02.2025, before the court of Appeal in Singapore.

(e) Section 24(a) of the Singapore International Arbitration Act enables a party to challenge the award, on the ground of fraud. But, despite the same, the respondents 2 & 3 failed to raise the ground of fraud before the Singapore High Court, while challenging the arbitral award. Therefore, no special circumstance has been made out by the respondents 2 & 3 to raise the ground of fraud for the first time before this Court under Section 48 of the Act.

(f) The grounds raised by the respondents 2 & 3 resisting enforcement of foreign arbitral award were either raised or could have been raised before the Singapore High Court, but were consciously omitted from the scope of challenge

to the final arbitral award. It is settled law that rejection of the material issue or consideration of certain issue by an arbitral award in a particular manner, does not render the award's enforcement open to challenge.

(g) Arbitral Tribunal can draw an inference from the evidence before it even if that inference has not specifically been raised by either party. Any such inference or findings of a material issue would not fall within the scope of Section 48 of the Act.

(h) Even on demurrer, the purported grounds of fraud, no opportunity was given to respondents 2 & 3 to present their case and violation of a law, do not fall within the scope of Section 48 of the Act.

42. Apart from the decisions relied upon by Mr.Vijay Narayanan, learned Senior Counsel appearing for the petitioner in Arb.O.P.(Com.Div) No.285 of 2024, Mr.Adarsh Ramanujan, learned counsel appearing for the petitioners in Arb.O.P.(Com.Div.) No.453 of

2024 also relied upon the following authorities:

(i) Checkpoint Ltd., vs.Strathclyde Pension Fund, reported in (2003) EWCA Civ 84 (Paragraph No.34).

(ii) International Air Transport Assn., vs. Spring Travels (P) Ltd., reported in 2024 SCC OnLine Del 7540.

(iii) Transtonnelstory – Afcons (JV) and Ors. vs. Chennai Metro Rail Ltd., reported in 2023 SCC OnLine Mad 1013 (Paragraph Nos.60 and 61).

43. Mr.T.K.Bhaskar, learned counsel appearing for the first respondent in all these original petitions, would submit as follows:

(a) The second respondent, who is making allegations of fraud on the final statements of the first respondent for financial years 2020-2021 and 2021-2022, has himself approved and signed the said financial statements.

(b) The first respondent has enabled and facilitated

the inspections as required under Section 28(3) of the Companies Act, 2013 to the second respondent, which was elaborately explained to the NCLT through multiple pleadings filed by the first respondent. All issues relating to inspection demanded by the second respondent are sub-judice before the NCLT and the NCLT had reserved its orders on reliefs relating to inspection on 24.01.2024.

(c) The respondents 2 & 3 allege that the present statutory auditor of the first respondent, G.Sekar Associates is related to a former employee of the first respondent and therefore, must not be appointed as the first respondent's statutory auditor. These are far-fetched arguments which have been dismissed by the NCLT after considering all allegations raised by the respondents 2 & 3 and Mr.Archit Mylandla in the NCLT proceedings and had passed a well-reasoned order dated 28.11.2023 allowing the

appointment of G.Sekar Associates and therefore, their arguments are meritless and irrelevant to the present proceedings.

(d) It is pertinent to note that no allegation in the common counter states that the appointment of G.Sekar Associates is illegal. The respondents 2 & 3 have also suppressed the fact that they did not appeal against the said order dated 28.11.2023 of NCLT before NCLAT), but are raising untenable allegations before this Court.

(e) The allegations relating to the signing of financial statements of the first respondent by one director for the financial years 2022-2023 and 2023-2024 are sub-judice before the NCLT.

(f) Section 134 of the Companies Act, 2013 (of which the respondents 2 & 3 are alleging violation), governing signing of financial statements, is procedural and not substantive in nature. Hence, the allegations on manner of signing of financial statements are meritless and

irrelevant to the present proceedings.

(g) Matters relating to remuneration, bonus, or incentivisation of directors and personnel are internal affairs of the first respondent and are within the exclusive domain of the Board of Directors. The respondents 2 & 3 were provided due opportunity to raise their views and objections in Board meetings. The NCLT also did not grant any relief to the respondents 2 & 3 in any applications filed before the NCLT in this regard, which is an undisputed fact.

(h) The allegation of special incentive plan being devised by the first respondent and its management pertains only to payouts to the management is false and erroneous. It is pertinent to note that the incentive plan is being formulated for a large number of employees / consultants (and not just the management team), which is a fact suppressed by the respondents 2 & 3. Hence, the allegations on increase in

remuneration / providing bonus, incentive to employees / consultants are meritless and irrelevant to the present proceedings.

(i) The allegations of *quid pro quo* are based on the false predicates that the first respondent and its officials are furthering the petitioners' intent or desire to conduct a strategic sale, not providing inspection, firing of senior employees at the behest of the petitioners etc., for which the petitioners are authorising bonus, special incentive etc., to the first respondents's officials. This is entirely false.

(j) The second respondent has filed a formal memo objecting to certain additional documents filed on behalf of the first respondent. The documents were filed only to bring out the truth and the second respondent had opportunity to reply to the same in the oral submissions as well as in their notes of submission. Any resistance to the production of critical documents by the first

respondent raises suspicion on the conduct of the second respondent.

44. Mr.S.Eshwar, learned counsel appearing for the fourth respondent (J.Rudhraapathy) would submit as follows:

(a) The fourth respondent's role and submissions is limited only to clarify this Court that there has been no act of fraud and / or collusion and / or *quid pro quo* between the fourth respondent and the petitioners herein.

(b) The Email dated 11.04.2022 sent by the respondents 2 & 3 will reveal that they voluntarily withdrew themselves from the operations of the company upon receipt of the notice of material breach of the SASHA by the petitioners in Arb.O.P.(Com.Div) No.453 of 2024. Hence, it is the second respondent, who jumped ship and abandoned the company of the fourth respondent, who was left to manage the company along with certain other company

personnels during the volatile, turbulent and uncertain period.

(c) The arbitral award has recorded the contentions of the fourth respondent denying any breach of the SASHA. This will clearly reveal that the fourth respondent has not colluded with the petitioners.

(d) The arbitrator has given reasons as to why the petitioners have not claimed damages against the fourth respondent and therefore, the very same objections cannot be raised by the respondents 2 & 3 through this petition filed under Section 48 of the Act, as this Court is only an enforcement court.

(e) The frail connection drawn between the increase in salary/bonus payouts to the fourth respondent owing to the alleged *quid pro quo* between the petitioners and the fourth respondent is imaginative and false. The said payouts/increase in salary is very much in line

with the salary, the second respondent used to receive when he was at the helm of affairs.

45. Mr.S.S.Rajesh, learned counsel for the fifth respondent, would submit as follows:

(a) The fifth respondent is constituted by the first respondent company to promote employees welfare activities.

(b) The fifth respondent is a signatory to the Share Acquisition and Shareholders' Agreement dated 10.10.2024 and has been impleaded in the present arbitration only as a formal / pro-forma party.

(c) The fifth respondent, therefore, has no independent or substantive role in the present arbitration petitions and its participation is limited to the extent of being a pro-forma party.

(d) While no specific allegations have been levelled against the fifth respondent, any order enforcing

the subject arbitral award by this Court would have a direct bearing on the shares allotted to the employees, which form an integral component of their remuneration package.

DISCUSSION:

46. The foreign arbitral award dated 05.07.2024 passed in favour of the respective petitioners is detailed hereunder:

(a) The respondents 1 to 3 are jointly and severally directed to pay damages suffered by the petitioners being the exit price as on 18.09.2020 aggregating to INR 6,614 Million to PI OPPORTUNITIES FUND-I (Petitioner in Arb.O.P.(Com.Div.) No.285 of 2024; INR 777 Million to NYLIM Jacob Ballas India (FVCI) III LLC (first petitioner in Arb.O.P.(Com.Div) No.453 of 2024); INR1,093 Million to NYLIM Jacob Ballas India Fund III LLC (second petitioner in Arb.O.P.(Com.Div) No.453 of 2024 and INR 2,804 Million to the MILLENNA FVCI LTD. (petitioner in Arb.O.P.(Com.Div)

No.452 of 2024, which amounts shall stand reduced to the extent of the net proceeds received by the respective petitioners from a Strategic Sale (provided that the sums received from a Strategic Sale are lower than the damages awarded by the Arbitral Tribunal.

(b) If the damages in paragraph 804(a) of the award are paid, the petitioners will cooperate with the respondents to surrender all their shares in the first respondent. The petitioners and respondent are to co-operate with each other in order to effect such prompt surrender.

(c) If within 90 days from the date of the arbitral award, the damages in paragraph No.804(a) above are not paid, then the petitioners are entitled to proceed towards a strategic sale and the respondents are not to interfere with the strategic sale (under Clauses 19.6(b) and 24.6(a) of the SASHA) to be implemented by the petitioners.

(d) The respondents are to render full cooperation with respect to any strategic sale (under Clause 19.6(b) of the SASHA) to be implemented by the petitioners.

(e) The respondents 2 to 5 are to sell their shares pursuant to a strategic sale as implemented by the petitioners (under Clause 19.6(b) of the SASHA) and to distribute the proceeds in accordance with Annexure 12 of SASHA within a period of six months from the date of the arbitral award.

(f) Simple interest at the rate of 5.33 from 01.07.2021 until the date of the arbitral award on the sums awarded in paragraph No.804(a) of the arbitral award.

(g) Post-award interest at the simple interest at the rate of 5.33% from the date of the arbitral award until the date of full repayment on the sums awarded in paragraph Nos.804(a) and 804(f) of the arbitral award.

47. The objections raised by the second and third respondents for enforcement of the foreign arbitral award passed in favour of the respective petitioners have been raised under Section 48 (2) (b) of the Act. The second and third respondents would contend that the enforcement of the foreign arbitral award as prayed for by the respective petitioners has to be refused as it would be contrary to the public policy of India.

48. Before this Court delves into each of the grounds raised by the second and third respondents, the scope of public policy falling under Section 48 (2) (b) of the Act, has to be discussed based on the interpretation of the term "Public Policy" given by Constitutional Courts in India as well as by foreign Courts.

49. Explanation 1 to Section 48 (2) (b) of the Act has clarified that an award is in conflict with the public policy of India, only if,—

> (a) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or
> (b) it is in contravention with the fundamental

policy of Indian law; or

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

50. Explanation 2 to Section 48 (2) (b) of the Act also makes it clear that the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

51. Defining public policy, Sir William Holdsworth stated, “A body of law like the common law, which has grown up gradually with the growth of the nation necessarily acquires some fixed principles and if it is to maintain these principles it must be able, on the ground of public policy or some other like ground, to suppress practices which, under ever new disguises, seek to weaken or negative them".

52. In ***Gherulal Parakh v. Mahadeodas Maiya reported in 1959 AIR SC 781***, the Honourable Supreme Court favoured a narrow, non-evolving view of public policy and stated that, “though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world, it is

admissible in the interest of stability of society not to make any attempt to discover new heads in these days."

53. In ***Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly reported in 1986 AIR 1571***, the Honourable Supreme Court held, "public policy connotes some matter, which concerns the public good and the public interest". The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time." Thus, public policy is either subject to a narrow view i.e., fixed principles, where Courts cannot create new heads of public policy or a broad view; where Courts can play a role in Judicial law making.

54. Foreign awards operate at the level of Private International Law involving conflict of laws as opposed to domestic awards. Thus, a distinction needs to be drawn while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. The application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the Courts are slower to invoke public policy in cases involving a foreign

element than, when a purely municipal legal issue is involved. Although the concept of public policy is the same in nature in these two spheres of law, its application differs in degree and occasion, corresponding to the fact that the transactions containing a foreign element may constitute a less serious threat to municipal institutions than a purely local transaction.

55. The particular rule of public policy may be of an overriding nature and therefore, could be a ground to resist enforcement or it may be local in the sense that it represents some feature of internal policy. If it is the latter, it must be confined to cases governed by the domestic law and ought not be extended to a case governed by foreign law. In order to ascertain whether the rule is all pervading or merely local, it must be examined in the light of its history, the purpose of its adoption, the object to be accomplished by it and the local conditions.

56. In the Supplementary Report to the 246th Law Commission Report, the Law Commission of India stated that the legitimacy of Judicial intervention in the case of a purely domestic award is far more than in cases, where a Court is examining the correctness of a foreign award or a domestic award in an international commercial arbitration.

57. Under the Arbitration and Conciliation Act, public policy stands as a ground, both for setting aside awards made by India-seated arbitral tribunals under Section 34, and for resisting enforcement of foreign arbitral awards under Section 48. Despite the internationally recognized view that public policy vis-a-vis, foreign awards must be applied narrowly at a Private International Law level, Indian case laws witnessed an intermingling of the operative realms of public policy for domestic and foreign awards. The trajectory of Judicial interpretation given by the Indian Supreme Court is traced below and it will be useful for deciding the objections raised by the second and third respondents for enforcement of the foreign arbitral award passed in favour of the respective petitioners.

58. In 1993, the Honourable Supreme Court had an opportunity to determine the contours of public policy in the case of ***Renusagar Power Co. Ltd v. General Electric Co. reported in 1994 Supp (1) SCC 644***, involving enforcement of a foreign award under the Foreign Awards Act. Applying a narrow view of public policy, the Honourable Supreme Court held that since the Foreign Awards Act is concerned with recognition and

enforcement of foreign awards, which are governed by the principles of Private International Law, the expression "public policy" in Section 7(1)(b)(ii) of the Foreign Awards Act must necessarily be construed in the sense the doctrine of public policy as applied in the field of Private International Law. Applying the said criteria, it was held that the enforcement of a foreign award would be refused on the ground that it is contrary to the public policy of India, if such enforcement would be contrary to

(a) Fundamental policy of Indian law; or

(b) The interests of India; or

(iii) Justice or morality.

59. In relation to the ‘Fundamental Policy of Indian law’, the Hon'ble Supreme Court held that,

(a) the award must invoke something more than merely a violation of Indian law to be refused enforcement;

(b) a violation of economic interests of India is contrary to public policy;

(c) the orders of Courts must comply with the

fundamental principles of law and a disregard for such orders would be contrary to public policy.

60. Subsequent to the Judgment in *Renusagar's case,* referred to supra, the Hon'ble Supreme Court interpreted the meaning of 'public policy'. In the case of ***ONGC Ltd. v. Saw Pipes Ltd. reported in (2003) 5 SCC 705*** (now overruled), the Hon'ble Supreme Court held that in addition to the meaning of public policy, provided in *Renusagar's case* (which was in relation to foreign awards), the Hon'ble Supreme Court introduced the concept of 'patent illegality' for setting aside domestic awards under the head of public policy. Patent illegality, to some extent, involved a review of the merits of the underlying dispute. Defining patent illegality, the Hon'ble Supreme Court held that "Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside, if it is so unfair and unreasonable that it shocks the conscience of the Court. Such award is opposed to public policy and is required to be adjudged void." The Hon'ble Supreme Court followed the dicta of *Saw Pipes (cited supra)* in the case of ***Venture Global Engineering v. Satyam Computer Services Ltd. & Anr. reported in 2008 (4) SCC 190*** (now

overruled).

61. In the case of ***Phulchand Exports Ltd. v. O.O.O Patriot reported in 2011 (10) SCC 300*** (now overruled), the Hon'ble Supreme Court extended the ground of 'patent illegality' devised in *Saw Pipes case* for setting aside domestic awards in India to resist the enforcement of foreign awards in India. The Judgment of the Hon'ble Supreme Court in *Phulchand* widened the ambit of public policy *vis-a-vis,* foreign awards - no longer keeping it narrow and minimal as in *Renusagar's case (cited supra)*.

62. Thereafter, the Honourable Supreme Court overruled its decision in Phulchand's case in the case of ***Shri Lal Mahal Ltd. v. Progetto Grano SPA reported in (2014) 2 SCC 433*** and held that a foreign award may be refused enforcement under Section 48(2)(b) of the Act, only if such enforcement would be contrary to:

(a) The fundamental policy of Indian law; or

(b) The interests of India; or

(c) Justice or morality,

thereby returning to the position laid down by the Honourable Supreme Court in *Renusagar's case*. The Honourable Supreme Court in Lal

Mahal's case refused to apply the ground of patent illegality while assessing foreign awards.

63. In August 2014, the 246th Law Commission Report provided significant inputs in relation to the definition of public policy. It acknowledged that *Saw Pipes' case (cited supra)* had unintended consequences on international commercial arbitrations and the enforcement of foreign arbitral awards, which was corrected by the Honourable Supreme Court in *Lal Mahal's case.* Additionally, it recommended,

> "(a) addition of Section 34(2A) to the Arbitration and Conciliation Act, 1996, in order to limit the ground of 'patent illegality' to purely domestic arbitral awards; and
>
> (b) a suggestion to add that "an award shall not be set aside merely on the ground of erroneous application of the law or by re-appreciating evidence".

64. The 246th Law Commission Report also proposed to statutorily include a definition of public policy based on the Honourable Supreme Court's dicta in *Renusagar's case.* Going a step forward, the 246th Law Commission Report suggested that the definition of public policy should

not include within it 'the interests of India' since the same was capable of interpretational misuse. Thus, it was proposed that the ambit of public policy for enforcement of foreign award should be limited to fundamental policy of Indian law; or basic notions of justice or morality.

65. Before the recommendations of the 246th Law Commission Report were incorporated into the Arbitration and Conciliation Act, the Honourable Supreme Court expanded the scope of public policy in ***ONGC v. Western Geco International Ltd. reported in (2014) 9 SCC 263*** in a case involving challenge to domestic awards. The Honourable Supreme Court held that 'fundamental policy of law' included three fundamental juristic principles, namely,

> (a) Duty to adopt Judicial approach, i.e., to not act in an arbitrary, capricious or whimsical manner. Judicial approach requires Courts to act in a fair, reasonable and objective manner and its decision should not be actuated by any extraneous consideration;
>
> (b) Compliance with principles of natural justice, including *audi alterum partem* and application of mind to the facts and circumstances; and

(c) 'Wednesbury principle' *i.e.,* an award may be set aside if it is perverse and so irrational that no reasonable person would have arrived at the same. The Honourable Supreme Court held that a Court could set aside a domestic award under the umbrella of fundamental policy of Indian law if the award is perverse or so irrational such as to fall foul of the touchstone of the *Wednesbury* principle.

66. Public policy was further consolidated by the Honourable Supreme Court in the case of ***Associate Builders v. Delhi Development Authority reported in (2015) 3 SCC 49,*** while assessing a challenge to domestic award. The Honourable Supreme Court set out the following elements of 'public policy':

(a) **Fundamental Policy of Indian Law:** This includes,

(i) Contravention of the provisions of the Foreign Exchange Regulation Act, 1973 as it is a statute enacted for the national economic interest;

(ii) Disregarding orders of the superior Courts in India;

(iii) Disregarding the binding effect of the Judgment of a superior Court; and

(iv) The principle of adopting a Judicial

approach, which demands that a decision be fair, reasonable and objective. An arbitrary or whimsical decision would not be a determination that is fair, reasonable or objective; contravention of the principle of *audi alteram partem* principle also contained in Sections 18 and 34(2)(a)(iii) of the Arbitration and Conciliation Act; a decision, which is so perverse or so irrational that no reasonable person would have arrived at the same. A decision could be deemed perverse if:

(a) The finding is based on no evidence; or

(b) An arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(c) Ignores vital evidence in arriving at its decision.;

(b) **Contrary to the interest of India:** This ground relates to India as a member of the world community in its relations with foreign powers;

(c) **Against justice:** An award is against Justice, when it shocks the conscience of the Court. For example, an arbitral award, which awards a relief without any reason or justification;

(d) **Against morality:** Morality includes within it ‘sexual morality’ so far as Section 23 of

the Indian Contract Act, 1872 is concerned. If it is to go beyond sexual morality, it would cover agreements, which are not illegal *per se* but would not be enforced given the prevailing morals of the day. Interference, on this ground, would also be only if it is something, which shocks the Court's conscience;

(e) **Patent illegality:** This includes contravention of the substantive law of India, which would result in an illegality, which goes to the root of the matter and cannot be of a trivial nature; contravention of the Arbitration and Conciliation Act itself; contravention of Section 28(3) of the Arbitration and Conciliation Act, which is the 'Rules applicable to the substance of the dispute'. If two views are possible, Court can't substitute its view for the view of arbitrator.

67. In the light of the decision in *Western Geco case (cited supra)* rendered by the Honourable Supreme Court, the Law Commission issued a Supplementary Report to the 246th Law Commission Report specifically on the topic of "Public Policy" in February 2015. It recorded the 'chief reason' for its issuance is the inclusion of the *Wednesbury principle of reasonableness* within the phrase of "fundamental policy of

Indian law" by the Honourable Supreme Court in the Western Geco case. The *Wednesbury principle of reasonableness* permitted Courts to look at an award to understand whether the conclusion would be one which "no reasonable person would have arrived at". This test permitted a review of an arbitral award on its merits. The Law Commission suggested that such a power to review an award on merits is contrary to the objectives of the Arbitration and Conciliation Act and international practice, and would increase Judicial interference in awards. It proposed that another explanation be added to Section 34 of the Arbitration and Conciliation Act, viz., "For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute."

68. In the light of the proposed amendments suggested in the Supplementary Report to the 246th Law Commission Report, the Arbitration and Conciliation Act was amended through the Arbitration and Conciliation (Amendment) Act, 2015. As prescribed by the Law Commission Report, the ground of 'patent illegality' is now restricted only to domestic arbitrations by way of insertion of Section 34(2A). Patent illegality is not available as a ground for international commercial

arbitrations. Additionally, Section 48 of the Arbitration and Conciliation Act was amended to include the following explanations:

> "Explanation 1. —For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, — (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice.
>
> Explanation 2. —For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute."

69. In the case of ***Ssangyong Engineering and Construction Company Ltd. v. NHAI ("Ssangyong Engineering") reported in 2019 (15) SCC 131,*** the Honourable Supreme Court set aside a majority domestic award. The specific factual circumstance involved a Circular being issued by the Respondent and unilaterally applied as binding on the other party. This was upheld by the majority arbitral tribunal. The Honourable Supreme Court held that "This being the case, it is clear that

the majority award has created a new contract for the parties by applying the said unilateral circular and by substituting a workable formula under the agreement by another formula *dehors* the agreement. This being the case, a fundamental principle of Justice has been breached, viz., that an unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this Country, and shocks the conscience of this Court.". Thus, the majority award was set aside on the ground that the award had unilaterally altered the terms of the underlying contract, which is contrary to the principles of justice and shocking the conscience of the Court. However, the minority award was upheld, by invoking the Court's inherent powers under Article 142 of the Constitution of India.

70. India is one of the few jurisdictions to statutorily define public policy through the Arbitration and Conciliation (Amendment) Act, 2015. While some countries consider public policy to mean international public policy, Indian Courts have held that there is no workable definition of international public policy. Thus, it should be construed to be the doctrine of public policy as applied by Courts in India. Within the definition of

public policy, India has statutorily included the grounds of fraud, corruption, fundamental policy of Indian law and basic notions of justice and morality. While public policy has no definition and its elements have been identified statutorily in Section 48(2)(b)(ii), additional elements have been sufficiently postulated by Judicial interpretation.

71. In the case of ***Cruz City 1 Mauritius Holdings* v. *Unitech Limited reported in (2017) 239 DLT 649,*** the Delhi High Court proposed a balancing test to determine, when a foreign arbitral award may be refused enforcement on the ground of public policy. The Court in *Cruz City case* considered whether refusing to enforce a foreign award, which is contrary to public policy may be further opposed to '*public policy*'. However, the Court further held that while the width of discretion to refuse the enforcement of an arbitral award is narrow and limited, if sufficient grounds are established, Courts can accept the contentions to refuse the enforcement of an arbitral award.

72. Additionally, in the case of ***Vijay Karia & Ors. v. Prysmian Cavi E Sistemi SRL reported in 2020 SCC OnLine SC 177,*** the Honourable Supreme Court held that while discretion of Courts may be

employed in some of the grounds for refusing the enforcement of a foreign award, Courts do not have any discretion regarding the grounds of fraud, corruption, fundamental policy of Indian law, basic notions of justice and morality.

73. The expression ‘fundamental policy of Indian law’ calls for a violation, which is beyond mere statutory violation. In *Renusagar's case (cited supra),* the Court held that Article V(2)(b) of the New York Convention, which is *pari materia* to Section 48(2)(b) of the Act, had omitted the reference to “principles of law of the Country in which it is sought to be relied upon”. While replacing the Geneva Convention of 1927, since the expression "public policy" covers the field not covered by the words "and the law of India", which followed the said expression, it was held that contravention of law alone will not attract the bar of public policy and something more than contravention of law is required.

74. It is important to assess the nature, object and scheme of a statute to determine, if the violation of such statute would constitute a violation of the fundamental policy of Indian law. In *Vijay Karia's case*(cited supra), the Honourable Supreme Court held that any rectifiable

breach under the FEMA cannot be said to be in violation of the fundamental policy of Indian law. It held that the Reserve Bank of India could step in and direct the parties to comply with the provisions of the FEMA or even condone the breach. However, the arbitral award would not be non-enforceable as the award would not become void on this count. Citing its Judgment in *Renusagar's case,* the Honourable Supreme Court held that the fundamental policy of Indian law must pertain to "a breach of some legal principles or legislation, which is so basic to Indian law that it is not susceptible of being compromised. "Fundamental Policy" refers to the core values of India's public policy as a nation, which may find expression not only in statutes but also time-honoured, hallowed principles which are followed by the Courts."

75. The Honourable Supreme Court has repeatedly held and even through its decision rendered in the case of ***Shri Lal Mahal Ltd. v. Progetto Grano SPA*** reported in ***(2014) 2 SCC 433,*** the scope of enquiry under Section 48 of the Arbitration and Conciliation Act does not permit review of a foreign arbitral award on its merits. The Honourable Supreme Court held that Courts do not have the ability to take a 'second look' at the foreign arbitral award at the enforcement stage. This is now

incorporated as a statutory rule under Section 48(2)(b) of the Act, Explanation 2.

76. Further, the Delhi High Court, in the case of ***Cairn India & Ors.*** **v.** ***Government of India,*** recently held that once an arbitral Tribunal has been vested with jurisdiction by parties, it has the right to make both right and wrong decisions as these are errors which fall within their jurisdiction.

77. In *Vijay Karia's case* (cited supra), the Honourable Supreme Court, while citing Albert Jan van den Berg in his treatise, "The New York Arbitration Convention: Towards a Uniform Judicial Interpretation", has noted that, "it is generally accepted that the Court, before which the enforcement of the foreign award is sought may not review the merits of the award. The main reason is that the exhaustive list of grounds for refusal of enforcement does not include a mistake of fact or law by the arbitrator. The control exercised by him is limited to verifying whether an objection of a respondent on the basis of the grounds for refusal is justified and whether the enforcement of the award would violate the public policy of the law of the Country. This limitation

must be seen in the light of the international commercial arbitration that a national Court should not interfere with the substance of the arbitration".

78. Section 48(1)(b) of the Act permits a party to resist enforcement on grounds relating to violation of natural justice, if a party is unable to present its case during the arbitration proceedings. However, a party may also resist the enforcement of an arbitral award on the ground of natural justice as being against public policy under Section 48(2)(b)(ii) of the Act. A foreign award can possibly be challenged, if the arbitral Tribunal had ignored the submissions of the party in totality and the resulting award was contrary to the principles of natural justice, thereby violating public policy. This was the finding of the Delhi High Court in the case of ***Campos Brothers Farms v. Matru Bhumi Supply Claim Pvt. Ltd. reported in (2019) 261 DLT 201.*** An appeal against the Single Judge's order in this case is currently pending before the Division Bench of the Delhi High Court.

79. Under Section 48(2) of the Act, a Court is not permitted to delve into merits of the award and evaluate the manner in which the arbitral Tribunal has construed the terms of the underlying contract.

However, recently, in a rare decision, the Honourable Supreme Court has declined the enforcement of a foreign arbitral award in the case of ***National Agricultural Cooperative Marketing Federation of India v. Alimenta S.A.*** In the aforesaid case, the Appellant was allegedly unable to comply with the contractual terms for the export of groundnuts, since it was impossible to get government approval. The Honourable Supreme Court noted that the export required Government approval. However, the Government did not grant the Appellant the necessary approval to carry out its contractual obligations. Further, the agreement itself contained a clause, wherein it was provided that the contract between the parties would be cancelled, if the shipment is prohibited by an executive or legislative act by the Government, which would make the shipment impossible (**Contingency Clause**). In its award, the arbitral Tribunal awarded damages upon the petitioners for the breach of contract. Thus, enforcing an award, which seeks the payment of damages for breach of a contract, which was rendered void, is contrary to the fundamental policy of Indian law. The Honourable Supreme Court, relying upon several judgments, including that of *Associate Builders* and *Ssangyong Engineering,* held that the foreign arbitral award to be unenforceable as being opposed to the fundamental policy of Indian law and the basic

notions of Justice, and thereby public policy.

80. While Indian Courts had an opportunity to expand as to what may constitute the fundamental policy of Indian law and basic notions of justice and morality, there is minimal jurisprudence on what constitutes fraud or corruption in the context of refusing the enforcement of a foreign arbitral award.

81. Resistance to enforcement of foreign awards in a Country must be approached with circumspection. The question, whether enforcement of a foreign award violates the public policy of India, must be considered in the context that India is a signatory to the New York Convention ***(Cruz City 1 Mauritius Holdings v. Unitech Limited, (2017) 239 DLT 649.)***. It is the sovereign commitment of India to honour foreign awards, except on the exhaustive grounds provided under Section 48 of the Act. While it may be tough to construe the term "public policy" without a workable definition, judicial interpretation offers sufficient guidance, while maintaining that judicial interference remains minimal. It is essential to recognize the need for restraint in examining the correctness of a foreign award or a domestic award tendered in an international commercial

arbitration, as opposed to a domestic award. As stated in the case of ***Fritz Scherk v. Alberto Cuvler, 417 US 506 (1974)***, we cannot have trade and commerce in world markets and international seas exclusively on our terms, governed by our laws and resolved in our Courts. Concerns of international comity, respect for the capacities of foreign and transnational Tribunals, and sensitivity to the need of the international commercial system for predictability in the resolution of disputes require that we enforce the parties' agreement even assuming that a contrary result would be forthcoming in a domestic context.

82. As the Delhi High Court in *Cruz City case (cited supra)* has aptly stated, a policy to enforce foreign awards itself forms a part of the *public policy of India* – and Courts should strive to find the right balance between the policy of enforcing foreign awards and considering the grounds for resisting the enforcement of foreign awards. In the light of judicial guidance and international circumspection over public policy as a ground for refusal of enforcement of foreign awards, it is clear that "public policy will not be argued readily, only when all other points fail".

83. From the latest decision of the Honourable Supreme Court in

Vijay Karia's case, the pro-enforcement stance of Indian Courts with respect to foreign arbitral awards has become increasingly pronounced. *Vijay Karia's case* is not only a re-affirmation of this position, but can also be seen as an attempt to plainly discourage litigious parties from seeking to exhaust all possible recourse against enforcement of foreign awards.

84. The judgment in *Vijay Karia's case* highlights two significant aspects:

> (a) It delineates the scope of the 'due process' objection taken by parties that they have not been able to present their case before the arbitral tribunal; and
>
> (b) Perhaps more importantly, it affirms the Delhi High Court's judgment in *Cruz City (cited supra)* and categorically holds that a foreign arbitral award may be enforced even if inconsistent with provisions of the Foreign Exchange Management Act, 1999 (FEMA), inasmuch as an award directing a buyout at a discounted price was held to be enforceable.

85. The Honourable Supreme Court, in *Vijay Karia's case,*

expressly noted that the signatories to the New York Convention on Enforcement of Foreign Arbitral Awards had recognized that a key theme of the Convention was a pro-enforcement 'bias'. This entailed that the burden of proof must lie on the party challenging enforcement and the extremely limited grounds set out in the Convention ought to be strictly construed to demonstrate that such grounds were applicable to any given case. This was because parties had a greater leeway in challenging the award in the seat of arbitration under the *lex situs arbitri* and could not be considered to have a right to raise the same grounds during the time of enforcement of the award in foreign jurisdictions under the Convention.

86. The Honourable Supreme Court, in *Vijay Karia's case,* also dealt with an interesting question of whether a Court could still enforce a foreign award even if certain grounds in Section 48 of the Act were made out. The Honourable Supreme Court classified the grounds set out in Section 48 of the Arbitration and Conciliation Act into three groups:

(a) Grounds, which affect jurisdiction of the arbitration proceedings;

(b) Grounds, which affect party interest alone; and

(c) Grounds, which go to the public policy of

India.

87. The Honourable Supreme Court held that Courts could not have any discretion, if grounds affecting jurisdiction of arbitral proceedings are made out, as this would make the award a nullity. Similarly, Courts could not have discretion in cases, where grounds affecting the public policy of India were made out. However, in terms of grounds affecting party interest alone, the Honourable Supreme Court held that Courts did have discretion to enforce such awards even if such grounds are made out. In essence, the Court held that the word 'may' in Section 48 would be considered to mean 'shall' depending on the context set out above.

88. The Honourable Supreme Court further pointed out the pro-enforcement 'bias' permeating through Section 48 and observed that Section 48(1)(b) of the Act must be strictly construed. Thus, the Honourable Supreme Court held that the expression 'unable to present his case' would be 'a facet of natural justice, which would be breached only if a fair hearing was not given by the arbitrator to the parties'. Thus, read along with the first part of Section 48(1)(b) of the Act – a party not being given proper notice of the appointment of an arbitrator or of the arbitral

proceedings, the Court held that the objection of being 'unable to present' one's case would be limited to the arbitration proceedings themselves and would not extend to the award. Examples cited by the Honourable Supreme Court, which would attract the ground were,

(a) No opportunity given to deal with an argument, which goes to the root of the case;

(b) Findings based on evidence, which go behind the back of a party; and

(c) Additional/new evidence taken, which forms the basis of the award and on which a party had no opportunity to cross-examine.

89. In sum and substance, the Honourable Supreme Court held that a failure to consider a material issue would not fall within the contours of Section 48(1)(b) of the Act. However, a failure to consider a material issue, which went to the root of the matter or failure to decide a claim in its entirety may shock the conscience of the Court, and could be set aside under Section 48(2)(b) of the Arbitration and Conciliation Act.

90. The Honourable Supreme Court also clarified that an award must be read as a whole and if the Tribunal considers a particular issue as essential and answers it, it meant, by implication, that other issues were

rejected. The Honourable Supreme Court further held that if an award had addressed the basic issues raised by the parties and had, in substance, decided the claims and counterclaims, the award must be enforced.

91. The Honourable Supreme Court had extensively quoted from the Delhi High Court judgment in *Cruz City case,* wherein the High Court had held that contravention of any provision of an enactment would not be synonymous with contravention of the fundamental policy of Indian law. The Honourable Supreme Court in *Vijay Karia's case (cited supra) and Cruz City case (cited supra)* approved the principle laid down by the Delhi High Court and recognised that foreign awards would ordinarily be based on foreign law and such laws might not be in conformity with the laws of the Country, in which enforcement was being sought. If courts of the enforcing Country refused enforcement of such awards merely on account of contravention with local laws, the object and purpose of the Convention would be defeated. Seen in this context, the Delhi High Court in *Cruz City Judgment* had observed that fundamental policy of Indian law could only mean fundamental and substantive legislative policy, which forms the bedrock of Indian laws and not a mere provision of any enactment. The Honourable Supreme Court in *Vijay Karia's case*

approved the Delhi High Court's reasoning and its observations in *Cruz City Judgment.*

92. In Vijay Karia's case, the Honourable Supreme Court had also severely castigated the appellants for attempting to argue the matter as a first appeal, given the limited jurisdiction that the Honourable Supreme Court had and in such circumstances, the Honourable Supreme Court had imposed costs of Rs.50,00,000/- on the appellants, to be paid to the respondents.

93. In ***Government of India Vs. Vedanta Ltd. reported in 2020 (10) SCC (1)***, the Honourable Supreme Court held that enforcement Court cannot reassess the arbitrator's appreciation of evidence or interpretation of contractual clauses under Section 48 of the Act. The Honourable Supreme Court clarified that mere disagreement with the arbitrator's interpretation does not fall within any of the narrowly defined grounds on which enforcement could be refused. This decision was also followed by the Honourable Supreme Court in ***Gemini Bay Transcription (P) Ltd. V. Integrated Sales Service Ltd. reported in 2022 (1) SCC 753***, in which the Honourable Supreme Court reiterated that a

party is not permitted to impeach the merits of the award before the enforcing Court. In a recent Judgment rendered by the Honourable Supreme Court in the case of ***Avitel Post Studioz Ltd. Vs. HSBC PI Holdings (Mauritius) Ltd. reported in 2024 (7) SCC 197*** the Honourable Supreme Court once again emphasized minimal interference of Courts at the enforcement stage. Similarly, in the case of ***Mercator Ltd. Vs. Dredging Corporation of India Ltd. reportedin 2024 SCC Online Del 3075,*** the Honourable Delhi High Court held that a review on the merits of the dispute does not fall within the jurisdiction of the Court under Section 48 of the Act.

94. In *Cruz City Judgment* rendered by the Delhi High Court, it was held that if a party has taken recourse to assail the award before the supervisory Court, in normal circumstances, the said party ought not to be permitted to re-litigate the same issue unless the party is able to establish certain special circumstances or indicate good reasons. The observations in *Cruz City Judgment* of Delhi High Court, referred to supra, were also approved by the Honourable Supreme Court in *Vijay Karia's case*. The decision rendered in *Cruz City Judgment* by the Delhi High Court was also endorsed by the Delhi High Court in the case of ***Nine Rivers Capital***

Ltd. v. Gokul Patnaik reported in 2025 SCC Online Del 2898, which stated that the principles of res judicata and issue estoppel apply to enforcement proceedings as well.

95. In the case of ***Carpatsky Petroleum Corporation vs. JPSC Ukrnafta reported in 2020 EWHC 769 (Comm),*** the England and Wales High Court held that enforcement Court, which is dealing with a party's objections to the enforcement of an award, can hold that such objections are an abuse of process since such party is raising objections, which it ought to have raised before the Curial / seat Court, but failed to do so. The Court held that unless special circumstances exist, a party ought to be precluded from bringing a fresh challenge before the enforcement Court, when it has failed to raise such ground before the Curial Court.

96. In ***Devas Employees Mauritious Pvt. Ltd. v. Antrix Corporation Ltd. and Others reported in 2023 SCC Online Del 1608***, the Division Bench of the Delhi High Court has held that to countenance an allegation of fraud for the purpose of resisting enforcement, there should be substantial evidence, which should be tested on the basis of

admitted documents.

97. As a sequitur to the decisions rendered by the Constitutional Courts with regard to enforcement of foreign arbitral awards and the objections that can be raised under Section 48 of the Act, the following principles emerge:

i) The Honourable Supreme Court favoured a narrow, **non-evolving** view of public policy.

ii) Public policy connotes some matter, which concerns the public good and public interest.

iii) Foreign awards operate **at the level of private international law** involving conflict of laws, as opposed to domestic awards. The application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the Courts have to be slow to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved.

iv) The principle of **minimal judicial intervention** in

enforcement of foreign awards as distinguished from domestic awards is to be adopted.

v) **Patent illegality is not available** as a ground to resist enforcement of a foreign arbitral award.

(vi) The test as to whether there is a contravention with the fundamental policy of Indian Law **shall not entail a review on the merits of the dispute**.

(vii) **The discretion of the Courts to refuse enforcement of foreign arbitral awards may be employed in some of the grounds** but the Courts do not have any discretion regarding the grounds of fraud, corruption, fundamental policy of Indian Law, basic notions of justice and morality.

(viii) **The expression "Fundamental policy of Indian Law" calls for a violation that is beyond mere statutory violation** since the expression "Public Policy" covers the field not covered by the word "and the law of India", which follow the said expression, contravention of law alone will not attract the bar of public policy and something more

than contravention of law is required.

(ix) **Fundamental policy of Indian Law must pertain to "a breach of some legal principles or legislation which is so basic to Indian Law that it is not susceptible of being compromised.** "Fundamental Policy" refers to the core values of Indian public policy as a nation, which may find expression not only in statutes but also time-honoured, hallowed principles, which are followed by the Courts".

(x) When it comes to the public policy of India, the argument based upon most basic notions of justice, this ground can be attracted only in very **exceptional circumstances when an award shocks the conscience of the Courts**.

(xi) Section 48 of the Act does not permit review of a foreign arbitral award on its merits. **Courts do not have the ability to take a 'second look' at the foreign arbitral award at the enforcement stage.** This limitation of the enforcement Court must be

seen in the light of the principles of international commercial arbitration that a national Court should not interfere with the substance of the arbitration.

(xii) Natural justice forms a part of the fundamental policy of Indian Law. **But, only in cases, where the foreign award had ignored the submissions of the party in totality and the resulting award was contrary to the principles of natural justice, thereby violating the public policy, the Court may refuse enforcement of the foreign award.**

(xiii) **If the contract itself is void, then enforcement of foreign award passed arising out of the void contract may be refused.**

(xiv) **It is the sovereign commitment of India to honour foreign awards,** except on the exhaustive grounds provided under Article V of the New York Convention. It is essential to recognize the need for restraint in examining the correctness of a foreign award or a domestic award tendered in an international commercial arbitration, as opposed to

a domestic award.

(xv) **The enforcement Court cannot re-assess the arbitrator's appreciation of evidence or interpretation of contractual clauses.** Mere disagreement with the arbitrator's interpretation does not fall within any of the narrowly defined grounds on which enforcement could be refused.

(xvi) **The challenge procedure in the primary jurisdiction gives more leeway to Courts to interfere with an award than the narrow restrictive grounds contained in Section 48 of the Act when a foreign award enforcement is resisted**.

(xvii) **A party is not permitted to impeach the merits of the award before the enforcing Court.**

(xviii) **Parties ought not to re-litigate issues, which have been or ought to have been raised before the seat Court.**

(xix) **In order to resist enforcement of a foreign award, the fraud alleged should be of egregious**

nature and should be proved beyond any reasonable doubt.

(xx) **Breach that is procedural or rectifiable, such a technical violation of regulatory laws, does not amount to breach of fundamental policy.**

(xxi) **A party who is objecting to the enforcement of the foreign arbitral award cannot argue the matter just like a first appeal, given the limited jurisdiction available under Section 48 of the Act, and costs can be imposed, if such an attempt is made.**

(xxii) **The Arbitral Tribunal is not required to deal with every contention made by the parties nor are they obligated to set out step-by-step justification akin to a judicial order. What is required is a reasoned award, that reflects the Tribunal's understanding of the issues and its basis for the conclusions reached.**

(xxiii) **The arbitral award must invoke something more than merely a violation of Indian law to**

be refused enforcement.

(xxiv) **Disregarding orders of the superior court in India will amount to violation of the fundamental policy of Indian law.**

(xxv) **The exhaustive list of grounds available under Section 48 of the Act for refusing enforcement does not include a mistake of fact or law by the Arbitral Tribunal.**

(xxvi) **If the award had addressed the basic issues raised by the parties and had in substance decided the claims and counter claims, the award must be enforced.**

(xxvii) **The fundamental policy of Indian law could only mean fundamental and substantive legislative policy, which forms the bedrock of Indian laws and not a mere provision of any enactment.**

(xxviii) **To resist enforcement of a foreign award on the ground of fraud, there should be substantial evidence, which should be tested on the basis of**

admitted documents.

98. This Court, after giving due consideration to the contentions of the respondents 2 and 3, in the forthcoming paragraphs will deal with every objection raised by the respondents 2 & 3 and thereafter decide as to whether these objections are sustainable under Section 48 of the Act:

99. The objections raised by the respondents 2 & 3 for granting enforcement of foreign arbitral award by this Court in favour of the respective petitioners are as follows:

(a) Buyback of shares by the first respondent as directed under the foreign arbitral award violates Sections 66 to 69 of the Indian Companies Act, 2013 and hence, the award contravenes Indian Company law and consequently, violates the Fundamental Policy of India.

(b) The foreign arbitral award is contrary to the fundamental policy of the Indian Law, as the doctrine of election does not permit the respective petitioners to seek both termination of

rights as well as strategic sale under Clause 24.6 read with Clause 19.6 of the SASHA.

(c) The respective petitioners having pursued for split sale have waived their rights to pursue the secondary sale. Hence, the foreign arbitral award is contrary to the doctrine of waiver, as the respective petitioners have waived their rights for strategic sale.

(d) The foreign arbitral award failed to consider the material issue that the alleged unauthorized obligation/power or the authority must relate to the specific affirmative vote matter listed in annexure 4 of the SASHA.

(e) The foreign arbitral award grants relief contrary to the provisions of the Indian Specific Relief Act and hence, it violates the fundamental policy of the Indian Law.

(f) The foreign arbitral award failed to consider the material issue of whether the investors' interpretation of the limitation of liability in

Clause 22 of SASHA violates the fundamental policy of the Indian Law.

(g) The foreign arbitral award has failed to consider the material issue of considering the wholesale payment business to be adopted while computing the EBITDA of the PAYTECH Business unit when calculating the Company's enterprises value. Hence, the award violates public policy.

(h) Enforcement of the foreign arbitral award will amount to fraud as it ignores the findings of the Ernst & Young (EY) report, which was not known to the respondents 2 & 3. Despite several requests, the respective petitioners did not furnish a copy of the EY report to the respondents 2 & 3 deliberately. The respective petitioners have played fraud on the respondents 2 & 3 for the purpose of assessing the value of the shares of the first respondent Company at a higher value.

Buy Back Objection:

100. The first objection of the respondents 2 and 3 that arises for consideration is whether the foreign arbitral award amounts to "buyback of shares".

101. The respective petitioners contend that the award has not directed "buyback of shares" by the first respondent company, whereas the respondents 2 and 3 contend that the award directs "buyback of shares", which according to the respondents 2 and 3, amounts to violation of fundamental policy of Indian Law, since it violates Sections 66 to 68 of the Indian Companies Act, 2013. The relevant portion of the foreign arbitral award pertaining to the said issue as to whether the award has directed "buyback of shares" or not, is reproduced hereunder:-

> a. The 1st to 3rd Respondents are jointly and severally, to pay damages suffered by the Claimants being the Exit Price as at 18 September 2020 aggregating to INR 6,614 million (for the first Claimant), INR 777 million (for the second Claimant), INR 1,093 million (for the third Claimant) and INR 2,804 million (for the fourth Claimant), which amount shall stand reduced to the

extent of the net proceeds received by the Claimants from a Strategic Sale (provided that the sums received from a Strategic Sale are lower than the damages awarded by the Tribunal);

b. If the damages in paragraph 804(a) are paid, the Claimants will cooperate with the Respondents to surrender all their shares in the first Respondent. The Claimants and Respondents are to co-operate with each other in order to effect such prompt surrender.

c. If within 90 days from the date of this Award, the damages in paragraph 804(a) above are not paid, then the Claimants are entitled to proceed towards a Strategic Sale and the Respondents are not to interfere with the Strategic Sale (under Clauses 19.6(b) and 24.6(a) of the SASHA) to be implemented by the Claimants;

d. The Respondents are to render full cooperation with respect to any Strategic Sale (under Clause 19.6(b) of the SASHA) to be implemented by the Claimants;

102. To have clarity, this Court deems it fit to point out the difference between “buyback of shares” and “surrender of shares”. Only in cases of “buyback of shares”, Section 68 of the Indian Companies Act,

2013, gets attracted, whereas it will not get attracted in respect of "surrender of shares". A buyback is a company's active decision to repurchase its own shares from the market to reduce the number of outstanding shares, while a surrender is a shareholder's voluntary act of returning shares to the company, often to avoid forfeiture due to non-payment of calls or to exit an investment. The company initiates a buyback to increase shareholder value, but, a surrender is usually a response to a shareholder's financial hardship or desire to exit their investment. Therefore, it is clear that the concept of "buyback of shares" and "surrender of shares" are completely different.

103. As seen from the relevant portion of the award, which is relevant to the buyback issue, as extracted supra, it is clear that the award does not direct any "buyback of shares" by the first respondent company, and the award only directs that on payment of damages by the respondents 1 to 3, the respective petitioners shall surrender all their respective shares without specifying the entity/persons to whom such surrender is to be made.

104. The foreign award has also recognized the distinction between

a share buyback contemplated under Clause 19.2 of the SASHA and a right to seek damages along with strategic sale on breach of Clause 19.1 of the SASHA. Clause 19.1 of the SASHA deals with "secondary sale", whereas Clause 19.2 of the SASHA deals with an actual "buyback". The Arbitral Tribunal has interpreted both the Clauses and has rendered a finding in paragraph No.348 of the award, which reads as follows:-

> "348..... While it is correct that investors cannot force an immediate buyback, Clause 19.2 applies in the event of secondary sale as contemplated in Clause 19.1 does not take place, that does not mean that the options have to be exercised in sequence. To the contrary, the express language of Clause 19 gives that option to the investors."

105. In Paragraph Nos.370 and 372 of the award, the Arbitral Tribunal held that awarding damages for breach of the obligation did not equate to a buyback of shares by the first respondent company (as contemplated under Clause 19.2 of the SASHA), thereby preserving the distinction between Clause 19.1 (damages) and Clause 19.2 (buyback) of the SASHA. Paragraph Nos.370 and 372 of the award are re-produced hereunder:-

370. The Respondents' argument that the non-provision of a Secondary Sale under Clause 19.1 does not give rise to a claim for damages, but instead merely takes you to the next step of the waterfall does not work when the language of Clause 19 is looked at in any detail. Crucially, the Investors are not required to invoke either or both Clause 19.2 or 19.3 after Clause 19.1 has been invoked, and indeed they cannot do so individually but only in unison and at their option. So to take the simplest argument of all. Assume Clause 19.2 was invoked by all the Claimants and a Buy-Back did not take place, the Claimants would then have a clear right of damages for breach against the Company. The same applies under Clause 19.1 *albeit* this time against the Promoters and the Company. In other words, there is no true waterfall of rights and obligations which apply to the Investors as a whole when looking for an exit. Under Clause 19.1, the Investors need not act as a collective, but can do so individually and each Investor who triggers Clause 19.1 and requires to be bought out has a secondary right to damages. Moreover, any Investor who does trigger the Clause 19.1 right is not then obliged to proceed under Clause 19.2 if no exit is provided.

> 372. This does appear to be a further argument in favour of the Claimants' construction. It should be recalled that under Clause 19.6, Clauses 19.2 and 19.3 are referred to in terms "if applicable". All these yet again suggest that Clauses 19.1, 19.2 and 19.3 are not part of a waterfall that has to be exhausted in *sequence* but instead a series of alternative options provided to the Investors.

106. Only based on the aforesaid reasoning, the Arbitral Tribunal has rendered a finding in the award that the respective petitioners had a right to get the relief of damages and also strategic sale, and that the contractual framework provided a series of alternative exit options rather than a single, mandatory buyback mechanism.

107. The direction issued under the award to surrender shares on payment of damages was to avoid any possibility of double recovery by the respective petitioners. This Court finds that such a direction given by the Arbitral Tribunal is only in accordance with Clause 19 of the SASHA for the following reasons:-

(a) The primary relief sought by the respective petitioners was damages and a right to implement a strategic sale of the first respondent

company to satisfy such damages.

(b) Having sought such relief, to avoid any allegation of double dipping or double recovery, the respective petitioners had volunteered to return the shares held by them in the first respondent company, upon receipt of damages.

(c) The aforesaid intent of the respective petitioners finds extensive discussion in the award, which are captured in paragraph Nos.243 and 677 of the award. Paragraph Nos.243 and 677 of the award are re-produced hereunder:-

> 243. The Claimants submit that having suffered non-performance of Clause 19.1, the Claimants are entitled to, and have sought damages. Having suffered a violation of *inter alia* various provisions of Clause 24.4 of the SASHA, the Claimants are entitled to seek performance of Clause 24.6(a) of the SASHA. To avoid allegations of "double-dipping", the Claimants have moulded their relief such that the damages be reduced pursuant to the proceeds from the Strategic Sale, if these proceeds are lower than the sum of damages. The Claimants submit that it is unclear how this could lead to an inference that Clause 19.1 is not an absolute obligation.

677. Finally, the Claimants accept that in seeking both specific performance (a Strategic Sale) and damages, they cannot obtain double recovery. The Claimants submit that to the extent they receive the full Exit Price awarded by the Tribunal, then they will undertake to return the shares to the Company, and further that the amount of damages awarded shall be reduced by any amounts recovered from a Strategic Sale and that if the Strategic Sale results in a higher sum being realised than awarded, then the Claimants will not seek to recover those amounts.

(d) The decision of the Delhi High Court in the case of *NTT Docomo Inc. Vs. Tata Sons Ltd. [2017 SCC Online Del 8078]* also premised surrender of shares on payment of damages. The same is re-produced hereunder:-

"The award is very clear on this issue. What was awarded to Docomo were damages and not the price of the shares. The order that the share scrips must be returned to Tata was only incidental and, in fact, Docomo itself was not interested in retaining the share scrips."

(e) In the same lines, under the foreign arbitral award, the Arbitral

Tribunal has directed payment of damages and upon payment of damages, it was made clear that the respective petitioners and other investors shall cooperate with the first respondent company and the promoters to surrender all their shares in the first respondent company.

(f) The Arbitral Tribunal also does not contemplate the entity/persons to whom such surrender of shares is to be made on payment of damages.

(g) Further, as observed earlier, the concept of buyback and surrender of shares are entirely different and the same has been analyzed by this Court in detail supra.

108. The construction given by the respondents 2 and 3 presupposes; (a) there will no strategic sale; (b) full damages will be paid; (c) those damages will be paid by the first respondent company; (d) shares will be "bought back" by the first respondent company and no other form of structuring of the transaction will be employed. Even assuming this is a buyback by the first respondent company after fulfillment of all the steps, there is no blanket embargo on a buyback under Sections 66 to 68 of the Indian Companies Act, 2013. It simply calculates thresholds for every year and the first respondent can very well

comply with those thresholds. Infact, Clause 19.2 of the SASHA contemplates an actual buyback, which is not the scenario in Clause 19.1. Only in accordance with Clause 19.1 of the SASHA, the directions have been issued by the Arbitral Tribunal under the award.

109. Further, it is to be noted that the respective petitioners are seeking enforcement of the award only as against the respondents 2 and 3 and not the first respondent company to keep the first respondent company as a going concern. In such a scenario as well, there would be no question of buyback of shares.

110. Moreover, by resisting the enforcement of the foreign award on this untenable ground, the respondents 2 and 3 are essentially inviting this Court to unravel the binding terms of the SASHA, which were confirmed by the Arbitral Tribunal, which will lead to a re-writing and re-assessment of the award, which is never permitted in the enforcement proceedings under Section 48 of the Act.

111. Surrender of shares through capital reduction under Section 66 of the Indian Companies Act, 2013, is lawful and distinct from

buyback. The direction to surrender shares upon payment of damages can also be effected by way of undertaking a capital reduction in accordance with Section 66 of the Indian Companies Act, 2013. Capital reduction is the process of decreasing a company's shareholder equity by cancelling and extinguishing its shares and paying off any paid-up share capital.

112. The fallacy of the second and third respondents' argument is borne out from the judgment of the Hon'ble Supreme Court in the case of *Renusagar Power Co. Ltd. Vs. General Electrict Co. [1994 Supp (1) SCC 644],* where the core allegation was that the enforcement of a foreign arbitral award would amount to a violation of Section 47(3) of the Foreign Exchange Regulation Act, 1973 (FERA), as it involved payment obligations in foreign exchange that had been previously denied approval by the Indian Government. The Hon'ble Supreme Court, while emphasizing on the economic and regulatory objective of FERA, rejected the argument that prior refusal of approval by the Government made subsequent enforcement impermissible, explaining that the Government remains free to re-evaluate its decision based on new developments. Ultimately, the Hon'ble Supreme Court held that none of the grounds

raised by *Renusagar* including those invoking FERA were sufficient to deny enforcement of the arbitral award as there was no violation of a law or public policy.

113. The reliance of the respondents 2 and 3 on *Trevor and another Vs. Whitwork and another [1887 (12) App.Cas.409] and Ramesh B. Desai and Ords Vs. Bipin Vadilal Mehta and others [2006 (5) SCC 638]* to contend that there is a prohibition against return of capital arising from a buyback is incorrect and misleading as, in *Trevor*, it was held that such return of capital should be in consonance with statutory restrictions and be carried out with Court sanction.

114. It is a settled proposition that when a statute imposes a penalty to deter or regulate specific conduct such as prohibiting or restricting certain transactions, such statutory consequence, even if attracted, does not by itself constitute a breach of the fundamental policy of Indian Law. The mere existence of a penal or regulatory provision is indicative of legislative intent to discipline, not to void the underlying transaction as repugnant to the foundational tenets of the legal system. Enforcement of a foreign arbitral award cannot be restricted merely on the ground that a

statutory penalty might hypothetically arise.

115. In *Mercator Vs. Dredging Corporation of India [2024 SCC Online Del 3075],* a decision rendered by the Delhi High Court which view this Court agrees, it has been held that unless the statute itself states that violation of a penal provision will render a contract void or illegal, mere violation of such provision will not invalidate a contract. The decision rendered by the Hon'ble Supreme Court in *Asha John Divianantha Vs. Vikram Malhotra [2021 (19) SCC 629]* relied upon by the respondents 2 and 3 has no applicability to the facts of the instant case. In *Asha John Divianantha (cited supra),* the Hon'ble Supreme Court analyzed Section 31 of FERA to hold that a gift deed executed without obtaining an approval from RBI would render such transfer of property unenforceable in law as clear title in the property would not pass to the donee. Similarly, the reliance on *Imax Corporation Vs. E-City Entertainment [2024 SCC Online Bom 3555]* by the respondents 2 and 3 is also totally misplaced. Unless the statute itself states that violation of a penal provision will render a contract void or illegal, mere violation of such provision will not invalidate a contract. Therefore, Sections 66 to 68 of the Indian Companies Act, 2013, relied upon by the respondents 2

and 3 for objecting to the enforcement of the foreign arbitral award has no applicability to the case on hand.

116. In *OPG Power General Pvt Ltd Vs. Enexio Power cooling Solutions India Pvt Ltd [2025 (2) SCC 417]*, the Hon'ble Supreme Court has held as follows:-

> "37. What is clear from the above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good."

117. Therefore, it is clear that a breach that is procedural or rectifiable, such as a technical violation of regulatory laws, does not amount to a breach of fundamental policy. Infact, even non-rectifiable breaches have been held to be not in violation of fundamental policy of India. Section 48 of the Act deals with the enforcement of an award, not its validity, and the scope for factual investigation is limited. This distinction underscores the narrow approach to deny enforcement on the

basis of public policy and restricts it to violations that are unquestionably contrary to the basic tenets of Indian Law.

118. The reliance of the second and third respondents' on *Macdougal vs. Jersey Imperial Hotel Co Ltd [1864 (2) H&M 568] and Barclays Bank Plc Vs. British Commonwealth Holdings Plc [1995 BCC 19]* to assert that return of capital/buyback is linked to public interest of protecting creditors and other stakeholders is erroneous as both these judgments pertain to return of capital of a listed company/joint stock company, which is not the case on hand, and therefore, the said decisions have no bearing for deciding these petitions.

119. In *OPG Power Generation's case* (cited supra), the Hon'ble Supreme Court has reiterated the well established principles that the Arbitral Tribunals are not required to deal with every single contention made by the parties, nor are they obligated to set out a step-by-step justification akin to a judicial order. What is required is a reasoned award that reflects the tribunal's understanding of the issues and its basis for the conclusion reached. If the award indicates the path of reasoning, identifies the evidentiary foundation and explains the key findings, it will

be sufficient to meet the requirement of being a reasoned award and enforcement must therefore follow.

120. The issue of buyback raised by the respondents 2 and 3 was also raised by them before the Singapore High Court while challenging the award. The objections raised by the respondents 2 and 3 were conclusively rejected by the Singapore High Court in its judgment dated 21.02.2025. The Singapore High Court held that the Arbitral Tribunal had duly applied its mind to the respondents' buyback argument and found no justification to interfere with the Arbitral Tribunal's conclusion. The Singapore High Court dealt with the buyback objection in the following manner:-

(a) The Singapore High Court examined the structure of the buyback defence, which consists of two limbs; (i) the interpretation limb; and (ii) the unenforceability limb. The Singapore High Court held that the unenforceability limb is contingent upon the prior establishment of the interpretation limb. If the interpretation limb is rejected, the unenforceability limb collapses.

(b) The promoters contended that awarding damages for the breach of Clause 19.1 would be equivalent to a buyback since the investors

would have to return their shares upon receiving damages. The Court noted that this argument was based on the assumption that damages paid for breach of Clause 19.1 would necessarily lead to share surrender and held as follows:-

> "However, the question of the permissibility of the Company buying back the Investors' shares (and whether that might affect the interpretation of cl 19. 1) would not even arise if an order for the Company to pay damages to the Investors (coupled with the Investors returning their shares to the Company upon receipt of such payment) does not "effectively amount" to the Company buying back the Investors' shares to begin with."

(c) The Singapore High Court noted that the Arbitral Tribunal also summarized and acknowledged the promoters' objections, particularly in regard to Clause 19.1 of the SASHA and if treated as an absolute obligation, the same would render the buyback provision in Clause 19.2 of the SASHA as redundant.

(d) The Singapore High Court held that since the interpretation limb was rejected, the Arbitral Tribunal was not required to separately address the unenforceability limb.

(e) The Singapore High Court noted that the promoters' failure to

raise the unenforceability limb earlier further weakened their position.

121. Therefore, the Singapore High Court, which is the supervisory court, having rejected the objection with regard to buyback, the respondents 2 and 3 have once again raised the very same issue before this Court, which is the enforcement Court under Section 48 of the Act. The observation of the Delhi High Court in *Cruz City Vs Unitech Limited [2017 SCC Online Del 7810],* which has been approved by the Hon'ble Supreme Court in *Vijay Karia (cited supra)* and also followed in *Mercator's case* (cited supra) is that a party is not permitted to re-litigate the same issue before the foreign award enforcement court. In the case on hand as well, since the issue with regard to buyback has already been decided by the Singapore High Court, the respondents 2 and 3 cannot argue the very same issue in the enforcement proceedings under Section 48 of the Act.

122. Further, in the case on hand, the transnational issue estoppel applies and therefore, the respondents 2 and 3 are estopped from raising the defence of buyback once again before the foreign award enforcement court, which, in the instant case, is this Court.

123. The respondents 2 and 3 are also attempting to raise new legal issues, which could have been raised by them even before the Singapore High court, which is the supervisory Court. It is for the first time before this Court, the respondents 2 and 3 have raised a plea that the award is in contravention of Sections 66 to 68 of the Indian Companies Act, 2013. Infact, as seen from the award, the respondents 2 and 3 in the arbitration have never raised the issue of violation of the Indian Companies Act, 2013, and it is only in their post hearing reply submissions and cost submissions dated 09.02.2024, where, for the first time, the respondents 2 and 3 have raised a new plea that the arbitral claim made by the respective petitioners if awarded will be in violation of Section 67(1) of the Indian Companies Act, 2013.

124. The respondents 2 and 3 have attempted to contend that this Court must appreciate the substance of the transaction over its form to argue that any surrender of shares by the respective petitioners will result in a buyback. Such a contention is flawed and misplaced, as any surrender of shares cannot and does not automatically result in a buyback and in any event, it will not violate any provisions of the Indian

Companies Act, 2013. Therefore, the reliance of the judgments in *Progress Property Co ltd (cited supra); Barclays Bank Plc (cited supra); and Trevor (cited supra)* by the respondents 2 and 3 to contend that courts have appreciated substance over form is not applicable to the case on hand.

For the foregoing reasons, the buyback issue raised by the respondents 2 and 3 once again before the enforcement Court, i.e., this Court, has to be summarily rejected.

Doctrine of Election Objections:

125. The second objection raised by the respondents 2 and 3 is that the foreign arbitral award is contrary to the fundamental policy of the Indian Law, since the doctrine of election does not permit the respective petitioners to seek both termination of rights as well as strategic sale under Clause 24.6 read with Clause 19.6 of the SASHA.

126. At the outset, it must be noted that this objection was never raised before the Singapore High Court by the respondents 2 and 3. A proper understanding of this objection reveals that it is, in substance, an impermissible attempt to reopen the merits of the dispute under the guise

of a natural justice claim. The contention of the respondents 2 and 3 that the Arbitral Tribunal applied its own reasoning and the principles to conclude that the strategic sale right was validly exercised without affording them an opportunity to respond fails to acknowledge the well settled position that it is entirely within the domain of an Arbitral Tribunal to evaluate and draw inferences from the evidence/arguments placed/presented before it, even if such reasoning does not mirror the exact articulation of either party. The Arbitral Tribunal has not relied upon any new evidence or denied the respondents 2 and 3 an opportunity to meet an argument going to the root of the matter. In the absence of such breach, the threshold under Section 48(1)(b) of the Act is not met.

127. The claim of the respondents 2 and 3 with regard to non-consideration of the doctrine of election is incorrect and is in any event will amount to re-appreciation on merits. Under Section 48 of the Act, as held in the decisions of the Hon'ble Supreme Court in *Vedanta Ltd; Vijay Karia; Shri Lal Mahal Ltd; and Gemini Bay Transcription (cited supra),* reconsideration of the merits of the dispute and reinterpretation of the SASHA is not permissible.

128. In the ratio laid down in *Checkpoint Ltd Vs. Strathclyde Pension Fund [2003 EWCA Civ 84],* which has been upheld by the Madras High Court in *Transtonnelstroy – Afcons (JV) Vs. Chennai Metro Rail Ltd.[2023 SCC Online Mad 1013],* the United Kingdom High Court drew a distinction between the arbitrator supplying new evidence by using his own knowledge and him using that knowledge to evaluate and adjudicate upon the evidence before him. In relation to the latter, the arbitrator is fully entitled to make use of his own experience and knowledge in evaluating the evidence before him and in reaching his conclusion, provided that it is of a kind and in the range of knowledge that one would reasonably expect the arbitrator to have, and provided he uses it to evaluate the evidence called and not to introduce new and different evidence.

129. It is commonplace in judicial decisions on points of construction that a judge may fashion his or her reasoning and analysis from the material upon which argument has been addressed without it necessarily being in terms which reflect those fully expressed by the winning party. Therefore, the reliance placed by the respondents 2 and 3 on *Interbulk Ltd. v. Aiden Shipping Co. Ltd. Lloyd's Law Reports [1984]*

Vol. 2; OAO Northern Shipping Company v. Remol Cadores De Marin SL [2007] EWHC 1821 (Comm); Lorand Shipping Ltd. v. Davof Trading (Africa) BV (The Ocean Glory) [2014] EWHC 3521 (Comm); Cameroon Airlines v. Transnet Limited [2004] EWHC 1829 (Comm); and Vee Networks Limited v. Econet Wireless International Limited [2004] EWHC 2909 (COMM), to contend that the Arbitral Tribunal ought to have provided an opportunity to the parties before deciding an issue that was not before it, is incorrect, misconceived and has to be rejected.

130. The Hon'ble Supreme Court has made it clear in *Vijay Karia* (cited supra) that the expression "or was otherwise unable to present his case" under Section 48(1)(b) of the Act must be interpreted narrowly. The Hon'ble Supreme Court observed that this standard is considerably more restrictive than the broader tests adopted under the English and Singapore arbitration regimes. Therefore, a mere failure to consider a material issue does not, by itself, fall within the ambit of Section 48(1)(b) of the Act. Further, the Hon'ble Supreme Court in *Vijay Karia* (cited supra) clarified that violation of Section 48(1)(b) of the Act, which arises only under limited circumstances, such as, where a party is denied the opportunity to meet an argument that goes to the root of the matter; or

whether the findings are based on evidence introduced behind the party's back; or where the award relies on new or additional evidence without affording the other side a chance to rebut it. Therefore, the respondents 2 and 3 cannot raise this objection under Section 48(1)(b) of the Act by placing reliance on *Bachhaj Nahar Vs. Nilima Mandal and others [MANU/SC/8199/2008]*; *and Organizing Committee Commonwealth Games Vs. Pico Deepali Overlays Consortium [2016 SCC Online Del 1582],* to contend that natural justice dictates that reliefs ought not to be granted without pleadings/opportunity to the counter-party, in view of very narrow and limited scope of Section 48 of the Act.

131. The respondents 2 and 3 raised the ground of election during the arbitration, which was refuted by the respective petitioners, and considered by the Arbitral Tribunal and rejected. Therefore, the respondents 2 and 3 cannot contend that they were not awarded ample opportunity by the Arbitral Tribunal to be heard on this issue. The Arbitral Tribunal only based on the pleadings and evidence available on record in the award found that (a) the respective petitioners had validly exercised the right of termination and the right of strategic sale under Clause 24.6 of the SASHA; (b) there was no exclusion of the right of

strategic sale or already an election made of the exercise of one remedy (termination) to the exclusion of another (strategic sale) on the basis of the April 11, 2022 notices -- the notices of arbitration and the consolidated statement of claim, since both rights had been invoked; and (c) the Tribunal granted damages and strategic sale which was the final relief sought by the respective petitioners and by granting so, it is held that the termination right under Clause 24.6(c) fell away since the final award determinatively granted the relief of strategic sale. Therefore, it is clear that there was no question of denial of an opportunity for the respondents 2 and 3 to be heard on this issue by the Arbitral Tribunal.

132. On 11.04.2022, the respective petitioners had issued a notice of material breach pursuant to Clause 24.4 of the SASHA on the respondents' failure to provide an exit under Clause 19 of the SASHA. In the said notice, the respective petitioners had given the respondents written notice of termination of their rights (not obligation) under Clause 24.6(c) of the SASHA. On the same date, the petitioners had also issued a separate notice of strategic sale under Clause 19.6 of the SASHA pursuant to the material breach. In response, the respondents and Mr.Archit Mylandla issued an email dated 11.04.2022 denying the

contents of the notice of material breach and notice of strategic sale and they have also stated that the respondents and Mr.Archit Mylandla have *"temporarily immediately withdrawn voluntarily"* from the first respondent company (Ex.C-3, Emergency arbitration application). The Emergency Arbitral Tribunal, after considering the above response given by the respondents 2 and 3, held that the petitioners have established a prima-facie case that they are contractually entitled to terminate the rights of the respondents 2 and 3 under the SASHA, which includes the second respondent's right to manage the first respondent company under Clause 10.1 of the SASHA. It has further observed that since the respondents 2 and 3 continue to interfere in the operations of the first respondent company, it would be difficult to quantify the impact of such interference to the operations and value of the first respondent company. This is especially so, since any of the interference and influence that the respondents 2 and 3 may seek to exert in the affairs of the first respondent company would not always be direct or obvious. Hence, the Management Orders would simply ensure the neutral management of the first respondent company while the dispute between the respective petitioners and the respondents 2 and 3 is in progress. Only under the aforesaid circumstances and only to prevent the respondents 2 and 3 from

engaging any activities jeopardizing the operations of the first respondent company, it is evident from the outset that the right to seek specific performance of the strategic sale need to be preserved. Therefore, it is clear that the core relief sought by the respective petitioners was only the enforcement of the strategic sale. The Arbitral Tribunal has also elaborately discussed in its award as to whether the respective petitioners have elected to terminate the promoters under the SASHA to the exclusion of any right to invoke the strategic sale, by giving the following reasons:-

> (a) As seen from the notices issued by the petitioners in April, 2022; and the notice of arbitration, the petitioners had invoked both the rights of strategic sale and termination of rights of the respondents.
>
> (b) In the statement of claim, the petitioners had invoked both of these remedies.
>
> (c) One of the primary relief sought by the petitioners is damages and if the respondents fail to pay such damages within 90 days, the petitioners can implement a strategic sale.

(d) The notice of strategic sale was not abandoned and formed a part of the reliefs sought in the arbitration; and

(d) The petitioners have not exercised any option to seek termination of the rights of the respondents at the expense of enforcement of a strategic sale, which has been the core relief sought in the arbitration.

133. Therefore, it is clear that at no point in the past the petitioners exercised their rights under Clause 24.6 of the SASHA to elect or give up one right over the other. Therefore, the conclusion of the Arbitral Tribunal that the petitioners had invoked both rights and based on the fact that they did not make an election as both rights were invoked on the same date, cannot be found fault with. The Arbitral Tribunal has also come to the right conclusion that the respective petitioners have claimed both reliefs, i.e., strategic sale and termination, but, they have not exercised any option to seek termination of the promoters' right at the expense of the right to force a strategic sale, which has been the core relief sought by the respective petitioners in the arbitration.

134. Concurring with the respective petitioners, the Arbitral Tribunal in its Memorandum of Correction and Interpretation of the Final Award dated 22.08.2024 concluded that the rights under Clause 24.6 of the SASHA are disjunctive and that the core relief sought by the respective petitioners is that of a right to implement strategic sale; and that the termination of the rights (and not the obligations) of the respondents cannot be at the expense of the right to force a strategic sale. The respondents 2 and 3 were also reinstated in the management of the first respondent company, post the correction award.

135. It is also to be noted that the ground of election was never raised by the respondents 2 and 3 in their challenge to the award before the Singapore High Court. If the respondents 2 and 3 genuinely believed that the Arbitral Tribunal had failed to consider the issue of election properly or violated the principles of natural justice, such a challenge ought to have been raised before the Singapore High Court, which is the Curial Court. Notably, the doctrine of election, which is the time-honored principle of Indian Law and their central aspect of argument, was not even alluded in the correction proceedings, indicating the belated

and opportunistic nature of the present objection. By resisting the enforcement of the award on the ground of non-consideration of the doctrine of election, the respondents 2 and 3 are essentially seeking a reconsideration of the merits of the dispute, which cannot be permitted under Section 48 of the Act.

Award disregards the prohibition under Section 16(b) of the Specific Relief Act:

136. There is no violation of the fundamental policy of India as contended by the respondents 2 and 3. They have contended that the Arbitral Tribunal had disregarded the prohibition under Section 16(b) of the Specific Relief Act, 1963, which states that a party that has breached an essential term of the contract cannot obtain specific performance. The breach of the essential term of the SASHA, as per the respondents, is in contravention of Clauses 10.1 and 10.3 of the SASHA by terminating the rights of the respondents under Clause 24.6(c) of the SASHA. This argument however fails as it is based on a premise that is not only unproven but directly contradicting by the findings of the Arbitral Tribunal. There is no determination by the Arbitral Tribunal that the respective petitioners were in breach of any essential term of the SASHA. On the other hand, the Arbitral Tribunal found that the respective

petitioners were entitled to enforce their rights and did not commit any breach that would attract the bar under Section 16(b) of the SASHA. In the absence of such a finding, the argument that the award violates the fundamental policy of Indian Law cannot be sustained. The test under Section 48(2)(b) of the Act is narrow and hence, no such objection can be upheld by this Court. That apart, the respondents 2 and 3 did not assert such a contention throughout the arbitration proceedings and therefore, they are barred from introducing such new grounds at the stage of enforcement proceedings under Section 48 of the Act.

137. The respondents 2 and 3, in their arguments, have incorrectly and fallaciously contended that the second respondent was ousted as the Chairman of the Board of Directors of the first respondent company by the petitioners, when infact the Minutes of the Meeting dated 09.02.2024 records to the contrary as under:-

> " It is a matter of record that Mr.Nagaraj Mylandla, in the past, has chaired the meetings as well and it is also a matter of record that he willingly gave up his position as the Chairman and has requested Mr.Rudhraapathy J to chair."

138. Therefore, it is clear that Mr.Nagaraj Mylandla was never ousted as the Chairman of the Board of Directors by the petitioners, but, had voluntarily given up the chair to Mr.Rudhraapathy J/fourth respondent.

For the foregoing reasons, the objections raised by the respondents 2 and 3 that the Arbitral Tribunal did not consider the doctrine of election, which, according to the respondents 2 and 3, is a core issue, has to be rejected by this Court.

Waiver Issue:

139. The fourth objection raised by the respondents 2 and 3 for resisting the enforcement of the foreign arbitral award is that the respective petitioners having pursued the split sale have waived their rights for strategic sale.

140. According to the respondents 2 and 3, the respective petitioners having participated in the split sale process of CashTech business and PayTech business of the first respondent company, had waived their rights for a secondary sale under Clause 19.1 of the SASHA. According to the respondents 2 and 3, the Arbitral Tribunal had failed to consider this issue of waiver, which, according to them, is a material and

core issue, and therefore, according to them, the award is contrary to Section 63 of the Indian Contract Act, 1872. The respondents 2 and 3 have relied upon a judgment of the Hon'ble Supreme Court in *All India Power Engineer Federation and others Vs. Sasan Power Limited and others [2017 (1) SCC 487]* in support of their objection of waiver. The objection of waiver will amount to reassessment and re-examination of the merits of the dispute and will amount to re-look of the evidence presented before the Arbitral Tribunal. It would also reopen the interpretation of the SASHA as rendered by the Arbitral Tribunal and therefore, the said objection travels far beyond the grounds available to the respondents 2 and 3 under Section 48 of the Act. The Arbitral Tribunal has rendered a categorical finding that the respective petitioners had never waived their rights to pursue for a secondary sale under Clause 19.1 of the SASHA and in any event, any waiver would have to be explicitly in writing in terms of Clause 29.5 of the SASHA. Clause 29.5 of the SASHA reads as follows:-

> **29.5. Waiver**
>
> Any waiver, permit, consent or approval of any kind or character on the part of any Party of any breach of default under this Agreement or any waiver on the part of the Party of any provisions or

> conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. No forbearance, indulgence or relaxation of any Party at any time to require performance of any provision of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of the same provision and any waiver or acquiescence by any Party of any breach of any provision of this Agreement shall not be construed as a waiver or acquiescence of any continuing or succeeding breach of such provisions, a waiver of any right under or arising out of this Agreement or acquiescence to or recognition of rights and/or position other than as expressly stipulated in this Agreement.

141. The Arbitral Tribunal has comprehensively analyzed and interpreted the terms of the SASHA including the absolute obligation of the respondents 2 and 3 to provide the petitioner an exit under Clauses 19.1 and 29.5 of the SASHA. The Arbitral Tribunal, only after analyzing the contemporaneous correspondence between the respective petitioners and the respondents, has concluded that the respective petitioners had validly invoked their rights under Clause 19.1 and all the parties had

agreed to pursue a secondary sale under Clause 19.1 of the SASHA.

142. The respondents 2 and 3 had once again raised this objection of waiver before the Singapore High Court in their challenge made to the award, where it was once again comprehensively dealt with and rightly rejected. Any attempt to reintroduce such objection at the stage of enforcement proceedings under the limited and narrow grounds available under Section 48 of the Act constitutes an impermissible re-litigation of issues already adjudicated by the Arbitral Tribunal as well as by the Singapore High Court. Moreover, the respondents 2 and 3, for the first time, alleged that the award violates Section 63 of the Indian Contract Act by placing reliance on *Sasan's case* (cited supra), which is not even pleaded by them in their counter affidavit dated 19.03.2025. Therefore, without a pleading in respect of waiver objection raised by the respondents 2 and 3, the said objection has to be summarily rejected, as the scope of interference by this Court under Section 48 of the Act is very narrow and limited. It is settled law that if a case has not been pleaded, it cannot be introduced for the first time in oral arguments.

143. The testimony of the second respondent before the Arbitral

Tribunal will also confirm that the respective petitioners did not waive their rights for a strategic sale. The second respondent in his deposition during the arbitration has deposed as follows:-

(a) He understood the notices sent by the petitioners in 2016 to be a valid secondary sale notices.

(b) He also understood that the petitioners wanted to participate in the secondary sale process in 2017.

(c) In response to a question as to whether by 2018 the exit process was taking longer than everyone would have liked, he confirmed by deposing that yes, by 2018, the exit process was taking time.

(d) The second respondent then confirmed that an exit via a secondary sale of all the petitioners' shares was being discussed in early 2020.

(e) When asked whether the second respondent understood the notices dated 18.09.2020 in which it is stated that the petitioners wanted to

proceed with the secondary sale, he said, yes agreed.

(f) He then confirmed that Credit Suisse was engaged to assist with this very secondary sale process.

144. The Arbitral Tribunal has relied on the cross-examination of the second respondent to arrive at its finding on this waiver issue, i.e., the petitioners were pursuing a secondary sale. Therefore, any reliance placed by the respondents 2 and 3 on documents/evidence that was placed before the Arbitral Tribunal to contend that the parties had, by pursuing a split sale, waived their rights to a secondary sale, has to be rejected outright.

145. The respondents 2 and 3 incorrectly highlighted paragraph No.38 of the Singapore High Court judgment and drew the attention of the Court to a selective reading of the Minutes of the Board Meeting dated 26.03.2021 to assert that the Singapore High Court agreed that the Tribunal was mistaken in construing that the parties were trying to proceed with a secondary sale when a split sale was being discussed at the said meeting. In the said meeting, under the agenda "Any other

business", it was specifically recorded that "the Chairman confirmed that the Company is fully committed to provide 100% exit to the existing investors and will immediately initiate a fund raise process." The Chairman of the said meeting was the second respondent and it is clear that an exit of the Investors was being discussed at the meeting and therefore, it is incorrect for the respondents 2 and 3 to say that the split sale was discussed in the meeting.

146. Following a detailed analysis, the Arbitral Tribunal in paragraph No.413 of the award held as follows:-

> "413. Further, on 26 March 2021 at a further meeting of the board of the company, the 2nd Respondent confirmed that he was fully committed to providing a **100% exit to the existing shareholders** and will immediately initiate a fund raise process. Caution needs to be expressed when crossing a line and relying upon subjective understanding as it is clear that Mannai test is an objective one. Nevertheless, it is noticeable that there is not one single document contemporaneous with 18 September 2020 letters that expresses anything other than a unified resolve on all sides to try proceed towards bringing about a Secondary Sale

> so as to provide the contractual exit to all the Investors. Indeed, this is the 1st Respondents' positive pleaded case. This is also apparent from the Board Meeting minutes and the presentations made by Credit Suisse. Moreover, there is no response from the 2nd and 3rd Respondents (or any other Respondent, for that matter) to the 18th September 2020 notices expressing that they did not understand what was being required."

147. Based on the aforesaid reasoning, the Arbitral Tribunal found that the conduct of the investors including any participation in split sale discussions or Credit Suisse presentations, pointed out to the consistent pursuit of the petitioners' rights under Clause 19.1 of the SASHA.

148. The waiver objection was also rightly rejected by the Singapore High Court. The Singapore High Court held that waiver defence was a live issue, but, had been implicitly rejected based on factual findings. Hence, the Singapore High Court ruled that an Arbitral Tribunal is not required to explicitly address every argument and the respondents failed to show any prejudice. The Singapore High Court held that even if the Arbitral Tribunal had explicitly considered the

waiver defence, it would not have changed the outcome. The Singapore High Court noted that the findings of the Arbitral Tribunal confirmed that the parties acted with common goal of effecting a secondary sale under Clause 19.1 of the SASHA. The fact that the petitioners participated in Credit Suisse presentations or other sale discussions did not imply a waiver of their right to secondary sale. The Singapore High Court dismissed the waiver objection stating that even if the Arbitral Tribunal has misunderstood the evidence, such a mistake would be an error of fact and not a breach of fair hearing rule.

149. In the case on hand, the Arbitral Tribunal took note of Clause 29.5 of the SASHA, extracted supra, and undertook a detailed analysis of the conduct of the parties as also the contemporaneous correspondence to conclude that the petitioners were always seeking a secondary sale under Clause 19.1 of the SASHA and just by participating in a split sale, they had in fact not waived their rights to seek an exit under Clause 19.1 of the SASHA.

For the forgoing reasons, the objection raised by the respondents 2 and 3 that the petitioner had waived their rights to pursue a secondary

sale by participating in the split sale process, has to necessarily fail. Accordingly, the objection raised by the respondents 2 and 3 with regard to waiver is rejected by this Court.

The affirmative vote matter issue:

150. The next objection raised by the respondents 2 and 3 for resisting enforcement of the foreign award is that the Arbitral Tribunal failed to consider the material issue that the unauthorized delegation of power must relate to a specific Affirmative Vote Matter (AVM) listed in annexure IV of the SASHA.

151. The crux of the respondents 2 and 3's argument in this objection is that while holding the respondents 2 and 3 in material breach of Clause 13.4 (Affirmative Voting Matters) read with Clause 24.4(e) (Material Breach of Affirmative Voting Matters) of the SASHA, the Arbitral Tribunal had failed to consider the material issue that the unauthorized delegation of power to Mr.Archit Mylandla must relate to a specific Affirmative Vote Matter listed in Annexure 4 of the SASHA. The reasoning given by the Arbitral Tribunal while holding the respondents 2 and 3 in material breach of Clause 13.4 read with Clause

24.4(e) was that the first respondent company had not replaced its statutory auditor. The respondents 2 and 3 have contended that the breach being material issue due to the statutory auditors not being replaced was not pleaded by any party and such an alleged finding is therefore a breach of natural justice.

152. This objection is wholly without any merit. The Arbitral Tribunal has held that the respondents 2 and 3 are in material breach of Clause 19.1 of the SASHA, since they failed to provide the petitioners with an exit, which resulted in passing of the award of damages and a direction for a strategic sale to recover such damages in favour of the respective petitioners. The contention of the petitioners that the respondents 2 and 3 are to be held in material breach of Clause 24.4(e) is in addition to the material breach that the respondents 2 and 3 failed to provide an exit under Clause 19 of the SASHA. Therefore, any objection raised by the respondents 2 and 3 with respect to the observation of the Arbitral Tribunal on this issue will not come in the way of this Court refusing enforcement of the award.

153. It is also to be noted that the respondents 2 and 3 had failed to

raise this objection before the Singapore High Court. In *Mercator's case* (cited supra), the Delhi High Court has held that the Court can take into consideration the fact that a challenge on the ground in question was not raised before the seat Court. This Court is in agreement with the view taken by the Delhi High Court in *Mercator's case* (cited supra). Therefore, the objection raised by the respondents 2 and 3 that the Arbitral Tribunal failed to consider a material issue that the unauthorized delegation of power must relate to a specific Affirmative Vote Matter has to be rejected by this Court.

154. The Arbitral Tribunal has given a categorical finding on the material breach of Clause 13.4 read with Clause 24.4(e) of the SASHA, which is reproduced hereunder:-

> 630. This state of affairs was of itself extremely serious because it involved a material departure from the protection of rights contained in the SASHA. It is correct as the Respondents contend that no Affirmative Vote Matter resolution was passed without notice or consent. Instead, the 2nd Respondent appears to have by-passed the SASHA in a material manner by delegating authority for day-to-day management onto Archit who repeatedly

> carried out this authority in the teeth of express opposition from the Claimants.... [Emphasis supplied]
>
> 631. The Tribunal agrees with the Claimants that Clause 13.4(e) of the SASHA does not require the Claimants to first identify the resolution that was passed without the consent of each of the Claimants and thereafter to establish that the resolution or decision was an Affirmative Vote Matter. Not only is such a requirement not expressly stated in Clause 13.4(e), it cannot be the case that any unauthorised action made without the proper approval from the Board is not prohibited under Clause 13.4(e)."

155. Therefore, the Arbitral Tribunal concluded that even if the petitioners had not identified any resolution and that such a resolution was contrary to an Affirmative Vote Matter, there was no requirement to do so under Clause 13.4(e) and an unauthorized action made without proper board approval was also prohibited by Clause 13.4(e) of the SASHA.

156. This Court being an enforcement Court under Section 48 of the Act, cannot re-appreciate and re-examine the merits of the award. It

is therefore not open to the respondents 2 and 3 now to resist the enforcement of the award by reopening the assessment of the merits of the dispute under the guise that the Arbitral Tribunal did not consider the material issue. The Arbitral Tribunal has appropriately interpreted Clause 13.4, Clause 24.4(e) along with Annexure 4(aa) of the SASHA, and also arrived at a correct finding that the breach of Clause 13.4(e) in itself is the material breach while also relying on documents and evidence placed before it to find the improper delegation of authority and to render a finding that the respondents are in material breach of Clause 13.4, in particular Clause 13.4(e) read with Clause 24.4(e) of the SASHA. By raising this objection, the respondents 2 and 3 are essentially seeking a complete reassessment of the interpretation of the SASHA as rendered by the Arbitral Tribunal and a re-appreciation of the evidence under the guise of a breach of natural justice and failure to consider a material issue, while there was no such denial of natural justice, cannot be permitted by this Court under Section 48 of the Act. Therefore, the Arbitral Tribunal has not failed to consider any material issue and has rendered a detailed award considering all contentions, hence, there is no justification for the respondents 2 and 3 to raise this objection under Section 48 of the Act.

Award is contrary to Section 10(b), Section 14(1)(a) and Section 20 of the Specific Relief Act:

157. The next objection raised by the respondents 2 and 3 is that the foreign award has granted the relief contrary to the provisions of the Indian Specific Relief Act, 1963, and hence, it violates the fundamental policy of the Indian Law.

158. The crux of the respondents 2 and 3's objection is that granting a relief of damages, and granting the right to a strategic sale upon non-payment of the damages within 90 days, allegedly contravenes Sections 10(b), Section 14(1)(a) and Section 21 of the Specific Relief Act. This argument is fundamentally flawed as the relief granted under the award does not fall under any of the provisions of the Specific Relief Act. The Arbitral Tribunal has comprehensively considered the contentions of the respondents 2 and 3 in this respect and rejected the same, by granting damages in favour of the respective petitioners besides granting strategic sale as a mode to recover the damages. The respondents 2 and 3 have admitted this position at paragraph No.112(3) of their statement of defence before the Arbitral Tribunal. Moreover, SASHA itself contemplated that both reliefs of damages and also

strategic sale were available to the petitioners on breach of the respondents 2 and 3's obligation to provide an exit and therefore, the Arbitral Tribunal is within its power to interpret the terms of the SASHA and grant reliefs in furtherance of the same.

159. The relief of damages granted by the award is intrinsically connected to the relief of strategic sale. Grant of such relief does in no way contravene any provisions of the Specific Relief Act. Therefore, the contention of the respondents 2 and 3 that the Tribunal could not have granted damages as a primary relief and specific performance as a secondary relief under Sections 10(b), 14(1)(a) and 21 of the Specific Relief Act is fundamentally flawed, incorrect and has to be rejected.

160. This objection having been already considered and rejected by the Arbitral Tribunal does not survive strict test of Section 48 of the Act, since it once again like other objections invites this Court to reconsider the merits of the dispute and reopen the interpretation of the SASHA as rendered by the Arbitral Tribunal and therefore, it travels far beyond the grounds available to the respondents 2 and 3 under Section 48 of the Act.

161. It is also to be noted that the respondents 2 and 3 have failed to raise this objection before the Singapore High Court and therefore, in view of the decision of the Delhi High Court in *Mercator's case (cited supra)*, which view this Court agrees, the objection of the respondents 2 and 3 that the relief granted under the award is contrary to the Specific Relief Act, without raising such a relief before the seat Court, i.e., Singapore High Court, cannot be sustained. In any event, the award is not in violation of the fundamental policy of India and any contention of the respondents 2 and 3 in this regard is entirely baseless.

162. The Specific Relief Act has been amended retrospectively and therefore, the respondents cannot now contend that specific performance cannot be granted where damages are an adequate relief. It is well settled law by a number of judgments that a statute which merely affects procedure is presumed to be retrospective in its application. In *Adhunik Steels Ltd Vs. Orrisa Manganese and Minerals P Ltd. [2007 SCC Online SC 882],* the Hon'ble Supreme Court held in paragraph No.16 that the law of Specific Relief Act is said to be, in its essence, a part of the law of procedure, for, specific relief is a form of judicial redress. It is therefore clear that the 2018 Specific Relief Act is retrospective in nature. The

respondents 2 and 3 have contended that the Hon'ble Supreme Court in *Katta Sujatha Reddy and another Vs. Siddamsetty Infra Projects (P) ltd [2023 (1) SCC 355]* held that the 2018 Specific Relief Act does not apply retrospectively and will only apply to transactions post 01.10.2018. The respondents 2 and 3 further submitted that *Katta Sujatha Reddy (cited supra)* was reviewed by the Hon'ble Supreme Court in *Siddamsetty Infra Projects P Ltd. Vs. Katta Sujatha Reddy [2024 SCC Online SC 3214]*. According to the respondents 2 and 3, such a review was only on merits and did not disturb the finding of the prospective applicability of the 2018 Specific Relief Act. Such a contention is incorrect. On review in *Siddamsetty (cited supra)*, the Hon'ble Supreme Court recalled the judgment in *Katta Sujhatha Reddy* (cited supra) and reinstated the judgment of the High Court, which was impugned therein being *Hyderabad Potteries P Ltd. Vs. Debbad Viweswara Rao [2021 SCC Online TS 3590]*, wherein it was held by the High Court that the 2018 Specific Relief Act would apply retrospectively. The said position of law is also fortified by the Delhi High Court judgment in *National Highways Authority of India (NHAI) Vs. HK Toll Road Private Limited [2025 SCC Online Del 2376]*. Though an SLP is pending from the decision of the Delhi High Court in NHAI (cited supra), the review order passed by the

Hon'ble Supreme Court in *Siddamsetty (cited supra)* settles the matter, which makes it clear that the provisions of the 2018 Specific Relief Act would apply retrospectively as well. Therefore, the reliance placed by the respondents 2 and 3 in *Katta Sujatha Reddy (cited supra)* rendered by the Hon'ble Supreme Court is untenable.

163. In view of the above discussion, the submissions of the respondents 2 and 3 with respect to the applicability of the 2018 Specific Relief Act are incorrect and their contentions that specific performance cannot be granted where damages is an adequate relief are entirely irrelevant as the 2018 Specific Relief Act, which is applicable, has entirely done way with such requirement. Further, under Section 21 of the 2018 Act, specific performance and damages are permitted to be granted simultaneously and go hand in hand as stated in the judgment of the Hon'ble Supreme Court in *Life Insurance Corporation of India Vs. Sanjeev Builders Pvt Ltd [2022 SCC Online SC 1128]*.

164. By resisting enforcement of the award on the ground of violation of the provisions of the Specific Relief Act, the respondents 2 and 3 are essentially seeking a reconsideration of the merits of the dispute

and a re-interpretation of the SASHA which cannot be permitted by this Court under Section 48 of the Act, as per the various decisions of the Hon'ble Supreme Court, cited supra. The Arbitral Tribunal, only after holistic construction of the SASHA, has concluded that on a breach of Clause 19.1 of the SASHA, the respective petitioners are entitled to damages and in addition to damages, they are also entitled to seek strategic sale in case of failure to pay damages.

165. The respondents 2 and 3 have contended that the Arbitral Tribunal has by granting damages and by directing strategic sale performed the role of an execution Court. Such contention is incorrect and inconsistent with a plain reading of the reliefs granted in the award. Grant of such a relief is not without precedent. The Singapore Court of Appeal in *Bloomberry Resorts and Hotesl Inc and Anr. Vs. Global Gaming Philippines LLC [2021 SGCA 94]*, while adjudicating a second appeal upheld an award which granted constructive remedy by directing payment of damages and on failure to pay such damages within 30 days, granted the right to sell shares to recover such damages. In doing so, the Court rejected the contention of the award debtors.

166. As is evident from the above decision, grant of damages and a mode of recovery of damages is merely a compensatory methodology adopted by the tribunals to compensate parties and the same does not amount to execution of the order. In the case on hand, the Arbitral Tribunal ascertained the right of the petitioners to effect a strategic sale from an interpretation of the SASHA and granted such relief to recover the damages awarded. The judgments relied upon by the respondents 2 and 3, namely, *Jawahar Lal Wadhva & Ors. v. Haripada Chakroberty* AIR 1989 SC 606; *Roop Chand Chaudhari v. Ranjit Kumari* AIR 1991 P&H 212l; *M/s Trans Freight Shipping Services v. N.K. Shashikumar 2018 SCC OnLin Mad 2980 and Kochukunjan Pillai v. Sathiadas 2010 (2) MWN (Civil); Ramchandra Tanwar v. M/s. Ram Rakhmal Amichand 1970 RLW 61; and Divvanshi Saxena v. Shri Ram School ILR (2006)* 1 Delhi 447, have no bearing for the facts of the instant case.

167. In addition to the above, the respondents 2 and 3 have also relied on the report of the Expert committee on Specific Relief Act, 1963, to demonstrate the reasons for amendment of the Specific Relief Act. This is of no assistance to the respondents 2 and 3. As stated above, the 2018 Specific Relief Act makes specific performance the norm as

opposed to an exception and does away with the requirement of establishing damages as an inadequate remedy to obtain specific performance.

For the foregoing reasons, this objection raised by the respondents 2 and 3 as stated supra, has also got to be rejected by this Court.

Limitation of liability issue:

168. The next objection raised by the respondents 2 and 3 for enforcement of the foreign arbitral award is that the Arbitral Tribunal failed to consider the material issue of whether the investors' interpretation of the limitation of liability in Clause 22 of the SASHA contradicted their own case.

169. During the hearing on 09.07.2025, the learned counsel for the third respondent submitted that the limitation of liability issue raised by the respondents 2 and 3 is not pressed. However, in the written submission filed by the third respondent before this court on 29.08.2025, the third respondent has asserted this objection.

170. In the statement of claim, the respective petitioners had sought

a relief of indemnity under Clause 22 of the SASHA in the alternative to damages. The respondents 2 and 3, in their statement of defence, argued that the limitation of liability cap, under Clause 22 applies. The petitioners, in their opening submission, argued that the cap only applies to breach of representations, warranties and covenants. The contention of the respondents 2 and 3 that the petitioners' interpretation of Clause 22 is contrary to their own claim has been categorically recorded in para 473 of the award and in para 504 of the award, the Arbitral Tribunal agreed with the interpretation of the petitioners and rendered a categorical finding on this issue and held as follows:-

> "The Tribunal also finds that the cap in the Company and the Promoters' liability under Clause 22 of the SASHA does not apply to the Claimants' claims for damages, and specifically does not apply to the Claimants' claims for breach of Clause 19.1. The 2nd and 3rd Respondents argue that Clause 22 should be read broadly and applies to all representations, warranties and covenants in the SASHA. However, the Tribunal notes that Clause 9 of the SASHA specifically refers to "Representations and warranties" and Clause 14 of the SASHA specifically refers to "Covenants". The Tribunal agrees with the Claimants that it is unlikely

> that the Claimants would have agreed to a generic liability cap at the sum of their investment, and on the contrary, it is commercially sensible for the Company and the Promoters' liability to be capped for a breach of Clauses 9 and 14 as they concern matters that if untrue or breached, are not sufficiently serious and at most would lead to the investment being unwound."

171. From the above, it is clear that the Arbitral Tribunal had considered the contention of the respondents 2 and 3 and rightly rejected the same. Therefore, there is no non-consideration of an issue, let alone a material issue, as contended by the respondents 2 and 3. This objection seeks a re-interpretation of the SASHA and it is settled law that this ground is not permitted in a petition filed under Section 48 of the Act.

Fraud Issue:

172. The last and final objection raised by the respondents 2 and 3 is that the award is vitiated by fraud purportedly committed by the respective petitioners based on the purported concealment of (i) the findings of a report prepared by Ernst & Young dated 15.12.2022 (in short “EY report”); and (ii) certain email correspondences between the

employees of the first respondent company where the petitioners are not copied.

173. The respondents 2 and 3 allege that the petitioners concealed the aforesaid documents which allegedly show (a) fraudulent accounting practices in the first respondent company; and (b) the employees of the first respondent company were allegedly manipulating the finance of the first respondent company and that these factors allegedly impacted the EBITDA of the first respondent company. They also alleged that the petitioners had a *quid pro quo* arrangement with certain employees of the first respondent company to secure a favourable award.

174. The aforesaid allegations of fraud are made by the respondents 2 and 3 for the first time in this enforcement proceedings, despite the respondents 2 and 3 having knowledge of the findings of the EY report since 30.01.2023. This statement is confirmed by the letter dated 30.01.2023 addressed by the petitioner to the Board and copied to the respondents 2 and 3. On 30.01.2023, the second respondent was the Managing Director and Chairman of the first respondent company and therefore, he was aware of the EY report. Even otherwise, none of these

documents including the EY report were placed on record before the Arbitral Tribunal. The various statements made by the respondents 2 and 3 alleging fraud for the first time in this enforcement proceedings would require a trial and a finding, and therefore, the same cannot be assumed to be true or proved. The respondents 2 and 3 in a malafide manner and to scuttle the enforcement proceedings are attempting to resort to an unsubstantiated and threadbare allegation of fraud for the first time in this proceeding under Section 48 of the Act, which is wholly unsubstantiated. The respondents 2 and 3 did not also choose to raise the argument with regard to fraud before the Singapore High Court, that shows that the said objection has been raised only as an afterthought to scuttle the enforcement proceedings before this Court under Section 48 of the Act.

175. Timeline of events and deliberate failure of the respondents 2 and 3 in seeking the EY report are detailed hereunder:-

a) November 28, 2022- The Statement of Claim was filed by the Petitioner in the SIAC arbitration proceedings.

b) December 15, 2022- The EY Report was prepared by Ernst & Young, at the behest of the Petitioner, Nylim and Millenna, with respect to the financial years FY 2021 and FY 2022 (financial statements of which period have no bearing on the

Award).

c) December 20, 2022- It is an admitted position [in the NCLT proceedings and in the Objections filed by the 2nd Respondent at paragraph 95(c)] that a copy of the EY Report was provided to Respondent No. 1, which fact the 2nd Respondent was aware of.

d) December 30, 2022 - A meeting of the Board of Directors and Audit Committee of the 1st Respondent was held and the financials for FY 2022 were approved and signed by the 2nd Respondent. The 2nd Respondent was quite clearly himself responsible for confirming the financials of the 1ª Respondent.

e) January 30, 2023 - A letter was addressed by the advocates for the Petitioner to the 1st Respondent (copied to the Board of Directors of the 1ª Respondent), informing them of the findings of the EY Report as also the period of review (being April 1, 2020 to March 31, 2022) and requesting the 1st Respondent to take appropriate action. The 2nd Respondent was made aware of the findings of the EY Report by this communication as admitted in the Objections at paragraph 92(d) being *"Shocked by the 30 January Letter. I repeatedly sought that a copy of the E&Y Report be shared with me."*

1) March 21, 2023 - The Statement of Defence was filed by the Respondents in the SIAC arbitration

("SOD"). However, the Statement of Defence made no mention whatsoever of any purported financial irregularities in the 1st Respondent, let alone the existence of the EY Report and/or any impact of this report on the calculation of the Exit Price as on September 18, 2020, despite the Respondents being completely aware of the findings and existence of the EY Report. At this stage the Respondents could have argued in respect of the impact of the EY Report and/or the impact of any alleged concealment on part of the Petitioners.

g) March 21, 2023 - Along with the SOD, the 2nd Respondent also filed his witness statement in the arbitration proceedings. The witness statement again does not raise any questions with respect to the calculation of the Exit Price as on September 18, 2020 basis any alleged financial irregularities in the 1st Respondent, despite being aware of the findings and existence of the EY Report.

h) March 21, 2023 - Along with the SOD, the Respondents filed a valuation expert report of Shailesh Haribhakti & Associates ("SHA"), in response to the valuation report of Secretariat Advisors LLC (the Petitioner's damages and valuation expert in the arbitration proceedings) dated November 28, 2022 ("Secretariat First Report"). Interestingly, this report of

the Respondents' expert does not question the valuation done by Secretariat and/or the calculations carried out to arrive at the Exit Price as on September 18, 2020 nor does it make any reference of any alleged financial irregularities, let alone the EY Report or its possible impact. In fact, the timeline of events charted in this report of SHA, the Respondents' own valuation expert confirms that "SVLLP completed the Statutory Audit for the FY 2020-21 issued a clean audit report without any qualifications" and "Nov 2022, Statutory Audit of FY 2021-22 was also completed and a clean audit report without any qualifications was issued.", thereby confirming that the financial statements of Respondent No. 1 for FY 2021 and FY 2022 have been duly closed without qualifications. The Respondents own expert confirmed the financials for FY 2021 and FY 2022 during the arbitration despite the Respondents being aware of the findings of the EY Report.

i) April/May 2023 - Parties exchanged requests for production of documents in the arbitration proceedings before SIAC. The Respondents also made elaborate requests for discovery of documents, however, no request was made by the Respondents to seek a copy of the EY Report.

j) May 31, 2023 - The Tribunal passed an Order

adjudicating the disputed requests for documents, including the documents requested by the Respondents, the discovery of which was contested by the Petitioner. While assessing the materiality of such requests, the Tribunal allowed / disallowed such requests. Had the Respondents considered the EY Report to be so material to the arbitration proceedings as they now claim, a simple discovery request for the same ought to have been made. Even assuming the Petitioner had contested such request, the Tribunal had the power to permit discovery, if it was found to be material to the arbitration proceedings.

k) March 26, 2023 - The Respondents filed an application seeking vacation of the Order dated June 7, 2022 passed by the Emergency Arbitrator wherein the Respondents referenced the existence and findings of the EY Report and PIOF's letter dated January 30, 2023 as below:

"61. An Audit Committee Meeting was held on 30 December 2022 for approval of the accounts. Prior to this meeting, the Claimants Nominee Directors, Rudhraa and Anand were already in possession of the E&Y Report. At this meeting the statutory auditor was also present. At the meeting, Srinivas and Bala assured NVM that his concerns would be investigated. When NVM raised concerns about fictitious entries in

financials and misrepresentations in cash flows, Rudhraa and Rahul confirmed that no issues were reported in the inspection by E&Y. Further, it was noted that the issues related to incorrect entries in financials do not impact the financials/audit for the financial year 2021-22. However, PIOF's letter dated 30 January 2023 clearly shows that the Claimants Nominee Directors. Rudhraa and Anand falsely approved the accounts. Such conduct is clearly against the interests of the Company....

FN 57: Respondent No. 1, ie., the Company was in receipt of a letter issued by PIOF'S counsel referring to a report filed by E&Y on 15 December 2022. It appears that the report was prepared pursuant to an inspection for a review period from 1 April 2020 to 31 March 2022. As per PIOF's letter, the findings in E&Y's report have raised serious cause for concern and evidences a plethora of bad-practices, accounting discrepancies and potentially illegal activities, including: (a) Recycling of invoices impacting the ageing of debtors; (b) Recording sale transactions without GST: (c) Inadequate provision for bad and doubtful debts; (d) Discrepancies in fixed assets register; (e) Use of short terms funds to purchase fixed assets."

Despite the Respondents being aware of the existence

and findings of the EY Report, no questions were raised on the calculation of the Exit Price owing to the same, in the arbitration proceedings. Further, it is evident that the Respondents have made false statements in the Objections by feigning ignorance of the findings of the EY Report until August 2024. Interestingly, despite referencing the EY Report, the Respondents did not seek discovery of the same during the arbitration nor-did-they-plead-in their pleadings its impact.

1) April 17, 2023- The Petitioners filed a response to this application of the Respondents on April 17, 2023 appropriately dealing with the contentions of the Respondents; and an Order was passed by the Tribunal on June 19, 2023 slightly modifying the Order of the Emergency Arbitrator.

m) October 18, 2023 - During the arbitration process, the Respondents chose to withdraw the report of SHA and engage a different valuation expert being HKA Global (Singapore) Pte Ltd ("HKA"), who also filed their expert report and the same did not raise a whisper about or question the valuation process/calculation carried out in the Secretariat First Report nor did they allege any financial discrepancies / irregularities in the 1st Respondent or the EY Report.

n) November 22-27, 2023 - The evidentiary

hearings commenced and were concluded before the SIAC.

o) November 23, 2023 - While the evidentiary hearings were proceeding before SIAC, the Respondents opportunistically filed an oppression and mismanagement petition before the National Company Law Tribunal, Chennai being C.P No. 129 of 2023 ("NCLT Petition") inter alia alleging financial irregularities in Respondent No. 1 and seeking an injunction on the appointment of statutory auditors being M/s. G. Sekhar Associates (on grounds of an alleged conflict), inspection of the records of the 1st Respondent and a copy of the EY Report. It is relevant to note that in the NCLT Petition the Respondents emphasize on the findings of the EY Report and state that "..the extremely conspicuous behaviour of Respondent No. 1 around the E&Y Report only supports Petitioner No. 1's previously stated apprehensions that there may be further wrongdoings that the Company Team is concealing". It is surprising that as far back as November 23, 2023 the Respondents had alleged apprehensions around the financials of the 1st Respondent, however, failed to raise the same before the Tribunal or in the Singapore High Court.

p) November 28, 2023 - Order passed by the

NCLT rejecting the request of the Respondents to injunct the appointment of M/s. G. Sekar Associates as the statutory auditor of the 1st Respondent. The NCLT held that the Respondents' apprehension of conflict is ill founded".

q) December 15, 2023 - A joint expert report was filed by Secretariat and HKA (a report of the aspects both experts agree on), which again did not allege any financial discrepancies/irregularities in Respondent No. 1, which would impact the calculation of the Exit Price as on September 18, 2020, in any manner whatsoever.

r) January 8, 2024 - HKA filed its response to certain supplemental calculations done by Secretariat, at the direction of the Tribunal. Again, no concerns /queries were raised owing to any purported financial irregularity in the 1st Respondent nor did they make any mention of the EY Report.

s) February 9, 2024 - The Respondents filed their Post Hearing Reply Submissions, however, did not allege any discrepancies in the financials of the 1st Respondent nor did they make a whisper about the EY Report.

t) June 3, 2024 - Pursuant to submissions made by experts on supplemental calculations and cost submissions made by the parties, the Tribunal declared

the SIAC proceedings closed.

u) July 5, 2024-The Award was passed by the Tribunal.

v) July 20, 2024 - The present enforcement Petition was filed before this Court and an ad-interim protective Order was passed on July 25, 2024.

w) August 22, 2024 - The Correction Memorandum was issued by the Tribunal.

x) October 5, 2024 - The Singapore HC proceedings were filed by the Respondents. Interestingly, the said challenge to the Award was limited to the grounds of "waiver and buy back and there was no whisper of any alleged fraud and/or the EY Report and /or its purported denial to be found in the same. Had there been any merit in such objections, the Respondents would have agitated the same at the first instance at least before the Singapore High Court (which permits fraud as a ground for setting aside of an award), after consciously not doing so during the entire arbitration proceedings. The Respondents knew fully well that such meritless objections would be dismissed by the Singapore High Court at the threshold and knowingly chose to not raise the same.

y) February 21, 2025 - The Singapore HC dismissed the proceedings and upheld the Award. Further, the Respondents have been directed to pay

costs of USD 25,000 to the Petitioner, Nylim and Millenna.

176. It is clear from the above narration of the dates and events that,

a) the Respondents 2 and 3, despite being aware of the existence of the EY Report back in December 2022 and the findings of the EY Report as early as January 30, 2023 i.e., even prior to the filing of their statement of defence, did not allege any impact of purported financial irregularities on the valuation of 1st Respondent/determination of the Exit Price as on September 18, 2020 during the entire course of the arbitration proceedings.

b) Both the experts engaged by the Respondents i.e., SHA and HKA, did not question the valuation exercise conducted by Secretariat to arrive at the Exit Price as on September 18, 2020, on the basis of any alleged financial irregularities/discrepancies in the 1st Respondent/purported impact of the EY

Report, during the course of the entire arbitration.

c) The Respondents 2 and 3, despite being aware of the existence and findings of the EY Report, never made any attempt to seek production/discovery of the same during the SIAC arbitration, despite making lengthy requests for production of 23 documents from the Petitioner.

d) While the NCLT Petition was filed to, inter alia, seek a copy of the EY Report on November 23, 2023, no such request/mention was made during the arbitration proceedings. It is relevant to note that the Respondents 2 and 3's request for the EY Report has not been allowed till date. The NCLT had reserved Orders on January 24, 2024, however, till date no order has been passed.

e) The Respondents 2 and 3 did not even challenge the Exit Price determined in the Award, in the Singapore HC proceedings by alleging any financial irregularities/discrepancies in the 1st Respondent company.

177. The respondents 2 and 3 have miserably failed to answer the reason for not pleading any irregularities in the financials of the first respondent company and/or pleadings in respect of implication of the EY report at any stage. The respondents have placed reliance on *Devas' case* (cited supra) to contend that despite prior knowledge of an alleged fraud and without pleading the same before the tribunal, the award debtor can seek to set aside an award at the stage of Section 34 of the Act. The factual conspectus of *Devas (cited supra)* shows that the award holder was wound up and found to be formed for fraudulent and unlawful purpose as rendered by the NCLT, which judgment was upheld by the NCLAT and the Hon'ble Supreme Court. Infact, the CBI had also registered an FIR and a charge sheet was filed against the award holder and its officers. Only on that ground, the award was set aside under Section 34 of the Act, which was upheld in the Section 37 proceedings. These facts are incomparable with the facts of the instant case. Therefore, *Devas case (cited supra)* has no applicability to the facts of the instant case. Further, the instant case is an enforcement proceeding seeking to enforce the foreign arbitral award, whereas *Devas case (cited supra)* was a case filed under Section 34 of the Act.

178. Infact, the respondents 2 and 3 have even failed to demonstrate how an alleged concealment of the EY report has any impact on the passing of the award, particularly, when the review period of the EY report (FY 2020-21 and 2021-22) was not even the subject matter of the analysis before the Tribunal. The respondents 2 and 3 are far from establishing any casual nexus of the EY report to the determination of the exit price by the Arbitral Tribunal. The respondents 2 and 3 have only alleged an inflation of EBITDA in the financials of the first respondent company with no proof, no evidence and no trial whatsoever. The enforcement of the award cannot be resisted on a mere apprehension and speculation, which the respondents are attempting to do. This is not the purport of Section 48 of the Act.

179. The respondents 2 and 3 are barred by law from introducing evidence at this stage, which they could have produced with reasonable diligence during the arbitration. It is settled law in India that enforcement of a foreign award under Section 48 of the Act is not a *de novo* trial on merits, and the party resisting enforcement cannot rely on evidence not placed before the Arbitral Tribunal. This settled proposition is supported by the decision of the Hon'ble Supreme Court in *Vedanta Ltd*

(cited supra).

180. The objection of fraud made by the respondents 2 and 3 for the first time fails to meet the strict legal threshold under Section 48(2)(b)(i) of the Act. The onus rests on the respondents 2 and 3 to establish that the alleged fraud is of such a nature that it goes to the root of the award and has a nexus with the arbitral process or outcome. Mere allegations, innuendos, or after-the-fact discovery, do not suffice. The allegation that certain employees including the fourth respondent were compensated to secure a favourable award is entirely unsubstantiated and that the contention of *quid pro quo* arrangement among the respective petitioners, first respondent and the fourth respondent by the respondents 2 and 3, is also false. The payouts/bonuses/incentives extended to certain personnel including the fourth respondent may be on account of due recognition of their services to the first respondent company. In any event, the contention of the respondents 2 and 3 that these payments/incentives are against the interests of the first respondent company is completely baseless. Infact, the respondents 2 and 3 have already challenged these payments before the NCLT and having failed to obtain any relief, they are seeking to re-litigate the issue under the guise

of alleging fraud and resisting enforcement of the award.

181. The respective petitioners are not privy to the internal emails between the employees of the first respondent company and the same has to be disregarded. These communications were never produced in arbitration or the proceedings before the Singapore High Court and were allegedly retrieved only in August, 2024.

For the foregoing reasons, the objection of fraud raised by the respondents 2 and 3 has to be summarily rejected by this Court.

182. Therefore, it is clear that the narrow limits of judicial interference on the grounds of public policy of the enforcement State are well settled in international arbitration. To sum up, enforcement of a foreign award may be refused only if it violates the enforcement State's most basic notions of morality and justice, which has been interpreted to mean that there should be great hesitation in refusing enforcement, unless it is obtained through "corruption or fraud, or undue means".

183. In the instant case, the respondents 2 & 3 have not made out a case for conflict with the basic notions of justice or violation of the substantive public policy of India. This Court also does not find any

infirmity with the contractual interpretation given by the Foreign Arbitral Tribunal under the foreign arbitral award as the view taken by the Foreign Arbitral Tribunal is a plausible one. Even assuming that an erroneous interpretation of the contractual terms has been given by the Foreign Arbitral Tribunal, this Court cannot interfere with the same as this Court is only an enforcement Court exercising the limited powers for the purpose of refusing enforcement and if erroneous interpretation of contract by the Foreign Arbitral Tribunal is allowed to be interfered with by this Court, it would amount to impeaching the foreign arbitral award on its merits.

184. The doctrine of transnational issue estoppel is grounded in the principle of finality of litigation. In other words, if a party was able to reopen issues that had already been fully argued and finally dealt with by a court in a later fresh action, this would open the door for an abuse of process. When applying the issue of estoppel in a transnational setting, this Court being the enforcement court has to give due consideration with balancing competing considerations of comity (due respect and deference for decisions of foreign courts) and the court's constitutional role as the guardian of the rule of law within its own jurisdiction.

185. In a Judgment rendered by the Singapore Court of Appeal between *Devas Multimedia Private Limited (Devas) and Indian state-owned entity Antrix Corporation Limited (Antrix),* the Singapore Court endorsed the application of transnational issue estoppel in the context of international arbitration. In doing so, it considered that applying the doctrine of transnational estoppel:

(a) respects the parties' choice of seat, giving "primacy" to the jurisdiction and system of law chosen by the parties in relation to many matters concerning the arbitration;

(b) coheres with the notion that courts co-exist as part of an international legal order, within which they should so far as possible avoid duplication, repetition and inconsistency in decision-making;

(c) avoids the risk of having enforcement courts approach a seat court's decision in a manner that is at odds with general trends in private international law towards the recognition of court judgments; and

(d) limits the extent to which matters determined by a court of competent jurisdiction can be re-litigated, thus reducing the wastage of time, effort and resources.

186. Therefore, as per the court of appeal's decision, where a seat court has decided on the validity of an arbitral award, a Singapore enforcement court should apply the doctrine of transnational issue estoppel when determining whether to afford preclusive effect to the seat court's decision. The Court did, however, clarify that no question of issue estoppel can arise where the public policy of the enforcement court's jurisdiction or the arbitrability of a dispute is in issue, because the question of public policy in the enforcement jurisdiction will not have previously been considered by the seat court.

187. Section 48 of the Act also does not preclude this Court from exercising the doctrine of transnational issue estoppel. The doctrine of transnational issue estoppel is grounded in the principle of finality of litigation. In other words, if a party was able to reopen the issues that had already been fully argued and finally dealt with by a court in a later fresh action, this would open the door for an abuse of process. The

intention of arbitration is for speedy resolution of disputes. Therefore, the doctrine of transnational issue estoppel can be applied by this Court, which is an enforcement court with regard to the objections that have already been raised by the respondents 2 & 3 before the Singapore High Court and the Singapore High Court had also rejected those objections.

188. The fundamental policy of Indian Law is not a single principle, but a broad concept, particularly, in the context of arbitration, comprising core legal tenets. It signifies violations of principles so basic to Indian law that they are considered non-negotiable rather than just mere errors of law or fact. Courts use this concept to determine if an arbitral award is so perverse or irrational that it shocks the conscious of the court thereby preventing these foundational legal principles.

189. The respondents 2 & 3 have raised objections, which are in the nature of the objections that can be raised only in a regular first appeal. This Court is only an enforcement Court exercising powers under Section 48 of the Act, and given the limited jurisdiction available to it, the objections raised by the respondents 2 & 3 for enforcement of the foreign arbitral award has to be summarily rejected.

190. The respondents 2 & 3 ought not to have raised objections, which have been raised in these petitions, which if at all can be raised only in a regular first appeal, not under Section 48 of the Act. Only to delay the inevitable ie., execution of the foreign arbitral award against them, the untenable and reckless objections have been raised by respondents 2 & 3, which do not fall under any of the objections available under Section 48 of the Act. If entertained, it would amount to this Court having a re-look at the arbitral award, which is not legally permissible under Section 48 of the Act. Having failed in their attempt in the challenge proceedings seeking to set aside the arbitral award before the Singapore High Court, the respondents 2 & 3 have made a last-ditch effort to thwart the enforcement of the foreign arbitral award by raising untenable grounds. Parties objecting to the enforcement of the foreign arbitral award cannot argue the matter just like a first appeal, considering the limited jurisdiction available to this Court under Section 48 of the Act. Since the respondents 2 & 3 have raised untenable objections, which will not fall under Section 48 of the Act, this Court will have to necessarily impose costs on the respondents 2 & 3.

191. Further, the conduct of the respondents 2 and 3 in not paying

the arbitrators' fees has to be deprecated. Having agreed to go for arbitration, the respondents 2 and 3 are fully aware of the fact that they will have to pay the arbitrators' fees in accordance with the Arbitration Rules of the Singapore International Arbitration Centre. But, despite the same, they have chosen not to pay the arbitrators' fees. They have raised defence before the Arbitral Tribunal, which has been duly considered by the Arbitral Tribunal spending enormous amount of time and effort. Due to non-payment of the arbitrators' fees by the respondents 2 and 3, the respective petitioners were directed to pay the respondents 2 and 3's share of the arbitrators' fees for no fault of theirs. The respondents 2 and 3 though have stated that it is not affordable for them to pay the arbitrators' fees, they have not till date expressed their regret for non-payment of the arbitrators' fees and they have also not undertaken that once they are in a position to pay they will reimburse the same to the respective petitioners, who have paid their share of the arbitrators' fees.

192. The respondents 2 & 3 are individuals against whom the arbitral award has been passed, which runs to more 1400 Crores of Indian Rupees. Since the award amount is a huge one and the award has been passed against two individuals, this Court had to give a patient hearing

running to several days only to ensure that the respondents 2 & 3's objections were given utmost consideration by this Court in the ends of justice. But, despite giving the utmost consideration for the objections raised by the respondents 2 & 3 resisting the enforcement of the foreign award, this Court has come to the conclusion that the objections raised by the respondent 2 & 3 are untenable objections, which do not deserve any merit.

193. Before parting with this case, this Court recollects the profound words of the Honourable Sandra Day O'Connor, respectable Former Associate Justice of the Supreme Court of the United States, who has said "The courts of this country should not be places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried." Therefore, the foreign arbitral award having attained finality and the objections raised before this Court by the respondents 2 & 3 for resisting enforcement of the arbitral award are untenable, as an enforcement court, it is the responsibility of this Court to see that the fruits of the foreign arbitral award passed in favour of the respective petitioners is enjoyed by them. Therefore, as expeditiously as possible,

the foreign arbitral award has to be enforced and has to be executed against the respondents 2 & 3 to enable the respective petitioners to enjoy the fruits of the foreign arbitral award, which indeed will set high standard that India, being a signatory to the New York convention, is maintaining its international commitment for the expeditious enforcement of foreign awards. If the objections, as raised by the respondents 2 & 3 in these petitions, which do not fall under Section 48 of the Act, are entertained, it would amount to violating the New York convention to which India is a signatory. The International Comity of Nations will also be broken, if the objections raised by the respondents 2 & 3 are entertained by this Court.

194. Since the respondents 2 & 3 have raised untenable objections, which do not fall under Section 48 of the Act and they have deliberately delayed the execution of the foreign arbitral award in favour of the respective petitioners, who have invested huge sums of money on the first respondent, the respondents 2 & 3 will necessarily have to be imposed costs for their reckless conduct of delaying the inevitable. They have treated this Court as a regular First Appeal Court knowing fully well that their objections will not fall under Section 48 of the Act, which amounts

to abuse of process. Since the award amount passed in favour of the respective petitioners is a huge one, this Court, in the ends of justice, is imposing costs of Rs.25,00,000/- (Rupees twenty five lakhs only) to be paid by the respondents 2 & 3 jointly and severally to each of the petitioners for deliberately delaying the inevitable by raising untenable objections, which will not fall under Section 48 of the Act.

195. For the foregoing reasons, the respondents 2 & 3 have not satisfied the requirements of Section 48 of the Act by raising objections, which enables this Court to refuse enforcement of the foreign arbitral award.

196. In the result,

(a) The foreign arbitral award dated 05.07.2024 read with the clarification order dated 22.08.2024 passed by the Arbitral Tribunal is declared to be enforceable by this Court against the respondents 2 & 3 as per the provisions of Sections 47 to 49 of the Act.

(b) The foreign arbitral award dated 05.07.2024 read

with the clarification order dated 22.08.2024 passed by the Arbitral Tribunal in favour of the respective petitioners against the respondents 2 & 3 is deemed to be a decree passed by this Court as per the provisions of Section 49 of the Act.

(c) Accordingly, a decree is passed in terms of the foreign arbitral award dated 05.07.2024 read with the clarification order dated 22.08.2024 passed by the Arbitral Tribunal in favour of the respective petitioners against the respondents 2 & 3.

(d) Connected interlocutory applications, namely, A.Nos.3748, 3749, 3750, 3752, 3754, 4969, 5209, 5211 to 5213, 5215, 5216, 5563, 5565, 5569, 5571, 5607, 6056 & 6059 of 2024, 161, 2563 & 2566 of 2025 and O.A.Nos.501 to 503, 815 & 816 of 2024 are kept pending, since those applications were not heard by this Court during the final hearing of the main arbitration original petitions, namely, Arb.O.P. (Com.Div.) Nos.285, 452 & 453 of 2024.

(e) Liberty is granted to the respective petitioners to execute the foreign arbitral award dated 05.07.2024 read with the clarification order dated 22.08.2024 passed by the Arbitral Tribunal against the respondents 1 to 3, which is now deemed to be decree by this order by filing a separate execution petition before this Court and the said execution petitions shall also be heard by this Court.

(f) The respondents 2 & 3 are directed to pay jointly and severally Rs.25,00,000/- (Rupees twenty five lakhs only) as costs to each of the respective petitioners for resisting the enforcement of the foreign arbitral award dated 05.07.2024 before this Court under Section 48 of the Act, by raising untenable grounds to unlawfully delay the enforcement of the foreign arbitral award.

(g) The undertaking given by the respondents 6 & 7 before this Court in A.No.161 of 2025 shall stand extended until further orders.

(h) Post the aforementioned connected interlocutory applications for further hearing before the regular Court on 27.10.2025.

22.09.2025

Index: Yes
Speaking order
Neutral citation : Yes
ab/rkm

ABDUL QUDDHOSE, J.

ab/rkm

common order in

Arb.O.P. (Com.Div.) Nos.285, 452 & 453 of 2024

22.09.2025