LEGAL UPDATE

ARBIVIS
PARTNERS LLP
LAW OFFICES

LEGAL UPDATE DATED 05.04.2026

The Hon'ble Supreme Court in "***Nagaraj V. Mylandla vs. PI Opportunities Fund I & Ors.*** [2026 INSC 298]", has clarified the law relating to the doctrine of 'transnational issue estoppel' and the scope of the enforcement court's jurisdiction under Section 48 of the Arbitration and Conciliation Act, 1996.

The matter pertains to the enforcement of a foreign arbitral award passed by a Three Member Arbitral Tribunal on 05.07.2024, under the Singapore International Arbitration Act, 1994 and the SIAC Rules. The genesis of the dispute relates to the investment made by three foreign investors in the entity FSSPL in 2014. As per the Share Acquisition and Shareholders Agreement, whereby an exit opportunity had to be provided vide a QIPO (Qualified IPO) by 2016, and in the event of its failure, alternative exit options, i.e. share sale, buy-back, or strategic sale, were to be provided. However, no exit option was provided, resulting in the arbitration being invoked. The Arbitral Tribunal held that it had granted the Investors relief in the form of a 'strategic sale' if the awarded damages were not paid within 90 days of the award. The appeal against the award before the Singapore High Court was also set aside. Subsequently, the High Court of Madras was approached for the enforcement of the award, which rejected the objections raised based on public policy and other grounds, including the fundamental laws of India[1] and imposed a cost of Rs. 25 lakhs on the Promoters. The concept of the doctrine of 'transnational issue estoppel' was also noted.

The Hon'ble Supreme Court analysed the statutory scheme under Part II of the Arbitration and Conciliation Act, 1996, leading Indian precedents[2], leading international precedents especially qua the doctrine of 'transnational issue estoppel'.

---

[1] Judgments of Vijay Karia and Others vs. Prysmian Cavi E Sistemi SRL and Others, (2020) 11 SCC 1; Cruz City 1 Mauritius Holdings vs. Unitech Limited, (2017) 239 DLT 649 relied upon.

[2] Vijay Karia and Others vs. Prysmian Cavi E Sistemi SRL and Others, (2020) 11 SCC 1; Renusagar Power Co. Ltd. vs. General Electric Co., 1994 Supp (1) SCC 644; Shri Lal Mahal Limited vs. Progetto Grano SPA, (2014) 2 SCC 433; Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI) (2019) 15 SCC 131; Associate Builders vs. Delhi Development Authority, (2015) 3 SCC 49; Cruz City 1 Mauritius Holdings vs. Unitech Limited, (2017) 239 DLT 649; Gopal Prasad Sinha vs. State of Bihar, (1970) 2 SCC 905; Hope Plantations Ltd. vs. Taluk Land Board, Peermade and Another, (1999) 5 SCC 590; Bhanu Kumar Jain vs. Archana Kumar and Another, (2005) 1 SCC 787; Thoday vs. Thoday, 1964 (1) All ER 341 (CA).

The Supreme Court dismissed the appeal by the following:

- applying the doctrine of Transnational Issue Estoppel,
- holding that no violation of Indian law took place, which justified interference qua enforcement,
- once the parameters of Public Policy violation had been considered in the passing of the arbitral award, the same cannot be challenged before the Court.

It was further observed that a 'merits-based' evaluation is beyond the scope of the enforcement court's jurisdiction under Section 48 of the Arbitration Act and would be barred by application of the doctrine of 'transnational issue estoppel'.

The Hon'ble Supreme Court noted that there is no decision of the Court on the doctrine of 'transnational issue estoppel' to date. The following conditions were culled out from international jurisprudence for the applicability of the aforementioned doctrine:

- That the judgment must be given by a foreign court of competent jurisdiction;
- That the judgment must be final and conclusive and on the merits;
- That there must be identity of parties; and
- That there must be identity of subject matter, which means that the issue decided by the foreign court must be the same as that arising in the later proceeding.

2026 INSC 298

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Special Leave Petition (Civil) Nos. 31866-68 of 2025

Nagaraj V. Mylandla … Appellant

versus

PI Opportunities Fund-I and others Etc. … Respondents

with

Special Leave Petition (Civil) Nos. 31945-31947 of 2025

J U D G M E N T

SANJAY KUMAR, J

1. Enforcement of a foreign arbitral award is in issue.

2. By common order dated 22.09.2025, a learned Judge of the High Court of Judicature at Madras held the award dated 05.07.2024 passed by a 3-member arbitral tribunal, under the aegis of the Singapore International Arbitration Act, 1994, and the Arbitration Rules of the Singapore International Arbitration Centre, to be enforceable and deemed it to be a decree under Section 49 of the Arbitration and Conciliation Act, 1996[1]. He, accordingly, passed a decree in terms of the said award

[1] For short, 'the Arbitration Act'

against Nagaraj V. Mylandla and Sharada Mylandla[2], the directors of Financial Software and Systems Private Limited[3], Chennai. Aggrieved thereby, the Mylandlas filed this batch of special leave petitions.

3. The impugned common order dated 22.09.2025 was passed in Arbitration O.P. (Comm. Div.) Nos. 285, 452 and 453 of 2024. These three petitions were filed by PI Opportunities Fund-I, Bangalore; Millenna FVCI Limited (formerly, NEA FVCI Limited), Mauritius; and lastly, NYLIM Jacob Ballas India (FVCI) III LLC along with NYLIM Jacob Ballas India Fund III LLC, Mauritius, under Sections 47 to 49 of the Arbitration Act, seeking a declaration that the arbitral award dated 05.07.2024 passed in SIAC Arbitration No. 098 of 2022 is enforceable; to deem it to be a decree of the Court; and, consequently, direct respondent Nos. 2 and 3 therein, viz., the Mylandlas, to jointly and severally pay the awarded damages, interest, and costs. Other directions were also sought in furtherance thereof.

THE FACTS

4. We may now note the underlying facts: FSSPL is a digital payment services company. It has two business divisions - CashTech and PayTech. The Mylandlas and Rudhraapathy J, respondent No. 4, are its promoters. FSSPL's business activities involve providing online, real time, electronic transaction processing and payment systems, including Automated Teller

---

2 For short and collectively, 'the Mylandlas'

3 For short, 'FSSPL'

Machines (ATMs), Point of Sale terminals (PoS), ATM sharing between banks, international and domestic interchanges, such as Mastercard, Visa and others. Earlier, the promoters of FSSPL collectively held 48.9% of its share capital. While so, PI Opportunities Fund-I; Millenna FVCI Limited (formerly, NEA FVCI Limited); NYLIM Jacob Ballas India (FVCI) III LLC along with NYLIM Jacob Ballas India Fund III LLC (hereinafter, collectively referred to as 'the Investors' and individually as 'PIOF', 'Millenna' and 'Nylim I & II' respectively) made substantial investments in FSSPL and acquired shares therein through an agreement dated 10.10.2014, titled 'Share Acquisition and Share Holders Agreement'[4].

THE SASHA

5. We may note the relevant details of the SASHA at this stage. It was entered into by FSSPL; its promoters, viz., the Mylandlas and Rudhraapathy J.; and the FSS Employees' Welfare Trust, with the Investors. It recorded that, as on the closing date, the promoters held 40.4% and the Employees' Trust held 6.52% of the share capital of FSSPL while the Investors were allotted shares on a fully diluted basis - PIOF was allotted 20.14% shareholding while Millenna was given 18.97% shareholding and Nylim I & II were to hold 12.65% of the shareholding together. Other shareholders held the remaining 1.32% shareholding.

4 For short, 'the SASHA'

6. Clause 19 of the SASHA is titled 'Exit' and posited that FSSPL and its promoters would make efforts to ensure that a Qualified Initial Public Offering (QIPO) occurs on or prior to the cut-off date, viz., 31.03.2016. If that did not occur, then an exit waterfall was made available to the Investors under Clauses 19.1, 19.2, 19.3 and 19.6. Under Clause 19.1, if the QIPO was not completed by the cut-off date, each Investor was to decide whether it would participate in a 'secondary sale' and, if so, deliver a notice to FSSPL and the promoters informing them of such decision, requiring FSSPL and the promoters to find a buyer for all or some of the shares held by such Investor(s) at a price per share which was equal to or higher than the 'exit price'. Sub-clauses (i) and (ii) of Clause 19.1 detailed how the 'exit price' was to be determined. Clause 19(1)(b) provided that, within 10 business days of receiving a secondary sale notice, FSSPL and the promoters were to intimate the other Investors of the receipt of such notice, and if the other Investors also wished to participate in the secondary sale, they were required to deliver a notice to FSSPL and the promoters informing them of their decision. Clause 19.1(c) stated that, on receipt of such participation notice, the Investors who had decided to participate in the secondary sale, along with FSSPL and its promoters, would jointly appoint an Investment Banker to initiate and continue the secondary sale so as to complete it in 6 months from the date of the participation notice or within 90 days from the 'secondary sale'

notice to be issued by FSSPL to the participating Investors after identification of a purchaser, whichever was later. Clauses 19(1)(d), (e), (f), (g), (h) & (i) detailed how the secondary sale was to be completed.

7. Clause 19.2 is titled 'Buy-back/Recapitalization' and stated that, in the event a secondary sale did not take place, then the Investors collectively had the right to require FSSPL to buy-back some or all of the outstanding shares held by them. The steps to be taken in relation to such buy-back were detailed under sub-clauses (a), (b) & (c) of Clause 19.2.

8. Clause 19.3 is titled 'Causing an IPO' and sub-clause (a) therein provided that if FSSPL and the promoters were unable to effectuate a secondary sale and/or cause buy-back of the shares of the Investors, or provide any other mechanism as mutually agreed to by the parties as contemplated under Clauses 19.1 and 19.2, the Investors would have the right, but not an obligation, to cause an IPO. This IPO was to be based on the advice of an independent Merchant Banker whose appointment was mutually acceptable to the Investors, FSSPL and the promoters. The other sub-clauses in Clause 19.3 detailed the process for causing the IPO.

9. Clause 19.6 is titled 'Failure to provide an exit'. Clause 19.6(a) stated that the Investors may, at their sole option, grant a cumulative extension to FSSPL of up to one year for making a QIPO or to provide an exit under Clauses 19.1, 19.2, or 19.3. Clause 19.6(b) stated that if FSSPL failed to complete the QIPO and failed to provide an exit as per Clause

19.2 (if applicable) and Clause19.3 read with Clause 19.6(a) (if applicable) and was in 'material breach', then the Investors would have the right to implement a 'strategic sale'. The Investors were required to send a written notice of at least 30 business days intimating the promoters and FSSPL of their desire to effect a strategic sale or merger. Clause 19.6(c) stated that the Investors could require the promoters and also the employee shareholders to offer up to 100% of the shares held by them pursuant to such merger or strategic sale and the terms of the sale of such shares, including the price, were not to be less favorable than the terms of the sale of the shares held by the Investors.

10. Clause 24.4 of the SASHA is titled 'Material Breach'. Under Clause 24.4(c), the failure to provide an exit to the Investors under Clause 19 is considered a 'material breach'. Clause 24.6 and the second Clause 24.5 thereafter are of relevance and are extracted hereunder: -

> '24.6 Upon the occurrence of a Material Breach, the Investors shall at their sole option, be entitled to the following:
>
> (a) cause a sale of Shares/merger of the Company in accordance with Clause 19.6; or
>
> (b) require a buy-back of the Shares held by the Investors in accordance with the procedure set out in Clause 19.2. It is hereby clarified that in the event that the Investors exercise their rights under this Clause 24.6(b) upon occurrence of a Material Breach under Clause 24.4(b), the Company/Promoters shall buyback/purchase the Shares held by the Investors such that each of NYLIM I, PIOF and NEA in relation to the Shares acquired by it in accordance with Schedule 6 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 receives an amount which is the higher of (i) the Relevant Investor Investment Amount; or (ii) the Fair Market Value. The buy-back price in relation to the Shares acquired by NYLIM II and NEA in accordance with Schedule 1 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, shall be the fair market value per Share (which shall

notwithstanding anything to the contrary contained in Clause 1.1 hereinabove be determined in accordance with applicable Law by any Big Four firm). In the event that the Investors exercise their rights under this Clause 24.6(b) upon occurrence of a Material Breach under one or more of Clauses 24.4(e), 24.4(a), 24.4(c), 24.4(d) and 24.4(f), the Company/Promoters shall buy-back/purchase the Shares held by the Investors such that the each of NYLIM I, PIOF and NEA in relation to the Shares acquired by it in accordance with Schedule 6 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 receives an amount which is the higher of (i) twice their Relevant Investor Investment Amount; or (ii) the Fair Market Value. The buy-back price in relation to the Shares acquired by NYLIM II and NEA in accordance with Schedule 1 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, shall be the fair market value per Share (which shall notwithstanding anything to the contrary contained in Clause 1.1 hereinabove be determined in accordance with applicable Law by any Big Four firm).; or

(c) terminate the rights (and not obligations) under this Agreement of the Promoters, by giving a written notice to the Company and the Promoters.

24.5 The termination of this Agreement shall be without prejudice to any claim or rights of action, including but not limited to the right to seek damages, previously accrued to any Party hereto against any other Party.'

11. Clause 29 of the SASHA is titled 'Miscellaneous' and Clause 29.6, titled 'Other remedies' is also relevant. It reads thus:

'Other remedies

(a) In the event that a Party commits a default of the terms of this Agreement then, the non-defaulting Parties shall be entitled to seek specific performance, as may be permitted under applicable Laws, in addition to its rights and remedies under this Agreement.

(b) Each Party acknowledges and agrees that the other Parties would be damaged irreparably in the event any provision of this Agreement is not performed in accordance with its specific terms or otherwise is breached, so that a Party shall be entitled to injunctive relief to prevent breaches of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in addition to any other remedy to which such Party may be entitled, at Law or in equity.

(c) All remedies of the Parties under this Agreement whether provided herein or conferred by statute, civil law, common law, custom, trade, or usage are cumulative and not alternative and may be enforced successively or concurrently.

THE ARBITRAL AWARD

12. Disputes arose between the parties in the context of the 'exit' to be provided to the Investors. It was the specific case of the Investors that

FSSPL and its promoters failed to provide them an exit. It is in this context that the parties went before the 3-member arbitral tribunal consisting of Ms. Koh Swee Yen, SC, (Presiding Arbitrator), Mr. David Joseph, KC, and Mr. Ramakrishnan Viraraghavan, SC. The arbitral tribunal passed a unanimous award on 05.07.2024. Reference was made therein to Clause 27 of the SASHA which dealt with dispute resolution by way of arbitration. It was noted that Clause 26 of the SASHA provided that the agreement shall be governed and construed in accordance with the laws of India and, subject to Clause 27, the Courts at Chennai shall have exclusive jurisdiction over all matters and disputes arising from the SASHA. Clause 27 provided that the Arbitration Rules of the Singapore International Arbitration Centre (SIAC Rules) were to apply to the arbitration. The seat of arbitration was at Singapore as per Clause 27.5. It was noted that FSSPL consisted of two principal business divisions – Cashtech and Paytech. The claimants were identified as third party investors in FSSPL, who collectively held 51.76% of its shares. The shareholding pattern in FSSPL pursuant to the SASHA was also taken note of.

13. The salient terms of the SASHA and, more particularly, Clause 19, titled ‘Exit’, were noted. It was also noted that the shares of FSSPL were never listed on a stock exchange in India and the QIPO, which was to take place by 31.03.2016, had failed to materialise, whereupon ‘secondary sale’ notices were issued by Millenna and Nylim I & II on 01.04.2016 and

26.04.2016 respectively. However, in 2017, FSSPL proposed a dual plan to cause an IPO and explore private equity funding simultaneously. This proposal was approved by its Board of Directors. However, no positive developments emerged from the exercise till March, 2022. Prior thereto, Nylim I & II reiterated their request for a 'secondary sale' by notice dated 18.09.2020. PIOF's notice dated 05.01.2021 was also issued on the same lines. Thereafter, the Investors issued notices of 'material breach' on 11.04.2022, owing to the failure to provide them an exit. On the same day, they issued written notice to the Mylandlas of the termination of their rights under the SASHA, without prejudice to the Investors' other rights and remedies. The Investors also issued separate notices of 'strategic sale' on 11.04.2022 pursuant to Clause 19.6(b)(ii) of the SASHA. FSSPL and the promoters were given 30 days' time to effectuate such sale. On the same day, the Mylandlas issued an email denying the contents of both notices. The email also stated that the Mylandlas and Archit Mylandla, who had been inducted as a Director in FSSPL, had temporarily but immediately withdrawn themselves voluntarily from FSSPL. Notices of arbitration were served by the Investors upon FSSPL and its promoters and the employees' trust on 14.04.2022 and 21.04.2022. The two substantive claims of the Investors in the arbitration were as follows:

> '204. First, the Claimants are seeking damages for breach of Clause 19.1 of the SASHA. The Claimants' case is that Clause 19.1 imposes an *absolute* obligation on the 2nd and 3rd Respondents to procure a Secondary Sale, under which the Claimants' shares would have been sold to a buyer at a prescribed Exit Price.

> The Claimants assert that the 2nd and 3rd Respondents breached the absolute obligation as a Secondary Sale did not occur. On this basis, the Claimants claim damages to be quantified in a sum equivalent to the Exit Price.
>
> 205. Second, the Claimants are claiming for specific performance of Clause 19.6 of the SASHA. The Claimants assert that their rights under Clause 19.6 to implement a Strategic Sale were enlivened pursuant to Clause 19.6(b)(ii) because of alleged Material Breaches of the SASHA. The Claimants further assert that they are consequently entitled to specific performance of Clause 19.6 of the SASHA.'

14. The arbitral tribunal opined that Clause 19 visited an absolute obligation upon FSSPL and its promoters to provide an exit to the Investors and all the parties understood that the Investors were seeking an exit for which adequate and requisite notice was given by them. Thereafter, the arbitral tribunal considered as to what would be the appropriate valuation date for damages to be assessed and decided that it would be 18.09.2020, when Nylim I & II sent a notice invoking Clause 19.1 of the SASHA. The arbitral tribunal opined that, as per the scheme under Clause 19.1, the exit price had to be established as on 18.09.2020 and all the Investors would be entitled to that valuation date, though the notice was issued only by Nylim I &II. The arbitral tribunal, thereupon, took up the exercise of fixing the fair market value of FSSPL's shares. The 'exit prices', in terms thereof, were accordingly worked out for the Investors - for PIOF, it stood at ₹6,614 million; for Millenna, it was ₹2,804 million; for Nylim-I, it was ₹777 million; and for Nylim II, it was ₹1,093 million.

15. The arbitral tribunal awarded simple interest at 5.33% per annum on the damages awarded, viz., the above exit prices, along with post-award

interest @ 5.33% from the date of the award until full payment. The arbitral tribunal considered whether the Investors were entitled to claim specific performance by way of enforcing a strategic sale under Clause 19.6(b), by way of Clause 24.6(a), and also terminate the rights of the promoters under Clause 24.6(c) of the SASHA. It was noted that exercise of the right of termination did not exclude a claim for damages, as that was expressly stated in Clause 24.5. The arbitral tribunal opined that proper meaning had to be given to Clause 29.6(a) and Clause 29.6(c) alongside Clause 24.6 and Clause 24.5 when a party seeks to enforce a strategic sale under Clause 24.6. It was observed that Clause 24.6 is to be read with Clause 29.6(c), as providing in effect 'unless otherwise expressly provided herein, all remedies of the parties' so as not to lead to redundant or meaningless provisions. There was, according to the arbitral tribunal, a need to read and give meaning to all the provisions alongside one another so as to make sense of all the words used in a very 'carefully crafted agreement'. In these circumstances, the arbitral tribunal held that it was difficult to conclude that the Investors had made an election to pursue one remedy and not the other, when both remedies were sought on the same day. As the primary relief sought by them was damages, the arbitral tribunal held that they were entitled to the same, but in the event the respondents failed to pay such damages within 90 days, the Investors would be entitled to enforce a strategic sale.

16. The arbitral tribunal categorically rejected the contention of the Mylandlas that the Specific Relief Act, 1963, would bar the grant of such relief. Noting that the strategic sale would arise only if the awarded damages were not paid within the 90-day period, the arbitral tribunal rejected that argument. The arbitral tribunal, accordingly, concluded that the Investors were entitled to obtain specific performance by way of a strategic sale pursuant to Clause 19.6(b) of the SASHA in such eventuality. The operative portion of the arbitral tribunal's award dated 05.07.2024 was set out from paragraph 802 onwards and the same is extracted hereunder:

> '802. The Tribunal has carefully and fully considered the applicable law, the entire evidence and the parties' submissions, and makes the following final orders.
>
> 803. In respect of the Claimants' claims, the Tribunal grants the following declarations:
>
> a. The Claimants have validly invoked Clause 24.4(c) of the SASHA and Material Breach under Clause 24.4(c) of the SASHA has occurred;
>
> b. The Claimants have validly invoked Clause 24.4(d) of the SASHA and Material Breach under clause 24.4(d) of the SASHA has occurred;
>
> c. The Claimants have validly invoked Clause 24.4(e) of the SASHA and Material Breach under clause 24.4(e) of the SASHA has occurred;
>
> d. The 1st to 3rd Respondents have breached Clause 19.1 of the SASHA and the Claimants are entitled to receive the Exit Price as at 18 September 2020 under Clause 19.1 of the SASHA;
>
> e. The Claimants have validly invoked Clause 19.6(b) of the SASHA and are entitled to implement a Strategic Sale and distribute the proceeds thereof in accordance with Annexure 12 of the SASHA;
>
> 804. The Tribunal further orders that:
>
> a. The 1st to 3rd Respondents are jointly and severally, to pay damages suffered by the Claimants being the Exit Price as at 18 September 2020 aggregating to INR 6,614 million (for the 1st Claimant), INR 777 million (for the 2nd Claimant), INR 1,093 million (for the 3rd Claimant) and INR 2,804 million (for the 4th Claimant), which amount shall stand reduced to the extent of the net proceeds received by the Claimants from a Strategic Sale (provided that the sums

received from a Strategic Sale are lower than the damages awarded by the Tribunal);

b. If the damages in paragraph 804(a) are paid, the Claimants will cooperate with the Respondents to surrender all their shares in the 1st Respondent. The Claimants and Respondents are to co-operate with each other in order to effect such prompt surrender.

c. If within 90 days from the date of this Award, the damages in paragraph 804(a) above are not paid, then the Claimants are entitled to proceed towards a Strategic Sale and the Respondents are not to interfere with the Strategic Sale (under Clauses 19.6(b) and 24.6(a) of the SASHA) to be implemented by the Claimants;

d. The Respondents are to render full cooperation with respect to any Strategic Sale (under Clause 19.6(b) of the SASHA) to be implemented by the Claimants;

e. The 2nd to 5th Respondents are to sell their shares pursuant to a Strategic Sale as implemented by the Claimants (under Clause 19.6(b) of the SASHA) and to distribute the proceeds in accordance with Annexure 12 of SASHA within a period of six months from the date of this Award;

f. Simple interest at the rate of 5.33% from 1 July 2021 until the date of the Award on the sums awarded in paragraph 804(a) above;

g. Post-award interest at the simple interest at the rate of 5.33% from the date of the Award until the date of full repayment on the sums awarded in paragraph 804(a) and 804(f) above.

805. The 1st to 3rd Respondents are jointly and severally liable to pay the legal costs of the Claimants in the amount of INR 32,816,268.67, USD 699,710.73 and GBP 99,580.37, and the fees and expenses of the expert witnesses at INR 19,035,431.86 and USD 68,281.23, with simple interest at the rate of 5.33% per annum from the date of this Final Award until the date of full and final payment.

806. The 1st and 3rd Respondents are also ordered to pay the costs previously ordered by the Tribunal against the Respondents at INR 472,500 and SGD 7,032.56, with simple interest at the rate of 5.33% per annum from the date of this Final Award until the date of full and final payment.

807. The 1st to 3rd Respondents are also ordered to pay, on a joint and several basis, other legal costs in the arbitration, namely Arbitration support costs in the sum of SGD 100,611.64 and further costs for the services of Epiq in the sum of SGD 1,199.01, to the Claimants, with simple interest at the rate of 5.33% per annum from the date of this Final Award until the date of full and final payment.

808. Reimbursement towards the costs of the arbitration in the amount of SGD 1,132,743.24 is to be paid by the 1st to 3rd Respondents jointly and severally to the Claimants, with simple interest at the rate of 5.33% per annum from the date of this Final Award until the date of full and final payment.

809. Other than what is stated above, all other claims and defences are dismissed.

810. This Final Award is immediately enforceable.'

17. Thereafter, the arbitral tribunal passed the 'Memorandum of Correction and Interpretation of the Final Award dated 05.07.2024' on 22.08.2024. Therein, it was noted that the Mylandlas had applied for correction and/or clarification of paragraph 710 of the award, pursuant to Rule 33 of the SIAC Rules. The arbitral tribunal, however, held that the Mylandlas were not seeking correction based on any error in computation or clerical or typographical errors or any error of a similar nature but were seeking to reverse the finding on Issue 7B, pertaining to exercise of Clause 24.6(c). Having stated so, the arbitral tribunal construed the application to be a request for interpretation under Rule 33.4 of the SIAC Rules, i.e., for a clarification that their rights were not terminated pursuant to Clause 24.6(c) of the SASHA. Accepting that there was some ambiguity as the Investors had simultaneously chosen to exercise their right to force a 'strategic sale' and their right to 'terminate the rights but not obligations of the promoters', the arbitral tribunal opined that, on the basis that the core relief sought by the Investors was that of a 'strategic sale', the same had been granted. It was opined that though the Investors had validly exercised their rights under Clause 24.6(a) and Clause 24.6(c) of the SASHA, they were entitled only to one remedy as the remedies were in the alternative. It was further noted that the Investors had sought both simultaneously and, therefore, their exercise of 'termination of rights'

would be valid as on 11.04.2022, i.e., the date on which they had issued 'material breach' notices, but as the final award had determinatively granted them the relief of 'strategic sale' under Clause 24.6(a) and in view of the remedies under Clause 24.6(a) and Clause 24.6(c) being alternative options, the 'termination of rights' under Clause 24.6(c) would fall away. It was, accordingly, concluded that there was no error in paragraph 710 of the award and the arbitral tribunal declared that it had granted the Investors relief in the form of a 'strategic sale' if the awarded damages were not paid within 90 days of the award and it had not granted them the relief of 'termination of the rights but not the obligations of the promoters' under the SASHA. This interpretation of the award was directed to be read together with and as a part of the award dated 05.07.2024.

CHALLENGE BEFORE THE SINGAPORE HIGH COURT

18. The arbitral award was subjected to challenge by the Mylandlas in OA No.1033 of 2024 before the General Division of the High Court of the Republic of Singapore. This OA came to be dismissed on 21.02.2025. The High Court noted how the sub-clauses of Clause 19 of the SASHA set out the 'exit' framework for the Investors in the event a QIPO did not occur by the cut-off date, 31.03.2016. It was observed that the Investors had sought damages @ the 'exit price' as on 18.09.2020, being the date on which notice had been issued to FSSPL requesting that a banker be appointed for a 'secondary sale' of their shareholdings. The High Court noted that

the Investors had undertaken to return their shares upon receipt of the awarded damages to avoid suggestion of double recovery. The High Court also noted that the arbitral tribunal had held that Clause 19.1 of the SASHA imposed an absolute obligation on FSSPL and its promoters to find a buyer for the shares of the Investors who had given requisite notices requiring a 'secondary sale'. It was noted that the arbitral tribunal held that FSSPL and the Mylandlas were jointly and severally liable to pay damages, being the 'exit price' as on 18.09.2020, to the Investors who would then surrender their shares in FSSPL.

19. Two grounds were urged by the Mylandlas before the High Court in support of their attack against the arbitral award– (i) The arbitral tribunal had breached the 'fair hearing rule' by failing to consider their 'waiver defence', and (ii) the arbitral tribunal breached the 'fair hearing trial' by failing to consider their 'buy-back defence'. Addressing the 'waiver defence, the High Court noted the plea of the Mylandlas that the Investors had waived and were estopped from asserting their right to a 'secondary sale at the exit price' within the timeline stipulated, as they had agreed to pursue a 'split sale', i.e., a split sale of the two principal businesses of FSSPL. The Investors, however, argued that the arbitral tribunal had considered and explicitly/implicitly rejected the 'waiver defence'.

20. The High Court opined that though the 'waiver defence' was a standalone defence to the Investors' claim, the arbitral tribunal was not

required to expressly address or articulate its decision on that defence. It was observed that an issue need not be resolved explicitly in an arbitral award as it may also be resolved implicitly. Further, the High Court observed that the Mylandlas had not established, as required in a challenge based on a breach of natural justice, that such breach had prejudiced their rights. According to the High Court, the arbitral tribunal had considered it unnecessary to expressly address and reject the 'waiver defence' in the light of its other findings and views. The High Court noted that the arbitral tribunal had found that there was not a single document contemporaneous with the notice dated 18.09.2020 that expressed anything other than a unified resolve of all sides to try to bring about a 'secondary sale' so as to provide an exit to the Investors. The effect of this, *per* the High Court, was to implicitly negate any notion that the Investors had, by participating in any presentation on a 'split sale' or otherwise, waived their requirement of a 'secondary sale'.

21. The High Court further noted that even if there was an error of fact on the part of the arbitral tribunal, it would not constitute a breach of the 'fair hearing rule'. Having looked at the factual findings of the arbitral tribunal, the High Court opined that the argument of the Mylandlas that the Investors had waived their secondary sale rights by agreeing to pursue a split sale did not have a leg to stand upon and that the arbitral tribunal realized that its findings implicitly resolved the 'waiver defence' in favour

of the Investors and considered it unnecessary to expressly address and reject the same. It was also noted that the arbitral tribunal was alive to Clause 29.5 of the SASHA, which expressly stated that no forbearance, indulgence or relaxation of a party to require performance with the SASHA can be considered 'waiver' of any right unless so waived in writing. In effect, the Mylandlas could not rely on the so-called conduct of the Investors, in the absence of a written representation, constituting the Investors' alleged waiver of their legal rights under Clause 19.1 of the SASHA. The High Court, therefore, concluded that application of Clause 29.5, as interpreted by the arbitral tribunal, was a complete answer to the 'waiver defence'.

22. On the 'buy-back defence' advanced by the Mylandlas, the High Court noted that it had two limbs. The first limb was with regard to proper interpretation of Clause 19.1 of the SASHA which, according to the Investors, imposed an absolute obligation on FSSPL and its promoters to secure a secondary sale at a price equal to or higher than the exit price. According to the Mylandlas, the breach of such an obligation would result in FSSPL and its promoters being liable for damages equivalent to the exit price, which would essentially transform Clause 19.1 into an obligation on FSSPL to buy back its shares from the Investors which, in turn, would render nugatory Clause 19.2, which provided for the Investors' exit by way of FSSPL buying back the shares held by them. The second limb of the

'buy-back defence', according to the Mylandlas, pertained to the relief sought by the Investors for damages, coupled with an undertaking to return their shares to FSSPL upon receipt of the damages awarded to them, to avoid the suggestion of double recovery. The Mylandlas argued that this relief would result in a buy-back by FSSPL of its own shares which was impermissible under Indian law and, therefore, Clause 19.1 could not be construed as imposing an absolute obligation on FSSPL and its promoters to find a buyer.

23. The High Court observed that the true nature and relationship between the two limbs of the 'buy-back defence' had to be appreciated. The High Court noted that the arbitral tribunal had signaled a wholesale rejection of the argument advanced by the Mylandlas with regard to the interpretation of Clause 19.1. The arbitral tribunal had not accepted that awarding damages to the Investors in the amount of the exit price for the breach of Clause 19.1 would lead or amount to FSSPL buying back the shares held by the Investors. Hence, interpretation of Clause 19.1 as an absolute obligation did not render nugatory Clause 19.2, which provided for the Investors' exit by way of FSSPL buying back their shares. The remedy of an award of damages in Clause 19.1 of the SASHA was, therefore, held to be distinct from a buy-back of shares by FSSPL under Clause 19.2. The High Court categorized the challenge by the Mylandlas to be a disguised attack on the arbitral tribunal's view that holding FSSPL

and its promoters liable to pay the Investors damages in the amount of the exit price for breach of Clause 19.1 did not effectively amount to FSSPL buying back the Investors' shares. In any event, *per* the High Court, any error of law and/or error of fact made by the arbitral tribunal in taking this view did not constitute a ground to set aside the award.

24. The High Court, therefore, concluded that the arbitral tribunal did apply its mind to the 'buy-back issue'. Further, the High Court rejected the Mylandlas' claim that they could not raise this issue earlier. As the Investors had already made it clear in their statement of claim that they would return their shares if damages were awarded for the breach of Clause 19.1 and if such damages were paid, the High Court held that the enforceability limb ought to have been raised by the Mylandlas in their statement of defence or, at the latest, in their closing submissions, but they had failed to do so. Both the grounds raised by the Mylandlas were, accordingly, rejected and OA 1033 of 2024 was dismissed on 21.02 2025.

25. It may be noted that the order dated 21.02.2025 of the High Court was appealable under Section 29(C)(2) of Singapore's Supreme Court of Judicature Act, 1969. Section 29(C)(2) states that an appeal against a decision of the General Division is to be made to the Court of Appeal, if the 6th Schedule or any other written law so provides. The 6th Schedule is titled 'Civil Appeals to be made to the Court of Appeal' and it is stated therein that, for the purposes of Section 29(C)(2), an appeal against a

decision of the General Division in the exercise of its original or appellate civil jurisdiction is to be made to the Court of Appeal in the cases enumerated from sub-clauses (a) to (l). Under sub-clause (c), an appeal is provided from a case relating to the law of arbitration (even if the appeal does not raise any issue relating to the law of arbitration). Therefore, despite the order dated 21.02.2025 of the High Court being appealable before the Court of Appeal, the Mylandlas did not choose to take recourse to such appellate remedy.

CHALLENGE BEFORE THE ENFORCEMENT COURT

26. In any event, the arbitral award dated 05.07.2024 and the clarification order dated 22.08.2024 of the arbitral tribunal fell for consideration before the learned Judge of the Madras High Court in the subject petitions filed by the Investors under Sections 47 to 49 of the Arbitration Act. The learned Judge observed that the objections raised by the Mylandlas to enforcement of this award were under Section 48 of the Arbitration Act, i.e., that such enforcement would be contrary to the public policy of India. In this context, the learned Judge extensively examined the law on the subject as to what would constitute a violation of the public policy of India apropos an arbitral award. Noting that the Court was not at liberty to delve into the merits of the arbitral award or to take a second look at it in the guise of examining its enforceability, the learned Judge held that resistance to enforcement of foreign awards must be viewed with

circumspection. Observing that it is essential to recognize the need for restraint in examining the correctness of a foreign award, the learned Judge opined that the law laid down by this Court in ***Vijay Karia and others vs. Prysmian Cavi E Sistemi SRL and others***[5] was a reaffirmation of the pro-enforcement stance of Indian Courts with respect to foreign arbitral awards and was also an indication that litigious parties should be discouraged from attempting to exhaust all possible recourses against enforcement of foreign awards.

27. Reference was made by the learned Judge to the decision of the Delhi High Court in ***Cruz City 1 Mauritius Holdings vs. Unitech Limited***[6], referred to in ***Vijay Karia*** (*supra*), and, more particularly, to the observations therein that foreign awards would ordinarily be based on foreign law; that such laws might not be in conformity with the laws of the country in which enforcement was being sought and, in such a situation, if Courts of the enforcing country refused enforcement of such awards, merely on account of contravention of local laws, the object and purpose of the 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, would be defeated. In this regard, the Delhi High Court had observed that the fundamental policy of Indian law could only mean 'fundamental and substantive legislative policy' which formed the bedrock

5 (2020) 11 SCC 1
6 (2017) 239 DLT 649

of Indian laws and not a mere provision of an enactment. This edict was approved by this Court in ***Vijay Karia*** (*supra*).

28. Having set out at length the principles that emerged *vis-à-vis* enforcement of foreign arbitral awards and the objections that can be raised thereto under Section 48 of the Arbitration Act, the learned Judge then dealt with the specific contentions of the Mylandlas. They had contended that the relief granted by way of the award dated 05.07.2024 amounted to a 'buy-back of shares' but the Investors asserted to the contrary. The learned Judge took note of the difference between 'buy-back of shares' and 'surrender of shares' and observed that it was only in the case of a 'buy-back of shares' that Section 68 of the Companies Act, 2013[7], would get attracted and it would not have any application to a 'surrender of shares'. *Per* the learned Judge, the term 'buy-back' indicates a company's active decision to repurchase its own shares to reduce the number of outstanding shares, while a 'surrender' is the voluntary act of a shareholder to return his shares.

29. The learned Judge opined that the award in question did not direct any buy-back of shares by FSSPL and only directed payment of damages, whereupon the Investors agreed to surrender their respective shares. The learned Judge also noted that the award did not specify the entity/persons

---

7 For short, 'the Companies Act'

to whom such surrender was to be made. The learned Judge noted that this direction to surrender shares on payment of damages was only to avoid the possibility of double recovery by the Investors. The learned Judge then went on to state that, even if it was assumed that there was a buy-back by FSSPL itself, there was no proscription in absolute terms on such buy-back in Sections 66 to 68 of the Companies Act. The learned Judge noted that there was a separate option of buy-back of shares under Clause 19.2 of the SASHA; but that was not the relief that had been granted by the arbitral tribunal. The learned Judge also noted that the Investors had only sought enforcement of the award against the Mylandlas and not against FSSPL, so as to keep it as a going concern and, therefore, there was no question of 'buy-back' of shares by FSSPL. Observing that the Companies Act imposed penalties for violation of the procedure, the learned Judge held that such consequences, even if attracted, did not constitute a breach of the fundamental policy of Indian law, as existence of penal/regulatory provisions was only indicative of the legislative intent to discipline and not to void the underlying transactions as being repugnant to the foundational tenets of our legal system.

30. The learned Judge noted that the issue of 'buy-back' was raised by the Mylandlas before the Singapore High Court and the argument was conclusively rejected by the High Court, *vide* its order dated 21.02.2025. As this issue already stood decided, the learned Judge opined that the

Mylandlas could not argue the same at the enforcement stage, as 'transnational issue estoppel' would apply. Apart from that, the learned Judge opined that the Mylandlas were also attempting to raise new issues which could have been raised by them before the Singapore High Court but they had failed to do so, such as violation of Sections 66 to 68 of the Companies Act. It was noted that, even before the arbitral tribunal, they had raised this issue only in their post-hearing reply submissions.

31. As regards the objection raised on the point of election, the learned Judge noted that the Mylandlas' contention was that, permitting the Investors to seek 'termination of rights' as well as implementation of a 'strategic sale' would be contrary to the fundamental policy of Indian law. The learned Judge noted that this objection had not been raised before the Singapore High Court and was, in fact, an attempt to reopen the merits of the matter in the guise of a 'natural justice' claim. The learned Judge observed that it was entirely within the domain of the arbitral tribunal to evaluate and draw inferences from the evidence/arguments placed before it and as the arbitral tribunal had not relied upon any new evidence or denied the Mylandlas an opportunity to meet an argument, the threshold in Section 48(1)(b) of the Arbitration Act was not satisfied. Noting that the Mylandlas had raised the issue of election during the course of the arbitration proceedings, the learned Judge concluded that the same had been considered by the arbitral tribunal and was rejected.

32. The learned Judge noted that, on 11.04.2022, the Investors had issued a notice of 'material breach' pursuant to Clause 24.4 of the SASHA and notice of 'termination of the rights but not the obligations of the promoters' under Clause 24.6(c) of the SASHA, along with a separate notice of 'strategic sale' pursuant to the material breach. The learned Judge noted that the ground of election was not raised by the Mylandlas in their challenge to the award before the Singapore High Court and, as that was the curial court, the learned Judge qualified this contention as belated and opportunistic and opined that the Mylandlas were essentially seeking reconsideration of the merits of the dispute by raising this ground, which was impermissible under Section 48 of the Arbitration Act.

33. As regards the Mylandlas' contention that the arbitral award violated Section 16(b) of the Specific Relief Act, 1963, the learned Judge noted that this provision states that a party who breaches an essential term of a contract cannot obtain its specific performance and observed that there was no determination by the arbitral tribunal that the Investors were in breach of any essential term of the SASHA and, on the other hand, the arbitral tribunal had held that the Investors were entitled to enforce their rights as they had not committed any breach. In the absence of a finding that they had committed any such breach, the learned Judge opined that Section 16(b) of the Specific Relief Act, 1963, was not attracted. The learned Judge also noted that this aspect had not been raised during the

arbitration proceedings and held that it could not be allowed to be raised at this stage.

34. On the issue of waiver, the Mylandlas had contended that the Investors must be deemed to have waived their right for a 'secondary sale' once they pursued and participated in a 'split sale' process. However, the learned Judge found that Clause 29.5 of the SASHA required any such 'waiver' to be in writing and the same could be effective only to the extent specifically set forth in writing. As the arbitral tribunal rendered a categorical finding that the Investors never waived their right in writing to pursue a 'secondary sale' and this objection had been unsuccessfully raised by the Mylandlas before the Singapore High Court also, the learned Judge held against the Mylandlas on this count.

35. The next objection raised by the Mylandlas was with regard to the unauthorized delegation of power. This related to a specific 'Affirmative Vote Matter' listed in Annexure IV of the SASHA. Their argument was that, while holding them in 'material breach', the arbitral tribunal had failed to consider that the unauthorized delegation of power to Archit Mylandla related to a specific Affirmative Vote Matter listed in Annexure IV of the SASHA. Their further contention was that the reasoning of the arbitral tribunal, while holding them in material breach, was that FSSPL had not replaced the statutory auditor and as this breach was not pleaded by any party, the finding in that regard amounted to violation of the principles of

natural justice. The learned Judge, however, opined that this objection was wholly without merit as the arbitral tribunal held the Mylandlas to be in 'material breach' as they had failed to provide the Investors with an exit and, therefore, any observation of the arbitral tribunal on some other issue would not come in the way of enforcement of the award. The learned Judge also noted that this objection had not been raised before the Singapore High Court and it, therefore, had to be rejected.

36. The objection of the Mylandlas that the arbitral award had granted reliefs contrary to the provisions of the Specific Relief Act, 1963, and that the same amounted to a breach of the fundamental policy of Indian law was considered at length by the learned Judge. This contention had been raised before the arbitral tribunal but was rejected and the learned Judge opined that it did not survive the strict test of Section 48 of the Arbitration Act. The learned Judge also noted that the Mylandlas did not raise this objection before the Singapore High Court but, having considered the same on merits, the learned Judge concluded that there was no violation of the Specific Relief Act, 1963. On the issue of limitation of liability, the Mylandlas had contended that the arbitral tribunal failed to consider whether the Investors' interpretation of Clause 22 of the SASHA in the context of limitation of liability was correct. The learned Judge, however, opined that the arbitral tribunal had considered the contention of the Mylandlas in this regard and rejected the same. The learned Judge further

opined that the objection sought reinterpretation of the SASHA, which was not permissible under Section 48 of the Arbitration Act.

37. The last and final objection raised by the Mylandlas was that the arbitral award was vitiated by fraud owing to concealment of certain documents. The learned Judge found that the Mylandlas had no answer as to why they did not raise the issue before the arbitral tribunal and the Singapore High Court. They also failed to demonstrate how the alleged concealment had any impact on the validity of the award. The learned Judge opined that enforcement of a foreign arbitral award under Section 48 of the Arbitration Act was not a *de novo* trial on merits and a party resisting enforcement could not rely on evidence that was not placed before the arbitral tribunal. The learned Judge held that the objection of fraud raised by the Mylandlas for the first time failed to meet the strict legal threshold under Section 48(2)(b)(i) of the Arbitration Act. Further, the learned Judge opined that the burden was upon the Mylandlas to establish that the alleged fraud was of such an egregious nature that it went to the root of the award and had a nexus with the arbitral process or its outcome and mere allegations, innuendos or 'after-the-fact discoveries' would not suffice. The allegation of fraud was, therefore, summarily rejected.

38. In conclusion, the learned Judge observed that the Mylandlas had not made out a case of conflict with the basic notions of justice or violation of the substantive public policy of India. He found that there was no

infirmity in the interpretation given by the arbitral tribunal to the contractual terms, as the view taken by it was a plausible one. The learned Judge also noted the doctrine of 'transnational issue estoppel' and observed that a party could not be permitted to reopen issues that had already been fully argued and dealt with by the seat court in a later action before another court, as that would open the door for abuse of process. The learned Judge noted that, applying the issue of estoppel in a transnational setting, the enforcement court would have to give due consideration by balancing competing considerations of comity, due respect, and deference for decisions of foreign courts. Observing that Section 48 of the Arbitration Act did not preclude applying the doctrine of 'transnational issue estoppel', the learned Judge observed that the fundamental policy of Indian law was a broad concept, particularly in the context of arbitration, comprising core legal tenets. He opined that it would signify violations of principles so basic to Indian law that they would be considered non-negotiable rather than just errors of law or fact.

39. The learned Judge held that the Mylandlas, having failed in their attempt to challenge the arbitral award before the Singapore High Court, were making a last-ditch effort to thwart the enforcement of the award by raising untenable grounds. The learned Judge also took adverse notice of the Mylandlas' failure to pay their share of the arbitrators' fees, which had to be paid by the Investors ultimately. Noting that the arbitral award visited

a liability of more than ₹1400 crores upon the Mylandlas, the learned Judge recorded that he had given them a hearing, stretching over several days, only to ensure that their objections were given due consideration and to meet the ends of justice. However, upon consideration, the learned Judge concluded that their objections were untenable and without merit. The learned Judge deemed it appropriate to impose costs of ₹25 lakhs, to be paid by the Mylandlas, jointly and severally, to each of the Investors for deliberately delaying the inevitable by raising untenable objections. The learned Judge, therefore, held the arbitral award dated 05.07.2024, read with the correction order dated 22.08.2024, to be enforceable and deemed the same to be a decree passed by the Court. He, accordingly, directed a decree to be drawn up in terms of the arbitral award dated 05.07.2024, read with the correction order dated 22.08.2024, in favour of the Investors and against the Mylandlas. Liberty was granted to the Investors to execute the award by filing a separate execution petition.

BEFORE THE SUPREME COURT

40. We have set out in detail the progress of events commencing with the arbitration proceedings, culminating in the award dated 05.07.2024 and the correction order dated 22.08.2024, followed by the refusal by the Singapore High Court to set aside the award, *vide* its order dated 21.02.2025, and ultimately the declaration by the learned Judge of the Madras High Court that the award is enforceable as a decree, *vide* the

impugned common order dated 22.09.2025, to demonstrate how each forum discussed and dealt with each issue. Before us, the Mylandlas would again contend that enforcement of the award dated 05.07.2024 would be in breach of the public policy of India, in terms of Section 48(2)(b) of the Arbitration Act, as it was passed in violation of the principles of natural justice and time-honoured principles of law. They would argue that contravention of statutory law linked to public good or public interest would be a facet of public policy. According to them, the application of 'transnational issue estoppel' by the learned Judge of the Madras High Court in relation to a 'public-policy challenge' is erroneous in law. They would assert that the Investors' surrender of shares upon payment of the awarded damages would amount to a 'buy-back', contrary to the mandate of the Companies Act and would, therefore, be against the fundamental policy of Indian law. They would argue that the framing of the relief in this regard in the award would not be decisive and the substance of the relief granted has to be reckoned for what it is and, by doing so, it is clear that the surrender of shares coupled with payment therefor is a 'buy-back' arrangement. They would point out that, as the award makes not only them but also FSSPL jointly and severally liable for the amounts due and payable thereunder, even if enforcement has been sought by the Investors only against them, it would still be open to them to seek reimbursement from FSSPL. In effect, if they succeed in doing so, FSSPL would indirectly

have to fund the Investors' exit and that would amount to a 'buy-back' arrangement without adhering to the restrictions posited by Sections 66 to 68 of the Companies Act.

41. Another argument advanced by the Mylandlas is that the award grants relief in violation of the Specific Relief Act, 1963. They would assert that when damages were awarded, the arbitral tribunal ought not to have ordered a 'strategic sale' as a means of recovering such damages. This, according to them, is in violation of the Specific Relief Act, 1963, and, in consequence, would be violative of the fundamental policy of Indian law. They contend that the amendments in the Specific Relief Act, 1963, in the year 2018, are prospective, as was held by this court in ***Katta Sujatha Reddy and another vs. Siddamsetty Infra Projects Private Limited and others***[8] and ***Annamalai vs. Vasanthi and others***[9]**.** They would, therefore, rely upon the unamended Sections 10(b) and 14(1)(a) of the Specific Relief Act, which permit grant of specific performance only where damages are not an adequate remedy, i.e., when the obligation cannot be reduced into monetary terms. They would argue that the award wrongly equated the adequacy of damages with the potential recoverability of damage while holding that specific performance, via a strategic sale, would arise only if the damages could not actually be realized.

---

8 (2023) 1 SCC 355

9 2025 INSC 1267

42. Another ground urged by the Mylandlas is that Clause 24.6(c) of the SASHA provided for the Investors electing one out of the three remedies upon a 'material breach' - (i) Strategic Sale [Clause 19.6] or (ii) Buy-Back [Clause 19.2] or (iii) Termination of Rights [Clause 24.6(c)]. They would contend that the Investors invoked two remedies simultaneously, i.e., a 'strategic sale' and 'termination of rights'. According to them, the Investors effectively obtained multiple remedies, i.e., a 'buy-back' in the form of damages coupled with 'surrender of shares' (Clause 24.6(b)), 'strategic sale' (24.6) and 'termination of rights' (Clause 24.6(c)).

43. *Per* contra, it is contended on behalf of the Investors that the Mylandlas, being parties to the SASHA, were bound by the terms thereof and that the exit mechanism provided under Clause 19 thereof was central thereto. It is pointed out that they are private equity/venture capital investors and, keeping in mind their substantial investments in FSSPL, they were afforded an array of exit options, coupled with a variety of rights, to protect their investments. They would further point out that FSSPL and the promoters, including the Mylandlas, failed to provide them a feasible exit option, leading to arbitral proceedings culminating in the award dated 05.07.2024. They would point out that the requirement of the Investors surrendering their shares upon payment of the damages was an equitable step based on their own offer. They assert that this would not constitute a buy-back of shares. They would rely upon the decision of the Delhi High

Court in support of their contention that the concept of 'surrender of shares' is entirely different from 'buy-back of shares' (See ***NTT Docomo Inc. vs. Tata Sons Limited***[10]). They assert that the contention that the Investors had approached the Madras High Court seeking to enforce the award only against the Mylandlas, but not against FSSPL, so as to circumvent the 'buy-back' argument, is incorrect. They point out that as the award permitted them to seek 'strategic sale' of FSSPL in the event damages were not paid, it was in their interest to preserve the value of FSSPL if that eventuality arose. They also point out that the award made FSSPL and the Mylandlas jointly liable and, therefore, they were at liberty to choose as to whom they would seek enforcement of the award against. As regards the argument that the award is violative of the fundamental policy of Indian law, the Investors contend that mere violation of a provision of a local law would not amount to violation of the fundamental policy of Indian law. They would point out that the concept of public interest or public good is to be construed narrowly, and the affairs of a private limited company could not be construed to implicate public interest or public good, as contemplated under the Arbitration Act.

44. As regards the contention that the award violates the 'doctrine of election' incorporated in the SASHA, the Investors point out that

---

10 (2017) 241 DLT 65

‘termination of rights’ was sought by them under the SASHA as an interim measure to protect the value of FSSPL till their exit therefrom fructified. They would point out that the correction order dated 22.08.2024 rightly noted this in the proper perspective as the arbitral tribunal observed therein that such ‘termination of rights’ fell away upon the award of the main relief of damages in the form of the exit price.

45. As regards the contention that the award is at loggerheads with the Specific Relief Act, 1963, the Investors point out that the relief of a ‘strategic sale’ is to be resorted to only if the awarded damages are not paid. They would, therefore, assert that ‘strategic sale’ was only a mode of satisfying the Investors’ entitlement to damages. The Investors would contend that, in any event, violation of the pre-amended Specific Relief Act, 1963, would not amount to violation of the fundamental policy of Indian law. They would state that though an incorrect observation was made by the learned Judge in the impugned order that ‘public policy of India’ in Section 48 of the Arbitration Act was narrower than that in Section 34 thereof, the facts did not support such violation being established as the fundamental policy, in the context of both provisions, refers to a core tenet of India’s public policy. As regards ‘transnational issue estoppel’, the Investors would point out that the Singapore International Arbitration Act, 1994, and the Arbitration Act are both modelled on the UNCITRAL Model Law and, therefore, the grounds raised by the Mylandlas before the

Madras High Court could as well have been raised and some were, in fact, raised by them before the Singapore High Court, which was the seat court. Having failed to raise all their grounds before the seat court, the Mylandlas chose to raise only two issues before the High Court. They would point out that the Mylandlas did not even choose to file an appeal against the order of the Singapore High Court and mutely accepted the findings therein. In these circumstances, the Investors would contend that the Mylandlas ought not to be allowed to raise grounds already raised by them unsuccessfully before the Singapore High Court as well as the grounds which ought to have been raised by them but were not so raised. It is contended that the argument of the Mylandlas that the award grants specific performance is fundamentally misconceived. It is pointed out that the arbitral tribunal expressly declined to compel performance of the exit obligations under Clause 19 of the SASHA and awarded damages quantified at the contractual exit price. It is pointed out that 'strategic sale' is only to be resorted to as a mechanism to satisfy the awarded damages in the event of non-payment. It is contended that even otherwise, violation of the Specific Relief Act, 1963, would not be sufficient to infer contravention of the fundamental policy of Indian law as a mere statutory infraction, with nothing more, would not attract the public policy bar under Section 48 of the Arbitration Act. It is pointed out that the conclusion drawn by the arbitral tribunal as to 'material breach' under Clause 24.4(e) of the

SASHA arose from an interpretation of the contractual terms and on the facts arising from the affirmative vote requirement violations relating to Clause 13.4 thereof, and such contractual interpretation and factual appreciation are immune from review under Section 48 of the Arbitration Act. It is pointed out that the 'material breach'was only supplementary to the conclusive finding of 'material breach' in relation to Clause 19 of the SASHA, i.e., with regard to providing an exit mechanism to the Investors and this incidental issue would, therefore, have no bearing on the enforceability of the award. It is further pointed out that no challenge was made in this regard on natural justice grounds before the seat court and, therefore, the Mylandlas would be barred from invoking this new ground for the first time during the enforcement proceedings. They, accordingly, prayed for dismissal of these special leave petitions.

THE STATUTORY SCHEME

46. At this stage, we may note the statutory scheme obtaining in the Arbitration Act. Part II thereof, titled 'Enforcement of certain Foreign Awards' comprises two chapters - Chapter I, dealing with New York Convention Awards; and Chapter II, dealing with Geneva Convention Awards. Chapter I consists of Sections 44 to 52. Section 44 defines a foreign award for the purposes of that chapter, subject to other conditions, as a commercial arbitral award made on or after 11.10.1960 in pursuance of an arbitration agreement to which the 'Convention on the Recognition

and Enforcement of Foreign Arbitral Awards, 1958' (New York Convention), set forth in the First Schedule, applies; and 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 New York Convention applies. The later portion relating to the Central Government's notification in the Official Gazette is found in Section 44(b). This requirement needs to be juxtaposed with Article III of the New York Convention, which is also reproduced in the First Schedule to the Arbitration Act, and provides that each 'contracting State' shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the Articles thereunder. It further provides that more onerous conditions on the recognition or enforcement of arbitral awards, to which the New York Convention applies, shall not be imposed than are imposed on recognition or enforcement of domestic arbitral awards. While so, till date, we find that only 48-50 contracting countries out of the 172 countries that are signatories to the New York Convention have been notified by the Central Government. The justifiability and application of this additional condition under Section 44(b) of the Arbitration Act is not an issue that we are required to consider presently, as Singapore is amongst the countries already notified in the Official Gazette by the Central Government under

Section 44(b) of the Arbitration Act. We, therefore, deem it appropriate to leave that issue open to be considered in an appropriate case.

47. Section 46 of the Arbitration Act is titled 'When foreign award binding' and provides that any foreign award which would be enforceable under Chapter I in Part II shall be treated as binding for all purposes on the persons as between whom it was made and may, accordingly, be relied on by any of those persons by way of defence, set-off or otherwise in any legal proceedings in India. Section 47 of the Arbitration Act details the evidence that the party applying for enforcement of a foreign award is required to produce before the court. Section 48 thereof is titled 'Conditions for enforcement of foreign awards.' Section 48(1)(b) provides that enforcement of a foreign award may be refused at the request of the party against whom it is invoked only if that party furnishes to the court proof that such party was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case. Section 48(2)(b) of the Arbitration Act provides to the effect that enforcement of an arbitral award may be refused if the court finds that the enforcement of the award would be contrary to the public policy of India. Hitherto, the '*Explanation'* to this provision read as follows:

> '*Explanation*.- Without prejudice to the generality of clause (b) of this section, it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.'

After amendment, *vide* Act 3 of 2016 with retrospective effect from 23.10.2015, the substituted '*Explanation'* reads thus:

> '*Explanation* 1.- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, -
>
> (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 of section 81; or
>
> (ii) it is in contravention with the fundamental policy of Indian law; or
>
> (iii) it is in conflict with the most basic notions of morality or justice.
>
> *Explanation* 2.- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.'

48. Section 49 of the Arbitration Act is titled 'Enforcement of foreign awards' and states that where the court is satisfied that the foreign award is enforceable under Chapter I, the award shall be deemed to be a decree of that court. Section 50, titled 'Appealable orders', provides under sub-section (1)(b) thereof that an appeal would lie from an order refusing to enforce a foreign award under Section 48 to the court authorised by law to hear appeals from such order. Further, Section 50(2) thereof states that no second appeal shall lie from an order passed in appeal under Section 50 but nothing therein would affect or takeaway any right to appeal to the Supreme Court.

CASE LAW ON THE SUBJECT

49. In ***Vijay Karia*** (*supra*), a 3-Judge Bench of this Court considered the nuances of a foreign arbitral award in the context of enforcement

thereof under the aforestated provisions of the Arbitration Act. It was noted therein that, unlike Section 37 of the Arbitration Act, which provides for an appeal against the setting aside as well as the refusal to set aside a domestic arbitral award, so far as a foreign award is concerned, Section 50(1)(b) only provides for an appeal against an order refusing to recognize and enforce a foreign award but not the other way round, i.e., an order recognising and enforcing an award. It was observed that this is because the policy of the legislature is that there ought to be 'only one bite at the cherry' in a case where objections are made to a foreign award on the extremely narrow grounds contained in Section 48 of the Arbitration Act and which have been rejected. This was held to be in consonance with India being a signatory to the New York Convention. This Court held that the legislature intended to ensure that a person who belongs to a 'Convention country' and who, in most cases, has gone through a challenge procedure to the said award in the country of its origin, must then be able to get such award recognised and enforced in India as soon as possible. *Per* this Court, this is to see that such person may enjoy the fruits of an award which has been challenged and which challenge has been turned down in the country of its origin, subject to the grounds to resist enforcement being made out under Section 48 of the Arbitration Act. Bearing this in mind, this Court observed that it would be important to remember that the Supreme Court's jurisdiction under Article 136 should

not be used to circumvent the legislative policy so contained and this Court should be very slow in interfering with such judgments and should entertain an appeal only with a view to settle the law, if some new or unique point is raised which has not been answered by the Supreme Court before, so that its judgment may then be used to guide the course of future litigation in that regard. This Court further elaborated that it would only be in an exceptional case of blatant disregard of Section 48 of the Arbitration Act that the Supreme Court would interfere with a judgment which recognises and enforces a foreign award.

50. Though the Mylandlas placed reliance on ***PASL Wind Solutions Private Limited vs. GE Power Conversion India Private Limited***[11] in support of their argument that a party is entitled to 'two bites at the cherry' – one, at the setting aside stage before the seat court; and the second, during the enforcement stage before the enforcement court, it may be noted that the 3-Judge Bench observed therein that in an international commercial arbitration, even when the arbitration takes place in India, resulting in an award being made in India, the ground available under Section 34(2-A) of the Arbitration Act would not be available as it would not apply to an international commercial arbitration held in India. It was observed that, in agreeing to a neutral forum outside India, parties agree

11 (2021) 7 SCC 1

that instead of 'one bite at the cherry' under Section 34 of the Arbitration Act, where the arbitration between two Indian nationals is conducted in India, with the grounds for setting aside that award being available under Section 34 (2-A), what is instead put in place by the parties is 'two bites at the cherry', namely, recourse to a court or a tribunal in a country outside India for setting aside the arbitral award passed in that country on grounds available in that country, which may be wider than the grounds available under Section 34 of the Arbitration Act, and then resisting enforcement under the grounds mentioned in Section 48 of the Arbitration Act.

51. However, in ***Vijay Karia*** (*supra*), the very same learned Judge who authored the decision in ***PASL Wind Solutions*** (*supra*), speaking for that 3-Judge Bench, observed that the policy of the legislature, as evidenced by Section 50 of the Arbitration Act, was that there ought to be only 'one bite at the cherry' in a case where objections are made to a foreign award on the extremely narrow grounds contained in Section 48 of the Arbitration Act and which have been rejected. This observation was made in the context of there being no further appeal under the Arbitration Act against the enforcement court's order holding a foreign award to be enforceable. The observations in the two cases were, therefore, made in different contexts. They stand alone and can be given effect to independently.

52. This Court further observed that, in so far as 'the public policy of India' ground is concerned, both Sections 34 and 48 of the Arbitration Act

are now identical, after the amendment of the Arbitration Act, *vide* Act 3 of 2016 and, therefore, the grounds of challenge relating to public policy of India would be the same for both. This Court observed that, given the fact that the object of Section 48 is to enforce foreign awards, subject to certain well-defined narrow exceptions, the expression was 'otherwise unable to present his case', occurring in Section 48(1)(b), cannot be given an expansive meaning and would have to be read in the context and colour of the words preceding the said phrase. In short, *per* this Court, this expression would be a facet of 'natural justice', which would stand breached only if a fair hearing was not given by the arbitrator to that party. In the context of the alleged violation of the Foreign Exchange Management Rules in that case, reference was made to the earlier decision of this Court in ***Renusagar Power Co. Ltd. vs. General Electric Co.***[12], wherein it was held that infraction of the fundamental policy of Indian law must be a breach of some legal principle or legislation which is so basic to Indian law that it is not susceptible to being compromised.

53. It was held that 'fundamental policy' refers to the core values of India's public policy as a nation, which may find expression in statutes and also in time-honoured, hallowed principles which are followed by the courts. It was observed that the decision in ***Renusagar*** (*supra*) was a

12 1994 Supp (1) SCC 644

decision which had dealt with a challenge to a foreign award under Section 7 of the Foreign Awards (Recognition and Enforcement) Act, 1961, but it still remained relevant as the grounds in Section 7 were borrowed from Article V of the New York Convention, which are almost in the same terms as Sections 34 and 48 of the Arbitration Act. Reference was made by the Bench to ***Shri Lal Mahal Limited vs. Progetto Grano SPA***[13], which made it clear that the legal position settled in ***Renusagar*** (*supra*) would continue to apply to cases which arise under Section 48(2)(b) of the Arbitration Act. Reference was also made to ***Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI)***[14], wherein this Court held that the expression 'public policy of India', whether contained in Section 34 or in Section 48 of the Arbitration Act, would now mean the 'fundamental policy of Indian law', as explained in paras 18 and 27 of ***Associate Builders vs. Delhi Development Authority***[15], i.e., the fundamental policy of Indian law would be relegated to the ***Renusagar*** understanding of this expression.

54. Reference was made to ***Cruz City 1*** (supra), wherein a learned Judge of the Delhi High Court held that the use of the word 'may' in Section 48 of the Arbitration Act does not confer an absolute discretion on the Court but the same would not also mean that the word 'may' should be

13 (2014) 2 SCC 433
14 (2019) 15 SCC 131
15 (2015) 3 SCC 49

read as ‘shall’, and the Court is under a compulsion to refuse enforcement if any of the grounds under Section 48 are established. The plain meaning of the word ‘may’, *per* the learned Judge, was not ‘shall’, and it is used to imply discretion and connotes an option as opposed to compulsion. The learned Judge noted that Section 48 of the Arbitration Act is a statutory expression of Article V of the New York Convention and was similarly worded. *Per* the learned Judge, the object of Article was to enable the signatory States to retain the discretion to refuse enforcement of a foreign award on specified grounds and none other; it did not compel the member States to decline enforcement of foreign awards.

55. On facts, the Bench held that the Foreign Exchange Management Act and the Rules thereunder, unlike the Foreign Exchange Regulation Act, referred to the nation’s policy of managing foreign exchange instead of policing it and, therefore, violation of the said Act or a Regulation or Rule framed thereunder would not amount to a breach of the public policy of India. The Bench pointed out that the fundamental policy of Indian law, as was held in ***Renusagar*** (*supra*)*,* must amount to breach of some legal principle or legislation which is so basic to Indian law that it is not susceptible of compromise. The ‘fundamental policy’, according to the Bench, referred to the core values of India’s public policy as a nation, which may find expression not only in statutes but also time-honoured, hallowed principles which are followed by the courts.

56. The Bench noted that even if a foreign award fails to determine a material issue which goes to the root of the matter or fails to decide the claim or counterclaim in its entirety, the award may shock the conscience of the Court and may be set aside on the ground of violation of the public policy of India, in that it would offend the basic notion of justice in this country. The Bench, however, cautioned that it must always be remembered that poor reasoning, by which a material issue or claim is rejected, cannot fall in this class of cases, and issues that the arbitral tribunal considered as essential and addressed must be given their due weightage, as it often happens that the arbitral tribunal considers a particular issue as essential and answers it, which by implication would mean that the other issue or issues raised have been implicitly rejected. The Bench observed that the important point to be considered is that the foreign award must be read as a whole, fairly, and without nit-picking. If read as a whole, *per* the Bench, the said award has addressed the basic issues raised by the parties and has, in substance, decided the claims and counterclaims of the parties, enforcement must follow. Reference was made to the following observations of Albert Jan van den Berg in his treatise, '*The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation'*:

> 'It is a generally accepted interpretation of the Convention that the Court before which the enforcement of the foreign award is sought may not review the merits of the award. The main reason is that the exhaustive list of grounds for refusal

> of enforcement enumerated in Article V does not include a mistake in fact or law by the arbitrator. Furthermore, under the Convention, the task of the enforcement Judge is a limited one. The control exercised by him is limited to verifying whether an objection of the respondent on the basis of the grounds for refusal of Article V (1) is justified and whether the enforcement of the award would violate the public policy of the law of his country. This limitation must be seen in the light of the principle of international commercial arbitration that a national Court should not interfere with the substance of the arbitration.'

ANALYSIS OF THE LEGAL POSITION

57. In this scenario, we must necessarily bear in mind that though the grounds under Section 48 of the Arbitration Act would have to be applied independently, in the course of such an exercise by the enforcement court in India, a party which has failed in its challenge to the arbitral award before the seat court cannot seek to reopen factual issues that were argued on merits and settled by such court once again before the enforcement court. One must remember that it is the sovereign commitment of India to honour foreign awards, except on the exhaustive grounds provided under Article V of the New York Convention. However, Article V does not advert to under what circumstances an enforcement court can recognize and enforce such an award. Article V(2)(b) of the New York Convention is reflected in Section 48(2)(b) of the Arbitration Act, which brings in limited review of issues raised in the context of the 'public policy' ground. Long ago, in ***Richardson vs. Mellish***[16], public policy was described as 'a very unruly horse' as 'when you get astride of it, you never

[16] (1824) 2 Bing 229 = 130 ER 294

know where it will carry you'. While it may be tough to construe 'public policy' without a workable definition, judicial interpretation offers sufficient guidance whilst maintaining that judicial interference remains minimal. However, in the guise of doing so, a merits-based evaluation cannot be resorted to by the enforcement court and it cannot reopen factual issues which were conclusively settled on merits by the decision of the seat court. It is in this context that the learned Judge of the Madras High Court referred to the doctrine of 'transnational issue estoppel'.

ISSUE ESTOPPEL

58. It would be appropriate to consider the concept of 'issue estoppel' first before turning to the doctrine of 'transnational issue estoppel'. In ***Gopal Prasad Sinha vs. State of Bihar***[17], this Court considered as to what would constitute 'issue estoppel' and opined to the effect that the basic principle underlying the 'rule of issue estoppel' is that, the same issue of fact and law must have been determined in the previous litigation and if there is any likelihood of facts or conditions changing during the two periods which are under consideration, then it would be difficult to say that the finding in the previous proceeding on a similar issue of fact would be binding during the later proceeding. Thereafter, in ***Hope Plantations Ltd. vs. Taluk Land Board, Peermade and another***[18], a 3-Judge Bench of

17 (1970) 2 SCC 905
18 (1999) 5 SCC 590

this Court observed that it is settled law that the principles of estoppel and *res judicata* are based on public policy and justice, though these two doctrines differ in some essential particulars. It was noted that the rule of *res judicata* prevents the parties to a judicial determination from litigating the same question over again, even though the determination may even be demonstrably wrong, as the parties would be bound by the judgment once it attains finality and they would be estopped from questioning it. It was further observed that the parties cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation and these two aspects are - 'cause of action estoppel' and 'issue estoppel'. Noting that these two phrases are of common law origin, the Bench stated that, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. It was held that the determination of the issue between the parties gives rise to an 'issue estoppel' which would operate in subsequent proceedings in the same suit in which the issue has been determined. It was further held that it would operate even in subsequent suits between the same parties, in which the same issue arises. In ***Bhanu Kumar Jain vs. Archana Kumar and another***[19], this Court pointed out

---

[19] (2005) 1 SCC 787

that there is a distinction between 'issue estoppel' and '*res judicata*'. *Per* this Court, *res judicata* debars a court from exercising its jurisdiction to determine the *lis* if it has attained finality between the parties whereas the doctrine of 'issue estoppel' is invoked against the party if such an issue has been decided against him, he would be estopped from raising the same in a later proceeding.

59. Reference was made to the decision of the Court of Appeal in ***Thoday vs. Thoday***[20], wherein it was observed that estoppel *per rem judicatam* is a generic term which, in modern law, includes two species - the first species 'cause of action estoppel' is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in a previous litigation between the same parties; and the second species 'issue estoppel' is an extension of the same rule of public policy and was explained in the following terms – there are many causes of action which can only be established by proving that two or more different conditions are fulfilled and such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the plaintiff in order to establish his cause of action; and there may be cases where the

20 1964 (1) All ER 341 (CA)

fulfilment of an identical condition is a requirement common to two or more different causes of action. If in a litigation on one such cause of action, any of such separate issues as to whether a particular condition has been fulfilled is determined by a court of competent jurisdiction, neither party can, in a subsequent litigation between them, on any cause of action which depends upon fulfilment of the identical condition, assert that the condition was fulfilled if the court in the first litigation determined that it was not or deny that it was fulfilled if the court in the first litigation determined that it was.

TRANSNATIONAL ISSUE ESTOPPEL

60. The doctrine of 'transnational issue estoppel' extends the principle underlying the concept of 'issue estoppel' to international commercial arbitrations and the arbitral awards that arise therefrom. Significantly, there is no decision of this Court on 'transnational issue estoppel' till date. In the light of what has been stated in ***Vijay Karia*** (*supra*) that this Court, in exercise of jurisdiction under Article 136 of the Constitution, ought to examine a matter arising out of an enforcement court's approval of a foreign arbitral award only with a view to settle the law, if some new or unique point is raised, we deem it appropriate to deal with this case in the context of the doctrine of 'transnational issue estoppel' and its applicability during the exercise of jurisdiction by an enforcement court in India in relation to foreign arbitral awards, under Section 48 of the Arbitration Act.

ACADEMIC VIEWS ON THE SUBJECT

61. In his article 'Arbitration and the Transnational System of Commercial Justice: Charting the Path Forward', Chief Justice Sundaresh Menon of the Republic of Singapore notes that courts have facilitated the enforcement of arbitral awards by developing doctrines to prevent the relitigation of disputes over the validity of awards and such doctrines supplement the regime under the New York Convention for the recognition and enforcement of awards. In this regard, he referred to the fact that the courts in some jurisdictions have applied the doctrine of transnational issue estoppel in determining the approach that an enforcement court should take to a prior decision of the seat court on the validity of an arbitral award. Referring to his own decision in ***Republic of India vs. Deutsche Telekom AG***[21], he observes that such decisions help to safeguard the place of arbitration within the 'Transnational System of Commercial Justice' by promoting finality of decisions on the validity of awards. He asserts that this is especially important to ensure that a claimant who has succeeded before both the arbitral tribunal and the seat court is not kept out of the fruits of its victory. He notes that, without doctrines like 'transnational issue estoppel' to guard against relitigation of disputes, there is a real risk that the same award might be enforced in one

21 [2023] SGCA (I) 10

jurisdiction but set aside in another, leading to uncertainty and unfairness that can undermine the value proposition of arbitration as a pre-eminent mode of international commercial dispute resolution.

62. In their article, 'Navigating Challenges to an Arbitral Award – Practical Implications of Transnational Issue Estoppel and the Primacy Principle', Koh Swee Yen, S.C., Joel Quek and Victoria Liu say that an award-debtor should not simply assume that it must challenge an award at the seat. They opine that, depending a party's confidence in the seat of arbitration, an unsuccessful party in an arbitration should carefully consider whether to invoke the 'active remedy' of challenging the award at the seat court as opposed to exercising the 'passive remedy' of challenging the award before the enforcement court. Once the jurisdiction of the seat court has been invoked on issues concerning the validity of an award, *per* the learned authors, it would be an uphill task for a party to relitigate those issues before an enforcement court.

63. In her article, titled - 'Salami-Slicing and Issue Estoppel: Foreign Decisions on the Governing Law', Adeline Chong deals with whether 'issue estoppel' would arise over foreign decisions on the governing law of the claim, which was not directly considered by the seat court. Reference was made to ***Blair vs. Curran***[22], wherein 'issue estoppel' was

[22] (1939) 62 CLR 464

described as a judicial determination directly involving an issue of fact or of law which disposes once for all of the issue, so that it cannot afterwards be raised between the same parties or their privies. The applicability of this doctrine to foreign judgments was said to have been recognized by the House of Lords only in May, 1966 in ***Carl Zeiss Stiftung vs. Rayner and Keller Ltd. (No.2)***[23]. The author notes that different considerations surface when considering whether estoppel arises from a foreign judgment compared to whether it arises from a domestic judgment. Reference was made to the observations in ***Carl Zeiss*** (*supra*) that unfamiliarity with the modes of procedure in foreign courts may lead to difficulties in ascertaining whether a specific issue was decided by the court of origin or if its decision on that issue was fundamental, as opposed to collateral, to the foreign judgment, as only decisions of the former type give rise to 'issue estoppel'. The author notes that 'issue estoppel' and 'cause of action estoppel' are part of estoppel *per rem judicatam*, which precludes a party from contradicting something which has previously been determined and is based on the Latin maxims - *'interest reipublicae ut sit finis litium'* and *'nemo debet bis vaxari pro una et eadem causa'*, which mean, respectively, that it is in the interest of the State that there should be an end to litigation and that no one should be tried twice in relation to

23 [1967] 1 AC 853 (HL)

the same matter. The author notes that the requirements for 'issue estoppel' from a foreign judgment were set out authoritatively in ***DSV Silo-Und Verwaltungsgesellschaft Mbh vs. Owners of the Sennar [The Sennar (No.2)]***[24]:

> "The first requirement is that the judgment in the earlier action relied on as creating an estoppel must be (a) of a court of competent jurisdiction, (b) final and conclusive and (c) on the merits. The second requirement is that the parties (or privies) in the earlier action relied on as creating an estoppel, and those in the later action in which that estoppel is raised as a bar, must be the same. The third requirement is that the issue in the later action, in which the estoppel is raised as a bar, must be the same issue as that decided by the judgment in the earlier action."

64. The author notes that a foreign judgment must be recognised in order for it to have effect in the forum and, therefore, recognition is a pre-condition to accord a foreign judgment preclusive effect. Further, the learned author notes that given the fact that requirements for recognition and *res judicata* are substantively identical, recognition of a foreign judgment will, in most cases, accord it *res judicata* effect at the same time. The learned author lastly notes that estoppel is supposed to 'work justice and not injustice', in terms of ***Carl Zeiss*** (*supra*) and as a result thereof, 'issue estoppel' would operate flexibly and would be denied in 'special circumstances', where its application would cause injustice. She further notes that the matters which are subject to forum international public

---

24 [1985] 1 WLR 490 (HL)

policy would not give rise to an 'issue estoppel' because each court would apply its own public policy and, consequently, there is no identity of issue. Reference was then made by the author to ***Yukos Capital Sarl vs. OJSC Rosneft Oil Co (No 2)***[25], wherefrom these observations of the Court of Appeal of England and Wales were extracted:

> "[P]ublic order" or "public policy" is inevitably different in each country. The standards by which any particular country resolves the question whether the courts of another country are "partial and dependent" may vary considerably … It is our own public order which defines the framework of any assessment of this difficult question; whether such decisions are truly to be regarded as dependent and partial as a matter of English law is not the same question as whether such decisions are to be regarded as dependent and partial in the view of some other court according to that court's notions of what is acceptable or otherwise according to its law."

In her conclusion, the learned author says that, to deny estoppel on the basis of difference in choice of law rules, would be to embark on a slippery slope, culminating in insisting that the foreign court had to apply the same law as the forum court would have, before an estoppel arises and it would undermine the entire thrust of the system for the recognition and enforcement of foreign judgments and estoppels. She observes that the interests of the parties and of the State in upholding finality in litigation would apply with full force in relation to foreign decisions on the governing law, but a caveat would have to be noted for special choice of law

25 [2012] EWCA Civ 855

categories and rules underpinned by public policy considerations, as estoppel would be precluded where the decision is one which raises forum international public policy, forum overriding mandatory rules or the forum court retains the prerogative to decide the issue for itself. For disputes involving such concerns, according to the author, the balance of competing policy considerations is one which the forum court ought to weigh and decide for itself.

CASELAW ON 'TRANSNATIONAL ISSUE ESTOPPEL'

65. We may now note the caselaw on the topic. In ***Good Challenger Navegante S.A. vs. Metalexportimport S.A.***[26], the Court of Appeal (Civil Division) of England and Wales was considering the enforcement of an award made by arbitrators at London against the appellant. The question arose as to whether the decisions of Romanian Courts in relation to the award had any impact on its enforcement in England. The Court of Appeal opined that, in order to establish 'issue estoppel', four conditions must be satisfied, namely: (1) that the judgment must be given by a foreign court of competent jurisdiction; (2) that the judgment must be final and conclusive and on the merits; (3) that there must be identity of parties; and (4) that there must be identity of subject matter, which means that the issue decided by the foreign court must be the same as that arising in the

26 [2003] EWCA Civ 1668

later proceeding. It was held that there must be 'a full contestation and a clear decision' on the issue in question for 'issue estoppel' to apply. Reference was made to the decisions in ***Carl Zeiss*** (*supra*), ***the Sennar (No. 2)*** (*supra*) and ***Desert Sun Loan Corporation vs. Hill***[27] and it was observed that these cases underlined four important features of the approach of courts to 'issue estoppel':

> (i) It is irrelevant that the English court may form the view that the decision of the foreign court was wrong either on the facts or as a matter of English law.
> (ii) The court must be cautious before concluding that the foreign court made a clear decision on the relevant issue because the procedures of the court may be different and it may not be easy to determine the precise identity of the issues being determined.
> (iii) The decision of the court must be necessary for its decision.
> (iv) The application of the principle of issue estoppel is subject to the overriding consideration that it must work justice and not injustice.

Reference was made to the observation in ***Carl Zeiss*** (*supra*) to the effect that: 'All estoppels are not odious but must be applied so as to work justice and not injustice and …. the principle of issue estoppel must be applied to the circumstances of the subsequent case with this overriding consideration in mind.'

On facts, the Court of Appeal found that there were special circumstances which made it unjust to hold the appellant to be issue

---

27 [1996] 2 All ER 847

estopped from arguing its case because of the Romanian courts' orders. The Court of Appeal, accordingly, upheld the decision under appeal that the appellant was not estopped from asserting before the court in England that its claim was not time-barred and there was no abuse of process.

66. In ***Diag Human SE vs. Czech Republic***[28], the doctrine of 'transnational issue estoppel' was again applied in England in the context of a foreign award. Therein, the Austrian Supreme Court had declined to enforce an award made in the Czech Republic on the ground that the award was not yet binding on the parties as it was subject to an additional arbitral review process. In the enforcement proceedings that came before the High Court of England and Wales, it was held that the Austrian decision gave rise to an 'issue estoppel' which prevented the party from raising the same issue as to whether the award was binding on the parties, in its effort to resist enforcement in the English proceeding. It was, however, observed that the issue of 'public policy' may be different from State to State and a decision of a foreign court refusing to enforce an award under the New York Convention on the 'public policy' grounds of that State would not ordinarily give rise to an 'issue estoppel' in England.

67. In ***Stati vs. Republic of Kazakhstan***[29], it was held that a Swedish court's decision not to set aside an arbitral award, wherein the arbitrators

---

28 [2014] EWHC 1639 (Comm)
29 [2017] EWHC 1348 (Comm)

had been misled by the claimants on merits, would not bind the English court in determining whether enforcement of the award in such circumstances would be contrary to English public policy. A similar view was taken in ***Eastern European Engineering Ltd. vs. Vijay Construction (Proprietary) Ltd.***[30], wherein the allegation was that a witness had been interfered with and prevented from giving evidence. The submission, in consequence, was that enforcement of the award in such circumstances would be contrary to public policy. It was held that there was no 'exact identity of issue' and it would be wrong to short-circuit the argument and it would be better to consider the merits of the challenge.

68. The US Court of Appeal, in ***TermoRio S.A. E.S.P. and Leaseco Group LLC vs. Elecranta S.P.***[31], stated that the New York Convention specifically contemplates that the court in the State in which, or under the law of which, the award is made will be free to set aside or modify an award in accordance with its domestic arbitral law and its full panoply of express and implied grounds for relief and this would mean that a primary State court may necessarily set aside an award on grounds that are not consistent with the laws and policies of the secondary contracting State. It was noted that the Convention does not endorse a regime in which secondary States, in determining whether to enforce an award, routinely

30 [2018] EWHC 2713 (Comm)
31 487 F.3d 928 (D.C. Cir. 2007)

second guess the judgment of a court in a primary State when the court in the primary State has lawfully acted pursuant to its authority to set aside an arbitral award made in that country. It was observed that it takes much more than a mere assertion that the judgment of the primary State court offends the public policy of the secondary State to overcome a defence raised under Article V(1)(e) of the Convention.

69. Reference may now be made to the decision of a 5-Judge Bench of the Court of Appeal of Singapore in ***Republic of India*** (*supra*). Therein, speaking for four of the five members on the Bench, including himself, the Chief Justice of Singapore dealt with the issue as to whether the arbitral award against India, which was upheld by the seat court in Switzerland and was to be enforced in Singapore, could be resisted by India by raising issues which already stood settled by the decision of the seat court in Switzerland. It was contended by India that an enforcement court should treat the seat court's decision like any other foreign judgment, without according it special status or primacy. The Chief Justice considered whether the doctrine of 'transnational issue estoppel' would apply in the context of international commercial arbitrations, so as to preclude relitigation of issues before the enforcement court that were previously dealt with by the seat court. The Chief Justice, however, held that the question of 'issue estoppel' would not arise where the public policy of the enforcement court's jurisdiction is in issue, as the question of what

that ‘public policy’ is or requires would not have been previously considered by the seat court. In those circumstances, *per* the Chief Justice, there would be no identity of subject matter as domestic public policy is unique to each State. The Chief Justice, accordingly, concluded that the order of the Swiss court was final and conclusive for the purposes of ‘transnational issue estoppel’ and India was precluded from relitigating the legality of the award. Having held so, the Chief Justice summed up the exceptions to the doctrine of ‘transnational issue estoppel’, as recognized in ***Merck Sharp & Dohme Corp vs. Merck KGaA***[32] :

> (a) First, ‘transnational issue estoppel’ should not arise in relation to any issue that the court of the forum ought to determine for itself under its own law
> (b) Second, ‘transnational issue estoppel’ should be applied with due consideration of whether the foreign judgment in question is territorially limited in its application
> (c) Third, additional caution may be necessary in applying the doctrine of ‘transnational issue estoppel’ against a defendant in foreign proceedings as opposed to against a plaintiff, who has the prerogative to choose the forum.
> (d) Fourth, ‘transnational issue estoppel’ will neither arise in respect of a foreign judgment that conflicts with the public policy of this jurisdiction, nor possibly in respect of foreign judgments that may be considered to be perverse or reflect a sufficiently serious and material error.

70. India’s appeal was, accordingly, dismissed by the Chief Justice. In his concurring opinion, the learned fifth Judge on the Bench observed that the prior decision of the seat court would undeniably and rightly receive

---

32 [2021] 1 SLR 1102

the closest attention from an enforcement court, whether or not it gives rise to any form of preclusive effect. This would depend upon whether it gives rise to an 'issue estoppel'. He pointed out that the seat court has a different role from an enforcement court and the difference was neatly explained in ***Karaha Bodas Co., LLC vs. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara***[33], wherein it was observed that the New York Convention mandates very different regimes for the review of awards in the countries in which or under the law of which the award was made and in other countries where recognition and enforcement are sought. It was noted that under the Convention, the country in which or under the arbitration law of which, an award was made has primary jurisdiction over the award and all other signatory States are secondary jurisdictions in which parties can only contest whether that State should enforce it. It was observed that, in contrast to the limited authority of secondary jurisdiction courts to review an award, courts of primary jurisdiction, usually the courts of the country of the arbitral situs, have broader discretion to set aside an award. While courts of the primary jurisdiction country may apply their own domestic law in evaluating a request to annul or set aside an award, courts in countries of secondary jurisdiction may refuse enforcement only on the grounds set out in Article V.

---

33 364 F.3d 274 (5th Cir. 2004)

71. In ***Hulley Enterprises Ltd vs. Russian Federation***[34], the Court of Appeal of England and Wales referred to ***Republic of India*** (*supra*) and observed that there is no reason why the decision of a foreign court as to whether the State had to agree in writing to submit a dispute to arbitration should not give rise to an 'issue estoppel' as the ordinary rule is that 'issue estoppel' would arise if that foreign judgment is entitled to recognition. Reference was made to ***Carl Zeiss*** (*supra*) wherein three requirements were prescribed for satisfaction, before applying 'issue estoppel'-

(1) (a) The judgment must be given by a Court of a foreign country with the jurisdiction to give it; and
(b) It must be final and conclusive on merits.
(2) The parties in the two actions must be the same; and
(3) The issue decided by the foreign Court must be the same as the issue in the domestic proceedings.

72. In ***Sacofa Sdn Bhd vs. Super Sea Cable Networks Pte Ltd and another***[35], a decision discussed at length in the article titled 'Navigating Challenges to an Arbitral Award – Practical Implications of Transnational Issue Estoppel and the Primacy Principle' (*supra*), the Singapore High Court had occasion to consider the approach a seat court should take towards a prior decision of an enforcement court. The award was the product of a Singapore-seated arbitration involving a Malaysian project. The award-creditor secured an order permitting the registration and

34 [2025] EWCA Civ 108
35 [2024] SGHC 54

enforcement of the award from the enforcement court in Malaysia before the award-debtor applied to the seat court in Singapore to set aside the award. In those proceedings, it was argued that the award was in conflict with Singapore's public policy as it contravened Malaysian law and that the arbitrator had acted in excess of his jurisdiction by deciding a claim that fell outside the scope of the arbitration agreement. The award-creditor, on the other hand, contended that these arguments were considered and rejected by the enforcement court and that the doctrine of 'transnational issue estoppel' precluded the award-debtor from raising such issues again.

73. In this scenario, the High Court held that the enforcement court's findings on the first issue gave rise to a transnational issue estoppel, as the award-debtor's public policy ground was based upon Malaysian public policy, which the Malaysian enforcement court was better placed to deal with. However, as regards the other ground of challenge that the arbitrator had acted in excess of his jurisdiction, the High Court held that, as the seat court, it was better placed to determine whether the arbitrator had acted in excess of his jurisdiction, and the primacy of the seat court justified a departure from applying 'transnational issue estoppel'.

74. A distinction was drawn between 'forum-connected issues', i.e., issues that turned on the legal position in the forum court and were, therefore, uniquely within that court's sphere of competence; and

'forum-neutral issues', i.e., issues that did not depend on the specific law of the forum for determination, such as questions of compliance with the agreed procedure and whether the award was in excess of jurisdiction.

ANALYSIS

75. It may be noted that the learned Judge of the Madras High Court was conscious of the fact that the doctrine of 'transnational issue estoppel' could be applied by him, sitting as the enforcement court, only *vis-à-vis* the objections that had been raised by Mylandlas before the Singapore High Court and which were rejected by that Court. Though the learned Judge was not correct in drawing a distinction between the contours of 'public policy' for the purpose of Section 48 of the Arbitration Act as opposed to Section 34 thereof, we find no error having been committed by the learned Judge owing to that lapse.

76. The application of the doctrine of 'transnational issue estoppel' would effectively curb the propensity of parties to relitigate settled factual issues taking advantage of the fact that they are before a different court in a different jurisdiction, viz., the enforcement court in a country other than the situs of the seat court. This would invariably narrow the scope of interference by the enforcement court with an arbitral award that has already passed muster with the seat court. This would add value and augment the efficiency of arbitration as a dispute resolution mechanism to settle trans-border commercial disputes. However, as noted by the

Singapore Court of Appeal in ***Republic of India*** (*supra*), opposition to enforcement of a foreign arbitral award on 'public policy' violation grounds would necessarily stand on a different footing. Notwithstanding the decision of the seat court upholding an arbitral award, the same can still be subjected to examination by the enforcement court against the parameters of the 'public policy' of the State in which enforcement of such award is sought. In the case on hand, we may note that the arbitral tribunal specifically noted in the award that it had carefully and fully considered the applicable law, i.e., Indian law, and one of the members of the arbitral tribunal is an eminent senior counsel of this Court. Despite the same, it cannot be gainsaid that the enforcement court necessarily had to consider the challenge to the award in the context of the 'public policy of India' grounds urged before it. However, in the guise of mounting such an attack, it is not open to a party whose contentions on the merits of a particular issue on facts have been rejected by the seat court to seek review thereof by the enforcement court. Such a 'merits-based' evaluation is beyond the scope of the enforcement court's jurisdiction under Section 48 of the Arbitration Act and would be barred by application of the doctrine of 'transnational issue estoppel'.

77. Before considering the objections raised by the Mylandlas on 'public policy' grounds, we may encapsulate the core issues, which were decided by way of the award dated 05.07.2024 and stood confirmed by the seat

court in Singapore. At the outset, we may note that the Investors secured shareholdings in FSSPL only as an investment and not to gain control over that company. They were promised returns in the form of a qualified initial public offering (QIPO). FSSPL and the promoters were required to make their best efforts to ensure that this event occurred by 31.03.2016. Clause 19 of the SASHA, however, provided that in the event the QIPO was not completed by that date, then the exit mechanisms mentioned in Clauses 19.1, 19.2, 19.3 and 19.6 were available to the Investors. The scheme of the exit waterfall was that, if the QIPO was not completed, each Investor had the choice to opt for a secondary sale under Clause 19.1 of the SASHA and if any one Investor did so, the same option was to be offered to the other Investors. The secondary sale was to be made at a price per share which was equal to or higher than the 'exit price', which was to be determined as per the procedure prescribed therein. Further, if a secondary sale also did not take place, then the Investors had the collective right to require FSSPL to buy-back some or all of their shares in accordance with the provisions of the Companies Act and the applicable rules. Clause 19 also made it clear that in the event of restriction on the number of shares that FSSPL could buy-back, in terms of Section 68 of the Companies Act, no other legal restrictions or contractual restrictions applicable to any one Investor would impede the exit right of any other Investor under Clause 19, to which such restrictions did not apply. In the

event FSSPL and the promoters were unable to effectuate a secondary sale and/or cause buy-back of the shares of the Investors, the Investors had the right, but not obligation, to cause an IPO under Clause 19.3. It was only if all three options failed to materialise that Clause 19.6 of the SASHA came into play. This Clause is titled 'Failure to provide an exit', and Clause 19.6(b) therein provided that if FSSPL failed to complete a QIPO by 31.03.2016 and failed to provide an exit under Clauses 19.2 and 19.3, or if it was in material breach, then the Investors had the right to implement a strategic sale or merger. 'Material breach' is dealt with under Clause 24.4 of the SASHA. By way of Clause 24.4(c), it is contemplated that the failure to provide an exit to the Investors under Clause 19 of the SASHA would, by itself, constitute 'material breach'. Clause 24.6 provided the Investors with remedies therefor at their option. Under Clause 24.6(a), they could cause strategic sale of the shares in accordance with Clause 19.6, or they could require a buy-back of the shares held by them under Clause 24.6(b), in accordance with Clause 19.2 of the SASHA. Under Clause 24.6(c), they could terminate the rights (but not obligations) of the promoters under the SASHA, by giving written notice to FSSPL and the promoters. Clause 24.5 of the SASHA, however, made it clear that termination of the agreement would be without prejudice to any claims or rights of action, including but not limited to the right to seek damages. Under Clause 29.6 of the SASHA, titled 'Other remedies', if a party

committed a default in terms thereof, the non-defaulting parties were given the entitlement to seek specific performance in addition to their rights and remedies under the SASHA. Further, Clause 29.6(b) posited that each party to the SASHA acknowledged and agreed that the other parties would be 'damaged irreparably' if any provision of the SASHA was not performed in accordance with the specific terms or was otherwise breached. In the event of this happening, it was further provided that such a 'damaged party' would be entitled to injunctive relief to prevent breaches of the SASHA and to enforce specifically the terms and provisions thereof, in addition to any other remedy to which such party may be entitled to in law or in equity. Clause 29.6(c) made it clear that all remedies of the parties under the SASHA, whether provided therein or conferred by statutes, civil law, common law, custom, trade or usage, were cumulative and not alternative and could be enforced successively or concurrently.

78. Given the aforestated scheme obtaining in the SASHA, the arbitral tribunal was fully justified in holding that Clause 19 visited an absolute obligation upon FSSFL and the promoters to provide an exit to the Investors as contemplated therein. However, the exit mechanisms under Clauses 19.1, 19.2, 19.3 and 19.6, which were to happen in the alternative, were then linked to Clause 24.6, as the very failure to provide an exit under Clause 19 constituted a material breach under Clause 24.4(c). Once such a material breach occurred, Clause 24.6 kicked in and

provided three alternatives at the sole option of the Investors. The first, under Clause 24.6(a), was to cause a strategic sale/merger of the company, in accordance with Clause 19.6. The second alternative was to require a buy-back of the shares under Clause 19.2. Though the third alternative, under Clause 24.6(c), was to terminate the rights (and not obligations) of the promoters by giving a written notice to the company, the same did not, in fact, constitute a remedy in the sense that, by doing so, no exit mechanism was provided to the Investors. It was in this context that the arbitral tribunal rightly held that there was a need to read and give meaning to all the provisions in the SASHA alongside one another so as to make sense of all words used in this 'carefully crafted agreement'.

79. As it was never the intention of the Investors, as is evident from a plain reading of the SASHA, to take over FSSPL for their own purposes, and the purchase of its share by the Investors was only by way of an investment with a profit motive, the termination of the rights (and not obligations) under Clause 24.6(c) has to be understood in the correct perspective. We may also not lose sight of the fact that PIOF, Millenna and Nylim I & II are venture capital investors and the very nature of their business is to invest in promising industries, with a profit motive. Therefore, the interpretation of the clauses of the SASHA by the arbitral tribunal, being a plausible and possible one, the same cannot be subjected to examination by the enforcement court and, in consequence,

by this Court by way of a 'merits-based' evaluation. It is well settled that Section 48 of the Arbitration Act does not permit such review of a foreign arbitral award. Further, as we have already noted, Clause 29.6(b) of the SASHA empowered the party damaged by non-performance of any commitment under the SASHA to seek injunctive relief so as to prevent breaches of the agreement and to specifically enforce the agreement terms. It was in aid of seeking such injunctive relief that the notice of termination of the rights of the promoters under Clause 24.6(c) seems to have been given to FSSPL and the promoters. As rightly contended on behalf of the Investors, this measure was required so as to protect and maintain the value of FSSPL as a going concern, so as to facilitate the Investors effectuating their exit through a strategic sale. However, once they went before the arbitral tribunal and sought damages in terms of the 'exit price' promised to them under Clause 19.1 of the SASHA, and the arbitral tribunal directed payment of damages to the Investors in terms of such 'exit price' obtaining as on 18.09.2020, the termination of the rights of the promoters, under the notice dated 11.04.2022 of the Investors, fell away. This aspect was clarified by the correction order dated 22.08.2024.

80. We may note, at this stage, that certain aspects raised in the grounds in these special leave petitions were not even argued. We, therefore, take it that the same have been discarded and are not being pressed. Such grounds are, accordingly, eschewed from consideration.

BUY-BACK OF SHARES

81. As regards the contention of the Mylandlas that the surrender of shares by the Investors upon payment of damages translates to a buy-back of shares, thereby attracting the provisions of the Companies Act, we may note that this argument was dealt with at length by the seat court and was conclusively rejected by it. Further, the learned Judge of the Madras High Court also considered the issue at length and opined that a surrender of shares could not be equated to a buy-back of shares. We find the distinction drawn by the learned Judge of the Madras High Court between 'surrender of shares' and 'buy-back of shares' to be unexceptionable. We may note, at this stage, it was the Investors themselves who made the offer that they would surrender their shares upon payment of the damages, so as to pre-empt an argument being advanced of unjust enrichment. Had the Investors not made such offer, this ground would not even have been available to the Mylandlas. It is, therefore, clear that they are only clutching at straws by harping upon this issue time and again. Further, as rightly noted by the learned Judge of the Madras High Court, there is no indication in the arbitral award as to whom the surrender of shares is to be made. Logically, if the Mylandlas themselves make the payments due under the award, the shares would be surrendered to them, which would, in effect, increase their shareholding in FSSPL and would not be either a buy-back by FSSPL or

reduction of its share capital. Therefore, on the face of it, the provisions of Sections 66 to 68 of the Companies Act have no application and the contention of the Mylandlas that enforcement of the award would result in violation thereof, and in consequence, violation of the public policy of India, has no legs to stand upon.

82. As noted by the learned Judge, a separate option of buy-back of shares was available to the Investors under Clause 29.6(b), read with Clause 19.2 of the SASHA. That was not the remedy that was availed of by them or granted to them by the arbitral tribunal. The Investors themselves offered to surrender their shares upon payment of the awarded damages. Had they not done so, the Mylandlas would have had to seek legal redressal for securing such shares from the Investors after paying the awarded damages. It was only the fairness of the Investors in offering to surrender their shares in FSSPL upon payment of the awarded damages that has resulted in the present position, which the Mylandlas are trying to take advantage of. We may also note that, even if the Investors were themselves under a misconception as to whom they would be surrendering their shares to, the learned Judge of the Madras High Court rightly identified that the arbitral award does not stipulate as to which entity/persons such surrender is to be made to. The understanding of the parties, including the Investors, therefore, has no binding effect, whereby the Mylandlas can now claim that the Investors themselves said that they

would be surrendering their shares to FSSPL. In effect, we find that there was neither a buy-back of shares by FSSPL nor was there any reduction of capital, whereby the Mylandla can fall back on the provisions of the Companies Act and allege violation thereof. The absence of such violation being the specific finding of the arbitral tribunal, which has attained finality, it cannot be reopened for a 'merits-based' evaluation by the enforcement court. Therefore, the question of the 'public policy of Indian law' being raised in that context does not even arise.

83. In this regard, we may also note that by giving a different colour to a factual issue, it is not open to a party to the foreign award to seek to bring it within the ambit of Section 48(2)(b) of the Arbitration Act by raising a' public policy' ground. The doctrine of 'transnational issue estoppel' would bar the same. Once the seat court held that there was no buy-back of shares and only a surrender of shares by the Investors, that issue stood settled once and for all and it is not open to the Mylandlas to seek to reopen the same on the anvil of Section 48(2)(b) of the Arbitration Act. Such a ground would have been available to them only if the seat court had agreed that the transaction in question amounted to a buy-back of shares but stopped short of granting relief on that score. The Mylandlas could have built upon such a finding so as to require examination thereof apropos a 'public policy' ground under Section 48(2)(b) of the Arbitration Act. As rightly held by the learned Judge, once such an issue stood

decided by the seat court against the Mylandlas, ‘transnational issue estoppel’ would apply.

ELECTION OF REMEDIES

84. As regards the contention that the Investors availed both remedies simultaneously, i.e., a strategic sale as well as the termination of the rights of the promoters, contrary to Clause 29.6, we have already held that this was essentially an issue pertaining to the interpretation of the terms of the SASHA. Once the arbitral tribunal undertook that exercise, a ‘merits-based’ evaluation of the finding thereon cannot be permitted under Section 48 of the Arbitration Act.

85. Though the Mylandlas contended that the arbitral tribunal had failed to abide by the principles of natural justice, we find no merit in this contention. All the relevant clauses of the SASHA were considered by the arbitral tribunal, including their interpretation and correlation. Therefore, the mere fact that the tribunal delivered a correction order on 22.08.2024 at the behest of the Mylandlas themselves, clarifying the position in their favour by stating that the termination of their rights would fall away once the relief of damages was awarded to the Investors, cannot be treated as an issue that was decided afresh thereby. The Mylandlas’ claim that this aspect was never in issue and, therefore, the same amounts to violation of the principles of natural justice, therefore, cannot be accepted nor can it be said to be in violation of time-honoured principles of Indian law.

SPECIFIC RELIEF ACT, 1963

86. The attack launched by the Mylandlas on the ground that enforcement of the arbitral award would result in violation of the provisions of the Specific Relief Act, 1963, is equally without foundation. In this regard, we may note that the reliance placed upon the decision of this Court in ***Katta Sujatha Reddy*** (*supra*) is misplaced as that decision was reviewed and recalled by another 3-Judge Bench of this Court in ***Siddamsetty Infra Projects Private Limited vs. Katta Sujatha Reddy and others***[36]. In ***Annamalai*** (*supra*), a Bench of two learned Judges took note of such recall and the decision therein then turned upon its own facts. Needless to state, the larger Bench decision in ***Siddamsetty*** (*supra*) was binding upon the 2-Judge Bench. In any event, we may note that this objection had been raised by the Mylandlas before the arbitral tribunal and the same stood rejected. The Mylandlas, in their wisdom, did not choose to raise this issue before the seat court, but despite the same, the seat court looked into it and concluded that there was no such violation. In the light of the findings on this issue by the arbitral tribunal and, thereafter, by the seat court, no merits-based evaluation by the enforcement court was permissible as regards the validity of such finding. In consequence, that issue cannot be reopened in the guise of a camouflaged contention that

36 (2024) 20 SCC 140

violation of the provisions of the Specific Relief Act would constitute a ground under Section 48(2)(b) of the Arbitration Act. As no such violation stood established on facts as per the arbitral tribunal and the seat court, the Mylandlas cannot build that argument in thin air.

TERMINATION OF THE RIGHTS OF THE MYLANDLAS

87. We may note that PIOF, Millenna and Nylim I &II, being venture capital entrepreneurs, invested substantial monies in FSSPL upon the premise that a QIPO would take place before the cut-off date, 31.03.2016, thereby expecting handsome returns on their investment. It is in that context that the SASHA provided a variety of exit mechanisms in the event the QIPO did not take place. It is, therefore, clear that the intent of the Investors was to secure their investments and the returns thereon, by ensuring an 'exit price/fair market value' being given to them when they liquidated their investments in FSSPL. We may also note that Clause 24.4 of the SASHA elucidates the occurrences which would constitute a 'material breach'. Under Clause 24.4(c) thereof, the very failure to provide an exit to the Investors under Clause 19 is categorized as a 'material breach'. As already noted, in the event a 'material breach' occurs, the Investors, at their sole option, were entitled to either opt for a strategic sale under Clause 19.6 or a buy-back of their shares under Clause 19.2. It is nobody's case that the Investors opted for Clause 24.6(b) by seeking a buy-back of their shares. No doubt, Clause 24.6(c) provides for

termination of the rights, but not the obligations, of the promoters under the SASHA as a third option to Clauses 24.6(a) and 24.6(b).

88. However, what was contemplated by Clause 24.6(c) did not happen, as what is to happen thereunder is a complete ouster of the promoters, whereby the Investors could have taken over FSSPL. However, the email dated 11.04.2022 addressed by Millena and Nylim I & II specifically stated that they were terminating the rights (but not the obligations of the Mylandlas) under the SASHA. Thereby, the following rights of the Mylandlas stood terminated - right to be the Chairman of the Board or a Committee thereof; right to manage FSSPL; right to appoint promoters, directors; right to jointly appoint independent directors; quorum rights in respect of board meetings and shareholders' meetings; right to be Chairman of the shareholders' meetings; and any other right under SASHA. The Mylandlas were called upon to refrain from exercising any rights under the SASHA, including the right to manage FSSPL. The seniormost management executives, including Rudhraapathy J, and other key personnel of FSSPL were to continue to exercise their functions and oversee the management of FSSPL in the ordinary course. Therefore, Millenna and Nylim I & II did not convey any intention under the aforestated email of taking over the company so as to run it themselves but merely directed the handing over of its management to Rudhraapathy J and others, to the exclusion of the Mylandlas. This was obviously to

ensure that there would be no wrongdoing in the running of FSSPL or in relation to its assets, pending further determination of the rights and remedies of the Investors. Therefore, the arbitral tribunal was correct in its approach in treating the termination of the rights of the Mylandlas as an interim measure, which would no longer survive after the damages were paid to the Investors, whereupon they would be put back in the saddle.

89. As regards the argument that the arbitral award grants the relief of specific performance, we may note that the substantial relief that was granted to the Investors is award of damages at the 'exit price'. The FSSPL and the Mylandlas were held jointly and severally liable to pay the same. However, in the event they failed to do so, the entitlement given to the Investors to realise such damages was by way of resorting to a strategic sale. Therefore, this relief, in the alternative, which was to arise only if FSSPL and the Mylandlas failed to make the payment, cannot be said to be 'specific performance' of a strategic sale. Being venture capital investment companies, the Investors were primarily interested in realising their returns and not in usurping management of the company that they invested in or the transfer thereof to third parties. It is only to secure their interests that the option of strategic sale was provided as a means of the last resort in Clause 19.6 of the SASHA. The arbitral award only allowed them to take recourse to this option if they were unable to realize the awarded damages, as directed therein. We reiterate that the 'termination

of the promoters' rights', provided in Clause 24.6(c) of the SASHA, was not one of the 'exit' options under Clause 19 thereof. This is a crucial aspect which must be kept in mind, as the 'material breach' that occurred was due to the failure of FSSPL and the Mylandlas in providing an 'exit' to the Investors under Clause 19. Reading the clauses together, the option of strategic sale was not shut out by the Investors exercising their option under Clause 24.6(c), unless the intention to take over FSSPL was itself manifested. As already noted, the email dated 11.04.2022 addressed to the Mylandlas did not evidence any such intention.

90. As rightly pointed out by the learned senior counsel appearing for the Investors, it was entirely within their choice to decide as to against whom they would seek enforcement of the arbitral award, as it made several parties jointly and severally liable. The Investors have logically explained as to why they limited their choice in that regard only to the Mylandlas and did not extend it to FSSPL. This was to see that FSSPL retained its value, as a going concern, as the entitlement granted to the Investors in the event the damages were not paid by FSSPL and/or the promoters, was to resort to a strategic sale and in that event, the value of the company would have been impacted if it was subjected to any coercive measure at such stage. We, therefore, find no clandestine or improper motive on the part of the Investors in choosing to seek enforcement of the award only against the Mylandlas.

91. Thus, we find that the grounds urged by the Mylandlas in support of their challenge to the order passed by the learned Judge of the Madras High Court and the enforcement of the arbitral award are entirely without merit and substance. Having failed before the enforcement court, in the second instance and despite being burdened with costs, the Mylandlas chose to bring the matter before us, expending the valuable time, not only of this Court, but also that of the Investors, who were to file a separate execution petition pursuant to the impugned common order.

92. The special leave petitions are, accordingly, dismissed. As we find that this was, to put it in the words of ***Vijay Karia*** (*supra*)*,* a mudslinging effort by the Mylandlas with the hope that some of the mud so flung would stick, they are richly deserving of being mulcted with further costs. We, accordingly, dismiss the special leave petitions with further costs of ₹25,00,000/- (Rupees Twenty-five Lakh only) to be paid by the Mylandlas jointly to each of the Investors.

....., J.
SANJAY KUMAR

....., J.
K. VINOD CHANDRAN

New Delhi.
March 25, 2026