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A NEED TO REGULATE DOMESTIC PARTIES PREFFERING A FOREIGN SEAT OF ARBITRATION: A PRO-ARBITRATION INITIATIVE

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Abstract

"Arbitration is one of the key aspects that has emerged in recent times in trades and contracts. The arbitration is not only the finest way to solve a dispute at a minimal time but also contributes to the country's economy as well. This can be seen from the fact that the most favourable countries for arbitration are also economically stable such as Singapore, China, and the United States. Aspiring to become one of them, the Indian legislature is making an environment favouring the same. The question the author wants to highlight has been dealt with by various judgments but, it still needs some scrutiny and re-evaluation. The issue dealt with through this article is whether it is feasible for two domestic parties to have a foreign seat of arbitration or not. The Court has almost made its stand clear by allowing the parties to have such arbitration. The author through this article highlights the problem and lacunae in the judicial precedents. Further, its impact on Indian arbitration and how it put the efforts of the legislature in vain. Not only the efforts, but it also disturbs the Indian arbitration Act. Also, the image that it creates of Indian Arbitration in the International arena may be distorted. The author will further take the example of some of the nations with commendable success in arbitration in the previous few years. This paper deals with questions like how this issue affects the economy, how the countries tackle this problem, and the rationale behind their stand to not allow the foreign seated arbitration by domestic parties."

Introduction

As Albert Einstein once said, *"In the middle of every difficulty lies opportunity."* The opportunity in the current economic warfare and trade is arbitration. The progress of arbitration in India every year needs no explanation and has shown considerable growth. The constant efforts by legislature and Judiciary have produced some fruitful results that promote the culture of arbitration. The legislative advancements including the *Amendment of 2015* and the

Amendment of 2019 to the Arbitration and Conciliation Act along with the judicial advancements including the judgments like *BALCO* and *GMR energy* seem to have a pro-arbitration effect.

The puzzle relating to two fully established Indian parties choosing a foreign seat of arbitration is a question that is still dubious. This question is important because it involves the issue of balancing between the Arbitration and the country's interest at the same time. This article is divided into four parts to understand the argument that how providing the scope for Indian companies in choosing a foreign seat of arbitration is detrimental to Indian's arbitration ambition and why the GMR Energy case needs to be considered again.

The first part will explain the relevant judicial precedent pertaining to the issue and flaws in each precedent. The judicial precedents which will be discussed are also relied upon by the Apex Court in GMR Energy judgment. From the very beginning, this issue was never dealt with diligence and in a scrupulous manner. The Courts always answered the question while dealing with other sections or issues. The Courts never answered the issue straightforwardly in the first few precedents. While in some precedents, the issue got fade away with the "Foreign element". Most of the counsels while arguing on the issue always cited the case with a foreign element, which left the important question as to whether two purely domestic parties can have foreign seated arbitration unanswered.

The second part provides how it affects the country's interest. The article highlights the misuse of bargaining power by one party on the weaker men. As once highlighted by the American Labour leader, Samuel Gompers when asked whether he believes in arbitration, he replied**, *"I do. But not in arbitration between the lion and the lamb, in which the lamb is in the morning found inside the lion."*** As the continuous efforts of the legislature to attract foreign investors like establishing Arbitration Council of India (ACI) and other Arbitral institution goes in vain if even domestic parties choose the foreign seat. Also, the image of Part I of the Arbitration and Conciliation Act, 1996 is being tarnished by creating some provision like patently illegal as a punishment for those choosing the domestic seat. This will also affect the basic purpose purported in Section 9 of the Act.

The third and the fourth part of the article will draw a comparative analysis pertaining to the seat of arbitration between India and other countries, how they have faced this issue as most countries follow the UNCITRAL Model Law to which Indian Arbitration Act is also inspired. The two countries which are primarily focussed and discussed are the United States of America and China as they are the most powerful economies of the current time. The recent report by CIETAC has provided the success of China in holding most arbitration, both domestic as well as international. Also, the contribution of the arbitration to a country's economic growth is something to watch out for. This part will involve the landmark precedents of the respective countries and the argument behind their stand on the issue.

Interpretation by Judiciary: A Debacle

This issue pertaining to the foreign seat of arbitration by completely domestic parties has been dealt with by the Indian Courts. The lack of clarity from the Judiciary can be seen from precedents in the subject matter. Hence, it's more of legislative work rather than the judiciary. The question can finally be settled by an appropriate amendment in the Act. But before the legislature enters into this ambit, there is a need to analyze and review the interpretations made by the court so that after the legislature passes the amendment, it does not get challenged in the court of law over judicial uncertainty.

The first judgment which triggered the issue was the ***TDM Infrastructure case***[1]. Although the case does not directly involve the issue in hand, through the course of the arguments this issue got evolved. The case involves the issue of whether the dispute falls within the ambit of Section 2(1)(f)[2] i.e. International Commercial Arbitration and also challenged the jurisdiction of the Court on the matter under Section 11[3] of the Arbitration Act. While discussing the above matter, the Apex Court opined that it would be against the public interest if two domestic parties opt to escape the Local laws by choosing seat outside India. This case cannot be taken as conclusive because a corrigendum was attached to the judgment stating that observations in the judgment were only for determining the authority of the Court under Section 11.

The next in the line is ***Addhar Mercantile Private Limited Case***[4]. The two highlights of this case were, firstly, the dubiously drafted Arbitration Clause and, secondly, its reliance on the TDM Infrastructure case. The arbitration clause states the seat either as India or Singapore. This gives an opportunity to the Court to apply the finding of the TDM Infrastructure case and hence Court proceeded to create an arbitral tribunal in India under Section 28 (1) (a). But later in the judgment, the Court stated that "*If the seat of the arbitration would have to be at Singapore, certainly English law will have to be applied…*", which shows that the Court is fine with the two local parties to have a foreign seat of arbitration but paradoxically later in para 12 the court countered the respondent's argument that even two domestic parties are barred to have the seat outside India.

The Court for the first time favoured the argument and countered the Addhar case by allowing the arbitration by two local parties outside India in ***Atlas Export Industries Case***[5]. The argument of autonomy and the right of parties was elaborately discussed. But this question relating to foreign seated arbitrations should always be discussed with the applicability of foreign law too. This is important because it takes into consideration a situation where two Indian parties agreed to have arbitration outside India but the law governing the arbitration is Indian Law. Then, escaping the Indian Court by advocating the foreign seat of arbitration will harm either party, as

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[1] *T. D. M. Infrastructure Pvt. Ltd. v. U. E. Development India Ltd*., (2008) 14 SCC 271.
[2] Arbitration and Conciliation Act, 1996, **§** 2 (1) (f), No. 26, Acts of Parliament, 1996.
[3] Arbitration and Conciliation Act, 1996, **§** 11, No. 26, Acts of Parliament, 1996.
[4] *M/s Adhar Mercantile (P) Ltd. v. Shree Jagdama Agrico Exports (P) Ltd.*, 2015 SCC OnLine Bom. 7752.
[5] *Atlas Export Industries v. Kotak & Co*., (1999) 7 SCC 6.

Indian courts would have suitable knowledge and experience. Another reason why this case holds no essential value is that one of the parties was from Hong Kong. Therefore, it was not the case of two complete Indian parties.

Another case that advocated the same was ***Sasan Power Limited***[6]. But the problem in this case pertaining to our question is that it involved a "foreign element". The case does not help to our question as the question is related to two purely domestic parties. This case does not provide any solution. The most underrated case is ***Reliance Industries Ltd.***[7]. This case holds significant importance yet was not discussed in any of the above cases. In this case, the Court ordered the imposition of an arbitral award pronounced outside India.

The most recent case on the issue is ***GMR Energy Ltd.***[8]. Although this judgment gave the green flag to the foreign seated arbitration, the problem is that the Delhi High Court while advocating on the issue placed heavy reliance on the case of *Sasan* along with the case of *Atlas*, which, as discussed above, in themselves are problematic.

Reasons As To Why Two Domestic Parties Should not be Allowed to Have a Foreign Seat of Arbitration

India is looking forward to creating an environment conducive for arbitration in the country itself. In furtherance of this objective, the legislature and the judiciary are continuously working for improving the conditions so as to attract foreign investment in the nation. The establishment of ACI (Arbitral Council of India) is one such step. Not only domestic arbitration, but the legislature is looking forward to establishing an arbitral institution for international arbitration too. Amitabh Kant, CEO of NITI Aayog said that the use of arbitration for dispute resolution will greatly reduce the pendency of cases and boost investor confidence in India.

Allowing two local parties, established in India, to have a seat of arbitration outside India has a demotivating effect on the legislature. While they are working on attracting international arbitration in India, the domestic parties are choosing another country for arbitration. If the domestic parties will eventually choose the seat of arbitration outside India, what is the point of making the Arbitration and Conciliation Act and establishing various Arbitration Centre such as DIAC and Indian Council of Arbitration (ICA)? Not only it is troublesome for the Government and economy but also the parties themselves.

As put forward in the BALCO case, *"Indian Court would have no jurisdiction to hear or set aside the arbitral award if the seat of arbitration is outside India."*[9] The Indian Courts only have

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[6] *Sasan Power Ltd.* v. *North American Coal Corporation. (P) Ltd.*, (2016) 10 SCC 813.
[7] *Reliance Industries Ltd. and Anr. v. Union of India,* (2014) 7 SCC 603.
[8] *GMR Energy Ltd. v. Doosan Power Systems India Pvt. Ltd. & Ors.*, 2017 SCC OnLine Del 11625.
[9] *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

a supervisory role over an award. So, according to the ***Reliance v Union of India***[10] and ***BALCO*** case, choosing the seat outside India *ipso facto* grants exclusive jurisdiction to the courts of the seat to set aside awards. But the case fails to consider the following situation. For example, if the clause provides for seats outside India but Indian Law as substantive law and there is no agreement governing the arbitration or governed by Indian Law. Then also, the Court other than Indian will have jurisdiction.

So, if the substantive law governing the agreement is Indian Law and Arbitration is governed by the Indian Arbitration act, who will be in a better position to judge the case? The knowledge, expertise, and experience of an Indian Judge would be more on the Indian substantive Laws and Arbitration Act. Now consider the perspective of non-Indian Lawyers and Judges assessing these cases it would be difficult for them to understand why the Indian Arbitration Act, which is the arbitration law of another nation, jumped its local ambit and now is judged by foreign authorities. It raises the doubt on the arbitration environment of the country and creates a negative image of Indian arbitration on a global level.

Similar were the situations in ***Union of India v McDonnell.***[11] The seat was London and substantive law governing the arbitration agreement was Indian. The British Court held that by choosing the seat they have accepted the jurisdiction of the English Court and held supervisory jurisdiction over any award by the tribunal.

The exploitation of the Legislative Lacunae Present in the Arbitration Act by Domestic Parties

As held by the Court in the case of McDermott International Inc. Case, *"Patently illegal or blatant illegality means error on the face of the record; or error of law that goes to the root of the matter; or violation of the Constitution or a statutory provision; or it may be inconsistent with common law."*[12] Following the footstep of the judicial approach of the public policy, the Indian legislature brought appropriate changes in the Indian arbitration Act by Amendment of 2015.[13] The legislature brought a broader definition of Section 34 by including wider interpretations of public policy in explanation of Section 34 (2)(b)(ii) and including sub- Section 34(2A). The legislature has incorporated two different Sections; one defining public policy: Section 34(2)(b)(ii) and another providing the definition of patently illegal: Section 34 (2A). Moreover, from the amendment of 2015, it becomes much clear that the legislature sees public policy and patently illegal as two distinct terms.

The parties may use this practice of opting for the seat of arbitration outside India to intentionally avoid some provisions of Part I of the Arbitration Act, such as Section 28[14] and 34 (2A)[15] of the

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[10] *Reliance Industries Ltd. and Anr. v. Union of India*, (2014) 7 SCC 603.
[11] *Union of India v. McDonnell Douglas Corporation*, (1993) 2 Lloyd's Rep 48.
[12] *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.
[13] The Arbitration and conciliation (Amendment) Act 2015, No. 3 of 2016.
[14] Arbitration and Conciliation Act, 1996, **§** 28, No. 26, Acts of Parliament, 1996.

Indian Arbitration Act. If arbitration is seated in India, as provided in Section 28, the substantive Laws that would be applicable are Indian laws except in the case of International Commercial Arbitration. Similar is the case with Section 34 (2A). Nevertheless, Section 48[16], dealing with the enforcement of foreign awards, lacks such provision. Therefore, it can be used by the Indian parties to escape scrutiny from an allegation of patent illegality. Further, Section 28 and 34(2A) which provides the compliance of substantive law as an essential ingredient. But section 48 does not demand such compliance unless the law completely incapacitates a party or renders the arbitration agreement invalid.

These situations would create an environment where Part I becomes a penalty for those who do not choose the foreign seat for arbitration. It would be a mockery of the whole Arbitration Act and the arbitral institution established. This meant that parties could escape the Indian substantive laws and deal with the case in a foreign court, which is least familiar in Local laws of India, and come back under Part II for the enforcement of such an award in India. Not only does this impact the arbitration act but have a serious impact on the parties itself especially the weaker parties.

Taking into the consideration the 103rd Commission Report which deals with 'unfair terms' in Contract, the Law Commission also cited some cases, such as ***Maddala Thathaih case***[17] in which the Court comes to rescue the weaker party. The Court held that *"a clause in a contract providing discriminatory power to the administration to cancel the contract at any stage was void and unconscionable."* In recent economic situations, economic duress is one of the common problems in commercial trades. By adding such a clause and forcing the weaker party to opt for arbitration outside India will deprive this party to have benefits provided in Indian substantive laws.

Section 9 of the Arbitration Act[18] provided us with the interim relief, during the arbitral proceedings to the parties. Sometimes even arbitration proceedings can take a long time. In this situation, the needy party or financially weaker party can approach the Court under Section 9 of the Indian Arbitration Act. The importance of this provision can be derived from the fact that it could be used by the parties in all arbitrations, in fact, International commercial arbitration also but arbitration seated outside India by domestic parties cannot approach. Initially, the Court in Bhatia International case laid down that, *"Courts in India would have a right to provide interim relief in foreign seated arbitrations also unless otherwise agreed in writing by the parties."* Nevertheless, the case was overruled by the landmark case of BALCO. A constitutional bench of Apex Court held that *"Part I of the Act would be applied only to those arbitrations taking place in India."* Leaving the question puzzled, this led to a lot of confusion and parties usually do not approach the Indian Court for interim relief.

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[15] Arbitration and Conciliation (Amendment) Act, 2015, § 34 (2A), No. 3, Acts of Parliament, 2015.
[16] Arbitration and Conciliation Act, 1996, § 48, No. 26, Acts of Parliament, 1996.
[17] *Union of India v. Maddala Thathiah*, (1964) 3 SCR 774.
[18] Arbitration and Conciliation Act, 1996, § 9, No. 26, Acts of Parliament, 1996.

Seeing this situation, the legislature provided clarity to the issue in 2015. Legislature passed an amendment to the Arbitration and Conciliation Act, providing a major boost to the investors and helped in creating an arbitration-friendly atmosphere. Legislature amended section 2(2) restoring the judgment providing in Bhatia International but even added a proviso providing the option even to the party having arbitration outside India unless contrary intention appeared from the agreement. Hailing this amendment, the courts in India through various judgments seem to have duly appreciated the legislative intent behind the amended section 2(2) and have held that this court is open to provide interim relief to all arbitration irrespective whether held outside India or even if the curial law governing the agreement is Foreign law.[19] Nevertheless, the other side of the amended section 2(2) is that the interim relief is not available to foreign seated arbitration by two domestic parties.

INTERNATIONAL SCENARIO CONCERNING THE ISSUE OF FOREIGN SEAT OF ARBITRATION BY DOMESTIC PARTIES

- COMPARATIVE STUDY OF CHINA IN RELATION TO INDIA

This question is not only concerning India but also all those nations following the UNCITRAL Model Law. Countries like China have tackled the situation well and have brought appropriate Amendments to the laws. Arbitration in China is gradually developing and is showing good signs of progress. The fact that there are over 200 arbitration institutions (known as arbitration commissions) shows the involvement of the government and investors in the arbitration in China. Also, according to the latest report published by CIETAC, China's arbitration commissions received 2,962 new cases during 2018, representing 28.89% of the total cases. The most overwhelming results were the 522 foreign-related cases from 60 different jurisdictions, of which 36 cases were between non-Chinese parties showing an increase of 9.66% from the previous year and. 2,440 new domestic cases in 2018 showing an increase of 33.92%. China's economy, for the first time in history, has shown a collection of approximately USD 14.8 billion from the arbitration dispute, an increase of 41.32% from the previous year. These statistics show the increasing participation of foreign parties, the involvement of Arbitration in China's economy, the involvement of foreign arbitrators, and diverse dispute.

Arbitration law in China is much alike to the Sasan Power Ltd. case. The two relevant laws governing the process of arbitration in China are the **PRC Arbitration Law, 1994,** and the

[19] *Raffles Design International India Pvt. Ltd. & Ors. v. Edu. Comp. Professional Education Ltd. & Ors.,* (2015) I. A. Nos. 25949.

Contract Law of the PRC, 1999. Article 128 of the PRC Arbitration Law, 1999, states that "parties to a foreign-related contract may apply to a Chinese arbitration institution or another institute for arbitration". Further, Chapter VII (Article 65- 73) in PRC Arbitration Law 1994 deals wholly with special provisions for Arbitration with "Foreign element." In 2013, China's Supreme Court clarified certain issues by providing the Application of PRC Laws to Foreign-Related Civil Relations. Article 1 of the application provided for the Foreign-related arbitrations. It stated that "*a Foreign related arbitration are domestic arbitrations with at least one party is a foreign national, foreign legal entity, or is stateless; or the habitual residence of at least one party is in the territory of a foreign state; or the subject matter of the dispute is located outside China; or the legal facts establishing, altering or terminating the parties' relationship occurred outside China; or there are other circumstances which suggest that the legal relationship may be foreign-related.*"

Although the statue does not clarify whether two domestic parties can have foreign seated arbitration. In 2012, the Chinese Apex Court in the ***Jiangsu Aerospace case***[20] provided a clear statement on the issue and held that "*no two domestic parties can choose a foreign seat of arbitration unless the case involves a foreign element.*" The Court even not enforced the agreement providing arbitration between two domestic parties, including a subsidiary fully owned by a foreign company, involving the issue of purchase of wind turbines in mainland China. The Court cited that the arbitration agreement provided for ICC arbitration in Beijing, which is invalid. After this judgment, various Courts in China has refused to enforce arbitral awards or arbitration agreements either with domestic parties having foreign seat or arbitral institution with no foreign element.[21]

The primary reason cited by the Chinese Courts for imposing barriers on the domestic companies or parties for electing the foreign seat of arbitration or arbitral institution is the preservation of judicial sovereignty in China. In ***Chaolaixinsheng Sports and Leisure case***[22], the Beijing's Court refused to enforce an arbitral award with Korean Arbitration laws, stating that *"The public policy in China is supreme solving civil disputes in a state involves the judicial sovereignty of such state, which is needed to be protected in any case. Parties are only allowed to make arrangements based on the scope permitted by the law. Any agreement outside the scope of the law is considered invalid".*

The reasons cited by the Chinese Court holds some rationale which is needed to be considered by Indian Courts. Judicial sovereignty is supreme and needed to be protected by the State. Opening the gates for the domestic parties will involve civil disputes to be judged by another State. This

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[20] *Jiangsu Aerospace Wanyuan Wind Power Co. Ltd. v. L. M. Wind Power (Tianjin) Co*., (2012) Min Si Te Zi No.2.
[21] Sabrina Lee, *Arbitrating Chinese Disputes Abroad: A Changing Tide?,* Kluwer Arb. Blog (Sept. 7, 2020), available at http://arbitrationblog.kluwerarbitration.com/2016/04/07/arbitrating-chinese-disputes-abroad-a-changing-tide/.
[22] *Beijing Chaolaixinsheng Sports and Leisure Co. Ltd. v. Beijing Suowangzhixin Investment Consulting Co. Ltd.,* (2013) Er Zhong Min Si Te Zi No. 10670.

surely affects the belief of citizens in the judicial system of India. Not only the local investors or company, in fact, but foreign investors also distrust the Indian legal system.

- **COMPARATIVE STUDY OF THE UNITED STATES OF AMERICA IN RELATION TO INDIA**

Another nation that can be taken into consideration is the United States of America. America's arbitration laws are of significant importance in context with India. America's arbitration law i.e. **Federal Arbitration Act, 1925 (FAA)**, can be categorized into two parts. Akin to India, Part I of the Act deals with the domestic arbitration whereas Part II of the act deals with the enforcement of foreign awards. Initially, the US does not have Part II, it was only in 1970 when the U.S. recognizes the *New York Convention*. However, Section 202 of the Act clearly provides that the arbitration between the domestic parties will be outside the scope of the New York Convention unless having a reasonable relationship with one or more foreign parties.

The intent of the legislature behind Section 202 is quite evident. The arbitration arising within the nation should be governed by the local laws, provided in Part I of the FAA, and should not enter the domain of Part II of the FAA. From the above provision, it is quite clear that the domestic parties cannot contract out of the Act unless it is truly international. Therefore, it does not matter where the seat of arbitration is agreed upon, if the matter involves two domestic parties it will remain under the strict supervision of Federal Courts of the U.S.[23]

Although the federal court recognizes that if there is written agreement between the parties then it is in the public interest of the Court to recognize it but Section 202 is said to have imposed a different kind of public policy, which requires the parties to show a foreign element. Hence, the District Court in the ***Ensco case***[24] rejected the plea of petitioners to establish the arbitration agreement. In this case, two Companies established in the U.S. consented to have London as the arbitration seat for some operations which were creating trouble near Louisiana. Also, in the *case of* ***Reinholtz***[25], the Southern District Court of Florida ordered an arbitration agreement invalid, being two local parties having London as the seat of arbitration.

CONCLUSION

The Indian courts are increasingly adopting a pro-arbitration approach and enforcing valid arbitration agreements. The statement of objects and reasons of the Arbitration and Conciliation Act also recognizes the principle of non-intervention by courts in the arbitration process. Once again, the Supreme Court has given a very pro-arbitration signal to negate any unnecessary

[23] Julian Lew, *Control of Jurisdiction by Injunctions Issued by National Courts*, International Arbitration 2006: Back to Basics? 185 (Albert Jan van den Berg ed., 2007).
[24] *Ensco Offshore Co. v. Titan Marine L.L.C.*, (2005) 370 F. Supp 2d 594.
[25] *Reinholtz v. Retriever Marine Towing & Salvage*, (1994) A.M.C. 2981.

challenge to arbitral proceedings held in foreign jurisdictions or foreign awards even in case of arbitrations governed by the decision in Bhatia International.

Although GMR Energy Case is a good effort by the apex court to sincerely discuss the issue for the first time. The Court was successful in neglecting the question of Section 28 of the Indian Contract Act. However, the court placed so much reliance on the previous judicial precedent to justify its argument which is quite doubtful. The courts should have taken a bigger picture into consideration pertaining to the country's interest over the arbitration. As a matter of fact, restricting the parties would also have been a pro-arbitration decision. The United States of America and China are such examples. The restrictions have shown a considerable amount of success in the country's annual CIETAC Report.

Also, the government efforts in the recent amendment of 2019 would go in vain as it sought to establish and develop the Arbitration Council of India. The Court must not take any step which might affect or derogate the image of the Arbitration act. By providing a scope to evade with the scrutiny of Indian legislation and later providing the scope to enforce the foreign award in the country would certainly have a negative impact. It appears the Hon'ble Supreme Court has applied the principles enunciated by *Balco* to Pre-*Balco* arbitration, also harmonizing itself with the standard international practice, giving importance to the seat of arbitration to the extent that it amounts to conferring exclusive jurisdiction to the chosen location. The Court should have taken a broader point of view rather than confining to the earlier precedents. The Court should have taken into consideration the recent economic condition and the international trade regime in the country.

It is time for the legislature to enter into the discussion and bring forth the appropriate amendment on the issue. Till now, the court has only discussed the issue but we have to take into consideration that Court's interpretations are usually narrow as they confine themselves to a particular case. Hence, providing a narrower interpretation to such a crucial issue also tarnishes the image of the Indian arbitration at the international level. The fact that most of the domestic parties themselves try to avoid Indian law, then why would a party established in any other nation arbitrate in India. Also, when the substantive law of India is applied, then in such a situation the Indian judges would be in a better position to interpret the law and provide a reasonable judgment.

The question of a foreign element is clear. No party should be forced to arbitrate in a country of which it is unaware of the law to be applied until mutually agreed. But it should not be mixed with the question involved. There is a need to create some amount of certainty in this issue. Also, in recent situations the economic duress is common. The party with better bargaining power must not take advantage of the weaker party. As highlighted in Singapore laws, there is a need for the curial law intervention for the protection of such parties. No party should be allowed to escape the essential domestic laws that affect the country's interest by choosing a foreign seated arbitration. There seems to be some uncertainty with respect to the aforesaid issue as of date. A

conclusive finding on the same from the Hon'ble Supreme Court of India would be welcome. As it is quite rightly said – *"At all events, arbitration is more rational, just, and humane than the resort to the sword."*