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CONFLICT OF LAWS

Prakash Sharma[*]

I INTRODUCTION

CONFLICT OF laws/choice of law/private international law (interchangeably used) rely on the understanding and comparison of various legal systems and concepts. The scope of conflict of laws varies by country, as each jurisdiction utilises its own methods and regulations in practice.[1]In this context, nation-states endeavour to enhance their legal frameworks through specific legislation, alongside the role of domestic courts, which apply conflict of laws to achieve four primary objectives: (a) facilitate access to justice, (b) resolve conflicts, (c) coordinate or harmonise legal systems, and (d) prevent or deter forum shopping. The need of examining trends in the relationships and conflicts between private parties in national courts has grown crucial, particularly in the post-globalization era, where alignment with the global community is essential.[2]

* Assistant Professor Grade-I, Rajiv Gandhi School of Intellectual Property Law (RGSoIPL), IIT Kharagpur, West Bengal.The author acknowledges the review inputs received from Shreya Matilal, Assistant Professor Garde-I, RGSoIPL, IIT Kharagpur, and the research assistance provided by Naveen Chandra Sharma, Assistant Professor (Guest), LC-II, Faculty of Law, University of Delhi, and Animesh Pareek, Research Scholar, RGSoIPL, IIT Kharagpur.

1 *See* Rodolfo De Novo, "Current Developments of Private International Law", 13(4) *The American Journal of Comparative Law* 542 (1964). *See also* Lakshmi Jambholkar, "Conflict of Laws", 48*Annual Survey of Indian Law* 201 (2013).

2 For instance, there are issues arising out of privatisation phenomenon, *see* Alex Mills, "The Privatisation of Private (and) International Law", 76(1) *Current Legal Problems* 75-128 (2023).There is also dichotomy formed due to the public-private international law interface, *see* Martti Koskenniemi, *The Politics of International Law*(Hart Publishing, Oxford, 2011); Horatia Muir Watt, "Private International Law Beyond the Schism", 2(3) *Transnational Legal Theory* 347-428 (2011).Further, issuesalso arise out of internet, which has global dimensions and does cut across territorial borders, *see* Raquel Xalabarder, "Copyright: Choice of Law and Jurisdiction in the Digital Age", 8 *Annual Survey of International & Comparative Law* 79-96 (2002). These instances perhaps explain why pure domestic solutions are ineffective, *see* Robert Wai, "Conflicts and Comity in Transnational Governance: Private International Law as Mechanism and Metaphor for Transnational Social Regulation through Plural Legal Regimes", in Christian Joerges and Ernst-Ulrich Petersmann (eds.), *Constitutionalism, Multilevel Trade Governance and International Economic Law* 240 (Hart Publishing, Oxford, 2006); Craig Scott and Robert Wai, "Transnational Governance of Corporate Conduct through the Migration of Human Rights Norms: The Potential Contribution of Transnational "Private" Litigation", in Christian Joerges, Inger-Johanne Sand, and Gunther Teubner (eds.), *Transnational Governance and Constitutionalism* 287-319 (Hart Publishing, Oxford, 2004).

The Annual Survey for 2024 illustrates India's practice. The technique of this review is both selective and subjective. This is not an exhaustive summary of all recorded decisions in India pertaining to conflictsissues. The examined cases were found *via* computer databases and conventional methods to concentrate on decisions that will influence the area. The covered cases are decided between 1 January 2024 to 31 December 2024.This year's coverage encompassed issues related to admiralty jurisdiction, child custody, family court and anti-suit injunction, inter-state adoption, international commercial arbitration, foreign judgements, *etc*.

II ADMIRALTY JURISDICTION

The importance of maritime trade in an increasingly globalised world is beyond contest. Further, with the development of interest of international comity,it has been firmly established that once the court has correctly exercised jurisdiction, it will continue to always have jurisdiction to determine a maritime claim asunderstood in the international context.Considering these aspects, India had enacted the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (*hereinafter* Admiralty Act, 2017),[3] which clarifies theadmiralty jurisdiction of Indiancourts.

That being said, admiralty law confers upon the claimant a right *in rem* to proceed against theship or cargo as distinguished from a right *in personam* to proceed against the owner.In *Shipping Corporation of India Limited* v. *Nicholas John Richardson,*[4] the High Court of Madras in its order dismissed the applications for rejection of plaint and revocation of leave to sue. In this case, suit was filed to recover damages from defendant for collision caused by defendant. The issue was: whether the collision occurred beyond territorial watersand therefore leave was liable to be revoked. The court referred to the expression 'admiralty jurisdiction'[5], which is vested in specific high courts over the waters up to and including the territorial waters of their respective jurisdictions.[6] Thereafter, the court referred to the expression 'territorial waters,[7] which has the same meaning assigned to it as it is in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976.[8]

Now, section 3 of the Admiralty Act, 2017 is subject to sections 4 and 5 of the Admiralty Act, 2017. According to the court, while section 4 does not contain an express prescription with regard to the jurisdictional high court for an action *in rem* but the nature of jurisdiction indicates that it should be the high court with jurisdiction over the vessel; section 5, by contrast, uses the phrase "the High Court may order arrest of any vessel which is within its jurisdiction" for the purpose

3 Likewise, in order to reform maritime law, the government has passed the Major Port Authorities Act, 2021. However, another law pertaining to maritime reform is still at the stage of bill, *see* the Merchant Shipping Bill, 2024.

4 MANU/TN/5640/2024[hereinafter *Shipping Corporation of India Limited*].

5 Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, s. 2(1)(a).

6 Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, s. 3.

7 Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, s. 2(1)(k).

8 Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, s. 3(2).

of securing a maritime claim, thereby making it clear that jurisdiction to arrest can be exercised only if the vessel concerned is within the high court's jurisdiction.[9] In this regard, the court referred to Supreme Court's decision,[10]and read the decision with section 4 and 5 of the Admiralty Act, 2017. The court concluded that an admiralty action *in rem* is maintainable in the high court having jurisdiction over the vessel at the time of commencement of such action irrespective of the place where the cause of action for the maritime claim arose and irrespective of the place of residence or business or place of incorporation of the defendants.[11] However, in the present case, the issue was *in personam* maritime claim, which is referred in section 6 and is subject to restrictions placed under section 7 of the Admiralty Act, 2017.[12]

The court opined that there are three restrictions referred under section 7 of the Admiralty Act, 2017. First, sub-section (1) of section 7 imposes restrictions with regard to certain types of action *in personam*, however the same do not apply to other types of maritime claim.[13] Within sub-section (1) of section 7, another restriction is imposed, which is "the High Court shall not entertain any action under this section against any defendant unless the cause of action arises, wholly or partly, in India; or the defendant, at the time of commencement of the action, voluntarily resides or carries on business or personally works for gain in India."The third restriction is covered under sub-section (2) of section 7, which states that "the High Court should not entertain an action *in personam*, if it falls within the scope of Section 7, unless any other proceedings previously brought by the plaintiff in any Court outside India against the same defendant in respect of the same incident or series of incidents have been discontinued or have otherwise come to an end." Therefore, in the light of above stated legal position, the question is: which high court has jurisdiction in respect of *in personam* maritime claims?

In order to answer the above question, the court referred to section 2(2) of the Admiralty Act, 2017, which states that the words and expressions not defined therein shall have the same meanings as defined under the Merchant Shipping Act, 1958. Now, while Admiralty Act, 2017, does not define or prescribe criteria for identifying the jurisdictional High Court, the Merchant Shipping Act, 1958 defines the jurisdictional high court,[14] however its applicability to an action *in personam*

9 *Shipping Corporation of India Limited, supra* note 4 at para 12.

10 *M.V. Elisabeth* v. *Harwan Investment and Trading Pvt. Ltd.,* MANU/SC/0685/1993 [*hereinafter M.V. Elisabeth*].

11 *Shipping Corporation of India Limited, supra* note 4 at para 13.

12 *Id*., para 14.

13 Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, s. 7(1). The sub-section (1) makes it clear that the restrictions are limited to maritime claims in respect of damage or loss of life or personal injury arising out of: collision between vessels; the carrying out of or failure to carry out a manoeuvre in relation to one or more vessels; or non-compliance with the collision regulations made under Section 285 of the Merchant Shipping Act, 1958 by one or more vessels.*SeeShipping Corporation of India Limited, supra* note 4 at para 16.

14 *See* Merchant Shipping Act, 1958, s. 3(15).

is contentious. Therefore, the court opined that "the exercise of admiralty jurisdiction *in personam* has to be decided primarily with reference to the Letters Patent, where applicable, such as in this case, and also by examining whether the additional pre-requisites of section 7 of the Admiralty Act, 2017 are satisfied."[15] Accordingly, the court on the basis of the available documents held that, *prima facie*, thepart of cause of action arose within jurisdiction of Tamil Nadu, and therefore no case was made out to revoke leave.[16]Further, since plaintiff has not brought an action in any Court outside India against the defendant in respect of this incident, the restriction under sub-section (2) of Section 7 does not apply.[17]

In *Value Shipping Limited* v. *Owners and parties interested in the Vessel MV Nadhenu Purna*,[18] the High Court of Madras was asked to settle a maritime claim. The facts are: the plaintiff had entered into a Memorandum of Agreement (MoA) dated October 31, 2023 with M/s. Arcadia Shipping Limited, the owner of the vessel. Under the MoA, the plaintiff agreed to purchase the vessel for a total consideration of USD 8.3 million. As per the terms and conditions of MoA, the plaintiff by way of security deposited 15% of the total sale consideration with the Escrow Agent. On making the security deposit, an Escrow Agreement dated 09.11.2023 was entered.As per theclause 8 of the MoA dated October 31, 2023, the owners of the vessel/defendant are required to obtain delivery documentation in the nature of statutory clearances, governmental permissions and certificates for legal transfer of ownership of the vessel. It was alleged that the defendant committed breach of MoA dated October 31, 2023 by not complying with their requirements.

Further, it was alleged that the defendant was repeatedly seeking extensions for issuing the notice of readiness and also for postponing the cancellation date. The defendant contends that they had ensured all efforts to obtain clause 8 requirements, and hadsought for extension of the cancellation date only due to the delay owing to governmental inaction and the reasons were beyond their control. It was contended that a combined reading of both MoA and Escrow Agreement will hold neither of the party liable for inadequate performance to the extent caused by a condition that was beyond the party's control (*force majeure* condition). Further, it was also alleged that the claim of plaintiff is not a maritime claim.

While perusing the facts, the court noted that the extensions sought, clearly demonstrate the failure on the part of the defendant to deliver the vessel to the

15 *Shipping Corporation of India Limited, supra* note 4 at para 18. The Court opined that "from the discussion in *M.V. Elisabeth*, admiralty jurisdiction was being exercised by High Courts in India much prior to the enactment of the Admiralty Act, including with reference to both the Colonial Courts of Admiralty (India) Act, 1891 (enacted pursuant to the Colonial Courts of Admiralty Act, 1890) and the Letters Patent. Such jurisdiction was exercised by a particular High Court if the vessel or cause of action fell within its appellate jurisdiction." *Id*. at para 19.

16 *Id*., para 22-23.

17 *Id*., para 21.

18 MANU/TN/0458/2024 [hereinafter *Value Shipping Limited*].

plaintiff within the stipulated time. As regard to the conjoint reading of the Agreements, the court referred to the object of the Escrow Agreement, clause 18 of the MoA, and the arbitration agreement in the MoA and in the Escrow Agreement. Accordingly, the Court opined that the MoA (which is an agreement to sell) and the Escrow Agreement (which is an agreement to secure the sale consideration and to protect the interest of both parties) are independent contracts and thus cannot be read together.[19]This finding also settles the issue of maritime claim. The Court held that "section 4(1)(r) of the Admiralty Act, 2017, deals with disputes arising out of a contract of sale of the vessel."[20] The court agreed with the Division Bench decision of the Bombay High Court in *M.V. Golden Pride*v. *GAC Shipping (India) Pvt. Ltd.*,[21] which held that the term "arising out of" in Section 4(1) of the Admiralty Act, 2017, are words of wide amplitude and there is no reason to give any restricted meaning to the those words.[22]

Further, the court noticed that the *force majeure* clause is not available in the MoA (it is available only in the Escrow Agreement). As a result, the defendant cannot take the plea of *force majeure*, since the MoA does not permit it.[23]Further, with respect to cancellation, the court after perusing MoA, opined that the plaintiff need not wait endlessly for the completion of sale, especially when they have already made a security deposit with the Escrow Agent.[24]

The court also clarifies the position with respect the yardstick for instituting an admiralty suit and seeking arrest of a vesselfrom that of seeking attachment under Order XXXVIII Rule 5 of Civil Procedure Code, 1908.[25] In this regard, the court referred to the Supreme Court decision,[26] wherein the test that an Admiralty Court follows at the time of grant of arrest or vacating the order of arrest, was laid down. According to the test, the Admiralty Court has to see, whether the plaintiff has 'a reasonably arguable best case'. Examining the test to the fact of the case, the High Court of Madras was of the view that, *prima-facie*, there has been a breach of contract, which prompted the plaintiff to terminate the MoA dated

19 *Id*., para 33.

20 *Id*., para 41.

21 MANU/MH/1693/2023.

22 *Value Shipping Limited, supra* note 18 at para 43. The court held that "the plaintiff, who has invested huge sums of money for purchasing the defendant vessel, has been made to run from pillar to post to seek remedy. The plaintiff exercising maritime claim against the owners of the defendant vessel is justified and certainly the said claim falls under Section 4(1)(r) of the Admiralty Act, 2017". *Ibid*.

23 *Id.*, para 34.

24 *Ibid*.

25 *Id*., para 44. The Court held that there is no necessity to satisfy the requirements of Order XXXVIII Rule 5 of CPC for an admiralty suit. The Court explained the position thus, "Arrest of a vessel is a statutory right provided under the Admiralty Act, 2017, for maritime claims falling under Section 4 of the Admiralty Act, 2017, whereas the attachment sought to be obtained under Order XXXVIII Rule 5 of CPC is a discretionary relief." *Ibid*.

26 *Videsh Sanchar Nigam Ltd.* v. *M.V. Kapitan Kud*, MANU/SC/0125/1996.

October 31, 2023. Therefore, the plaintiff has made out a reasonably arguable best case to secure suit claim.[27]

In *Siddhartha Insurance Limited* v. *Owners and Parties Interested in the Vessel M.V VSL SSL Kolkata*,[28]the maintainability of the admiralty suits filed in the Admiralty Jurisdiction before the Ordinary Original Division of High Court of the Calcutta was in question[the Calcutta High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2019 (*hereinafter* Rules 2019) were notified on 22.11.2019, days after the filing of the suitson October 31, 2019].The issue was: whether or not post promulgation of the Commercial Courts Act, 2015 (*hereinafter* CC Act), the suits should have been filed before the Commercial Division of the Court?

The court noted that all the suits were instituted long after the commencement of the CC Act.[29] Additionally, section 2(1)(c) of the CC Act creates an independent and separate Division in the high courts for adjudication and settlement of 'commercial disputes'[30] by the 'commercial court'[31].Now, the definition of 'commercial disputes' provides that issues relating to admiralty and maritime law fall within its scope,[32] and Section 7 of the CC Act requires all suits relating to commercial disputes of a prescribed value filed in the high court to be heard and disposed of by the Commercial Division of the Court. On the basis of this legal position, the Court opined that the provisions of the CC Act read with the Admiralty Act of 2017, do not remove the applicability of the CC Act.[33]The court accordingly rejected the plaintiff's prayer for transfer of the suits to the Commercial Division.[34]

III FAMILY LAW

In an increasingly interconnected world, there are challenges in balancing/ upholding national legal sovereignty with the global imperative. This aspect is equally relevant considering the evolving nature of family law in the context of globalisation and international mobility.Time and again, Indian courts are asked to fill in the lacunae in the law, especiallyfor circumstances that has never arisen before. Here, the Indian courts have repeatedly demonstrated a willingness to engage with the underlying principles of the private international law.[35]Such an

27 *Value Shipping Limited, supra* note 18 at para 55.

28 MANU/WB/1862/2024 [hereinafter *Siddhartha Insurance Limited*].

29 *Id*., para 4.

30 Commercial Courts Act, 2015, s. 2(1)(c).

31 Commercial Courts Act, 2015, s. 2(1)(b) r/w s. 3. Further, section 6 of the Commercial Courts Act, 2015 confers jurisdiction only upon the Commercial Court to try all suits and applications relating to commercial disputes.

32 Commercial Courts Act, 2015, s. 2(1)(c)(iii).

33 *Siddhartha Insurance Limited, supra* note 28 at para 5.

34 *Id*. , para 10.

35 *See* C. Jayaraj, "Conflict of Laws", 42 *Annual Survey of Indian law*59 (2006); Lakshmi Jambholkar,"Conflict of Laws", 54 *Annual Survey of Indian law* 77-87 (2018). *Seealso Rajeswari Chandrasekar Ganesh* v. *The State of Tamil Nadu*, MANU/SC/0890/2022.

approach is indicative of a broader trend, where the courts balance respect for international legal principles with the imperatives of domestic legal contexts.

Child custody

The complexities of international custody disputes and the paramount importance of focusing on child welfare in inter parental legal proceedings had kept our courts busy.[36] In *Nienke Leida Hulshof* v. *The State of Maharashtra*,[37] the High Court of Bombay , delves into the intricate issues of international child custody, the application of the Hague Convention on the Civil Aspects of International Child Abduction, 1980 (*hereinafter* Hague Convention of 1980), and the legal principles governing child welfare across borders. The facts are: the petitioner sought a writ of *habeas corpus* to produce the minor child, who is alleged to be in an illegal custody of the ex-husband and relatives in India, and for appropriate directions for the return of child to the Netherlands. By a summary adjudication and invoking its extraordinary writ jurisdiction for the best interest of the child, the court allowed return to Netherlands.

In another case,[38] a writ petition was filed by the father/petitioner for the custody and repatriation of minor daughter, who had been removed from the USA by her mother, without the consent or informing the husband, and even against the District Court of Mecklenburg County temporary parenting arrangement of custody of their daughter. The High Court of Bombay allowed the petition but refrained from directing the wife to return to the United States (US), stating that she is an adult and no court could compel her to stay in a place where she does not wish or want to.However, as for the repatriation of child, the Court passed directions which were in the best interest of the child.

In *Srinivas Ramineni* v. *State of Andhra Pradesh*,[39] the High Court of Andhra Pradesh reiterated the law that the primary consideration in child custody cases is welfare of child, rather than rights of parents.The facts were: the boy was born in US and was studying in Dallas till February, 2023. Subsequently, due to matrimonial dispute, in March, 2023, the wife brought him to India and admitted in a local school at Rajamahendravaram. Further, due to change in climate conditions and alsohygienic conditions, the boy now and then suffered health problems. Holding that the facts of the case are similar to *Nilanjan Bhattacharya* v. *State of*

36 *See* Prakash Sharma, "Inter-Country Adoption Mechanism: Analysing the 'Best Interest' of the Child", in Afkar Ahmad and Partha Pratim Mitra (eds.), *Child Rights in India: Contemporary Issues and Challenges* 185-196 (Satyam Publication, New Delhi, 2021).

37 MANU/MH/0752/2024 [hereinafter *Nienke Leida*].

38 *Abhijit S. Shingote* v. *The State of Maharashtra*, MANU/MH/3090/2024.

39 MANU/AP/1065/2024 [hereinafter *Srinivas Ramineni*].

Karnataka,[40] the court observed that the court has to make a scrupulous enquiry as to "with whose hands the minor's welfare will be safe and his all round welfare will be served."[41] The court opined that the binding precedentssuggests that "whenever children have been removed from their native country to India, the Court shall, in the best interest of the child, order for the return of the child to his native country if the child has not developed roots in India and no harm would be caused to the child on such return."[42]

In *Shishir Shirolkar* v. *The State of Maharashtra*,[43]the mother moved with the child on account of the alleged harassment. The court observed that whenever the question arises before a court pertaining to the custody of a minor child, the matter has to be decided not on consideration of the legal rights of the parties or on the basis of the acrimony between them as husband and wife, but on the sole criteria of what would best serve the interest and welfare of the minor.[44]On a careful perusal of the facts, the Court observed:[45]

> We are conscious as to how India is perceived globally in such scenario, and we must make it clear that we feel ourselves bound by the principle of comity of court orders and comity of nations, but we have before us a case, where the child aged 2 ½ years accompanied her mother to India and who took a decision not to return, as according to the respondent, she suffered physical, verbal and mental abuse at the end of the petitioner and his behaviour deteriorated with time.

On careful examination, the court also opined that the custody with the biological mother is not an illegal custody.[46]Further, the court remarked that during

40 MANU/SC/0736/2020. The facts were: the couple married in the year 2012 and moved to USA in April, 2015 and both of them were employed in different places and in March, 2019 the wife planned to travel to India for a short period with the minor son aged about 3 1/2 years and accordingly returned to India. The efforts of the appellant to persuade the wife to return to the USA could not fructify. Hence, the appellant filed a custody petition before the Superior Court in New Jersey, Hudson County, Chancery Division-Family Part. The court on 21.05.2019 granted temporary custody of the child to the appellant. Added to it, the appellant also filed divorce application dated 06.06.2019 before the court in New Jersey. However, the wife did not give custody of the minor son. On 10.07.2019 the appellant filed *habeas corpus* petition before the High Court of Karnataka and by its judgment dated 07.04.2020 the Division Bench allowed the petition with certain conditions. Aggrieved by the contentions, the appellant moved to Supreme Court. In that process the Supreme Court, after considering several judgments on the aspect,set aside the few conditions of the judgment of the High Court and ultimately allowed the appellant to take the minor boy to USA in the interest of welfare of the minor child.

41 *Srinivas Ramineni,supra* note 39 at para 13.

42 *Ibid*.

43 MANU/MH/6066/2024.

44 *Id*., para 14.

45 *Id*., para 30.

46 *Id*., para 33.

summary enquiry, it must examine whether the child's return may expose him/her to grave risk of harm or not. Additionally, it was noticed that the petitioner has approached the court at a belated stage. Accordingly, while dismissing the petition, the court observed:[47]

> In the present scenario we find that when the daughter is brought to India by her mother she was 2 ½ year old and now she is almost 6 ½ years. Last four years she has gained roots in India as she continued to stay with her mother and her grandparents. When she was removed from USA, she had hardly settled there and was not introduced to its social customs, language, way of leading life, but now within period of 4 years she is definitely accustomed to the culture of this country, and has established bond with her grandparents and has started rooting herself in its cultural atmosphere. She is now settled in the new environment and transferring her to USA to be with the petitioner, who definitely is serving and with no one to take care of the child, we feel that the child would be exposed to physical and physiological harm on her return.

Similar observations were also held in *Rohan Rajesh Kothari*v. *State of Gujarat*,[48] where High Court of Gujarat opined that in custody matters,emphasis on the welfare of the child must begiven the paramount consideration. The court examined the effect of other proceedings initiated in the foreign court. The court referred to the rule of tender years and noticed that it haslegislative[49] and judicial recognition.[50] Accordingly, while noticing the facts, the Courtruled that the minor child "will have to be given in custody of the mother, on the basis of the tender years rule."[51]

These cases are important and has the potential to influence future legal discourse on international child custody and abduction, thus encouraging a more integrated and child-centric approach in resolving such disputes.These cases also serve as a call for countries to enhance cooperation and harmonize legal standards to better protect child interest in international custody battles.

Inter-country adoption

In *Ravi Kumar C.* v. *Central Adoption Resource Authority*,[52] the High Court of Karnataka while considering inter-country adoption (for seeking to recognise a legalised child adoption under the Indian law) allowed the relief. The brief facts were: The petitioners i.e. the husband and wife are citizens of India, residing in

47 *Id*., para 35.

48 MANU/GJ/0059/2024 [hereinafter *Rohan Rajesh*].

49 Hindu Minority and Guardianship Act, 1956, s. 6.

50 *SeeVivek Singh*v. *Ramani Singh*, MANU/SC/0156/2017; *Sejalben Arpit Shah* v. *State of Gujarat*, MANU/GJ/0562/2019; *Kamla Devi*v. *State of H.P.*, MANU/HP/0010/1987

51 *Rohan Rajesh*, *supra* note 48 at para 21.

52 MANU/KA/1315/2024.

Nairobi, Kenya. Between 2011 and 2018, the petitioners were residents of Uganda.During their stay in Uganda, they became desirous of adopting a child, and after following all due procedures, adopted a child. In the meantime, the High Court of Uganda, declared that the petitioners are adoptive parents of the child and were granted all consequential rights over the child.Desiring the adoption to become formal as per Indian procedure (since the petitioners hold Indian citizenship), the petitioners preferred an application under the Adoption Regulations, 2022 framed by the Central Adoption Resource Authority (CARA) to grant legal sanctity to the said adoption. Thereafter, having received no communication, the petitioners sought a direction by issuance of a writ of *mandamus*.

After perusing the grievance and taking note of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Regulations of the Adoption Regulations, 2022, pointed out that the situation in the case at hand does not figure in any of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, but figures in the Adoption Regulations, 2022 [Regulations 23(2), 41, & 70].[53]Thereafter, the court referred to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1995 (*hereinafter* Hague Adoption Convention), and pointed that if it is not Hague Adoption Convention, the rights of the child or the parents over the child would be left in the state of uncertainty.[54] The court observed:[55]

> The petitioners are not the ones who are asking for legalizing, an illegal adoption. They are the ones asking recognition of a legalized adoption under the Regulations of the Nation. They have in their arm complete legal process in the High Court of Uganda *qua* their right over the child. Therefore, it becomes necessary to iron out the creases even in the Regulations by harmonizing the provisions of the Act and the Regulations to accept such adoption and direct issuance of a no objection or approval of such adoption. Ironing out the creases by the constitutional Courts of the provisions of law as promulgated, without disturbing the content of the statute, is permitted exercise of judicial review, as the law makers at the time of making the law would not have envisaged a situation of the kind that is generated in the case at hand.

The court also took note of the issuance of Support Letter as mandated Regulation 41(17) of the Adoption Regulation, 2022, and pointed out that this will place the petitioners or the child "neither here nor there",[56] as the Support Letter is for issuance of passport in case of in-country adoption, and thus would not be helpful incross border adoption.

53 *Id.* at para 11.
54 *Id.*, para 13.
55 *Ibid.*
56 *Id.*, para 14

Family court and anti-suit injunction

In *Prasanna Sankaranarayanan* v. *Dhivya Shashidar*,[57] the High Court of Madras in its Order allowed the civil revision petition initiated at the instance of the husband. The facts were: the petitioner/husband and the respondent/wife solemnized their wedding under the provisions of the Special Marriage Act, 1954 [hereinafter SMA] at Chennai. Thereafter, they relocated to the USA, and in 2016, a child was born. In 2023, the they re-located to Singapore. On 31.08.2024, the wife lodged a complaint against the husband, alleging that, he had assaulted her. On account of this complaint, the husband moved away from the matrimonial home, which he had taken on rent,and shortly thereafter, came to India. Accordingly, he filed adivorce petition before the Family Court, Chennai. The divorce was sought on two grounds, namely, cruelty and adultery under Sections 27(1)(a) and 27(1)(d) of the SMA. Fearing that the wife might initiate divorce proceedings in US or Singapore, the husbandalso filed two applications, one for seeking the relief of an anti-suit injunction, and second for seeking interim custody of the minor son, in Chennai.Thereafter, notice was ordered to the wife.

Meanwhile, the wife had initiated a proceeding for maintenance and for custody of the minor child before the courts in Singapore. In the said proceeding, the husband filed an application seeking to restrain the wife from removing the minor from the jurisdiction of the Courts in Singapore. Accordingly, the Singapore Court passed a restraint order. Interestingly, a day before the order came to be passed, the wife along with the child left Singapore to San Francisco, US. On 06.09.2024, the wife initiated a proceeding for divorce before the Superior Court of Washington, County of King, US. She also filed an application seeking immediate restraining order, whichwas rejected. Thereafter, immediately, another application was moved by her seeking reconsideration and clarification of the order passed.

Further, the huband appeared before the Family Court, Chennai, whereinthe matter was adjourned to November 25, 2024. An application was also moved for advancing the hearing in anti-suit injunction application. It came to be dismissed by the court.Feeling aggrieved that no orders have been passed by the Family Judge in the anti-suit injunction petition, a civil revision petition was preferred before the Madras HighCourt.

Later, when the revision came up for admission, the counsel for the wife pleaded that he had not yet been served with the typed set of papers. He added that the American Court has listed the matter on November 12, 2024 for the purpose of receiving a response from the husband and hence, sought for time. Accordingly, the Court adjourned the revision and passed an order directing the parties not to precipitate the matter before any Courts and listed the matter on November 20, 2024. On November 20, 2024, as the counsel for the wife had not received *vakalatnama,* the Court granted time and adjourned the matter to November 28, 2024. On 28.11.2024, on the request of both sides, the matter was again adjourned to December 11, 2024. On these dates of hearing, the order directing the parties not

57 MANU/TN/6943/2024 [hereinafter *Prasanna Sankaranarayanan*].

to precipitate the issue was continued. Finally, the matter was taken up for hearing on December 11, 2024.

Accordingly, on December 19, 2024, the Court gave a detailed Order. In her Order, the Madras High Court, first, examined the issue whether Indian Courts have the jurisdiction to grant an anti-suit injunction. In this regard, the Court referred to the Supreme Court's decision[58] wherein it held that, the courts in India, are courts of both law and equity, and therefore while considering the application, the courts must consider the rule of comity of courts.[59]Accordingly, the High Court of Madras referred to the facts and noted that while the injunction application in India is challenged, a simultaneous petition seeking for anti-suit injunction is filed in US. Further, the court also noticed that despite the Singapore Court's restraint order, the wife removed the child leading to proceedings being initiated before the US Court under the Federal legislation based on the Hague Convention of 1980. The court observed:[60]

> The idea of the [wife] seems to be to ensure that no order is passed in India, while simultaneously pursuing the same remedy before the court in United States of America. To be noted, no proceedings have been initiated in Singapore regarding divorce nor could any proceedings have been initiated in Singapore because the basic requirement, of domicile for a period of three years prior to filing a divorce petition in Singapore, has not been satisfied in the present case.

Thereafter, the court looked into the second contention that there is no power in the family court to grant an anti-suit injunction. Here, the court after referring the explanation (d) of Section 7 of the Family Court Act,1984, observed that "it is a settled position of law that the width of the jurisdiction of the Transferee Court depends on the jurisdiction of the transferor court."[61] The Court also pointed out that the application for injunction does not seek for stay of proceedings before the foreign courts. The court explained the correct position of law and observed:[62]

> Anti-suit injunction is granted restraining a person subject to a Court's jurisdiction from proceeding further or from presenting any

58 *Modi Entertainment Network* v. W*.S.G. Cricket Pte. Ltd*., MANU/SC/0039/2003.

59 In this regard, the Supreme Court laid down the principles on which a court can grant anti-suit injunction.The principles are:
(a) that the person, against whom injunction is sought for, is amenable to the personal jurisdiction of the court;
(b) if the injunction is declined, ends of justice will be defeated and injustice will be perpetuated; and
(c) respect should be shown to the court in which the commencement or continuance of the proceeding is sought to be restrained.*Id*. at para 28.

60 *Prasanna Sankaranarayanan, supra* note 57 at para 39.

61 *Id*. para 42.*See also George Koshy* v. *Sarah Koshy*, MANU/KE/1517/2021.

62 *Id*. para 48.

> proceeding in a foreign territory. It operates *in personam*. It does not operate on the Court…If a Family Court were to grant an order of anti-suit injunction, it is not as if, it has been granted against the Courts in America. It is has been granted against the respondent before the Court. If the respondent were to disobey the order, the consequence that will be visited on the respondent and not on the Presiding Officer of the Court in foreign territory.

The court also looked into the child custody issue and observed that the Singapore Court have invoked their jurisdiction *vis-a-vis* the child,hence, it would not be appropriate for the Family Court, Chennai to exercise its jurisdiction over the child.[63] With respect to irretrievably break down marriage and SMA, the court categorically pointed out that the principles relating to recognition of a foreign decree is that "the jurisdiction of the foreign Court as well the grounds on which the reliefs all granted, must be in consonance with the matrimonial laws by which the parties are married."[64] Referring to the undisputed facts of the case that both parties have married under SMA, as per Hindu rites and customs, the law applicable to the parties is SMA. Now, the ground of divorce sought in the USA Court *i.e.* irretrievably broken down, is not covered by any of the provisions in the SMA. Therefore, the courts in India cannot recognize such a decree.

IV INTERNATIONAL COMMERCIAL ARBITRATION

International commercial arbitration is a method of resolving disputes between businesses through an arbitration proceeding. Here, the term 'commercial'has been given a wide interpretation so as to cover matters arising fromall relationships of a commercial nature, whether contractual or not.[65] That being so, ICA was structured around the premise that it is an alternative to applicable court system. Over the years, ICA has been used to resolve various disputes, including those related to contracts, investments, construction, etc. In recent times, a trend is seen

63 *Id*. para 53. The Madras High Court noticed that "consequent to the exercise of the jurisdiction over the child, proceedings have also been initiated before the United States District Court (Western District of Washington) under the provisions of The Convention of the Civil Aspects of the International Child Abduction and the United States International Child Abduction Remedies Act. Both Singapore and United States being parties, to the Hague Convention and the child not being within the jurisdiction of Indian Courts, the issue of going into interim custody by Indian Courts does not arise. During the relevant point of time, the child was within the jurisdiction of the Courts in Singapore. Noticing this difficulty, Ms.Geeta Luthra, submitted that the husband will not proceed with respect to any orders for interim custody or otherwise before the Courts in India. The said statement is recorded." *Ibid*.

64 *Id*. para 54.*See also Narasimha Rao* v. *Y. Venkata Lakshmi*, MANU/SC/0603/1991.

65 *See* United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, 1985, art. 1.

wherein commercial arbitration hasgained traction as an alternative for resolving IP-related disputes.[66]

Foreign judgments: recognition and enforcement

The doctrine of comity of courts, while significant, demands circumspection when examining a plea for an anti-suit or anti-enforcement injunction. In other words, the doctrine cannot act as a barrier to granting injunctions when justified by the facts of a case.[67]At the same time, it is the duty of the courtsto carefullyexamine the delicate balance between respecting the jurisdiction of foreign courts and upholding the parties' agreement to arbitrate. In *Honasa Consumer Limited*v. *RSM General Trading LLC*,[68] the High Court of Delhi was required to settle the issue: whether Court can grant anti-enforcement injunction under to prevent enforcement of foreign decree, allowing arbitration to resolve dispute. The brief facts were: the petitioner and the respondent entered into an Authorized Distributorship Agreement (ADA) on 30.07.2020, whereunder the respondent was to distribute the petitioner's products in the Middle East and Africa. The contract specifically envisaged resolution of disputes by arbitration, to be governed by theArbitration and Conciliation Act, 1996 (*hereinafter* Act, 1996), with New Delhi as the arbitral venue. The contract also contained a clause conferring exclusive jurisdiction, in respect of all matters relating to the contract, on courts in New Delhi. The contract also specified that it was to be interpreted in accordance with Indian law which was, therefore, both the governing and the curial law.By letter dated 17.10.2022, addressed to the respondent, the petitionerterminated the ADA with effect from 17.01.2023. Following this, the petitioner also addressed multiple e-mails to the respondent for full and final reconciliation of the dispute between

66 *See* Aastha Gilda and Anuttama Ghose, "Decussating Aspects of Intellectual Property Rights and Private International Law in India", 28(6)*Journal of Intellectual Property Rights* 510-517 (2023). The authors highlight multiple reason, including the fact that "there are difficulties in enforcing foreign rulings in transnational intellectual property conflicts"; besides there are"certain unique aspects of intellectual property conflicts are addressed effectively"*via* arbitration as compared to judicial action. *Id.* at 517.Having said this, here two decisions of the Supreme Court require proper reading, namely, *Booz Allen & Hamilton* v. *SBI Home Finance*, MANU/SC/0533/2011 (*hereinafterBooz Allen*), wherein the Court held that the question of arbitrability is to be decided on the basis of the 'nature of rights' involved in the dispute. In 2019, the Supreme Court revisited*Booz Allen* in *Vidya Drolia* v. *Durga Trading Corporation,* MANU/SC/0363/2019(*hereinafterVidya Drolia*) and clarified that the courts could intervene to adjudicate only when the subject-matter is 'demonstrably non-arbitrable'. Having said this, there exists conundrum (owing to pendulum of conflicting decisions) on thearbitrability of Intellectual Property Rights disputes. For instance, section 62 of the Copyright Act, 1957 provides scope for filing suit or proceeding for infringement of copyright only by a competent court due to the fact that it deals with *right in rem*(see *BoozAllen*). Also, section 103 of the Indian Patent Act, 1970 allows arbitration in matters where government is party.

67 Naveen Chandra Sharma and Partha Pratim Mitra, "Demystifying Judicial Intervention Through Public Policy Exception: Analysing its Impact on Enforceability of Foreign Arbitral Award", 8(1) *ILI Law Review* 155-178 (2023).

68 MANU/DE/5429/2024 [hereinafter *Honasa Consumer Limited*].

them, which were not responded. Now, the respondent on 25.11.2022 filed a suit in the Court of First Instance, Dubai, alleging breach. By judgment dated 16.05.2024, the respondent obtained a decree.[69] Accordingly, the petitioner moved to the High Court of Delhi,[70] seeking an injunction against the respondent from enforcing the Dubai Court decree,[71]and thus invoke the contractually envisaged remedy of arbitration to resolve disputes.

The court noted thatthe respondent failed to provide any justification for petitioning the Dubai Court. The facts clearly reveal a desperate attempt to escape the reference of the dispute to arbitration,and to jeopardize the right to legal remedies as envisioned in the agreement between the parties.[72]With respect to the scope of section 9 of the Act, 1996, the court was of the view that:[73]

> Section 9 Court can grant all interim measures envisaged by clauses (i) and (ii) of section 9 and excludes, specifically, stay of arbitral proceedings, a challenge to the existence or validity of arbitration agreements, and a challenge to the jurisdiction of the Arbitral Tribunal. There is, therefore, no known proscription, in the law, for an order under Section 9 of the 1996 Act enforcing the arbitration agreement executed between the parties, by which they have bound themselves. If either party acts in derogation of the clause, the Court is not only empowered, but also duty bound to interfere and injunct continuance of the derogation, in exercise of its Section 9 jurisdiction.

In other words, section 9 is wide enough to grant injunctions which would not only preserve the "subject matter of the arbitration" but the "arbitration" itself. Another pertinent issue addressed by the Court was onthe principle of comity. The court noted that no principle of comity of courts should prevent judicial redressal of the damage caused by any misadventures. The Court opined:[74]

> The principle of comity of courts can have no application where a foreign Court is manifestly acting in excess of jurisdiction. Though it is true that the authority of a court in one jurisdiction cannot extend to interfering with, or undoing, a decision taken by a Court in a another jurisdiction, right or wrong, the former Court, when called upon to remedy the effect of the decision taken by the foreign Court on citizens within its own jurisdiction and their legal and constitutional rights, has to address the question of whether the

69 Against the decree, the petitioner has filed statutory Appeal 984/2024, before the Dubai Court of Appeal. *Id*. at para 15.

70 Arbitration and Conciliation Act, 1996, s. 94.

71 Meanwhile, *vide* order dated 05.07.2024, the High Court of Delhi had granted an *ad interim* protection to the petitioner, thus restraining the respondent from proceeding to execute the decree, within the territorial jurisdiction of this Court or elsewhere. *Honasa Consumer Limited, supra* note 68 at para 18.

72 *Id*. at para 27.2.

73 *Id*. at para 29.14.

74 *Id*. at para 33.2.

> foreign Court can be said, in any manner of speaking, to have acted within jurisdiction.

The decision underscores the importance of upholding arbitration agreements and the jurisdictional clauses embedded within the contracts. Additionally, the judgment offers valuable lessons for other jurisdictions as well, particularly in the light ofthe need to balance respect for foreign judgments with the enforcement of contractual rights. Further, by upholding arbitration agreements and jurisdiction clauses, the decision India's position as a hub for international arbitration.

Seat of arbitration

In *ArifAzimCo.Ltd.*v. *MicromaxInformaticsFZE*,[75] the Supreme Court was asked clarify arbitration jurisdiction. The facts are: on 09.11.10, the petitioner, Arif Azim Co. Ltd., an Afghan company, entered into a consumer distributorship agreement (CDA) with the respondent, Micromax Informatics FZE, a UAE-based entity. The agreement designated Arif Azim as an authorized distributor of mobile handsets in Afghanistan. Key provisions included payments *via* an irrevocable letter of credit before delivery, dispute resolution through arbitration in Dubai, UAE (under UAE Arbitration and Conciliation Rules), and the governing law as UAE laws. The agreement also granted the Dubai Courts non-exclusive jurisdiction over disputes.Disputes arose in March 2012 regarding a transaction involving the supply of 8,000 handsets. Despite an outstanding credit balance in favour of the petitioner with the UAE entity, the respondents did not honour the same. Subsequent correspondence revealed complications stemming from the involvement of Micromax India, a non-signatory to the CDA, which demanded payment for transactions initiated under the agreement. This led to confusion regarding obligations under the CDA. As the cause of action had concurrent jurisdiction,on 14.09.22, the petitioner invoked arbitration, seeking resolution under Indian jurisdiction, citing a concurrent cause of action. However, the respondents failed to appoint an arbitrator, prompting the petitioner to approach the Supreme Court on 19.04.23.[76]

Three issues were raised, namely, whether the petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, is maintainable?; does Part I of the Arbitration and Conciliation Act, 1996, apply to the arbitration clause in the CDA?, and what is the seat of arbitration under the CDA?

The court opined that the seat of arbitration cannot be determined by a "formulaic and unpredictable application of choice of law based on abstract connecting factors to the underlying contract."[77] Accordingly, while dismissing the appeal, the Court held that merely because the parties have stipulated a venue without any express choice of a seat, the courts cannot sideline the specific choices made by the parties in the arbitration agreement by "imputing stipulations as inadvertence at the behest of the parties as regards the seat of arbitration."[78]

75 MANU/SC/1181/2024 [hereinafter *ArifAzimCo.Ltd.*].

76 Arbitration and Conciliation Act, 1996, s. 11(6)(a) r/w 11(12)(a).

77 *Arif Azim Co. Ltd., supra* note 75 at para 71.

78 *Ibid*.

Jurisdiction of the Indian courts to annul a foreign award

In arbitration, due caution must be given to the fact that an arbitrator is the ultimate authority on the quantity and quality of evidence, and their factual determinations should be respected. Further, if on a fair reading the award is intelligible and adequate with no gaps in its reasoning, it ought not to be challenged under the Act, 1966. These aspects were dealt by the Supreme Court in *OPG Power Generation Private Limited*v. *Enexio Power Cooling Solutions India Private Limited*,[79] wherein the Court explained the scope for judicial interference in arbitral awards under section 34 the Act, 1996 on the ground of violation of public policy. The brief facts were: OPG Power Generation Private Limited (OPG) is a subsidiary of Gita Power and Infrastructure Private Limited (GPI). Now, OPG entered into a contract Enexio Power Cooling Solutions India Private Limited (EPCS) for 160 MW coal-based thermal power project for supply, erection and commission of air-cooled condenser units. In pursuance of the contract, GPI issued separate purchase orders, which were later approved by OPG, with previous terms and conditions. Later, a dispute arose over outstanding payments and related claims on part of OPG to EPCS for its services, which led to the invoking of arbitration clause by EPCS. The arbitral tribunal ruled in favor of EPCS, holding OPG and GPI, jointly and severally liable for the unpaid amounts. Additionally, the tribunal granted EPCS the unpaid principal amount with interest but rejected the claim for the declaratory relief *qua* the debit notes, stating that they were time-barred under the Limitation Act, 1963.OPG challenged the award before a single judge of the Madras High Court, which set aside the arbitral award. The Division Bench of the Madras High Court reversed the decision, against which appeal(s) were made before the Supreme Court.

On the basis of stated facts, three main issues raised before the Court, *viz*.,(a) whether the arbitral award conflicted with the public policy of India or was tainted by patent illegality;(b) whether GPI could be made jointly and severally liable for the award alongside the Appellant; and (c) whether EPCS's claim for the outstanding principal amount was barred by limitation.

On the issue of conflict of arbitral award with public policy, the Court was of the view that that violation of fundamental policy of Indian law is a very narrow ground to challenge an arbitral award under the Act, 1996.TheCourt was of the view that after the 2015 amendments to the Act, 1996,[80]and with the insertion of the word 'fundamental' before 'policy of Indian law' is deliberate. The Court observed:[81]

79 MANU/SC/1040/2024 [hereinafter *OPG Power*].

80 *Seeespecially*, Arbitration and Conciliation Act, 1996, ss. 34(2)(b)(ii) and 48(2)(b). Here, the Court could have also referred to 2019 Amendments to Act, 1996.The legislative intent behind the 2015 and 2019 amendments to the Act, 1996 was to reinforce the notion that the arbitral tribunal is the 'preferred first authority' to adjudicate all questions relating to arbitrability and courts are to only have a 'second look' at the award under section 34 of the Act, 1996.

81 *OPG Power, supra* note 79 at para 52.

> The legal position which emerges from the aforesaid discussion is that after the '2015 amendments' in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word 'fundamental' before the phrase 'policy of Indian law' makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

In other words, it is only in exceptional circumstances that violation of fundamental policy of Indian law can be invoked, such that mere breach of municipal law does not render the award vulnerable to challenge under the Act, 1996.Having said this, the court did not outline what comprises of the fundamental policy of Indian law and left it up to the judicial discretion. Nevertheless, to guide the judicial discretion in determining violation of fundamental policy of law, certain pointers (though not exhaustive) were suggested by the Court, namely:[82]

> Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that (a) violation of the principles of natural justice; (b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and (c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law. However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).

With respect to the second issue, the Court applied the 'group of companies'doctrine, which premised on ascertaining the intention of the non-signatory to be party to an arbitration agreement.[83] On the last issue, the Court opined that the tribunal had rejected the counterclaims not because they were time-barred but on their merits.[84] Accordingly, the court held that there was no palpable error in the arbitral award as to be termed patently illegal/perverse, or in conflict with public policy of India.

82 *Ibid*.

83 *Id*. at para 80. The Court observed, "the doctrine requires the intention to be gathered from additional factors such as direct relationship with the signatory parties, commonality of subject matter, composite nature of the transaction, and performance of the contract." *Ibid*. See also, *Cox and Kings Ltd.* v. *SAP India (P) Ltd.*, MANU/SC/1310/2023.

84 *Id*. at para 138.

By emphasizing that acknowledgments within contract discussions can extend limitation periods, the judgment paves the way for a fairer, more inclusive arbitration processes.[85]The trend of ensuring minimal judicial intervention, indeed marks a significant step in fortifying the finality of arbitral awards in Indian commercial arbitration. Overall, the Supreme Court's decision affirms (a) the pro-arbitration stance, and (b) fosters confidence in India as an arbitration-friendly jurisdiction.

Foreign awards

Owing to the inherent volatility of exchange rates,the issue has gained significant implications for the holder of an arbitral award—especially when the timing of currency conversion can greatly impact the final amount—payable or receivable. The Supreme Court in *DLF Ltd.* v. *Koncar Generators and Motors Ltd.*,[86] examined the issue of conversion of foreign arbitral awards into the local currency. The dispute arose over the enforcement of a foreign arbitral award granted in favour of Koncar Generators (respondent, a Croatian company) against DLF Ltd. (petitioner, Indian company). Seeking to enforce the award in India, Koncar filed for execution in 2004, which was contested by DLF.[87]The core legal questionswere: what is the correct and appropriate date to determine the foreign exchange rate for converting the award amount expressed in foreign currency to Indian rupees; and, what would be the date of such conversion, when the award debtor deposits some amount before the court during the pendency of proceedings challenging the award.

The court held that the correct date for converting the foreign currency award to Indian rupees should be the date when the award becomes enforceable, i.e., when all objections against it are resolved. The court opined that the statutory scheme under the Act, 1996 does not require a judgment or decree to be passed for a foreign award to be enforceable;and the enforceability of a foreign award is automatic and deemed under section 49 after the objections against such an award under section 48 are finally decided and disposed of.[88] The court further opined that, if a partial deposit is made during the pendency of the case, the conversion of that amount should occur on the deposit date. The remaining award amount should be converted when the award is fully enforceable.[89]

The judgment establishes twin norms: (a) guidelines for managing currency fluctuations in the enforcement of foreign arbitral awards, and(b) importance of timely compliance with court orders to avoid negative impacts from

85 *Id.* at para 150.

86 MANU/SC/0855/2024 [hereinafter *DLF Ltd.*].

87 Indian Arbitration and Conciliation Act, 1996, ss. 34 and 48.

88 *DLF Ltd., supra* note 86 at para 10. The court reinforcedthe position laid down in*Forasol* v. *Oil and Natural Gas Commission*, MANU/SC/0034/1983, which asserted that the relevant date for determining the conversion rate of a foreign award expressed in foreign currency is the date when the award becomes enforceable.

89 *Id.* at para 20.

currency volatility. This willensure consistency and predictability of legal proceedings involving the enforcement of foreign arbitral awards in India.

V CONCLUSION

India insists that she is still meeting her obligations under international treaties. The courts are duly resorting towards unification of the private international law while at the sametime developing the normative contents of the domestic rules.This is crucial, given the fact that there exists no dedicated legislation on private international law, and in its absence, the judicial decisions fill in the gap.In this respect, the 2024 survey on conflict of laws cases indicates a rising number of instances, suggesting a steady awareness/evolution of private international law in India.Here, the courts are successful in reaching beyond the schism of the public and private spheres of international law. Observations in thecases like *Nienke Leida, Prasanna Sankaranarayanan*,*Honasa Consumer Limited,OPG Power*, and *DLF Ltd*., reaffirmed the governing potential of private international law and sought to address the gaps resulting from the exclusion or denial of non-state authority.