

(2016) 07 DEL CK 0077

In the Delhi High Court

Case No : FAO (OS) No. 59 of 2016 and CM Nos. 7062, 7063 of 2016 and 7066 of 2016

Union of India

APPELLANT

Vs

Hardy Exploration & Production (India) Inc.

RESPONDENT

Date of Decision : 27-07-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37(2)
Uncitral Model Law, 1985 — Article 31(3), 33

Citation : (2016) 10 ADDelhi 330 : (2016) 4 ArbiLR 288 : (2016) 232 DLT 384 : (2016) 159 DRJ 291 : (2017) 1 RAJ 387

Hon'ble Judges : Mr. Badar Durrez Ahmed and Mr. Sanjeev Sachdeva, JJ.

Bench : Division Bench

Advocate : Mr. Tushar Mehta, ASG with Mr. K.R. Sasiprabhu, Mr. Samiran Sharma, Mr. Rajat Nair, Mr. Manas Popli and Mr. Adit Khorana, Advocates, for the Appellant; Mr. Rajiv Nayar, Sr. Advocate with Mr. Ameet Naik, Mr. Rishi Agrawala, Mr. Abhishek Kale, Mr. Harshvard

Final Decision : Dismissed

Judgement

Mr. Badar Durrez Ahmed, J.—The present appeal has been filed under Section 37(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the said Act") against the order dated 09.07.2015 in OMP 693/2013 and the order dated 20.01.2016 in Review Petition No. 400/2015.

2. OMP No. 693/2013 was a petition filed by the appellant under Section 34 of the said Act challenging an award dated 02.02.2013. In the order dated 09.07.2015, a learned single Judge had noted the two principle objections which had been taken by the respondent. The first being that the petition under Section 34 of the said Act would not lie in view of the fact that the impugned award was a foreign award. The second objection taken on behalf of the respondent was that even if the petition under Section 34 of the said Act was maintainable, the same would not lie in this court as this court did not have the necessary territorial jurisdiction. When faced with these objections, the learned counsel for

the Union of India sought to withdraw the petition to move the same before an appropriate forum in accordance with law. The learned single Judge dismissed the said OMP as withdrawn in these circumstances.

3. Thereafter, a review petition (Review Petition No. 400/2015) was filed seeking review/recall of the order dated 09.07.2015. The main point urged in the review petition was that the learned counsel for the appellant had, on 09.07.2015, made a clear concession of law which led to the consequential withdrawal of the said petition. The plea taken was that a lawyer's concession in law would not bind his client.

4. The review petition was taken up for hearing on 20.01.2016 when the same was dismissed. The learned single Judge, after extracting the earlier order dated 09.07.2015, had this to say:-

"1.1 A perusal of the aforementioned order would show that the concerned law officer who represented the petitioner on that date, withdrew the captioned petition to approach the appropriate forum; albeit in accordance with law. This aspect of the matter finds mention in paragraph 2.2 of the order extracted above.

1.2 As a matter of fact, a submission was made on behalf of the petitioner that the delay caused on account of time spent in this court ought to be condoned. As is evident from paragraph 3 of the order dated 09.07.2015, I had indicated that this aspect will have to be considered by the appropriate forum. It is, in these circumstances, that the petition was dismissed as withdrawn.

2. I must note though elaborate arguments were addressed, on the previous dates, on behalf of the petitioner, by Mr. Tushar Mehta, learned ASG, as to how and why this court would have jurisdiction in the matter. However, having heard, the learned ASG, to my mind, what cannot be lost sight of, is that, the court at this juncture is only exercising review jurisdiction. Therefore, having regard to the fact that the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 was withdrawn by the petitioner on its own volition, albeit under advice, I find, there is no error apparent on the record; a pre-requisite for triggering the review jurisdiction of this court.

3. Thus, in my opinion, the captioned review petition cannot be entertained. It is accordingly dismissed.

4. Consequently, the pending application will suffer the same fate having been rendered infructuous. It is, also, accordingly, dismissed."

5. Strictly speaking, there can be no quarrel with the decision of the learned single Judge insofar as the review order is concerned because in a case of withdrawal of a petition by the petitioner, there is no question of any error apparent on the record. The present appeal could be decided on this short point alone. However, Mr. Tushar Mehta, the learned ASG, appearing on behalf of the appellant, pleaded with us and quoted several authorities to indicate that a concession on a point of law would not be binding on the petitioner and that,

according to him, this was not a case of a foreign award and, therefore, Part I of the said Act was applicable, which included Section 34. Consequently, the petition under Section 34 would be maintainable. He also submitted that this court also had territorial jurisdiction to entertain the said petition. These submissions of Mr Tushar Mehta were vehemently opposed by Mr. Rajiv Nayar, senior advocate, appearing on behalf of the respondent. Both sides made elaborate arguments with regard to the applicability/non-applicability of Part I of the said Act. It is for this reason that we are examining this issue in detail.

6. Rival contentions were made with regard to the "place of arbitration?". According to the appellant, the place of arbitration was New Delhi and, according to the respondent, the place of arbitration was Kuala Lumpur, Malaysia. The clauses pertaining to arbitration and the applicable laws contained in the product sharing contract between the parties are contained in Articles 32 and 33, which are reproduced here in below:-

"32.1 This contract shall be governed and interpreted in accordance with the laws of India.

32.2 Nothing in this contract shall entitle the contractor to exercise the rights, privileges and powers conferred upon it by this contract in a manner which will contravene the laws of India.

32.3 The English language shall be the language of this contract and shall be used in arbitral proceedings. All communications, hearing or visual materials or documents relating to this Contract shall be written or prepared in English."

"33.1 The Parties shall use their best efforts to settle amicable all disputes, differences or claims arising out of or in connection with any of the terms and conditions of this Contract including the validity and existence hereof or concerning the interpretation or performance thereof.

33.2 Matters which, by the terms of this Contract, the Parties have agreed to refer to a sole expert and any other matters which the Parties may agree to so refer shall be submitted to an independent and impartial person of international standing with relevant qualifications and experience appointed by agreement between the Parties. Any sole expert appointed shall be acting as an expert and not as an arbitrator and the decision of the sole expert on matters referred to him shall be final and binding on the Parties and not subject to arbitration.

If the Parties fail to agree on the sole expert, then the sole expert shall be appointed, upon request by one of the Parties, by the Secretary General of the Permanent Court of Arbitration at the Hague, from amongst persons who are not nationals of the countries of any of the countries of any of the Parties.

33.3 Subject to the provisions herein, the Parties hereby agree that any unresolved dispute, difference or claim which cannot be settled amicably within a reasonable time may, except for those referred to in Article 33.2 be submitted to an arbitral tribunal for final decision as hereinafter provided.

33.4 The arbitral tribunal shall consist of three arbitrators. The Party or Parties instituting the arbitration shall appoint one arbitrator and the Party or Parties responding shall appoint another arbitrator and both parties shall so advise the other Party. The two arbitrators appointed by the parties shall appoint the third arbitrator.

33.5 Any Party(ies) may, after appointing an arbitrator request the other Party(ies) in writing to appoint the second arbitrator. If such other Party(ies) fails to appoint an arbitrator within forty five (45) days of receipt of the written request to do so, such arbitrator may, at the request of the first Party(ies), be appointed by the Secretary General of Permanent Court of Arbitration at Hague, within forty five (45) days of receipt of such request, from amongst persons who are not nationals of the country of any of the parties to the arbitration proceedings.

33.6 If the two arbitrators appointed by the Parties fail to agree on the appointment of the third arbitrator within thirty (30) days of the appointment of the second arbitrator and if the Parties do not otherwise agree the Secretary General of Permanent Court of Arbitration at Hague may at the request of either Party and in consultation with both, appoint the third arbitrator who shall not be a national of the country of any Party.

33.7 If any of the arbitrator fails or is unable to act, his successor shall be appointed in the manner set out in this Article as if he was the first appointment.

33.8 The decision of the arbitral tribunal and in the case of difference among the arbitrators, the decision of the majority, shall be final and binding upon the Parties.

33.9 Arbitration proceedings shall be conducted in accordance with the Suncitral Model Law on International Commercial Arbitration of 1985 except that in the event of any conflict between the rules and the provisions of this Article 33, the provisions of this Article 33 shall govern.

33.10 Notwithstanding anything to the contrary contained in Article 30, the right to arbitrate disputes and claims under this Contract shall survive the termination of this Contract.

33.11 Prior to submitting a dispute to arbitration, a Party may submit the matter for conciliation under the UNCITRAL conciliation, rules by a sole conciliator to be appointed by mutual agreement of the Parties. If the Parties fail to agree on a conciliator in accordance with the said rules, the matter may be submitted for arbitration. No arbitration proceedings shall be instituted while conciliation proceedings are pending.

33.12 The venue of conciliation or arbitration proceedings pursuant to this Article unless the parties otherwise agree, shall be Kuala Lumpur and shall be conducted in English language. Insofar as practicable the parties shall continue to implement the terms of this contract notwithstanding the initiation of arbitration

proceedings and any pending claim or dispute.

33.13 The fees and expenses of a sole expert or conciliator appointed by the Parties shall be borne equally by the Contractor and the Government. Assessment of the costs of arbitration including incidental expenses and liability for the payment thereof be at the discretion of the authorities."

The appellant's submissions:-

7. It was submitted by Mr. Mehta that Article 33 of the Contract does not provide for any "proper law governing the arbitration". Though, the law governing the contract has been specified to be Indian law, the authority governing the reference to arbitration has been specified as the Secretary General of the Permanent Court of the Arbitration at the Hague and the Curial law has been specified to be UNCITRAL Model Law on International Commercial Arbitration, 1985.

8. It was further contended on behalf of the appellant that Article 33.12 of the subject contract does not specify any place of arbitration in the sense of the seat of arbitration. It only specifies the venue of the arbitration proceedings to be Kuala Lumpur unless the parties agree otherwise. It was further submitted that in the absence of a clear stipulation of a place or seat of arbitration, it is for the arbitral tribunal to decide the same. This has been specifically stipulated in Article 20 of the UNCITRAL Model Law. Article 31.3 of the UNCITRAL Model Law is also relevant as it deals with the form and contents of the award. The said two provisions are set out here in below for ready reference:-

"Article 20.- Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents."

"Article 31.- Form and contents of award

xxx xxx xxx

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place."

9. In the context of the above provisions, it was submitted that the place of arbitration has not been declared by the arbitral tribunal and that merely noting

that the award was signed and made in Kuala Lumpur would not be sufficient compliance of Article 20 read with Article 31(3) of the UNCITRAL Model Law. Therefore, it cannot be said that Kuala Lumpur, which was only a venue of the arbitration proceedings, can be regarded as the place or seat of arbitration. It was, therefore, submitted that the supervisory jurisdiction of the Indian courts was not excluded by the parties either on account of the place of arbitration being outside India or on account of the arbitration agreement being governed by a law other than Indian law. It was contended that the principle laid down in *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.*, 2016 (4) SCC 126 would be applicable which provides that when there is an absence of any specific choice on the law governing the arbitration agreement, the same would be determined by the substantive law of contract. It was, therefore, contended that since by virtue of Article 32.1, the contract was to be governed by the laws of India, the Arbitration and Conciliation Act, 1996 would have to be treated as the proper law of the arbitration agreement which allows for the filing of a petition under Section 34 before the Indian courts.

10. It was next contended by Mr. Mehta that even under the UNCITRAL Model Law, recourse against an award is provided for under Article 34(2) thereof. The said provision reads as under:-

"Article 34.- Application for setting aside as exclusive recourse against arbitral award:-

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in Article 6 only if:

xxxx xxxx xxxx xxxx xxxx"

11. Furthermore, Article 6 of the UNCITRAL Model Law provides that the functions referred to, inter alia, in Article 34(2) shall be performed by a court to be specified by each state enacting the model law. Article 6 of the UNCITRAL Model law reads as under:-

"Article 6.-Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]"

12. It was submitted that the UNCITRAL Model Law was adopted by the Indian Parliament by enacting the Arbitration and Conciliation Act, 1996 as is evidenced by the Statement of Objects and Reasons. It was submitted that the grounds mentioned in Article 34 of the UNCITRAL Model Law have been, mutatis

mutandis, incorporated in Section 34 of the Arbitration and Conciliation Act, 1996. Thus, according to the learned counsel for the appellant, a conjoint reading of the said Articles of the UNCITRAL Model Law, 1985 and the Statement of Objects and Reasons of the said Act makes it clear that the intention of the parties by providing for UNCITRAL Model Law as the curial law was to incorporate the provisions pertaining to recourse against the arbitral awards under Article 34 thereof, which was more or less similar to Section 34 of the said Act. This, according to the learned counsel for the appellant, would mean that the parties intended to apply Part I of the said Act in the present case. This, according to the learned counsel for the appellant, was in consonance with the reasoning of the Supreme Court in *Bhatia International v. Bulk Trading, S.A. and another*, 2002 (4) SCC 105.

13. With regard to the applicability of Part I of the said Act, it was further submitted that the product sharing contract, which contains the arbitration clause, having been entered into prior to 06.09.2012, would be governed by the ratio in *Bhatia International* (supra) and not by *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.*, 2012 (9) SCC 552. It was submitted that, in the present case, neither the place of arbitration has been specified to be outside India nor does the law of any other country govern the subject arbitration. It was submitted that from the intention of the parties, it is clear that they had expressly adopted the said Act for the purposes of exercising supervisory jurisdiction over the subject arbitration. Consequently, it was submitted that this court had the requisite jurisdiction to entertain the petition under Section 34 of the said Act.

14. On the other hand, Mr. Rajiv Nayar, appearing on behalf of the respondent, submitted that, as the respondent was a foreign company, the present arbitration would be an international commercial arbitration within the meaning of Section 2(1)(f) of the said Act, he reiterated that this case involves the interpretation of the product sharing contract dated 19.11.1996 between the parties and, in particular, Articles 32 and 33 thereof. We have already extracted the said Articles earlier in this judgment. It was submitted by Mr. Nayar that the governing law of contract was the Indian law, the proper law of arbitration was the UNCITRAL Model Law, 1985. Furthermore, in terms of Articles 33.5 and 33.6, in case there is difficulty in the appointment of an arbitrator and/or the two arbitrators appointed by the parties fail to agree on the appointment of the third arbitrator, the same shall be appointed by the Secretary General of the Permanent Court of Arbitration at the Hague. It is also clear from the arbitration clause and, in particular, clause 33.12 that the venue of the arbitration was to be Kuala Lumpur, Malaysia.

15. It was contended by Mr. Nayar that Section 44 of the said Act defines a foreign award in the following manner:-

"44. Definition.-In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of

legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960 -

(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and

(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies."

16. A reference was also made to Articles 20 and 31(3) of the UNCITRAL Model Law which we have already extracted above. Article 20(1) of the UNCITRAL Model Law makes it clear that the parties are free to agree on the place of arbitration and, failing such agreement, the place of arbitration shall be determined by the arbitral tribunal, of course, having regard to the circumstances of the case, including the convenience of the parties. It was, therefore, contended that, even if the reference to venue in Article 33.12 of the product sharing contract did not mean the place or seat of arbitration, it was for the arbitral tribunal to determine the place of arbitration. It was further contended that Article 31(3) of the UNCITRAL Model Law clearly stipulates that the award shall state its date and place of arbitration as determined in accordance with Article 20(1). It is further stipulated that the award shall be deemed to be made at that place. On the basis of this, it was contended that the award in question was made at Kuala Lumpur on 02.02.2013. It was signed in triplicate by all the members of the arbitral tribunal at Kuala Lumpur on 02.02.2013. Therefore, it was contended that the award would be deemed to have been made at that place which would also be the place of arbitration. It was contended that the place of arbitration was Kuala Lumpur and it was for this reason that the arbitral tribunal delivered and signed the award at Kuala Lumpur. A reference was made to *Hiscox v. Outhwaite*, (1992 1 AC 562) wherein the House of Lords observed as under:-

"? An Award, whilst it is no doubt that final culmination of a continuing process, is not in itself a continuing process. It is simply a written instrument and I can see no context for departing from what I apprehend to be the ordinary, common and natural construction of the word "made". A document is made when and where it is perfected. An Award is perfected when it is signed."

17. It was further contended that Article 1(2) of the UNCITRAL Model Law made it clear that its provisions, except Articles 8, 9, 35 and 36 would apply only if the place of arbitration is in the territory of "this state" referred to in Article 1(2). In the present case, it would mean the Republic of Malaysia. It was submitted that the effect of this would be that the law of arbitration would be the law of the Republic of Malaysia and the Malaysian Arbitration Act, 2005 would automatically stand applied to the award made at Kuala Lumpur, particularly because Article 34 of the UNCITRAL Model Law is in *pari materia* to Section 37 of the Malaysian Arbitration Act, 2005. It was, therefore, contended that the place of arbitration

being Kuala Lumpur, Malaysia, Part I of the said Act in which Section 34 falls, would not be applicable to the present case. Reliance was also placed on the recent Supreme Court decision in the case of Union of India v. Reliance Industries Limited and others, 2015 (10) SCC 213. Particular reliance was placed on paragraph 21 thereof which reads as under:-

"21. The last paragraph of Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] judgment has now to be read with two caveats, both emanating from para 32 of Bhatia International [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] itself - that where the Court comes to a determination that the juridical seat is outside India or where law other than Indian law governs the arbitration agreement, Part I of the Arbitration Act, 1996 would be excluded by necessary implication. Therefore, even in the cases governed by the Bhatia [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] principle, it is only those cases in which agreements stipulate that the seat of the arbitration is in India or on whose facts a judgment cannot be reached on the seat of the arbitration as being outside India that would continue to be governed by the Bhatia [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] principle. Also, it is only those agreements which stipulate or can be read to stipulate that the law governing the arbitration agreement is Indian law which would continue to be governed by the Bhatia [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] rule.

(underlining added)

18. It was, therefore, contended that this court would not have jurisdiction to entertain the petition under Section 34 of the said Act as the place of arbitration was outside India, i.e., in Kuala Lumpur, Malaysia. Consequently, it was submitted that there was no error committed by the learned single Judge.

Discussion:-

19. From the above arguments and counter arguments, it is evident that the key question is with regard to the place of arbitration. Once the place of arbitration is determined, it would be clear as to whether Part I of the said Act would apply or not. It is true that Article 33.12 of the product sharing contract only speaks of the venue of the arbitration proceedings to be Kuala Lumpur. The said contract does not specifically mention the place or seat of arbitration. But, it is clear that the award was made at Kuala Lumpur. It is also clear that the UNCITRAL Model Law, 1985 is applicable. As already indicated above, Article 20(1) of the UNCITRAL Model Law, 1985 makes it clear that the parties are free to agree on the place of arbitration, failing which, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties. There is no express determination of the place of arbitration by the arbitral tribunal. However, the arbitration proceedings were conducted at Kuala Lumpur and the award has been made and signed at Kuala Lumpur. Because of Article 31.3 of the UNCITRAL Model Law, 1985, the date of

making the award and the place of arbitration as determined in accordance with Article 20(1) is required to be stated in the award. Since there is no mention of any dispute with regard to the place of arbitration in the award made by the Arbitral Tribunal, it can safely be presumed that the award having been made at Kuala Lumpur, the place of arbitration as distinct from the venue of the arbitration, would also be Kuala Lumpur.

20. Once it is decided that the place of arbitration is Kuala Lumpur, Malaysia and not in India, the next point that needs consideration is:- Whether Part I of the said Act, which includes Section 34, is applicable ? From a plain reading of Section 2(2), it is evident that Part I would apply where the place of arbitration is in India.

21. In *Balco* (supra), the Constitution Bench had ruled as under:-

"197. The judgment in *Bhatia International* [(2002) 4 SCC 105] was rendered by this Court on 13.3.2002. Since then, the aforesaid judgment has been followed by all the High Courts as well as by this Court on numerous occasions. In fact, the judgment in *Venture Global Engg.* [(2008) 4 SCC 190] has been rendered on 10.1.2008 in terms of the ratio of the decision in *Bhatia International* [(2002) 4 SCC 105] . Thus, in order to do complete justice, we hereby order, that the law now declared by this Court shall apply prospectively, to all the arbitration agreements executed hereafter."

22. In other words, the decision in *Bhatia International* (supra) and *Venture Global Engineering* (supra) would continue to apply in respect of arbitration agreements entered into prior to the date of decision in the *Balco* case (supra) (i.e., prior to 06.09.2012). In the present case, the product sharing contract had been entered into on 19.11.1996, much prior to 06.09.2012 and, therefore, the decision in *Bhatia International* (supra) would be applicable. The operative portion of *Bhatia International* (supra) is as under:-

"32. To conclude, we hold that the provisions of Part I would apply to all arbitrations and to all proceedings relating thereto. Where such arbitration is held in India the provisions of Part I would compulsorily apply and parties are free to deviate only to the extent permitted by the derogable provisions of Part I. In cases of international commercial arbitrations held out of India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or rules will not apply."

23. The Supreme Court in *Reliance Industries Limited* (supra) analysed the impact of the *Balco* decision with regard to the cases covered by the *Bhatia International* (supra). The Supreme Court observed that in paragraph 32 of *Bhatia International* itself, the Supreme Court held that Part I of the Arbitration Act, 1996 will not apply if it has been excluded either expressly or by necessary implication. It was further observed that several judgments of the Supreme

Court had held that Part I would be excluded by necessary implication if it was found that on the facts of the case either the juridical seat of the arbitration was outside India or the law governing the arbitration agreement was a law other than the Indian law. It was observed that this proposition was well settled by a series of the decisions including:-

- (i) Videocon Industries Limited v. Union of India, 2011 (6) SCC 161;
- (ii) Dozco India (P) Limited v. Doosan Infracore Company Limited, 2011 (6) SCC 179;
- (iii) Yograj Infrastructure Limited v. SSang Yong Engineering and Construction Company Limited, 2011 (9) SCC 735;
- (iv) Reliance Industries Limited v. Union of India, 2014 (7) SCC 603;
- (v) Harmony Innovation Shipping Limited v. Gupta Coal India Limited, 2015 (9) SCC 172.

24. The Supreme Court finally observed in para 21 of the decision in Reliance Industries (supra), which we have already quoted above, that even in cases governed by the Bhatia principle, it is only those cases in which agreement's stipulate that the seat of arbitration is in India or on whose facts a judgment cannot be reached on the seat of Arbitration as being outside India that would continue to be governed by the Bhatia principle. In the present case, we have already concluded that the seat or place of arbitration was at Kuala Lumpur which is outside India. Therefore, the present case would not be governed by the Bhatia principle. From this, it follows that Part I of the said Act would not apply and consequently, Section 34 thereof would also not apply.

25. In these circumstances, in whichever way the matter is examined, it is clear that Section 34 of the said Act is not applicable and, therefore, OMP No. 693/2013 filed under Section 34 of the said Act was not maintainable and has been rightly rejected by the learned single Judge. The appeal is dismissed. There shall be no order as to costs.