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NO JURISDICTION TO APPOINT ARBITRATOR IN FOREIGN SEATED ARBITRATION

The Supreme Court, (SC) in *Balaji Steel* case,¹ dismissed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 ('ACA'), reaffirming that Indian courts lack jurisdiction to appoint an arbitrator when the primary agreement designates a foreign seat for arbitration.

Brief Facts.

- Balaji Steel Trade (BST) entered into a Buyer-Seller Agreement (BSA) with Fludor Benin S.A. (Fludor) for the supply of cottonseed products.
- The BSA and its subsequent Addendum served as the 'mother agreement' for the commercial relationship. It stipulated that arbitration would take place in Benin² and be governed by the laws of Benin.
- Fludor assigned its obligations to Vink Corporation DMCC (Vink), leading Balaji Steel to enter into sales contracts with Vink.
- Following a claimed shortfall in supply, after BST's exclusive purchase rights were removed, Tropical Industries International Private Limited (TI IPL) was introduced to remedy the shortage, as such High Sea Sale Contracts (HSSC) was entered into.
- Sales contracts and HSSC contained arbitration clauses providing for arbitration in New Delhi, under the ACA.
- When supply disputes arose, Fludor initiated arbitration in Benin.
- BST sought to anchor a composite arbitration in India against Fludor, Vink and TI IPL, citing the 'Group of Companies' doctrine, arguing that the later Indian clauses superseded the Benin clause.
- Before approaching the SC, BST attempted to obtain an anti-arbitration injunction suit³ restraining the Fludor from proceeding/continuing with the Benin Arbitration which was dismissed by the Delhi High Court (HC).

¹ *Balaji Steel Trade vs. Fludor Benin S.A. & Ors.*, Arbitration Petition No. 65 of 2023, Neutral Citation 2025 INSC 1342.

² CAMEC-CCIB- Arbitration, Mediation, and Conciliation Centre of the Chamber of Commerce and Industry of Benin.

³ *CS (Comm) No. 544 of 2023*, before the HC.

Question of Law.

1. Can the SC entertain a Section 11(6) petition for an international commercial arbitration where the parties have chosen a foreign seat?
2. Do subsequent ancillary contracts with different arbitration clauses novate or supersede the ‘mother agreement’?
3. Does the ‘Group of Companies’ doctrine allow for a composite reference in this context?

BST’s Contentions.

- The transactions were composite and interlinked under a common corporate group wherein Fludor and Vink are controlled by TIPL, requiring a unified reference.
- The BSA was novated by the subsequent sales contracts and HSSC’s which pointed to Indian law.
- Benin was merely a venue, not the juridical seat.

SC’s Judgment & Reasoning.

The SC:

- Held that under Section 2(2) of the ACA, 1996 Part I (including Section 11) applies only when the place of arbitration is in India. As the BSA designated Benin as the seat, the jurisdiction of Indian courts is ousted at the threshold.
- Held also that the BSA governed the fundamental commercial relationship. The ancillary sales contracts and HSSC’s were limited to specific consignments and did not expressly or impliedly novate the BSA’s dispute resolution framework.
- Noted that the HC had already adjudicated the “separateness” of these contracts in the injunction suit and BST was barred by estoppel from re-litigating the same jurisdictional facts.
- Opined that the ‘Group of Companies’ doctrine is applied sparingly; mere common shareholding or participation in a transaction is insufficient to bind non-signatories without a clear mutual intention to do so.
- Highlighted that the Benin arbitration had already culminated in a final award, and allowing a parallel process in India would defeat the principle of finality and the doctrine of *kompetenz-kompetenz*.⁴
- Dismissed the petition, ruling that the disputes must be resolved in the parties’ chosen forum, which is arbitration in Benin, governed by Benin law.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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⁴ Enshrined in the UNCITRAL Model law on International Commercial Arbitration, which means “power to determine jurisdiction.”