IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

RESERVED ON: 02.12.2025
DELIVERED ON: 09.01.2026

PRESENT:
HON'BLE JUSTICE GAURANG KANTH

AP-COM 856 OF 2024

OCL IRON AND STEEL LIMITED
VERSUS
JINDAL COKE LIMITED

Mr. Chayan Gupta, Adv.
Mr. Pourash Bandyopahdyay, Adv.
Mr. Rajesh Upadhyay, Adv.
Ms. Surabita Biswas, Adv.
..... for the petitioner

Mr. Sarad Kumar Sunny, Adv.
Mr. Chiranjib Sinha, Adv.
Mr. Madhav Binzani, Adv. **..... for the respondent**

JUDGMENT

Gaurang Kanth, J.:-

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act") assailing an interim award dated 15.07.2024 passed by the Arbitral Tribunal in exercise of powers under Section 31(6) of the Act. By the impugned interim award, the Arbitral Tribunal rejected the Petitioner's application seeking amendment of the Statement of Defence and, simultaneously, allowed the Respondent's application filed under Section 31(6) of the Act.

2. The material facts, as emerge from the record, are that SM Niryat Pvt Ltd. was engaged in the business of export and import of minerals and ores and carries on trade in iron ore, coal, sponge iron, pellets, coke, MS billets and

other allied products. The Respondent is engaged in the business of manufacturing, processing, finishing and dealing in all forms of coke and coke-based products at its facility having an annual capacity of 0.43 million metric tonnes situated at Kalinganagar Industrial Complex, P.O. Danagadi, Dubri, District Jajpur, Odisha.

3. In the ordinary course of their commercial dealings, the parties entered into two Sale and Purchase Contracts dated 27.08.2021 and 07.09.2021. Under the said contracts, the Petitioner was required to supply 11,500 MT and 8000 MT of Peak Downs North Coking Coal to the Respondent on a loaded-onto-rakes basis at Paradip Port.

4. Disputes arose between the parties during the execution of the aforesaid contracts. In terms of the arbitration clause contained therein, the Indian Chamber of Commerce ("ICC") was designated as the authority to appoint the Sole Arbitrator for adjudication of the disputes. Consequently, the ICC constituted the Arbitral Tribunal. Although the agreement between the parties stipulated Bhubaneswar as the venue of arbitration, the alternative hearings were thereafter conducted at Kolkata and Delhi with the mutual consent of the parties.

5. Upon completion of pleadings, the Respondent filed an application under Section 31(6) of the Act seeking release of certain amounts allegedly admitted by the Petitioner in its Statement of Defence. The Petitioner, on the other hand, filed an application seeking amendment of the Statement of Defence on the ground that certain inadvertent computational and clerical errors had crept into the figures reflected therein. The Petitioner asserted that the admissions in the Statement of Defence were incorrect as a result of these errors.

6. The errors pointed out by the Petitioner in its amendment application include: (i) an erroneous figure of Rs.1,31,31,311.59 reflected towards ash-content aggregates in paragraph 3(m) of the Statement of Defence, whereas the correct figure was stated to be Rs. 24,205.89; (ii) an incorrect penalty figure of Rs.22,04,090 mentioned in paragraph 12, instead of Rs. 20,96,975.09; and (iii) an incomplete annexure in the form of a railway receipt comprising three pages, of which the middle pages were inadvertently omitted at the time of filing.

7. The Petitioner contended before the Tribunal that the amendment sought was not intended to retract from any genuine admission but was necessitated to correct inadvertent and bona fide errors so as to properly reflect its understanding of the contractual obligations.

8. After hearing both applications together, the Arbitral Tribunal, by the interim award dated 15.07.2024, dismissed the Petitioner's amendment application and allowed the Respondent's application under Section 31(6) of the Act.

9. Aggrieved thereby, the Petitioner has approached this Court under Section 34 of the Act seeking to set aside the impugned interim award.

10. It is also pertinent to mention here that in the meanwhile vide order dated 30.01.2024 passed by the National Company Law Board, M/s SM Niryat Pvt Ltd. got amalgamated with the Petitioner herein.

11. At the outset, the Respondent has raised a preliminary objection to the maintainability of the present petition on the ground of lack of territorial jurisdiction. It is, therefore, appropriate for this Court to first take note of the said objection, in addition to the other objections raised by the Respondent on the merits of the matter.

Submission of the Respondent

12. Learned counsel for the Respondent submits that the arbitration agreement stipulates *Bhubaneswar* as the venue of arbitration, which, in the absence of any contrary indication, must be construed as the *seat* of arbitration. Consequently, only the Courts at Bhubaneswar would have jurisdiction under Section 34. Reliance is placed on BGS SGS Soma JV v. NHPC Ltd., (2020) 4 SCC 234, wherein the Supreme Court held that a designated "venue" ordinarily signifies the juridical seat, particularly where the clause provides that the proceedings "shall be held" at that place.

13. Learned Counsel further relied on ***Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.,*** report as ***(2020) 5 SCC 462***, which held that once the parties have chosen venue of arbitration as Bhubaneswar, the Courts at that place alone have exclusive jurisdiction, even if part of the cause of action arises elsewhere, in recognition of party autonomy under the Act. Reliance was also placed on ***United India Insurance Co. Ltd. v. East Coast Boat Builders & Engineers Ltd.,*** reported as ***(2011) 6 SCC 161***, where the Supreme Court held that fixation of the seat necessarily vests exclusive supervisory jurisdiction in the Courts of that seat, to the exclusion of all other Courts that may otherwise have jurisdiction under the CPC.

14. Learned Counsel further places reliance on the judgment of the Hon'ble Supreme Court in ***BBR (India) Pvt. Ltd. v. S.P. Singla Constructions Pvt. Ltd.,*** reported as ***2023 (1) SCC 693***, to contend that once the seat of arbitration is fixed under Section 20(2) of the Arbitration and Conciliation Act, 1996, the same attains finality and cannot be deemed to have shifted merely because arbitral hearings were conducted at different locations. The Supreme Court has categorically held that while the venue of hearings may

vary for convenience, such change does not alter the juridical seat, which alone determines the Court having supervisory jurisdiction. It is therefore submitted that the seat, once designated, remains constant unless expressly altered by agreement of the parties.

15. Learned counsel for the Respondent also relies heavily on the judgment in ***Caretel Infotech Ltd. v. HPCL,*** reported as ***(2019) 14 SCC 81***, to assert that Courts cannot rewrite commercial contracts or introduce interpretations not supported by the plain language of the contract. It is submitted that the arbitration clause clearly specifies the venue as Bhubaneshwar, and the Court must give effect to the intention by the parties. It is argued that the attempt of the Petitioner to reinterpret or dilute the venue clause amounts to seeking a judicial redrafting of the agreement, which is impermissible. In this context, reliance is placed on ***Bharat Petroleum Corporation Ltd. v. Rajinder Singh John*** reported as ***MANU/DE/2714/2024***, emphasising that where the contractual terms are clear and unambiguous, no external or extrinsic evidence is admissible to alter their meaning.

16. Learned Counsel for the Respondent, placing reliance on Clause 18 of the Sale Purchase Agreement, submits that any modification or amendment to the contract must be effected only through a written instrument executed by both parties. In the present case, no such written amendment exists; consequently, the terms of the contract remain unaltered, and the parties' original intention cannot be subsequently varied or reinterpreted.

17. On the strength of these authorities, it is the Respondent's submission that the reference to Bhubaneswar as the venue amounts to its designation as the seat of arbitration, and accordingly, only the Courts at Bhubaneswar are

competent to entertain a petition under Section 34. It is therefore contended that this Court lacks territorial jurisdiction.

18. Learned Counsel for the Respondent further places reliance on the definition of "Court" contained in Clause 2(X), as well as Rule 30 of the Indian Chamber of Commerce Rules (ICC Rules), under whose aegis the present arbitration is to be conducted. It is submitted that Clause 2(X) read with Rule 30 of the ICC Rules substantially corresponds to the scheme of Section 2(1)(e) and Section 20(3) of the Arbitration and Conciliation Act, 1996. Accordingly, when these provisions are harmoniously construed, it becomes evident that the parties have conferred exclusive supervisory jurisdiction upon the Courts at Bhubaneswar, which alone are competent to entertain and adjudicate the present proceedings.

19. Without prejudice to its rights and contentions on the preliminary objection regarding territorial jurisdiction, the Respondent further submits that the Petitioner is not entitled to assail the order passed by the learned Arbitral Tribunal on the amendment application at this interlocutory stage. It is argued that the legislative scheme of the Act does not permit a challenge to procedural or interim orders of the Tribunal except under Section 16(6) or Section 17, where expressly provided. For this proposition, reliance is placed upon ***Container Corporation of India Ltd. v. Texmaco Ltd.*** reported as ***2009 (2) ARBLR 573 (Delhi*)**, ***Punj Lloyd Limited v. Oil and Natural Gas Corporation Ltd.,*** reported as ***2016 SCC OnLine Bom 2749*,** and ***Arati Plastic v. Rajendra Yadav*,** reported as ***MANU/WB/1921/2023.*** to contend that intermediate orders of the Arbitral Tribunal cannot be assailed independently. It is the settled position that such objections must be raised only in a challenge to the final arbitral award under Section 34 of the Act.

The Respondent therefore submits that the Petitioner's present challenge, to the extent it seeks to impugn interlocutory determinations of the Tribunal, is premature and thus not maintainable.

20. The Respondent further submits that the amendment application was filed by the Petitioner with the sole objective of retracting the categorical admissions made in the original Statement of Defence. According to the Respondent, these admissions are not confined merely to the pleadings but also find clear reflection in the documents relied upon by the Petitioner during the arbitral proceedings. Reliance is placed on ***Videocon Industries Ltd. v. Union of India***, reported as ***(2011) 6 SCC 161***, and ***Heeralal v. Kalyan Mal & Ors.***, reported as ***(1998) 1 SCC 278,*** to contend that admissions made in pleadings are binding and constitute substantive evidence. A party cannot, through subsequent pleadings or by moving an amendment, seek to contradict or withdraw such admissions except in exceptional circumstances, which the Petitioner has neither pleaded nor established. It is further contended that the Petitioner's admissions are not restricted to the pleadings alone but are also borne out from the documentary material furnished by the Petitioner. In this regard, reliance is placed on ***Augmont Gold Pvt. Ltd. v. One 97 Communications Ltd.***, reported as ***MANU/DE/2479/2021,*** to submit that documentary admissions carry a higher evidentiary value and are ordinarily conclusive unless withdrawn or explained in the manner known to law.

21. Summarising his submissions, learned counsel for the Respondent contends that Bhubaneshwar is the contractually agreed seat of arbitration, and therefore this Court lacks territorial jurisdiction under Section 2(1)(e). The Petitioner is bound by its admissions and cannot be permitted to withdraw

or contradict them. Any challenge to interlocutory or procedural orders of the Arbitral Tribunal is premature and not maintainable until the final award; and the Court is bound to enforce the contract as written, without resorting to external evidence or equitable considerations. On these grounds, it is submitted that the present petition deserves to be dismissed in limine for want of jurisdiction and for being otherwise untenable.

Submission on behalf of Petitioner

22. Learned Counsel for the Petitioner, on the other hand, submits that under the arbitration agreement, the 'venue' of arbitration is mentioned as Bhubaneswar and the proceedings are to be conducted in accordance with the ICC Rules. He submits that notwithstanding such stipulation, no hearing was ever conducted at Bhubaneswar. The first hearing was held at Kolkata and, thereafter, by mutual consent, the parties agreed that the sittings of the Arbitral Tribunal would be conducted alternately at Kolkata and New Delhi. According to the Petitioner, the parties, by their conduct and mutual understanding, consciously departed from and, in effect, waived the contractual stipulation regarding Bhubaneswar as the venue.

23. It is further argued that Rule 2(X) of the ICC Rules defines "Court" to mean the civil court which would have jurisdiction to decide the questions forming the subject-matter of the reference had the dispute been the subject of a civil suit. Rule 30 of the ICC Rules, which governs the place of arbitration, expressly stipulates that the *"place or venue of arbitration shall be Kolkata, India,"* while also empowering the Council, for the convenience of the Arbitrators and the parties, to conduct proceedings at such other place or places in India as it may determine, subject to the parties bearing the additional expenses prescribed in Schedule I. Learned Counsel further

submits that although Clause 9 stipulates that, for a venue outside Kolkata, the panel must be appointed by ICC New Delhi, the venue here was Bhubaneswar and yet ICC Kolkata appointed the panel, indicating waiver of the venue clause and acceptance of Kolkata. Referring to Rule 48 (waiver clause), the Respondent, having knowledge yet raising no written objection, is deemed to have waived the stipulation of ICC New Delhi appointment and thereby accepted Kolkata as the venue. When these provisions are read harmoniously with the arbitration clause and the manner in which the parties have conducted themselves, it becomes evident that Kolkata is the designated juridical seat of arbitration, and any hearings held elsewhere are merely a matter of convenience. Consequently, this Hon'ble Court possesses territorial jurisdiction to entertain and adjudicate the present petition.

24. Placing reliance on the judgment in ***BGS SGS Soma JV*** *(supra)*, learned counsel submits that designation of a venue amounts to designation of the seat only when the venue is expressly specified and there is no indication of any alternative place as the seat combined with supranational body of rules governing arbitration, and no other contrary indicia. In the present case, however, the arbitration is governed by the ICC Rules, the parties consciously departed from the venue clause, and the proceedings were never held at Bhubaneswar. Therefore, the case of the Petitioner is squarely covered by the exception carved out in para 61 of the ***BGS SGS Soma JV*** *(supra)***.** It is thus contended that Bhubaneswar cannot, in law or on facts, be treated as the juridical seat, and that the Courts at Kolkata, as per the ICC Rules and the arbitration effectively conducted, possess supervisory jurisdiction under Section 2(1)(e) of the Act.

25. Learned counsel for the Petitioner submits that the Respondent's reliance on decisions such as ***Brahmani River Pellets Ltd*** *(supra)* and ***Indus Mobile Distribution Pvt. Ltd***. *(supra)* is misplaced, as those decisions were premised on situations where the arbitral hearings were in fact conducted at the designated venue and there was no departure by the parties. In contrast, in the present case, the parties themselves departed from the venue clause from the very outset, rendering those judgments factually distinguishable.

26. On merits, learned counsel submits that, by email dated 09.12.2021, the Petitioner offered to tender the amounts expressly admitted therein; however, the Respondent declined to accept such offer. It is, therefore, contended that the Respondent is not entitled to any interest awarded by the Arbitral Tribunal. It is further urged that the Tribunal erred in granting interest at the stage of an interim award, particularly when the agreement between the parties is silent on interest. According to the Petitioner, the question of interest ordinarily arises only at the stage of the final award upon appreciation of evidence, and the interim award has caused grave prejudice by foreclosing the Petitioner's opportunity to establish its case. Reliance is placed on ***Kripa Sindhu Mukherjee v. Annanda Sundari Debi*****,** reported as **(1906-07)** ***11 CWN 983*** and ***Pana Ana Rana Arunachalam Pillai v. Govinda Swami Naikar*****,** reported as ***ILR (1932) 55 Mad 458***.

27. As regards the Respondent's objection to amendment, learned counsel submits that the amendment application was decided along with the Respondent's application under Section 31(5) of the Act, and the order conclusively determines certain rights of the parties. It is urged that the Tribunal has finally negatived the interpretation sought by way of amendment and, consequently, deprived the Petitioner of the opportunity to

lead evidence on the construction of Clause 4.0, including the issue of tolerance and industry-specific trade practice. Hence, a Section 34 challenge is maintainable. It is further submitted that there was no consent to hear both applications simultaneously and that the Tribunal ought to have decided the amendment application first. According to the Petitioner, there was no attempt to withdraw any conscious or unequivocal admission; the alleged admissions were inadvertent clerical and computational errors sought to be corrected at the earliest. Reliance is placed on *Wasudhir* ***Foundation v. C. Lal & Sons*****,** reported as ***1991 SCC OnLine Del 569; Hitech System & Services Ltd v. DILO Amaturen Und Anlagen GMBH*****,*** reported as ***2017 SCC OnLine Cal 5034; Gora Lal Seal v. Fine Infra Projects Pvt. Ltd.*****,*** reported as ***2023 SCC OnLine Cal 1987; Steel Authority of India Ltd. v. H.R. Construction Pvt. Ltd.*****,*** reported as ***2025 SCC OnLine Cal 4494; Rajesh Kumar Aggarwal v. K.K. Modi*****,*** reported as ***(2006) 4 SCC 385;*** and ***Usha Balashaheb Swami v. Kiran Appaso Swami*****,*** reported as ***(2007) 5 SCC 602***, to contend that amendments should be liberally permitted where necessary for determining the real controversy and where no prejudice is caused. The Petitioner accordingly submits that the amendment was wrongly rejected and that the interim award suffers from patent illegality.

28. In view of the above submissions, learned counsel for the Petitioner concluded that this Court has the requisite territorial jurisdiction to entertain the present petition. It is submitted that the amendment sought was essential for a proper and complete adjudication of the dispute and was not filed with any intention to resile from or withdraw the earlier admissions. According to the Petitioner, the decision on the amendment application

finally determines the Petitioner's substantive rights in the arbitral proceedings and, therefore, such determination is amenable to challenge in proceedings under Section 34 of the Arbitration and Conciliation Act.

Legal Analysis

29. This Court heard the arguments advanced by the learned counsel for both the parties and examined the documents.

30. The first question to be determined is whether this Court has territorial jurisdiction to entertain the present Petition under Section 34 of the Act.

Determination on territorial jurisdiction

31. This Court has carefully considered the rival submissions advanced on the issue of territorial jurisdiction.

32. The principal controversy that arises for determination is whether, in the facts of the present case, the reference to *Bhubaneswar* as the "venue of arbitration" in Clause 14 of the Agreement vests exclusive supervisory jurisdiction in the Courts at Bhubaneswar, or whether, in light of the express applicability of the ICC Rules and the subsequent conduct of the parties, the juridical seat of arbitration stands situated at *Kolkata*, thereby conferring jurisdiction upon this Court under Section 2(1)(e) of the Act.

33. The agreement between the parties records Bhubaneswar as the *venue* of arbitration. Clause 14 of the Agreement between the parties reads as follows:

> *"Any dispute, difference or disagreement between the parties arising under or in relation to this contract including (but not limited to) any dispute, difference or disagreement as to the meaning of the terms of this contract or any failure to agree on any matter required to be agreed upon under this contract shall if possible be resolved by negotiation and mutual agreement by the parties within 30 days. Should no agreement be reached then the dispute shall be finally settled by arbitration upon the request of either party hereto in accordance with the rules of conciliation and arbitration of the Indian Chamber of Commerce by three arbitrators in English*

> *language and in accordance with the said rule. The result of such arbitration shall be final and binding for the parties and for all purposes. The venue of arbitration shall be Bhubaneshwar."*

34. The contractual clause designates Bhubaneswar as the venue of arbitration and stipulates that the arbitral proceedings shall be conducted in accordance with the Rules of Conciliation and Arbitration of the Indian Chamber of Commerce ("ICC Rules").

35. In this regard, Rule 2(X) of the ICC Rules defines "Court" to mean the civil court having jurisdiction to decide the subject-matter of the reference had the dispute been the subject of a civil suit. Rule 30 of the ICC Rules, which governs the place of arbitration, further provides as follows:

> *"The place or venue of arbitration shall be Kolkata, India. However, the Council, having regard to the convenience of the Arbitrators and the parties, may determine the venue and hold the proceedings at such place or places in India.*
>
> *In case the venue is outside Kolkata, the parties have to bear all additional costs and expenses as prescribed in Schedule I."*

36. The Respondent's primary contention is that Clause 14 of the arbitration agreement stipulates Bhubaneswar as the *venue* of arbitration, and that such designation, absent any explicit contrary stipulations, must be construed as the *seat* of arbitration in view of the law laid down by the Hon'ble Supreme Court in *BGS SGS Soma JV (supra), Brahmani River Pellets Ltd.(supra), United India Insurance Co. Ltd. (supra).* It is further urged that since the Agreement records Bhubaneswar as the venue, and since the venue implies the seat unless expressly displaced, jurisdiction must lie exclusively with the Courts at Bhubaneswar.

37. The flaw in the Respondent's reasoning emerges upon a closer examination of the effect of the ICC Rules, which stand expressly incorporated into the

arbitration agreement. Unlike the clauses considered in *Brahmani River Pellets (Supra)* or *Indus Mobile Distribution Pvt. Ltd. (Supra)*, the arbitration clause herein does not merely designate a venue; it subjects the entire arbitral process to the ICC Rules. Rule 30 of these Rules is explicit and categorical, to the extent that the place or venue of arbitration shall be Kolkata, India**.** However, having regard to the convenience of the Arbitrators and the parties, they can determine the venue and hold the proceedings at such place or places in India.

38. On a careful reading, Rule 30 of the ICC Rules reveals a clear two fold scheme. The first limb, which states that "the place or venue of arbitration shall be Kolkata," operates as a designation of the juridical seat of arbitration within the meaning of Section 20(1) of the Arbitration and Conciliation Act, 1996. The second limb, which empowers the Council to conduct proceedings at such other place or places in India as may be convenient to the parties and the Arbitrators, is purely procedural in nature and designed to provide logistical flexibility. This scheme aligns with Section 20(3) of the Act, which permits the Arbitral Tribunal to hold hearings at locations other than the seat without affecting the juridical seat itself. Consequently, Kolkata remains the legally recognised seat of arbitration, while any sittings held elsewhere are to be treated solely as venues of convenience.

39. This Court is also of the considered view that any interpretation of Rule 30 other than one which treats the first limb as a designation of the juridical seat would render the provision internally inconsistent and unworkable. The expression "place or venue of arbitration shall be Kolkata" cannot be construed as giving the parties a choice between "place" and "venue," nor as

indicating alternative locations. The use of both terms in the first limb serves only to emphasise that Kolkata is the fixed juridical seat. The second limb, permitting the Council to determine an alternative venue for convenience, makes clear that the venue alone is flexible and may vary depending on logistical requirements. Any interpretation that detaches the first limb from its function as the seat or treats "place" and "venue" as separate or optional concepts would contradict the internal structure of the Rule and lead to an absurd outcome where the juridical seat is indeterminate. Such a construction cannot be accepted in law.

40. Hence the legal effect of Rule 30 is unequivocal. The *"place of arbitration"*, a term judicially recognised as synonymous with the "seat", is fixed at Kolkata by the applicable institutional rules. When parties choose institutional rules that expressly stipulate the place of arbitration, those rules become an integral and binding part of the arbitration agreement, and their designation of the "place" must prevail unless expressly excluded by the parties.

41. Thus, even though Clause of the Agreement between the parties uses the expression "venue" in reference to Bhubaneswar, the clause simultaneously submits the arbitration to the ICC Rules, which undeniably fix Kolkata as the juridical seat. The presumption applied in *BGS SGS Soma (supra),* that a designated venue amounts to a seat, operates only *in the absence of contrary indicia*. In the present case, Rule 30 constitutes a clear and binding contrary indicium, sufficient to displace the presumption.

42. The factual matrix further reinforces the conclusion that Bhubaneswar was never intended or treated as the juridical seat. It is not disputed that no sitting of the Arbitral Tribunal took place at Bhubaneswar, the first hearing was held at Kolkata, subsequent hearings were, by mutual consent, held

alternately in Kolkata and New Delhi, neither party ever insisted on Bhubaneswar as the locus of proceedings.

43. The Supreme Court in ***Inox Renewables Ltd. v. Jayesh Electricals Ltd.*** reported as ***2023 (3) SCC 733*** recognises that the seat may be shifted by mutual conduct, and that the conduct of parties can override an initial stipulation of venue where the parties consciously and consistently proceed elsewhere. The uniform departure from Bhubaneswar from the inception of the proceedings, coupled with the adoption of Kolkata as the practical centre of gravity of the arbitration, is entirely inconsistent with the Respondent's case that Bhubaneswar constituted the juridical seat. Where the parties have not merely avoided Bhubaneswar but have conducted the arbitration principally at Kolkata, which is also designated as the "place" under Rule 30, there remains no scope to hold that the juridical seat lies elsewhere.

44. The Respondent's reliance upon Rule 2(X) of the ICC Rules is misplaced. Rule 2(X) merely defines "Court" to mean the civil court competent to decide the subject matter of the reference *if the same were the subject of a suit*. This definition does not determine the seat. It operates only *within the framework of the seat*, i.e., to identify which civil court within the seat's jurisdiction would be competent. Once Rule 30 fixes Kolkata as the place of arbitration, Rule 2(X) necessarily points to the competent courts at Kolkata. It does not and cannot extend jurisdiction to Bhubaneswar.

45. The decisions in *Brahmani River Pellets (supra)***,** *BGS SGS Soma (Supra)***,** *Indus Mobile (supra)***,** and *United India Insurance (Supra)* were rendered in factual contexts where the venue designated by the arbitration agreement was actually used for conducting the proceedings, there existed no contrary

indication in the contract, such as institutional rules fixing a different seat, the parties had not mutually departed from the contractual venue.

46. The present case stands on a fundamentally different footing. The arbitration here is governed by institutional rules that explicitly designate Kolkata as the place of arbitration, arbitration has never been conducted at Bhubaneswar; and arbitration has been consistently held at Kolkata and New Delhi by mutual consent.

47. In so far as reliance is placed on the decision in ***BBR (India) Pvt. Ltd****. (supra)*, it is submitted that the same is distinguishable on facts. In ***BBR (India) Pvt. Ltd.*** *(supra)*, the Supreme Court addressed the position where the seat of arbitration had been fixed by the first arbitrator, but subsequent hearings were conducted at a different location following the appointment of a new arbitrator. The Court held that the juridical seat remained unchanged notwithstanding the change of venue for hearings. In the present case, however, the parties have, from the inception of the contract, expressed a practical and mutual intention to designate Kolkata as the seat of arbitration, as reflected in the consistent conduct of the parties and the arbitration clause read with Rule 30 of the ICC Rules. Unlike ***BBR (India) Pvt. Ltd.*** *(supra)*, there is no attempt to alter an already fixed seat by unilateral action of a newly appointed arbitrator or any procedural change. Here, the first limb of Rule 30 expressly fixes Kolkata as the juridical seat, and any other hearing locations are merely for convenience. Therefore, the principle in *BBR (India) Pvt. Ltd. (supra)* that the seat remains fixed despite change of hearing venue supports, rather than undermines, the present case, and the territorial jurisdiction of this Court is rightly attracted to Kolkata.

48. These factual and contractual distinctions render the Respondent's reliance on the above authorities wholly inapposite. Rather, the principles that emerge from the various case laws discussed herein above squarely apply to the present case, recognising that the juridical seat must be identified not merely from nomenclature but from a cumulative assessment of the contract, the governing rules, and the conduct of parties.

49. Upon a holistic consideration of the contractual clause, the ICC Rules, and the conduct of the parties, this Court concludes that the designation of Bhubaneswar in Clause 14 is only a reference to the *venue* of hearings, Rule 30 of the ICC Rules, expressly incorporated by the parties, fixes the juridical seat at Kolkata, the arbitral proceedings were in fact held at Kolkata and New Delhi, and never at Bhubaneswar, thereby evidencing a conscious departure from the contractual venue, the juridical seat of arbitration is therefore Kolkata; and the Courts at Kolkata alone possess supervisory jurisdiction under Section 2(1)(e) of the Act.

50. Consequently, the Respondent's preliminary objection that this Court lacks territorial jurisdiction is unsustainable and stands rejected.

Maintainability of the Petition challenging the order where by amendment to SOD has been rejected

51. The next issue that arises for consideration concerns the maintainability of the Petitioner's challenge to the order of the learned Arbitral Tribunal refusing to permit amendment of the Statement of Defence. The Petitioner contends that the refusal finally determines certain substantive rights and therefore is amenable to challenge under Section 34. The Respondent, on the other hand, submits that the said order is purely procedural in nature,

constitutes neither an interim award nor an appealable order under the Act, and consequently cannot be assailed at this stage.

52. Upon consideration of the rival submissions, this Court is of the view that the present challenge is fundamentally misconceived and not maintainable in law. The Arbitration and Conciliation Act, 1996 embodies the principle of minimal judicial intervention. Section 5 of the Act expressly mandates that no judicial authority shall intervene in arbitral proceedings except where so contemplated by the statute. The scheme of the Act makes it abundantly clear that judicial review of interlocutory or procedural orders of the arbitral tribunal is narrowly circumscribed.

53. The discretion to permit or decline amendments is vested exclusively in the Arbitral Tribunal under Section 23(3) of the Act. Such discretion is to be exercised having regard to the stage of the proceedings, the nature of the amendment, its potential impact on the arbitral timeline, and the prejudice, if any, to the opposite party. The Tribunal's refusal to allow the amendment is thus an exercise of procedural jurisdiction flowing directly from the statute. Unless the Petitioner establishes jurisdictional infirmity, perversity, or violation of natural justice, which is not demonstrated, the Court cannot substitute its view for that of the Tribunal.

54. The material on record demonstrates that the amendment was sought at an advanced stage and which would have the effect of withdrawing earlier admissions contained in the Statement of Defence. By that time, the Respondent's application under Section 31(6) of the Act was already pending. The Arbitral Tribunal, in the exercise of its procedural discretion, allowed the application under Section 31(6) and rejected the Petitioner's amendment request. The order reflects a reasoned consideration after

hearing both sides, and no infirmity or procedural unfairness warranting judicial interference has been established.

55. Significantly, an order refusing amendment does not adjudicate upon or finally determine any substantive claim or defence between the parties. It merely regulates the procedure of the arbitration and therefore does not satisfy the statutory definition of an "interim award" under Section 2(1)(c) nor does it fall within the categories of appealable orders enumerated under Section 37. The Supreme Court, in ***Deep Industries Ltd. v. ONGC*****,** reported as (2020) 15 SCC 706; and ***Bhaven Construction v. Executive Engineer*****,** reported as ***(2022) 1 SCC 75*****;**, has repeatedly cautioned that High Courts should refrain from interfering with such procedural orders, save in rare cases of patent lack of inherent jurisdiction.

56. The Tribunal's refusal to permit amendment is in the nature of a procedural or case management direction and does not finally determine any substantive right of the parties, such an interlocutory step is therefore not amenable to challenge under Section 34, which is attracted only where the award, in whole or part, decides issues conclusively. The authorities cited by the Petitioner are distinguishable. ***Wasudhir Foundation*** *(supra)****, Hitech System*** *(supra)****, Gora Lal Seal*** *(supra)* and ***Steel Authority of India*** *(supra)* address the scope of amendments in civil proceedings and not the statutory limits of curial interference under Section 34, while ***Rajesh Kumar Aggarwal*** *(supra)* and ***Usha Balashaheb Swami*** *(supra)* interpret Order VI Rule 17 CPC and cannot be mechanically applied to arbitral procedure, where party autonomy and the Tribunal's procedural discretion are paramount.

57. With regard to the petitioner's contention that the rejection of the proposed amendment amounts to a final negation of the interpretation sought to be advanced and has consequently deprived the petitioner of an opportunity to adduce evidence on the construction of Clause 4.0, including the aspects of tolerance and industry practice, this Court finds no merit in the said submission. The interpretation of contractual terms is essentially a matter of legal argument and not one requiring specific pleadings. Pleadings are intended to set out the factual matrix of the dispute and not the interpretative exercise to be undertaken by the adjudicating authority. Even in the absence of a specific plea as to interpretation, the arbitral tribunal is competent to consider and adjudicate upon the rival submissions of the parties on the interpretation of the contractual clause at the stage of final arguments.

58. Entertaining challenges to orders relating to amendment of pleadings at the interlocutory stage would lead to fragmentation of the arbitral process and would defeat the very objectives of expedition and efficiency underlying the 1996 Act. The appropriate remedy available to the Petitioner is to raise all permissible objections, including the alleged erroneous refusal to permit amendment, in a Section 34 petition after passing of the final award, if the petitioner is so advised and if such grounds are legally tenable.

59. Viewed from another perspective, permitting the present challenge would also amount to bypassing the express legislative scheme. Neither Section 16, nor Section 17, nor any other provision of the Act permits a standalone challenge to an order disallowing amendment. The Petitioner has attempted to characterize the order as one "finally determining rights", but this contention is untenable. No substantive rights are determined; the Tribunal

has merely declined to modify pleadings. Procedural discipline, once exercised within jurisdiction, cannot be converted into a ground of mid-course judicial intervention.

60. In the circumstances, this Court finds that the grievance of the Petitioner, even if assumed to be genuine, does not confer any statutory right of intervention at this stage. The refusal of amendment does not result in any irremediable prejudice to the Petitioner's ability to present its case and thus does not attract any of the narrow exceptions carved out by judicial precedents permitting court interference in arbitral proceedings prior to the final award.

61. For the reasons stated above, this Court holds that the challenge to the order of the Arbitral Tribunal disallowing amendment to the Statement of Defence is not maintainable under the Arbitration and Conciliation Act, 1996. The impugned order is purely procedural determination, squarely within the discretion and jurisdiction of the Tribunal, and does not finally determine the rights of the parties so as to attract the supervisory jurisdiction of this Court at the present stage.

62. In view of the foregoing finding that the challenge to the order passed by the Arbitral Tribunal disallowing the amendment is not maintainable and cannot be treated as an interim award determining the rights of the parties, this Court does not propose to examine the merits of the proposed amendments at this stage. The question of such amendments is accordingly left open for the Petitioner to raise at the appropriate stage, if so advised.

Conclusion

63. In view of the foregoing discussion, this Court is of the considered view that:

(i) Having regard to the arbitration agreement, the governing ICC Rules, the conduct of the parties, and the settled principles for determining the juridical seat of arbitration, the Courts at Kolkata possess territorial jurisdiction under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 to entertain the present petition. The Respondent's preliminary objection on the ground of lack of territorial jurisdiction is, therefore, rejected.

(ii) Insofar as the Petitioner seeks to impugn the order of the learned Arbitral Tribunal refusing amendment of the Statement of Defence, this Court finds that the said order is purely procedural in nature, does not determine any substantive rights of the parties, and falls neither within the ambit of an "interim award" nor within the category of appealable orders under Section 37. Such challenge is, therefore, not maintainable at this interlocutory stage.

64. It is clarified that the observations made herein with respect to the amendment sought by the Petitioner are strictly prima facie and confined to the issue of maintainability of the present challenge. This Court has not examined, nor expressed any final opinion on, the merits of the proposed amendment. It is left open to the Petitioner to raise all permissible grounds, including those relating to the refusal of amendment, at the stage of challenge to the final arbitral award, if so advised and in accordance with law.

65. In view thereof, the present petition is dismissed.

(GAURANG KANTH, J.)

Sakil Amed P.A.