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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 16th July, 2024

\+ **ARB.P. 286/2023**

M/S KTC INDIA PVT. LTD. ..... Petitioner
Through: Mr. Amit Gupta, Mr. Shiv Verma, Ms. Muskan Nagpal, Advocates.

versus

RANDHIR BRAR & ORS. ..... Respondents
Through: Mr. Amit Agrawal, Mr. Rahul Kukreja, Ms. Sana Jain, Ms. Reaa Mehta, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a "Shareholders Agreement" dated 20.07.2018 ["the Agreement"].

2. A preliminary question arises as to whether the petition is maintainable in this Court, in view of the fact that one of the parties to the Agreement – Mr. Nicholas Valladares (arrayed as respondent No. 5 in the petition), is admittedly not a national or habitual resident of India. The question depends upon whether the proposed arbitration would constitute an "international commercial arbitration" within the meaning of Section 2(1)(f) of the Act, in which case, the power to appoint an arbitrator under

Section 11(9) of the Act would lie with the Chief Justice of India or his nominee, and not with this Court.

3. There are fifteen parties to the Agreement. The petitioner is described as the "Initial Shareholder" and thirteen individuals are collectively referred to as "Subsequent Shareholders". A company by the name of Destinos India Gurus Private Limited ["Destinos"] is also a party to the Agreement, but has not been impleaded in this petition. The purpose of the Agreement is to reorganize the shareholding of Destinos so that the petitioner and the respondents hold shares in the ratio of 30:70 respectively.

4. The Agreement contains an arbitration clause [Clause 26], which provides as follows:

> "***26. GOVERNING LAW AND DISPUTE RESOLUTION***
>
> *26.1 This Agreement shall be governed by and construed in accordance with the laws of India. Subject to arbitration provisions provided herein below, the courts in New Delhi shall have jurisdiction in respect of any and all disputes or differences arising out of or in connection with this Agreement.*
>
> *26.2 If any dispute or difference of any kind whatsoever arises between the Parties in connection with or arising out of this Agreement (and whether before or after the termination or breach of this Agreement), the Parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement by negotiation for 60 days. In the event no amicable settlement is reached within a period of 60 days from the date on which the dispute or difference arose, such dispute or difference shall be referred to a mutually accepted sole arbitrator.*
>
> *26.3 In the event that the Parties fail to agree to the appointment of a sole arbitrator within 15 days, then the Parties shall jointly apply to the Court for appointment of an independent arbitrator who shall be a retired judge of a High Court. The arbitration shall be held in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force.*

26.4 The arbitration proceedings shall be held in New Delhi and shall be conducted in the English language.

26.5 Nothing contained in this Clause shall prevent any Party from applying to any court of competent jurisdiction for temporary or permanent injunctive relief or to enforce any of its right as under this Agreement."

5. Disputes having arisen between the parties, learned counsel for the petitioner addressed a letter dated 30.01.2023 to each of the thirteen respondents, invoking arbitration and proposing the name of a former judge of this Court as the sole arbitrator. As the parties have failed to agree upon the appointment of an arbitrator, the petitioner has approached this Court under Section 11 of the Act.

6. It is not disputed that the jurisdiction to appoint an arbitrator in cases of international commercial arbitration, rests with the Chief Justice of India or his nominee, and not with this Court. The point urged by Mr. Amit Gupta, learned counsel for the petitioner, however, was that the proposed arbitration, in the facts of this case, does not fall within the definition of "international commercial arbitration" in terms of Section 2(1)(f) of the Act.

7. Section 2(1)(f) of the Act reads as follows:

"*2. Definitions.—*

(1) In this Part, unless the context otherwise requires,—

(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and ***where at least one of the parties is—***

(i) ***an individual who is a national of, or habitually resident in, any country other than India****; or*

(ii) a body corporate which is incorporated in any country other than India; or

> *(iii)* ***an association or a body of individuals whose central management and control is exercised in any country other than India****; or*
>
> *(iv) the Government of a foreign country;*"[1]

8. Mr. Gupta submitted that all the thirteen individuals described as "Subsequent Shareholders" in the Agreement, have entered into a common enterprise to subscribe to the shares of Destinos, as set out in the Agreement, and thus constitute "an association or a body of individuals", within the meaning of Section 2(1)(f)(iii) of the Act. He contended that the central management and control of this association or body of individuals is exercised in India and the arbitration, therefore, does not satisfy the definition of "international commercial arbitration". Mr. Gupta relied upon the judgment of the Supreme Court in *Larsen & Toubro SCOMI Engineering BHD v. Mumbai Metropolitan Region Development Authority*[2] to submit that, where a group of individuals can appropriately be classified as "an association or a body of individuals", the question to be answered is whether the central management and control of the association or body of individuals rests in India. If so, the fact that one of the said individuals is a body corporate incorporated outside India, or an individual who is not a citizen or habitual resident of India, would not bring the arbitration within the definition provided in Section 2(1)(f) of the Act. Mr. Gupta also cited the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*[3] and *Amway (India) Enterprises (P) Ltd. v. Ravindranath Rao Sindhia*[4], and the

[1] Emphasis supplied.
[2] (2019) 2 SCC 271.
[3] (2020) 20 SCC 760.
[4] (2021) 8 SCC 465.

judgment of this Court in *SAIL v. Tata Projects Ltd.*[5] in support of his contentions. Reference has also been made to *Meera and Co. v. CIT*[6], *Ramanlal Bhailal Patel v. State of Gujarat*[7], and *Mansarovar Commercial (P) Ltd. v. CIT*[8].

9. Mr. Amit Agarwal, learned counsel for the respondents, on the other hand, submitted that the thirteen individuals were each, independently, parties to the Agreement in their individual capacity, and there is no material on record to suggest that they form part of a single "association or a body of individuals", so as to justify the application of Section 2(1)(f)(iii) of the Act. Mr. Agarwal argued that Section 2(1)(f)(i) of the Act, which refers to the nationality or habitual residence of individuals, is squarely applicable to the present case.

10. Turning first to the judgments cited by Mr. Gupta, in *Larsen & Toubro*[9], the contracting parties were a consortium comprising of an Indian company and a Malaysian company, on the one hand, and Mumbai Metropolitan Region Development Authority ["MMRDA"], on the other hand. The Indian company was designated as the "lead partner" of the consortium. The consortium filed a petition under Section 11 of the Act before the Supreme Court on the ground that one of the parties to the Agreement was a body corporate incorporated in Malaysia. The Supreme Court was taken through the agreement between the consortium and MMRDA, as well as the consortium agreement between the two constituents thereof. An order of the Bombay High Court dated

[5] 2021 SCC OnLine Del 4170.
[6] (1997) 4 SCC 677.
[7] (2008) 5 SCC 449.
[8] 2023 SCC OnLine SC 386.

20.10.2016 was also cited in support of the argument that the claims sought to be agitated could be made only by the consortium, and not by its constituent entities individually. The Supreme Court found that the aforesaid order of the Bombay High Court was conclusive as to the status of the consortium as the only contracting party, leaving its individual constituents without locus to agitate any claims independently. In these circumstances, the Court came to the conclusion that the consortium was an unincorporated association, of which the Indian company was the lead partner and had the determining voice, i.e., that the central management and control of the consortium was exercised in India. The Supreme Court therefore dismissed the petition under Section 11 of the Act filed before it, with liberty to the petitioner to approach the appropriate Court.

11. *Perkins*[10] is also a case where one of the contracting parties was a consortium, comprising of a foreign entity (incorporated in New York) and an Indian entity. Disputes arose under the contract between the consortium and the respondent, HSCC India Ltd. The consortium approached the Supreme Court for appointment of an arbitrator. The maintainability of the petition was contested on the ground that the arbitration proceedings was not an international commercial arbitration at all. The Supreme Court allowed the petition, holding that the lead member of the consortium was a foreign entity (unlike in *Larsen & Toubro*[11]), and the requirements of Section 2(1)(f) of the Act were therefore satisfied.

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[9] Supra (note 2).
[10] Supra (note 3).
[11] Supra (note 2).

12. In contrast to the aforesaid two cases, *Amway*[12] concerned individuals who were nationals and habitual residents of the United States of America, who approached this Court for appointment of an arbitrator. This Court relied upon the judgment in *Larsen & Toubro*[13], to hold that the two individuals (who were husband and wife) had entered into a single agreement for operation of a distributorship, as a single entity. This Court found that the individuals constituted an "association or a body of individuals" with its central management in India, and therefore proceeded to exercise jurisdiction under Section 11 of the Act. The Supreme Court reversed the decision, observing that the judgment in *Larsen & Toubro*[14] turned upon a final and binding judgment between the parties, which made it clear that the constituents of the consortium could not rely upon their status as independent entities while dealing with MMRDA.

13. In *SAIL*[15], the judgment of a coordinate Bench of this Court was rendered under Section 34 of the Act. One of the contracting parties was a consortium comprising of a foreign entity and an Indian entity. This Court found that the agreement contemplated separate rights and obligations of the members of the consortium, and the agreement would therefore constitute an international commercial arbitration.

14. In *Meera & Co.*[16], the Court was concerned with the interpretation of the term "association of persons or a body of individuals" under the

[12] Supra (note 4).
[13] Supra (note 2).
[14] Ibid.
[15] Supra (note 5).
[16] Supra (note 6).

Income Tax Act, 1961. It is in this context that the Court has held as follows:

> "*29. In this definition, in clause (v), both "association of persons" and "body of individuals" have been included with the added words "whether incorporated or not". Another thing to note is that clause (v) speaks of "an association of persons or a body of individuals". This implies that an "association of persons" is not something distinct and separate from a "body of individuals". It has been added to obviate any controversy as to whether only combination of human beings are to be treated as a unit of assessment. The intention clearly is to hit combinations of individuals and individuals, combinations of individuals and non-individuals and also combinations of non-individuals with other non-individuals who are engaged together in some joint enterprise when such joint enterprise does not fall within any of the other categories enumerated in sub-section (31) of Section 2 of the Act.*"

15. In *Ramanlal*[17], the Court examined the definition of "association of persons or body of individuals" in the context of Bombay General Clauses Act, 1904 and the Gujarat Agricultural Lands Ceiling Act, 1960, and held as follows:

> "*28. The terms "association of persons" and "body of individuals" (which are interchangeable) have a legal connotation and refer to an entity having rights and duties. They are not to be understood literally. For example, if half a dozen people are travelling in a car or a boat, or standing in a bus-stop, they may be a group of persons or a "body of individuals" in the literal sense. But they are not an association of persons/body of individuals in the legal sense. When a calamity occurs or a disaster strikes, and a band of volunteers or doctors meet at the site and associate or cooperate with each other for providing relief to victims, and not doing anything for their own benefit, they may literally be an association of persons, but they are not "an association of persons/body of individuals" in the legal sense. A mere combination of persons or coming together of persons without anything more, without any intention to have a joint venture or carry on some common activity with a common understanding and purpose will not convert two or more persons into a body of individuals/association of persons. An "association of persons/body of individuals" is one in which two or more persons join in a common purpose and common action to achieve*

[17] Supra (note 7).

some common benefit. Where there is a combination of individuals by volition of the parties, engaged together in some joint enterprise or venture, it is known as "association of persons/body of individuals". The common object will have some relevance to determine whether a group or set of persons is an association of persons or body of individuals with reference to a particular statute. For example, when the said terms "association of persons" or "body of individuals" occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profit or gain (vide CIT v. Indira Balkrishna [AIR 1960 SC 1172] , Mohd. Noorulla v. CIT [AIR 1961 SC 1043] , N.V. Shanmugam and Co. v. CIT [(1970) 2 SCC 139] and Meera and Co. v. CIT [(1997) 4 SCC 677]). But the object need not always be to carry on commercial or business activity. For example, when the word "person" occurs in a statute relating to agriculture or ceiling on landholding, the term "association of persons/body of individuals" may refer to a combination of individuals who join together to acquire and own land as co-owners and carry on agricultural operations as a joint enterprise.

29. Normally, where a group of persons have not become co-owners by their own volition with a common purpose, they cannot be considered as a "person". When the children of the owner of a property succeed to his property by testamentary succession or inherit by operation of law, they become co-owners, but the co-ownership is not by volition of parties nor do they have any common purpose. Each can act in regard to his/her share, on his/her own, without any right or obligation towards the other owners. The legal heirs though co-owners, do not automatically become an "association of persons/body of individuals". When different persons buy undivided shares in a plot of land and engage a common developer to construct an apartment building, with individual ownership in regard to respective apartment and joint ownership of common areas, the co-owners of the plot of land, do not become an "association of persons/body of individuals", in the absence of a deeming provision in a statute or an agreement. Similarly, when two or more persons merely purchase a property, under a common sale deed, without any agreement to have a common or joint venture, they will not become an "association of persons/body of individuals". Mere purchase under a common deed without anything more, will not convert a co-ownership into a joint enterprise. Thus when there are ten co-owners of a property, they are ten persons and not a "body of individuals" to be treated as a "single person". But if the co-owners proceed further and enter into an arrangement or agreement to have a joint enterprise or venture to produce a common

result for their benefit, then the co-owners may answer the definition of a "person"."

16. It is evident from these authorities that the question of whether a particular group of individuals or entities fall within the scope of an "association or a body of individuals", is dependent upon the particular facts and circumstances of the case. In the present case, on consideration of the terms of the Agreement, I am of the view that the respondents herein cannot be held to constitute an "association or a body of individuals", so as to fall within Section 2(1)(f)(iii) of the Act.

17. The Agreement contains no such indication, other than collective reference to the thirteen individuals (the respondents herein) as "Subsequent Shareholders". Mr. Gupta relied upon this factor to submit that they were to be treated as a single entity. However, I am not inclined to accept this submission merely on the basis that they are referenced collectively. This is not a case of a consortium or partnership of any sort. The thirteen individuals are separately listed in the Agreement, and their individual addresses are also stated. In fact, Clause 2.1(d) of the Agreement, set out below, also indicates that the reference to this group of "Subsequent Shareholders" is only for convenience of collective reference, and does not diminish their status as independent and individual contracting parties:

"2. INTERPRETATIONS

2.1 In this Agreement, unless the context otherwise requires:

xxxx xxxx xxxx

(d) References to the singular number shall include references to the plural number and vice versa. ***In other words reference to any group of shareholder (Initial or Subsequent Shareholders) shall, unless the***

context otherwise require, include and be binding upon all the constituents/ members of that group;"[18]

18. Some of the other clauses of the Agreement also indicate that individual constituents of each group of shareholders have the capacity to take independent decisions under the Agreement. Consequently, and significantly for the present purposes, the arbitration clause in the Agreement also refers to each "party" and not to "Subsequent Shareholders" as a group. Examples of such clauses are as follows:

> *"6.2 Additional funding after Initial Committed Funds:*
>
> *(a) If after the expiry of Initial Shareholder's Lock-in Period the debt (including the Initial Committed Funds) extended by the Initial Shareholder or its Affiliates under or pursuant to this Agreement remains outstanding and the Company requires additional funding for the operations of the Company as per the relevant Business Plan agreed between the Parties, the Parties agree that such funding shall be financed in the manner as follows:*
>
> *xxxx xxxx xxxx*
>
> *(iii) In the event any* ***Shareholder group or the constituents thereof*** *decline the first right to subscribe to the Fresh Issue, then, the Fresh Issue will be offered to the other Shareholders group and to third parties in that order. It is agreed by the Shareholders that offer of Fresh Issue made to any third party or parties will be subject to prior approval of all existing Shareholders. It is also agreed by the Shareholders that offer of Fresh Issue made to any third parties will never be on terms which are more favorable than those offered to the Shareholders.*
>
> *xxxx xxxx xxxx*
>
> *xxxx xxxx xxxx*
>
> *9.5* ***Any Party may****, from time to time and at any time, if it thinks fit, present to the Board for approval any amendment or modification of, or addition or addendum to the Business Plan. Any such amendment or*

[18] Emphasis supplied.

modification of, or addition or addendum to the Business Plan shall, if approved by the Board as aforesaid, continue in effect for so long as the relevant Business Plan continues in effect.

xxxx *xxxx* *xxxx*

xxxx *xxxx* *xxxx*

10.2 Lock-in Period for Subsequent Shareholders:

(a) Except as otherwise stated in the Agreement, ***the members of the group of Subsequent Shareholders*** *shall not be entitled to transfer or encumber or otherwise dispose of or assign their shares in the Company for a minimum period of 8 (eight) years from the Effective Date ("Subsequent Shareholders Lock-in Period"):*

Provided that if ***any constituent of the Subsequent Shareholders*** *transfer, encumber, assign or otherwise dispose of their shares before the expiry of the Subsequent Shareholders Lock-in Period, then* ***he/ she shall be liable*** *to pay a sum equivalent to the value calculated in the manner given in sub-clause (i) or sub-clause (ii) below, whichever is higher, as penalty to the Company:*

(i) value of his/her shareholding in the Company computed @ Rs. 15 crores; or
(ii) value of his/her shareholding in the Company computed @ 1.25 times of the turnover of the Company in the last Financial Year.

The provision of this clause 10.2 (a) is without prejudice to any other provision of this Agreement and shall survive the termination of this Agreement.

(b) Nothing in clause 10.2 (a) above shall restrict the exit of ***any member of the group of the Subsequent Shareholders*** *in the situation of his / her prolonged illness (as certified by a qualified medical practitioner) or incapacitation or otherwise specifically approved by the Initial Shareholder and the Board. It is, however, agreed that no transfer of shares by way of sale or otherwise shall take place except in accordance with the terms of this Agreement.*

(c) After the expiry of Subsequent Shareholders Lock-in Period, ***if any constituent of the Subsequent Shareholders proposes to transfer his/her shares****, then*

they shall be permitted to do so in accordance with the provisions as laid down under this Agreement.

xxxx *xxxx* *xxxx*

xxxx *xxxx* *xxxx*

20.1 (a) After the expiry of the Lock-in Period (as applicable to the Initial Shareholder and Subsequent Shareholders under Clause 10.1 and Clause 10.2, respectively), ***if any constituent of the Shareholders is intending to sell or transfer his / her own shares*** *in the Company, the remaining Shareholders would jointly and severally retain the right to acquire the said shares, as detailed below, at a price no less than the Fair Value determined by the independent reputed chartered accountancy firm appointed by the Company.*

(b) ***If the seller is a constituent of the Subsequent Shareholders****, the offer would first be made to the other constituents of the Subsequent Shareholders (to be exercised in 21 days) and then to the Initial Shareholder (to be exercised in 21 days). It is agreed by the Shareholders that any such sale or transfer of shares between existing Shareholders i.e. Initial or Subsequent Shareholders will be subject to prior approval of all Shareholders.*

xxxx *xxxx* *xxxx*

xxxx *xxxx* *xxxx*

23.2 ***Each of the Subsequent Shareholders hereby represents and warrants to the Company and the Initial Shareholder****, at the execution date that:*

(a) they are not, either on its own or through any Person, engaged in any business competitive to the business of the Company; and

(b) they are not bound by any non-compete clause or provision under any employment contract or other agreement with their previous employers which restricts them to associate with or engage in the business of the Company or any other similar business.

xxxx *xxxx* *xxxx*

xxxx *xxxx* *xxxx*

26.2 ***If any dispute or difference of any kind whatsoever arises between the Parties*** *in connection with or arising out of this Agreement (and whether before or after the termination or breach of this Agreement), the Parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement by negotiation for 60 days. In the event no amicable settlement is reached within a period of 60 days from the date on which the dispute or difference arose, such*

dispute or difference shall be referred to a mutually accepted sole arbitrator.

xxxx *xxxx* *xxxx*

xxxx *xxxx* *xxxx*

27. EXECUTION, VALIDITY AND EFFECTIVENESS OF THE AGREEMENT

*27.1 It is clarified that the **members of the group of Subsequent Shareholders will be subscribing to the share capital of the Company in proportion / ratio as set forth under Schedule II hereto at different stages/ dates and any one or more members representing the Subsequent Shareholders group will be signing/ executing this Agreement on behalf of all other members of the Subsequent Shareholders group**. Without prejudice to the aforesaid, this Agreement shall become binding and valid against all the members of the Subsequent Shareholders group from the Effective Date.*

xxxx *xxxx* *xxxx*

xxxx *xxxx* *xxxx*

*29.3 Notice: **Any notice or other communication under this Agreement shall be given in writing and shall be deemed to be duly given if sent by registered mail / courier (with acknowledgement due) to the respective addresses of the Parties as set out at the beginning of this Agreement** (or at such other address as may hereafter be specified for such purpose by the relevant addressee) or sent by telefax or facsimile to such number as is from time to time specified by the relevant addressee and shall be deemed to be duly received within 3 (three) days of being sent by registered post or courier and if sent by facsimile, when the recipient's answer back appears at the beginning and end of the facsimile.*

xxxx *xxxx* *xxxx*

*29.5 **Relationship: Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties or confer on any Party any authority to bind the other or to contract in the name of the other or to incur any liability or obligation on behalf of the other or shall be deemed to be the agent of the other in any way**.*

xxxx *xxxx* *xxxx*

xxxx *xxxx* *xxxx*

SCHEDULE II

TOTAL SHARE RATIO AMONGST MEMBERS OF SUBSEQUENT SHAREHOLDERS GROUP

S. No.	Name of Subsequent Shareholder	Number of shares to be held	Total Value of shares (@ Rs. 1 each) (in Rs.)	Percentage Shareholding
1.	Mr. Chander Ahuja	2,73,000	2,73,000	15.60%
2.	Mr. Randhir Brar	2,73,000	2,73,000	15.60%
3.	Mr. Ramesh Punjabi	2,73,000	2,73,000	15.60%
4.	Mr. Sanjay Malhotra	2,73,000	2,73,000	15.60%
5.	Mr. Nicholas Valladares	2,73,000	2,73,000	15.60%
6.	Mr. Vijay Srinivasan	52,500	52,500	3%
7.	Mr. Navin Mishra	52,500	52,500	3%
8.	Mr. Pankaj Hingorani	52,500	52,500	3%
9.	Mr. Kshitij Kapoor	52,500	52,500	3%
10.	Mr. Vikas Sharma	52,500	52,500	3%
11.	Mr. Om Prakash Pant	52,500	52,500	3%
12.	Mr. Bhoop Singh Bhan	35,000	35,000	2%
13.	Mr. Ranjan Kumar Jha	35,000	35,000	2%

xxxx *xxxx* *xxxx*

xxxx *xxxx* *xxxx*

Annexure B

List of Subsequent shareholders having voting rights

14. Mr. Ramesh Punjabi
15. Mr. Chander Ahuja
16. Mr. Sanjay Malhotra
17. Mr. Randhir Brar
18. Mr. Nicholas Valladares

List of Subsequent shareholders not having voting rights

1. Mr. Vijay Srinivasan
2. Mr. Navin Mishra
3. Mr. Pankaj Hingorani
4. Mr. Kshitij Kapoor
5. Mr. Vikas Sharma
6. Mr. Om Prakash Pant
7. Mr. Bhoop Singh Bhan
8. Mr. Ranjan Kumar Jha".[19]

19. Upon a consideration of all these terms, I am of the view that the "Subsequent Shareholders" in the Agreement did not constitute a single

[19] Emphasis supplied.

entity, so as to attract the applicability of Section 2(1)(f)(iii) of the Act. Each of such shareholders was to subscribe to a defined quantity of shares, had the right to exit the company individually on the conditions set forth in the Agreement, and undertook individual rights and obligations. The status of the individuals with regard to voting rights also vary as specified in "Annexure B" to the Agreement. The Agreement specifically requires notices to be sent to each of the individual parties (as was done in the present case), and permits any of them to invoke arbitration. There is no prior arrangement or agreement on record between the "Subsequent Shareholders" *inter se* to support Mr. Gupta's submission, nor any indication as to the joint management and control of the combined entity.

20. The situation, in my view, is not one of a simple association or body of individuals engaging in a common enterprise, but of several individuals involved in the common enterprise, each in their individual capacity. To treat such individuals as a common "association or a body of individuals", within the meaning of Section 2(1)(f)(iii) of the Act, would be virtually indistinguishable from a case of several shareholders in a company, each holding their individual shares, but being engaged in the common enterprise of the company, simply by virtue of their shareholding. Such a consequence appears to me far-fetched.

21. The judgment of *Mansarovar Commercial*[20], cited by Mr. Gupta, deals with the question of locating the management and control of joint enterprises. As I have come to the conclusion that there is no joint enterprise in the present case, which constitutes the individuals into an

"association or a body of individuals" for the purpose of the Act, it is not necessary to enter into this question.

22. The inevitable consequence of the above discussion is that the undisputed status of respondent No. 5 as a national and habitual resident of a country other than India, renders the proposed arbitration an "international commercial arbitration" within the meaning of Section 2(1)(f)(i) of the Act. This Court, therefore, has no jurisdiction to entertain the petition.

23. The petition is therefore dismissed, with liberty to the petitioner to take the remedies available to it in law.

PRATEEK JALAN, J

July 16, 2024
"Bhupi"/

[20] Supra (note 8).