REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.11396 OF 2015

UNION OF INDIA …PETITIONER

VERSUS

RELIANCE INDUSTRIES LIMITED
& ORS. …RESPONDENTS

J U D G M E N T

R.F. Nariman, J.

1. The present case arises as a sequel to this Court's decision delivered on 28th May, 2014 in **Reliance Industries Limited and another** v. **Union of India**, (2014) 7 SCC 603.

2. A brief résumé of the facts that led to the judgment of this Court on 28th May, 2014 are as follows:-

Two Production Sharing Contracts (hereinafter referred to as "PSC") for the Tapti and Panna Mukta Fields were executed between

Reliance Industries Limited, the Union of India, Enron Oil and Gas India Limited and the ONGC. The relevant clauses of the PSCs insofar as they are applicable to the present controversy are as follows:-

> "ARTICLE 32: APPLICABLE LAW AND LANGUAGE OF THE CONTRACT
>
> 32.1 Subject to the provisions of Article 33.12, this Contract shall be governed and interpreted in accordance with the laws of India.
>
> 32.2 Nothing in this Contract shall entitle the Government or 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.
>
> ARTICLE 33: SOLE EXPERT, CONCILIATION AND ARBITRATION
>
> 33.9 Arbitration proceedings shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) of 1985 except that in the event of any conflict between these rules and the provisions of this Article 33, the provisions of this Article 33 shall govern.
>
> …
>
> 33.12 The venue of conciliation or arbitration

proceedings pursuant to this Article, unless the Parties otherwise agree, shall be London, England and shall be conducted in the English Language. The arbitration agreement contained in this Article 33 shall be governed by the laws of England. Insofar as practicable, the Parties shall continue to implement the terms of this Contract notwithstanding the initiation of arbitral proceedings and any pending claim or dispute.

34.2 This Contract shall not be amended, modified, varied or supplemented in any respect except by an instrument in writing signed by all the Parties, which shall state the date upon which the amendment or modification shall become effective."

3. 3. It needs to be mentioned that Enron Oil & Gas India Limited was renamed BG Exploration & Production India Limited. The PSCs were amended to substitute Enron Oil & Gas India Limited with BG Exploration and Production India Limited by two amendment agreements dated 24.2.2004 and 10.1.2005. Since certain disputes and differences arose between the Union of India, Reliance Industries Limited and BG Exploration and Production India Limited sometime in 2010, Reliance Industries Limited and BG Exploration and Production India Limited invoked the arbitration clause and appointed Mr. Peter Leaver, QC as Arbitrator. The Union of India appointed Justice B.P. Jeevan Reddy as Arbitrator and Mr.

Christopher Lau SC was appointed as Chairman of the Tribunal. On 14.9.2011, the Union of India, Reliance Industries Limited and BG Exploration and Production India Limited, agreed to change the seat of arbitration to London, England and a final partial consent award was made and duly signed by the parties to this effect. On 12.9.2012, the Arbitral Tribunal passed a final partial award which became the subject matter of a Section 34 petition filed in the Delhi High Court by the Union of India, dated 13.12.2012. The Delhi High Court by a judgment and order dated 22.3.2013 decided that the said petition filed under Section 34 was maintainable. This Court in a detailed judgment dated 28.5.2014 reversed the Delhi High Court. Since this judgment in effect determines the controversy raised in the present SLP, it is important to set it out in some detail. After stating the facts and the contentions of both parties, this Court held:

> "Before we analyse the submissions made by the learned Senior Counsel for both the parties, it would be appropriate to notice the various factual and legal points on which the parties are agreed. The controversy herein would have to be decided on the basis of the law declared by this Court in *Bhatia International* [(2002) 4 SCC 105] . The parties are agreed and it is also evident from the final partial consent award dated 14-9-2011 that the *juridical seat* (or legal place) of arbitration for the purposes of the arbitration initiated under the claimants' notice of arbitration dated 16-12-2010 shall be London,

England. The parties are also agreed that hearings of the notice of arbitration may take place at Paris, France, Singapore or any other location the Tribunal considers may be convenient. It is also agreed by the parties that the terms and conditions of the arbitration agreement in Article 33 of the PSCs shall remain in full force and effect and be applicable to the arbitration proceedings.

The essential dispute between the parties is as to whether Part I of the Arbitration Act, 1996 would be applicable to the arbitration agreement irrespective of the fact that the *seat* of arbitration is outside India. To find a conclusive answer to the issue as to whether applicability of Part I of the Arbitration Act, 1996 has been excluded, it would be necessary to discover the intention of the parties. Beyond this parties are not agreed on any issue.

We are also of the opinion that since the ratio of law laid down in *Balco* [*Balco* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] has been made prospective in operation by the Constitution Bench itself, we are bound by the decision rendered in *Bhatia International* [(2002) 4 SCC 105] . Therefore, at the outset, it would be appropriate to reproduce the relevant ratio of *Bhatia International* [(2002) 4 SCC 105] in para 32 which is as under: (SCC p. 123)

"*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."

In view of the aforesaid, it would be necessary to analyse the relevant articles of the PSC, to discover the real intention of the parties as to whether the provisions of the Arbitration Act, 1996 have been excluded. It must, immediately, be noticed that Articles 32.1 and 32.2 deal with applicable law and language of the contract as is evident from the heading of the article which is "Applicable law and language of the contract". Article 32.1 provides for the proper law of the contract i.e. laws of India. Article 32.2 makes a declaration that none of the provisions contained in the contract would entitle either the Government or the contractor to exercise the rights, privileges and powers conferred upon it by the contract in a manner which would contravene the laws of India. Article 33 makes a very detailed provision with regard to the resolution of disputes through arbitration. The two articles do not overlap—one (Article 32) deals with the proper law of the contract, the other (Article 33) deals with ADR i.e. consultations between the parties; conciliation; reference to a sole expert and ultimately arbitration. Under Article 33, at first efforts should be made by the parties to settle the disputes among themselves (Article 33.1). If these efforts fail, the parties by agreement shall refer the dispute to a sole expert (Article 33.2). The provision with regard to constitution of the Arbitral Tribunal provides that the Arbitral Tribunal shall consist of three arbitrators (Article 33.4). This article also provides that each party shall appoint one arbitrator. The arbitrators appointed by the parties shall appoint the third arbitrator. In case, the procedure under Article 33.4 fails, the aggrieved party can approach the Permanent Court of Arbitration at The Hague for appointment of an arbitrator (Article 33.5). Further, in case the two arbitrators fail to make the appointment of the third arbitrator within 30 days of the appointment of the second arbitrator, again the Secretary General of the Permanent Court of Arbitration at The Hague may, at the request of either party appoint the third arbitrator. In the face of this, it is difficult to appreciate the submission of the respondent Union of India that the Arbitration Act,

1996 (Part I) would be applicable to the arbitration proceedings. In the event, the Union of India intended to ensure that the Arbitration Act, 1996 shall apply to the arbitration proceedings, Article 33.5 should have provided that in default of a party appointing its arbitrator, such arbitrator may, at the request of the first party be appointed by the Chief Justice of India or any person or institution designated by him. Thus, the Permanent Court of Arbitration at The Hague can be approached for the appointment of the arbitrator, in case of default by any of the parties. This, in our opinion, is a strong indication that applicability of the Arbitration Act, 1996 was excluded by the parties by consensus. Further, the arbitration proceedings are to be conducted in accordance with the UNCITRAL Rules, 1976 (Article 33.9). It is specifically provided that the right to arbitrate disputes and claims under this contract shall survive the termination of this contract (Article 33.10).

The article which provides the basis of the controversy herein is Article 33.12 which provides that *venue* of the arbitration shall be London and that the arbitration agreement shall be governed by the laws of England. It appears, as observed earlier, that by a final partial consent award, the parties have agreed that the *juridical seat* (or legal place of arbitration) for the purposes of arbitration initiated under the claimants' notice of arbitration dated 16-12-2010 shall be London, England.

We are of the opinion, upon a meaningful reading of the aforesaid articles of the PSC, that the proper law of the contract is Indian law; proper law of the *arbitration agreement* is the law of England. Therefore, can it be said as canvassed by the respondents, that applicability of the Arbitration Act, 1996 has not been excluded?" [at paras 36 - 42]

4. The Court went on to state in paragraph 45 that it is too late in

the day to contend that the seat of arbitration is not analogous to an exclusive jurisdiction clause and then went on to hold as follows:-

> "In our opinion, these observations in *Sulamerica case* [(2013) 1 WLR 102 : 2012 EWCA Civ 638 : 2012 WL 14764] are fully applicable to the facts and circumstances of this case. The conclusion reached by the High Court would lead to the chaotic situation where the parties would be left rushing between India and England for redressal of their grievances. The provisions of Part I of the Arbitration Act, 1996 (Indian) are necessarily excluded; being wholly inconsistent with the arbitration agreement which provides "that arbitration agreement shall be governed by English law". Thus the remedy for the respondent to challenge any award rendered in the arbitration proceedings would lie under the relevant provisions contained in the Arbitration Act, 1996 of England and Wales. Whether or not such an application would now be entertained by the courts in England is not for us to examine, it would have to be examined by the court of competent jurisdiction in England." [at para 57]

It ultimately concluded:

> "We are also unable to agree with the submission of Mr Ganguli that since the issues involved herein relate to the public policy of India, Part I of the Arbitration Act, 1996 would be applicable. Applicability of Part I of the Arbitration Act, 1996 is not dependent on the nature of challenge to the award. Whether or not the award is challenged on the ground of public policy, it would have to satisfy the precondition that the Arbitration Act, 1996 is

applicable to the arbitration agreement. In our opinion, the High Court has committed a jurisdictional error in holding that the provisions contained in Article 33.12 are relevant only for the determination of the curial law applicable to the proceedings. We have already noticed earlier that the parties by agreement have provided that the *juridical seat* of the arbitration shall be in London. Necessary amendment has also been made in the PSCs, as recorded by the final partial consent award dated 14-9-2011. It is noteworthy that the Arbitration Act, 1996 does not define or mention *juridical seat*. The term "juridical seat" on the other hand is specifically defined in Section 3 of the English Arbitration Act. Therefore, this would clearly indicate that the parties understood that the arbitration law of England would be applicable to the arbitration agreement.

In view of the aforesaid, we are unable to uphold the conclusion arrived at by the Delhi High Court that the applicability of the Arbitration Act, 1996 to the arbitration agreement in the present case has not been excluded.

In view of the above, we hold that:

The petition filed by respondents under Section 34 of the Arbitration Act, 1996 in the Delhi High Court is not maintainable.

We further overrule and set aside the conclusion of the High Court that, even though the arbitration agreement would be governed by the laws of England and that the *juridical seat* of arbitration would be in London, Part I of the Arbitration Act would still be applicable as the laws governing the substantive contract are Indian laws.

> In the event a final award is made against the respondent, the enforceability of the same in India can be resisted on the ground of public policy.
>
> The conclusion of the High Court that in the event, the award is sought to be enforced outside India, it would leave the Indian party remediless is without any basis as the parties have consensually provided that the arbitration agreement will be governed by the English law. Therefore, the remedy against the award will have to be sought in England, where the juridical seat is located. However, we accept the submission of the appellant that since the substantive law governing the contract is Indian law, even the courts in England, in case the arbitrability is challenged, will have to decide the issue by applying Indian law viz. the principle of public policy, etc. as it prevails in Indian law.
>
> In view of the above, the appeal is allowed and the impugned judgment [(2013) 199 DLT 469] of the High Court is set aside." [at paras 74 - 77]"

5. Continuing the narration of facts, the present SLP arises out of a judgment dated 3.7.2014 whereby the Delhi High Court has dismissed an application filed under Section 14 of the Arbitration and Conciliation Act, 1996, dated 12.6.2013, on the ground that this Court's judgment dated 28.5.2014 having held that Part-I of the Arbitration Act, 1996 is not applicable, such petition filed under

Section 14 would not be maintainable.

6. It needs further to be pointed out that a review petition against the said judgment dated 28.5.2014 was dismissed on 31.7.2014 and a curative petition filed thereafter was also dismissed.

7. Shri Ranjit Kumar, learned Solicitor General of India argued before us that the partial consent award dated 14.9.2011 was without jurisdiction in that it was contrary to clause 34.2 of the PSC which stated that the PSC can only be amended if all the parties thereto by an agreement in writing amend it. Since ONGC which was a party to the PSC had not done so, the said final partial consent award was without jurisdiction. This being so, the seat of the arbitration cannot be said to be London and clause 33.12 of the PSC which made the "venue" London would continue to govern. Since the arbitration clause contained in the PSC is prior to 12.9.2012, the judgment in **Bhatia International** v. **Bulk Trading S.A. & Anr.,** (2002) 4 SCC 105 would govern and consequently Part I of the Arbitration Act, 1996 would be applicable. He also stated

that the judgment delivered on 28.5.2014 would not stand in his way notwithstanding that a review petition and a curative petition had already been dismissed. This was because, according to him, the issue raised being jurisdictional in nature, the doctrine of *res judicata* would have no application. He went on to read various provisions of the UK Arbitration Act, 1996 to further buttress his submission.

8. Dr. A.M. Singhvi, learned senior counsel, on the other hand vehemently opposed the arguments of Shri Ranjit Kumar, learned Solicitor General of India. According to him, the judgment dated 28.5.2014 being final *inter partes* binds the parties both by way of *res judicata* and as a precedent. According to him, the judgment unequivocally holds that on the very facts of this case Part-I of the Arbitration Act, 1996 would have no application. He further went on to demonstrate that the Union of India had already availed of the very remedy sought under Section 14 and had invited a decision of the Permanent Court of Arbitration dated 10.6.2013 by which its objections to the appointment of Mr. Peter Leaver as Arbitrator were already rejected.

9. We have heard learned counsel for the parties. In order to fully appreciate the contention raised by the learned Solicitor General of India, it is necessary to delve into the history of the law of arbitration in India. Prior to the 1996 Act, three Acts governed the law of Arbitration in India – the Arbitration (Protocol and Convention) Act, 1937, which gave effect to the Geneva Convention, the Arbitration Act, 1940, which dealt with domestic awards, and the Foreign Awards (Recognition And Enforcement) Act, 1961 which gave effect to the New York Convention of 1958 and which dealt with challenges to awards made which were foreign awards.

10. In **National Thermal Power Corporation** v. **Singer Company**, (1992) 3 SCC 551, this Court while construing Section 9(b) of the Foreign Awards Act held that where an arbitration agreement was governed by the law of India, the Arbitration Act, 1940 alone would apply and not the Foreign Awards Act. The arbitration clause in Singer's case read as follows:-

"Sub-clause 6 of Clause 27 of the General Terms deals with arbitration in relation to an Indian contractor and sub-clause 7 of the said clause deals with arbitration in respect of a foreign contractor. The latter provision says:

"27.7 In the event of foreign contractor, the arbitration shall be conducted by three arbitrators, one each to be nominated by the owner and the contractor and the third to be named by the President of the International Chamber of Commerce, Paris. Save as above all rules of conciliation and arbitration of the International Chamber of Commerce shall apply to such arbitrations. The arbitration shall be conducted at such places as the arbitrators may determine."

In respect of an Indian contractor, sub-clause 6.2 of Clause 27 says that the arbitration shall be conducted at New Delhi in accordance with the provisions of the Arbitration Act, 1940. It reads:

"27.6.2 The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof. The venue of arbitration shall be New Delhi, India."

The General Terms further provide:

"[T]he contract shall in all respects be construed and governed according to Indian laws." (32.3).

The formal agreements which the parties executed on August 17, 1982 contain a specific provision for

settlement of disputes. Article 4.1 provides:

> "4.1. *Settlement of Disputes*.—It is specifically agreed by and between the parties that all the differences or disputes arising out of the contract or touching the subject-matter of the contract, shall be decided by process of settlement and arbitration as specified in Clauses 26.0 and 27.0 excluding 27.6.1 and 27.6.2., of the General Conditions of the Contract." [at para 4]

11. Notwithstanding that the award in that case was a foreign award, this Court held that since the substantive law of the contract was Indian law and since the arbitration clause was part of the contract, the arbitration clause would be governed by Indian law and not by the Rules of the International Chamber of Commerce. This being the case, it was held that the mere fact that the venue chosen by the ICC Court for the conduct of the arbitration proceeding was London does not exclude the operation of the Act which dealt with domestic awards i.e. the Act of 1940. In a significant sentence, the Court went on to hold:-

> "…Nevertheless, the jurisdiction exercisable by the English courts and the applicability of the laws of that country in procedural matters must be viewed as

> concurrent and consistent with the jurisdiction of the competent Indian courts and the operation of Indian laws in all matters concerning arbitration insofar as the main contract as well as that which is contained in the arbitration clause are governed by the laws of India." [at para 53]

12. It can be seen that this Court in Singer's case did not give effect to the difference between the substantive law of the contract and the law that governed the arbitration. Therefore, since a construction of Section 9(b) of the Foreign Awards Act led to the aforesaid situation and led to the doctrine of concurrent jurisdiction, the 1996 Act, while enacting Section 9(a) of the repealed Foreign Awards Act, 1961, in Section 51 thereof, was careful enough to omit Section 9(b) of the 1961 Act which, as stated hereinabove, excluded the Foreign Awards Act from applying to any award made on arbitration agreements governed by the law of India.

13. This being the case, the theory of concurrent jurisdiction was expressly given a go-by with the dropping of Section 9(b) of the Foreign Awards Act, while enacting Part-II of the Arbitration Act,

1996, which repealed all the three earlier laws and put the law of arbitration into one statute, albeit in four different parts.

14. However, this Court in **Bhatia International** v. **Bulk Trading S.A. & Anr.,** (2002) 4 SCC 105, resurrected this doctrine of concurrent jurisdiction by holding, in paragraph 32, that even where arbitrations are held outside India, unless the parties agree to exclude the application of Part-I of the Arbitration Act, 1996, either expressly or by necessary implication, the courts in India will exercise concurrent jurisdiction with the court in the country in which the foreign award was made. **Bhatia International** was in the context of a Section 9 application made under Part-I of the 1996 Act by the respondent in that case for interim orders to safeguard the assets of the Indian company in case a foreign award was to be executed in India against it. The *reductio ad absurdum* of this doctrine of concurrent jurisdiction came to be felt in a most poignant form in the judgment of **Venture Global Engineering** v. **Satyam Computer Services Ltd. & Anr.**, (2008) 4 SCC 190, by which this Court held that a foreign award would also be considered as a domestic award and the challenge procedure provided in Section 34

of the Part-I of the Act of 1996 would therefore apply. This led to a situation where the foreign award could be challenged in the country in which it is made; it could also be challenged under Part-I of the 1996 Act in India; and could be refused to be recognised and enforced under Section 48 contained in Part II of the 1996 Act.

15. Given this state of the law, a 5-Judge Bench of this Court in **Bharat Aluminium Company Ltd.** v. **Kaiser Aluminium Technical Services, Inc.,** (2012) 9 SCC, overruled both **Bhatia International** and **Venture Global Engineering**. But in so overruling these judgments, this Court went on to hold:

> **"**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 Engineering* [(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." [at para 197]

16. It will thus be seen that facts like the present case attract the **Bhatia International** principle of concurrent jurisdiction inasmuch as all arbitration agreements entered into before 12.9.2012, that is the date of pronouncement of **Bharat Aluminium Company's** judgment, will be governed by **Bhatia International.**

17. It is important to note that in paragraph 32 of Bhatia International itself this Court has held that Part-I of the Arbitration Act, 1996 will not apply if it has been excluded either expressly or by necessary implication. Several judgments of this Court have held that Part-I is excluded by necessary implication if it is found that on the facts of a case either the juridical seat of the arbitration is outside India or the law governing the arbitration agreement is a law other than Indian law. This is now well settled by a series of decisions of this Court [see: **Videocon Industries Ltd.** v. **Union of India & Anr.**, (2011) 6 SCC 161, **Dozco India Private Limited** v. **Doosan Infracore Company Limited**, (2011) 6 SCC 179, **Yograj Infrastructure Limited** v. **Ssang Yong Engineering and Construction Company Limited,** (2011) 9 SCC 735), the very judgment in this case reported in **Reliance Industries Limited** v. **Union of India**, (2014) 7 SCC 603, and a recent judgment in

Harmony Innovation Shipping Ltd. v. **Gupta Coal India Ltd. & Anr.,** (decided on 10th March, 2015 in Civil Appeal No. 610 of 2015)].

18. In fact, in **Harmony's case,** this Court, after setting out all the aforesaid judgments, set out the arbitration clause in that case in paragraph 32 as follows:

> "In view of the aforesaid propositions laid down by this Court, we are required to scan the tenor of the clauses in the agreement specifically, the arbitration clause in appropriate perspective. The said clause read as follows:
> "5. If any dispute or difference should arise under this charter, general average/arbitration in London to apply, one to be appointed by each of the parties hereto, the third by the two so chosen, and their decision or that of any two of them, shall be final and binding, and this agreement may, for enforcing the same, be made a rule of Court. Said three parties to be commercial men who are the members of the London Arbitrators Association. This contract is to be governed and construed according to English Law. For disputes where total amount claim by either party does not exceed USD 50,000 the arbitration should be conducted in accordance with small claims procedure of the Page 33 33 London Maritime Arbitration Association." [at para 32]

It then held:

> "Coming to the stipulations in the present arbitration clause, it is clear as day that if any dispute or difference would arise under the charter, arbitration in London to apply; that the arbitrators are to be commercial men who

> are members of London Arbitration Association; the contract is to be construed and governed by English Law; and that the arbitration should be conducted, if the claim is for a lesser sum, in accordance with small claims procedure of the London Maritime Arbitration Association. There is no other provision in the agreement that any other law would govern the arbitration clause." [at para 41]
>
> "Thus, interpreting the clause in question on the bedrock of the aforesaid principles it is vivid that the intended effect is to have the seat of arbitration at London. The commercial background, the context of the contract and the circumstances of the parties and in the background in which the contract was entered into, irresistibly lead in that direction. We are not impressed by the submission that by such interpretation it will put the respondent in an advantageous position. Therefore, we think it would be appropriate to interpret the clause that it is a proper clause or substantial clause and not a curial or a procedural one by which the arbitration proceedings are to be conducted and hence, we are disposed to think that the seat of arbitration will be at London.
>
> Having said that the implied exclusion principle stated in *Bhatia International* (supra) would be applicable, regard being had to the clause in the agreement, there is no need to dwell upon the contention raised pertaining to the addendum, for any interpretation placed on the said document would not make any difference to the ultimate conclusion that we have already arrived at." [at paras 46 and 47]

19. It is interesting to note that even though the law governing the arbitration agreement was not specified, yet this Court held, having regard to various circumstances, that the seat of arbitration would be London and therefore, by necessary implication, the ratio of **Bhatia International** would not apply.

20. The last paragraph of **Bharat Aluminium's** judgment has now to be read with two caveats, both emanating from paragraph 32 of **Bhatia International** 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** 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 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 rule.

21. On the facts in the present case, it is clear that this Court has already determined both that the juridical seat of the arbitration is at London and that the arbitration agreement is governed by English law. This being the case, it is not open to the Union of India to argue that Part-I of the Arbitration Act, 1996 would be applicable. A Section 14 application made under Part-I would consequently not be

maintainable. It needs to be mentioned that Shri Ranjit Kumar's valiant attempt to reopen a question settled twice over, that is by dismissal of both a review petition and a curative petition on the very ground urged before us, must meet with the same fate. His argument citing the case of **Mathura Prasad Bajoo Jaiswal** v. **Dossibai N.B. Jeejeebhoy**, (1970) 1 SCC 613, that *res judicata* would not attach to questions relating to jurisdiction, would not apply in the present case as the effect of clause 34.2 of the PSC raises at best a mixed question of fact and law and not a pure question of jurisdiction unrelated to facts. Therefore, both on grounds of *res judicata* as well as the law laid down in the judgment dated 28.5.2014, this application under Section 14 deserves to be dismissed. It is also an abuse of the process of the Court as has rightly been argued by Dr. Singhvi. It is only after moving under the UNCITRAL Arbitration Rules and getting an adverse judgment from the Permanent Court of Arbitration dated 10.06.2013 that the present application was filed under Section 14 of the Arbitration Act two days later i.e. on 12.6.2013. Viewed from any angle therefore, the Delhi High Court judgment is correct and consequently this Special Leave Petition is dismissed.

……J.

(A.K. Sikri)

……J.

(R.F. Nariman)

New Delhi;

September 22, 2015.