(2013) 08 AP CK 0040

Andhra Pradesh High Court

Case No: Civil Miscellaneous Appeal No''s. 831, 832 and 864 of 2012 and C.R.P. No''s. 3821 and 3822 of 2012

M/s. Tech Mahindra Limited — APPELLANT

Vs

Venture Global Engineering LLC — RESPONDENT

Date of Decision: Aug. 23, 2013

Citation: (2014) 3 ALD 177 : (2014) 4 ALT 261

Hon'ble Judges: L. Narasimha Reddy, J; K.G. Shankar, J

Bench: Division Bench

Advocate: Iqbal Chagla, Sri Soli Sorabji, Sri Mukhophadhya, for Sri K. Vivek Reddy in C.M.A. Nos. 831, 832 and 864 of 2012 and C.R.P. Nos. 3821 and 3822 of 2012, Sri Ch. Pushyam Kiran in C.M.A. Nos. 834, 865 of 2012, for the Appellant; Parag Tripathi for Sri S. Niranjan Reddy in C.M.A. Nos. 831, 832, 834, 864, 865 of 2012 and C.R.P. Nos. 3821 and 3822 of 2012, for the Respondent

Judgement

L. Narasimha Reddy, J.
This batch of Civil Miscellaneous Appeals and Civil Revision petitions is in relation to the proceedings initiated under the Arbitration and Conciliation Act, 1996 (for short ''the Act'') between the parties herein. For the sake of convenience, the parties herein are referred to, as arrayed in C.M.A. No. 832 of 2012.

2. The 1st respondent is an American Company, with its principal activity in Automobile Engineering, having registered office at Michigan, United States of America (USA). The appellant is an Indian Company, mainly involved in the activity of Information and Technology. It has also established its units abroad, particularly in USA. The 1st respondent evinced interest to work in collaboration with the appellant and to bring about a joint venture. Accordingly, it was decided on 11-03-1999, by both of them to bring about a Joint Venture, with the name, Satyam Venture Engineering Services Private Limited, the 2nd respondent herein.

3. After the Memorandum of Understanding was executed, a Share Holders Agreement (SHA) was entered into, defining the mutual rights and liabilities of both

the parties, method of making investments and providing for consequences for various developments, that may take place over the period. One of the clauses contained in this agreement is that, if any dispute arises between the parties, they shall first negotiate, in good faith, for a period of 30 days, and in case the negotiations are not successful, they shall submit their disagreement to the senior officials of the respective companies; and if that also fails, the dispute shall be referred to the London Court of International Arbitration (for short ''LCIA''). They have also agreed to construe the agreement in accordance with the laws of the State of Michigan, USA.

4. On the same day, another document, viz., Non-competing Agreement (NCA) was also entered into. The gist of it is that neither the 1st respondent, nor the appellant shall undertake any activity, which would compete with that of the joint venture. This agreement also contains a clause, providing for arbitration, broadly on similar lines.

5. After the 2nd respondent came into existence, the activities, as contemplated under the respective agreements, commenced.

6. One of the clauses in SHA is that, in case any affiliates or shareholding companies of the 1st respondent become bankrupt, the appellant can insist on transfer of the shares of the 1st respondent in its favour, at book value. The appellant came to know that 11 members of the 1st respondent-company, which are the affiliates of the companies, filed voluntary petitions for bankruptcy in various Courts in U.S.A. Citing this as a ground, the appellant insisted on transfer of shareholding of the 1st respondent to it, at the book value. The 1st respondent, on the other hand, alleged that the appellant violated the NCA, in the context of handling the work of a Company, M/s. TRW. According to them, the appellant first entertained the work of that company and after collecting its own commission, diverted the work to the joint venture i.e. the 2nd respondent.

7. In view of the allegations as to breach of conditions made by the 1st respondent and the appellant against each other, they agreed to refer the matter to LCIA. After taking into account, the contentions advanced before it, LCIA passed an award, dated 03-04-2006. The claim of the appellant was allowed and that of the 1st respondent was rejected.

8. The 1st respondent filed O.S. No. 80 of 2006 in the Court of I Additional Chief Judge, City Civil Court, Secunderabad, for the relief of a) declaration to the effect that the award, dated 03-04-2006, passed by the LCIA is invalid and unenforceable, b) setting aside of the award, and c) perpetual injunction, restraining the defendants therein (i.e. appellant and 2nd respondent), or anybody claiming through them from effecting transfer of its shares, acting on the award.

9. After entering appearance in that suit, the appellant filed I.A. No. 2042 of 2006, under Order VII Rule 11(d) of C.P.C., with a prayer to reject the plaint. It was pleaded

that for the relief of enforcement of the award, dated 03-04-2006, the appellant instituted proceedings before the United States District Court, Eastern District of Michigan, and that the 1st respondent has also filed cross-petition on 28.04.2006, before that very Court, to deny the relief of enforcement of the award dated 03-04-2006 to the appellant. It was also stated that the Court at Michigan heard the matter and reserved it for judgment, and filing of O.S. No. 80 of 2006 by the 1st respondent, is barred under law. The I.A. was allowed through order dated 28-12-2006 and the plaint was rejected. C.C.C.A. No. 26 of 2007 filed by the 1st respondent before this Court against the said order was dismissed on 27-02-2007.

10. The 1st respondent filed SLP (Civil) No. 8491 of 2007, before the Hon''ble Supreme Court, challenging the judgment of this Court, in C.C.C.A. No. 26 of 2007. Through its judgment dated 10-01-2008, reported in Venture Global Engineering Vs. Satyam Computer Services Ltd. and Another, (for short, ''Venture Global-I), the Hon''ble Supreme Court held that in view of its judgment in Bhatia International Vs. Bulk Trading S.A. and Another, it was competent for the 1st respondent to institute proceedings in the Indian Courts under Part-I of the Act, even to enforce a foreign award. The contention of the appellant as to the maintainability of the suit, in contradistinction to filing of an application u/s 34 of the Act, to challenge an award, was also taken into account. Their Lordships further observed that, no final view is expressed on the merits of the claims of the parties, and in case it is found that the Court, in which the suit is pending; is not competent to entertain a petition u/s 34 of the Act, challenging an award, the suit shall be transferred to the appropriate Court. A direction as to maintenance of status quo, in relation to the enforcement of the award, till the disposal of the suit, was also issued.

11. In view of the judgment of the Supreme Court, the suit stood restored and was transferred to the Court of Chief Judge, City Civil Court, Hyderabad. It has been re-numbered as O.P. No. 390 of 2008 and was treated as the one, filed u/s 34 of the Act, to declare the award, dated 03-04-2006, as invalid, unenforceable, and for other consequential remedies.

12. During the pendency of the O.P., the 1st respondent filed I.A. No. 1331 of 2009, with a prayer to receive additional pleadings, and I.A. No. 1 105 of 2010, to receive additional documents. Its effort was to incorporate the plea that the Managing Director of the appellant made certain voluntary disclosures to the effect that, the figures, furnished by them regarding the assets of their company were not truthful and that the investors have been misled, to a large extent. According to the 1st respondent, the result in the arbitration would have been altogether different, had such disclosures been brought to the notice of the Arbitrator, and that an element of fraud has crept into the proceedings.

13. The trial Court allowed those applications, through order dated 03-11-2009. Challenging the same, the appellant filed C.R.P. No. 5712 of 2009 before this Court. The revision was allowed on 19-02-2010 and the orders passed by the trial Court

were set aside. Aggrieved by the same, the 1st respondent filed S.L.P (Civil) No. 9238 of 2010 before the Hon''ble Supreme Court. The SLP was allowed through judgment, in Venture Global Engineering Vs. Satyam Computer Services Ltd. and Another, (for short, ''Venture Global-II''), and the order of the trial Court, permitting the amendment was sustained. Their Lordships of the Supreme Court, however, made an observation to the effect that the judgment can not be construed as expressing any opinion, even remotely, on the legality of the award, and directed that the O.P. shall be decided by the trial Court, on its own merits.

14. The trial Court finally heard the O.P. No. 390 of 2008 and allowed the same through its order dated 31-01-2012. The award dated 03-04-2006, passed by the learned Arbitrator was set aside. C.M.A. No. 832 of 2012 is filed against the same.

15. The 1st respondent filed O.S. No. 87 of 2012 before the Court of I Additional Chief Judge, City Civil Court, Secunderabad, with a prayer to declare that it continues to be a 50% shareholder in the 2nd respondent-Company, and entitled to all the benefits under the SHA and Articles of Association; and for direction to the appellant to return the share certificates in respect of 50% of share held by it, and for return of a sum of 16,79,984.8 US Dollars, equivalent to Rs. 8,71,74,441=53 with interest at 18% per annum. Further direction to the 2nd respondent to disclose the quantum of commission payable to them for the years 2006-2012 and payment thereof, was sought. Prayer for declaration to the effect that the NCA, dated 11-02-2000, continues to be binding on the appellant in relation to their business was made, and mandatory injunction against the appellant from claiming any benefit under the award was sought.

16. In that suit, the 1st respondent filed I.A. No. 1360 of 2012 under Order XXXIX Rules 1 and 2 C.P.C., with a prayer to restrain the appellant and the 2nd respondent from taking any major decision, prejudicial to their interests. On 04-06-2012, the trial Court passed an order directing the parties to maintain status quo. Challenging the order of status quo, the 2nd respondent i.e. the joint venture, filed C.M.A. No. 834 of 2012.

17. The 1st respondent has also filed I.A. No. 1143 of 2012 in that suit, with a prayer to restrain the appellant and the 2nd respondent from taking any benefit of the award dated 03-04-2006, or relying upon it, in any manner, during the pendency of the suit. Through its order dated 27-04-2012, the trial Court directed maintenance of status quo, in that behalf. C.M.A. No. 864 of 2012 is filed by the appellant against the said order. Not satisfied with the limited relief granted to it, the 2nd respondent filed C.M.A. No. 865 of 2012.

18. The appellant filed I.A. No. 1295 of 2012 in O.P. No. 390 of 2008 with a prayer to correct the record: To be precise, their grievance was that their submissions, in the affidavit, made during the course of hearing of the O.S., setout in paragraphs (a) to (m), were not adverted to by the trial Court. They have also filed I.A. No. 1296 of

2012 with a prayer to delete a sentence in the decree dated 31-01-2012, which indicated that the O.P. was filed u/s 34 of the Act. Through separate orders, dated 27-04-2012, the trial Court dismissed both the applications.

19. C.R.P. Nos. 3821 and 3822 of 2012 are filed by the appellant against those two orders.

20. Arguments on behalf of the appellant are advanced by three reputed Senior Advocates, and assisted by Sri K. Vivek Reddy, learned counsel on record.

21. Sri Soli Sorabji, learned Senior Counsel, advanced arguments, about the jurisdiction of the trial Court, to entertain the O.P. His contention is that the award in question was handed out by the LCIA, and enforcement thereof, being a foreign award, can be only in accordance with the provisions of Part-II of the Act. He submits that whether one goes by the scheme of the Act, in general, or by Section 34 thereof, the filing of suit, or O.P., in an Indian Court, even to challenge a foreign award is impermissible. Learned Senior Counsel contends that though there may have been justification for the 1st respondent in instituting the proceedings in Indian Courts, in view of the judgment of the Supreme Court in Bhatia International (2 supra), the justification ceased, with the judgment of the Supreme Court in Bharat Aluminium Company and Others Vs. Kaiser Aluminium Technical Service, Inc. and Others etc. etc., He submits that in clear and categorical terms, the Supreme Court overruled the principle laid down in Bhatia International (2 supra), and the inescapable conclusion is that any proceedings, initiated in an Indian Court, either to challenge or to enforce a foreign award; cannot be countenanced. He further submits that the observation of the Supreme Court in BALCO (4 supra), at the end, that it is prospective in operation, is made only as a matter of convenience and to save the accrued rights of the parties in that case. According to him, there cannot be one set of principles of law, in respect of agreements entered into up to a particular date, and another set, for the agreements entered into after that date, when both the categories are governed by the same enactment and the same legal regime.

22. Analyzing the concept of ''prospective overruling'', learned Senior Counsel submits that it can be invoked only to save the situations, which have assumed finality, lest the settled things get unsettled. Placing reliance upon the judgment of the Supreme Court, in M/s. Somaiya Organics (India) Ltd. Vs. State of Uttar Pradesh and Another, he submits that the very institution of the suit, or O.P., by the 1st respondent was untenable. Another contention of the learned Senior Counsel is, that the 1st respondent itself instituted proceedings in a Court at Illinois, USA, with a prayer to set aside the award, much before the appellant initiated proceedings for enforcement of the award in the Court at Michigan. He contends that this was done with a clear and proper understanding of the legal position that Part-I of the Act does not apply to the award in question, but surprisingly, the proceedings in the Court at Illinois were got closed as not pressed, and a suit was instituted in India, even after submitting to the jurisdiction of the Court at Michigan. It is urged that not

only the 1st respondent filed a reply, opposing the relief claimed by the appellant in the Court at Michigan for enforcement of the award, but also has independently instituted proceedings for setting aside thereof.

23. He further argued that the Court at Michigan passed an order directing the implementation of the award, the same was upheld by the Appellate Court, and the award has also been since implemented by transferring the shares on remittance of the book value of the shares, by the appellant. Learned Senior Counsel submits that the observations made by the Supreme Court in Global Venture-I and Global Venture-II are in the limited context of the interlocutory applications, filed in the suit and O.P., and their Lordships have made it amply clear that none of the observations can be treated as final pronouncements on the issues, that arise in the main case.

24. The arguments on merits have been advanced by Sri Iqbal Chagla and Sri Mukhophadhyaya, learned Senior Counsel.

25. Sri Iqbal Chagla, learned Senior Counsel, submits that the O.P. cannot be maintained for more reasons than one. He contends that the question of ''issue estoppel'' arises, in view of the fact that the very issue, namely whether the award dated 03-04-2006 can be enforced in law, was dealt with by the Court at Michigan with the active participation of both the parties herein and the same issue cannot be raised by the 1st respondent by instituting proceedings in a Court in India. Secondly, he submits that the plea of fraud raised by the 1st respondent, for the first time in the Civil Court was totally untenable. He contends that the plea was not raised before the Arbitrator, and assuming that necessary facts came to the knowledge of the 1st respondent, at a later point of time, neither any specific facts, that constitute fraud, and have any bearing on the award, were pleaded in the O.P., as required under Rule 4 of Order VI C.P.C., nor any evidence was adduced. He submits that the finding of the trial Court that the fraud has vitiated the arbitration proceedings is totally untenable, if not perverse.

26. Third contention of the learned Senior Counsel is that the trial Court has made an observation to the effect that the award is opposed to public policy, only on the ground that the transfer of foreign exchange can take place with the permission of the Reserve Bank of India (RBI). According to him, neither the Foreign Exchange Management Act (FEMA), nor the instructions issued by the RBI, prohibit remittance of foreign exchange, for transfer of the shares and any transfer of money can take place only on the basis of permission or clearance by RBI. He submits that the RBI has expressed its readiness to process the application submitted by the appellant, and the finding of the trial Court cannot be sustained in law.

27. Fourthly, learned Senior Counsel submits that the 1st respondent itself made it amply clear before the Courts in USA that it does not intend to challenge that part of the award, which dealt with NCA and still, the trial Court, in the judgment under

appeal, has set aside the award in its entirety. The fifth point urged by the learned Senior Counsel is that the procedure adopted by the trial Court is totally defective, inasmuch as, (a) the points for consideration were framed only while preparing the order and not earlier thereto; (b) no oral evidence was recorded, despite the fact that allegations as to fraud were made and several disputed questions of fact were involved; (c) the documents that were submitted by the appellant were not taken into account, and (d) several important arguments that were made during the course of arguments, were not referred to, by the trial Court.

28. Sri Mukhophadhyaya, learned Senior Counsel, has elaborated the aspects of fraud, non-compliance with RBI Regulations, and NCA with reference to the relevant documents. Placing reliance upon the judgment of the Supreme Court in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, he contends that even ex post facto permission can be accorded by the RBI, and that in the instant case, the permission was sought much in advance. Reliance is placed on the judgment of the Supreme Court in Renusagar Power Co. Ltd. Vs. General Electric Co., and several other precedents. He has also pleaded that the aspect of the so-called violation of the FEMA was not even urged before the Arbitrator, and the trial Court ought not to have entertained that plea, at all. Sri S. Ravi, learned Senior Counsel, has also assisted the Court.

29. Arguments on behalf of the 1st respondent are advanced by Sri Parag Tripathi, learned Senior Counsel, and he was assisted by Sri S. Niranjan Reddy, learned counsel on record. At the outset, learned Senior Counsel submits that the question of maintainability of the proceedings under Part-I of the Act, in relation to the award in this case, and the permissibility of the plea of fraud were dealt with by the Hon''ble Supreme Court, in Global Venture I and II and the said questions cannot be agitated once again at this stage. He contends that the plaint in the suit (before it was modified as OP) filed by the 1st respondent was rejected by the trial Court, only on the ground that the proceedings for implementation of the award were initiated before a foreign Court and by applying the ratio in Bhatia International (2 supra), the Hon''ble Supreme Court in Global Venture-I, took the view that the proceedings can be maintained in Indian Courts also. He submits that though this Court declined permission to incorporate the plea as to fraud, the Hon''ble Supreme Court permitted the same in Global Venture-II, and the appellant cannot urge any ground in relation thereto. He contends that the trial Court has analyzed the record before it, the purport of the judgments in Global Ventures I and II (1 and 3 supra), and has taken the correct view of the matter.

30. On the question of ''issue estoppel'', learned Senior Counsel, submits that, if at all anything, the principle operates against the appellant, since various questions, that are being urged now, have already been dealt with by the Supreme Court in the earlier set of proceedings. He submits that though the judgment in Bhatia International (2 supra), was reversed in BALCO (4 supra),, the Supreme Court

categorically observed at the end of the judgment that the principle laid therein would apply only to the arbitrations, in respect of the agreements entered into subsequent to the date of the judgment; and since the agreement in the instant case was entered into earlier to that date, the law laid down in Bhatia International (2 supra), continues to govern the proceedings on hand.

31. As regards the effect of the adjudication that has taken place in the American Courts vis-�-vis the award, learned Senior Counsel submits that all such proceedings or orders therein are in the teeth of the specific observation made by the Hon''ble Supreme Court in Venture Global-I and II (1 and 3 supra), and that the appellant has no right to seek enforcement of the remedies in the American Courts. He further submits that the plea of fraud is based upon the admissions of the Managing Director of the appellant-company and in that view of the matter, there was no necessity to adduce oral evidence. He submits that the fraud would vitiate everything, and the approach of the trial Court accords with law.

32. Learned Senior Counsel has also pleaded that Section 48 of the Act makes it clear that any steps initiated for enforcement of a foreign award would be subject to the proceedings, that may be initiated for annulment thereof, and once the award is annulled by an Indian Court, various steps, that ensued on the strength of the judgments or orders, passed by US Courts; are of no avail.

33. In view of the extensive arguments advanced by the learned Senior Counsel, for the respective parties, we are of the view that the following points arise for consideration in this batch of appeals:

1) Whether the institution of the proceedings by the 1st respondent in the Indian Courts to enforce a foreign award can be justified in view of the judgment of the Supreme Court in BALCO''s case (4 supra)?

2) Whether the principle of ''issue estoppel'' gets attracted in the facts of the case?

3) Whether it is competent for a party to arbitration to invoke Part-I as well as Part-II of the Arbitration Act in relation to a foreign award?

4) Whether the ground of fraud raised by the appellant has been pleaded and proved as required in law, and whether the finding recorded by the trial Court on that aspect can be sustained?

5) Whether the award can be said to be opposed to public policy, on the ground that the transfer of money for its implementation, needs permission, under FEMA?

6) Whether an Indian Court can set aside a foreign award, which has already been enforced in the proceedings with the participation of both the parties to the award?

7) Whether the trial Court followed the correct procedure in deciding the O.P.? and

8) Whether the miscellaneous orders that are challenged in certain appeals and revisions can be sustained in law?

Point No. 1.

34. This point has been extensively argued by Sri Soli Sorabji and effectively dealt with by the learned Senior Counsel appearing for the opposite side. The Arbitration Act, 1940, which held the field for more than half a century came be the replaced by the 1996 Act. The new Act has several improvements on the old one, be it, in relation to the strengthening of the institution of arbitration, or limiting the powers of the Courts, to interfere with the award passed in arbitration. Of the several innovations in the new Act, the one, relating to transnational commercial arbitrations assumes importance. The ambiguity in relation to the matters pertaining to arbitrations, involving parties of different nationality, has been dealt with prominently under the new Act. Part-II of the Act, comprising of Sections 44 to 60; is devoted for enforcement of foreign awards. The expression ''foreign award'' is defined u/s 44 of the Act. It reads,

Sec. 44: Definition- In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960--

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

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

35. In the instant case, the 1st respondent is an American Company and it entered into agreement with an Indian Company, the appellant herein. The agreement contained clauses, providing for arbitration, in the event of any differences arising between the parties. Such clauses are present in SHA and NCA. Section 11.05 of the SHA reads,

Section 11.05: Disputes/Governing Law.

(a) In the event of a dispute between the parties to this Agreement regarding the terms and conditions of this Agreement or any of the transaction documents, the Parties shall negotiate in good faith for a period of 30 days in an effort to resolve the issues causing such dispute. If such negotiations are not successful, the Parties shall submit the disagreement to the senior officer VENTURE and the senior officer of SATYAM or their designees for their review and resolution in such manner as they deem necessary or appropriate Compliance with this Section 11.5(a) shall be a condition precedent to the commencement of any judicial or other legal proceeding.

(b) This Agreement shall be construed in accordance with an governed by the laws of the State of Michigan, United States, without regard to the conflicts of law rules of such jurisdiction. Disputes between the parties that cannot be resolved via negotiations shall be submitted for final, binding arbitration to the London Court of Arbitration.

(c) Notwithstanding anything to the contrary in this agreement, the Shareholders shall at all times act in accordance with the Company''s Act and other applicable Acts/Rules being in force, in India, at any time.

In the NCA, the relevant provision is Clause (5). It reads,

Dispute Resolution etc. This agreement shall be governed by and construed according to the Laws of the State of Michigan, United Stated, without regard to conflicts of law rules of such jurisdiction. Disputes between the parties which cannot be resolved via negotiations shall be submitted for final, binding arbitration to the London Court of Arbitration. In addition, a party may seek injunctive relief in a Court of competent jurisdiction, restraining a violation of this agreement.

36. Article VIII of the SHA stipulates the events of defaults and remedies. One such event relates to bankruptcy, covered by Section 8.03. It reads,

Sec. 8.03. Rights Upon Bankruptcy Event. Upon the occurrence of a Bankruptcy Event with respect to any Shareholder (the "Bankrupt Shareholder"), such shareholder shall give immediate written notice to the other Shareholder (the "Solvent Shareholder"). The Solvent Shareholder shall have the option of (a) purchasing the Shares hold by the Bankrupt Shareholder at book value and repay such Shareholder''s loans or (b) causing the immediate dissolution and liquidation of the COMPANY in accordance with Article IX. Either of such options must be exercised by the Solvent Shareholder by written notice to the Bankrupt Shareholder within one hundred twenty (120) days after receipt of notice of the Bankruptcy Event from the Bankrupt Shareholder".

37. The appellant pleaded that the 1st respondent is exposed to the circumstances, provided for under Clause 8.03 and accordingly invoked Section 11.05 of the SHA for resolution of disputes through arbitration. The 1st respondent, on the other hand, complained of the violation of a clause in the NCA on the part of the appellant. The result is that both of them agreed for reference of their disputes through the LCIA, as provided for under the arbitration clauses, in the relevant agreement. The parties submitted their respective claims before the Arbitrator. Ultimately, an award was passed on 03-04-2006. The learned Arbitrator summed up his award, as under:

6.1:1 hereby make the following awards in this Arbitration:

(A) I order VGE to deliver to Satyam share certificates in form suitable for immediate transfer to Satyam or its designee evidencing all of VGE''s ownership interest (legal and/or beneficial) in SVES. I further order it to do all that may otherwise be

necessary to effect the transfer of such ownership to Satyam or its designee.

(B) Concurrently with the transfer of ownership described in Section 6.1 A above, I order Satyam to pay VGE US $622,656, such sum being the net difference between the amount payable by Satyam to VGE for the book value of the shares of SVES (plus interest) and the amount payable by VGE to Satyam for the disgorgement of royalties paid to VGE by SVES (plus interest).

(C) I order VGE to pay Satyam GBP 48,777.48, the costs of the Arbitration as determined by the LCIA Court.

(D) I order VGE to pay to Satyam US$ 1,488,454.11 Satyam''s additional costs as determined in Section 5.12 thereof.

(E) I order VGE to pay Satyam interest at the rate of 5 per cent per annum compounded annually on the unpaid balance of the sums set forth in Sections 6.1 C and D hereof until such sums are paid.

(F) I declare that Satyam is released from its obligation under the NCA not to compete with SVES or VGE with respect to engineering services to the automotive industry.

38. The first step taken after this award, was by the 1st respondent. It challenged the award in the United States District Court for the Northern District of Illinois, by presenting a petition on 13-04-2006. The relief claimed before that Court was directed against the findings of the arbitrator in clauses 6.1(A) 6.1(B) and 6.1(D) of the award. No challenge was made to the other relief granted in the award. Shortly thereafter, the appellant instituted proceedings before the United States District Court for the Eastern District of Michigan, for enforcement of the award. After receipt of notice in those proceedings, the 1st respondent entered appearance. Apart from filing its answer to the proceedings instituted by the appellant, the 1st respondent independently submitted a cross- petition to refuse and deny recognition for enforcement of award dated 03-04-2006, or stay the enforcement. The proceedings instituted by it before the Court at Illinois were not pressed.

39. Even while the proceedings before the U.S. Courts were pending, the 1st respondent filed O.S. No. 80 of 2006 before the I Additional Chief Judge, City Civil Court, Secunderabad. The gist of the same has been mentioned in the preceding paragraphs. Shortly thereafter, the Court at Michigan passed order dated 13-07-2006, rejecting the cross-petition. An appeal preferred by the 1st respondent before the United States Court of Appeals for the Sixth Circuit was rejected on 25-05-2007. Relief was granted to the appellant for enforcement of the award.

40. Section 2(2) of the Act mandates that Part-I of the Act shall apply, where the place of arbitration is in India. This was interpreted by the Supreme Court in Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., to mean that the provisions of Part-I do not apply to foreign awards. Taking clue from that, the

appellant filed I.A. No. 2042 of 2006, in O.S. No. 80 of 2006, under Order VII Rule 11(d) of C.P.C., with a prayer to reject the plaint. The I.A. was allowed and the same was upheld by the High Court. The 1st respondent approached the Supreme Court by filing Civil Appeal No. 309 of 2008, which is decided as, Venture Global-I (1 supra). Their Lordships took into account, the judgment in Bhatia International (2 supra) and held that there is no bar for institution of the proceedings under Part-I of the Act in Indian Courts, in respect of a foreign award also. The purport of the directions issued by the Supreme Court, while disposing of that case, would be considered a bit later.

41. The suit came to be altered as the one u/s 34 of the Act with a prayer to set aside the award. The 1st respondent filed an application seeking permission of the trial Court to take the additional plea. It was not an application filed under Rule 17 of Order VI C.P.C., nor any permission was sought, to amend the pleadings. The trial Court allowed the I.A. The same was reversed by this Court and the matter landed before the Supreme Court for the second time, in Venture Global-II (3 supra). The Civil Appeal was allowed, and the l5'' respondent was permitted to raise the additional plea.

42. The principle laid down by the Supreme Court in Bhatia International (2 supra), namely, that proceedings can be instituted under Part-I of the Act in respect of foreign awards also, was reversed by a Larger Bench of the Supreme Court, in BALCO (4 supra). The conclusions are reflected in paragraphs 194 to 196. They read,

Para-194: In view of the above discussion, we are of the considered opinion that the Arbitration Act, 1996 has accepted the territoriality principle which has been adopted in the UNCITRAL Model Law. Section 2(2) makes a declaration that Part I of the Arbitration Act, 1996 shall apply to all arbitrations which take place within India. We are of the considered opinion that Part I of the Arbitration Act, 1996 would have no application to international commercial arbitration held outside India. Therefore, such awards would only be subject to the jurisdiction of the Indian courts when the same are sought to be enforced in India in accordance with the provisions contained in Part II of the Arbitration Act, 1996. In our opinion, the provisions contained in the Arbitration Act, 1996 make it crystal clear that there can be no overlapping or intermingling of the provisions contained in Part I with the provisions contained in Part II of the Arbitration Act, 1996.

Para-195: With utmost respect, we are unable to agree with the conclusions recorded in the judgments of this Court in Bhatia International Vs. Bulk Trading S.A. and Another, and Venture Global Engineering Vs. Satyam Computer Services Ltd. and Another, . In our opinion, the provision contained in Section 2(2) of the Arbitration Act, 1996 is not in conflict with any of the provisions either in Part I or in Part II of the Arbitration Act, 1996. In a foreign-seated international commercial arbitration, no application for interim relief would be maintainable u/s 9 or any other provision, as applicability of Part I of the Arbitration Act, 1996 is limited to all

arbitrations which take place in India. Similarly, no suit for interim injunction simpliciter would be maintainable in India, on the basis of an international commercial arbitration with a seat outside India.

Para-196: We conclude that Part I of the Arbitration Act, 1996 is applicable only to all the arbitrations which take place within the territory of India".

43. However, in a way, their Lordships expressed the view that overruling of the judgments in Bhatia International (2 supra) is prospective in nature. The relevant portion reads,

Para-197: The judgment in Bhatia International Vs. Bulk Trading S.A. and Another, was rendered by this Court on 13-3-2002. Since then, the aforesaid judgment has been followed by all the High Courts as ell as by this Court on numerous occasions. In fact, the judgment in Venture Global Engineering Vs. Satyam Computer Services Ltd. and Another, has been rendered on 10-1-2008 in terms of the ratio of the decision in Bhatia International Vs. Bulk Trading S.A. and Another, Thus, in order to do complete justice, we hereby order, that the law now declared by this Court shall apply prospectively, to all the arbitration agreements executed hereafter.

44. Sri Soli Sorabji, learned Senior Counsel submits that the sole basis to sustain the proceedings instituted by the 1st respondent in Indian Court was the judgment in Bhatia International (2 supra) and once that is overruled, in BALCO (4 supra), the proceedings become untenable and deserve to be set at naught. He submits that the concept of overruling is evolved only to save certain situations, which have emerged by the time, the Court laid the law, and that the same does not have the effect of watering down the principle, so laid. Reliance is placed upon the judgment of the Supreme Court in Somaiay Organics (5 supra)

45. ''Stare decisis'' is a typical feature of common law system. Be it from the point of view of consistency or the respect to the views expressed by a superior forum, the principle of law laid down by a superior Court is not only followed by the Courts subordinate to it, but also by itself. If, at a later point of time, the principle, which is governing a particular state of affairs, requires reconsideration and the Court is convinced that its earlier view was not correct, it overrules that. Once a judgment or a principle laid down earlier is overruled, it ceases to have any force and comes to be replaced by the one, expressed in the subsequent judgment.

46. Several contingencies arise on account of this. If the judgments are in relation to interpretation of a provision, such interpretation dates back to the origin of the legislation. However, the wavering, on account of conflicting views, would leave their own impact upon the persons, who come to be dealt with by the provision. Though not always, at least on certain occasions, the overruling of precedents would have devastating effect on one party or the other. For instance, if on the basis of the interpretation placed upon a provision of taxation law, an assessee has derived substantial monetary benefit, the reversal of the relevant precedent may

result in a situation, where the assessee may be required to shell down the benefit enjoyed by him. Conversely, if the state has collected substantial amount of tax from an assessee on the basis of a provision, interpreted in a particular way by a Court, it may be exposed to the obligation to refund the amount collected by it, if such interpretation is found to be not correct in a subsequent judgment. Examples can be multiplied. At least in certain cases, the effect of the overruling would be far-reaching. It is with a view to avoid situations of this nature, that the principle of prospective overruling is evolved.

47. It is quite possible to contend that the prospective overruling results in denial of the benefit of the interpretation of the provision, to a section of people. In Somaiay Organics (5 supra) the Supreme Court explained that the concept of prospective overruling does not bring about two legal regimes and the purpose thereof is only to save a particular situation which develops on account of the subsequent judgment. In the ordinary course of things, the situation of typical attributes is saved through this process; and it is not laid down as a general principle, to bring about a dichotomy of situations to be covered by the same provision of law. In BALCO (4 supra), their Lordships did not restrict the saving of the situation on account of the interpretation placed by them on Section 2(2) of the Act to the parties to those proceedings obviously, because the situation warranted that. This is evident from paragraph 197. It was indicated that the law laid down in Bhatia International (2 supra) would continue to apply to the claims, arising out of agreements containing arbitration clauses, executed up to the date of the judgment in BALCO (4 supra).

48. It has already been mentioned that the plaint in the suit filed by the 1st respondent was rejected mostly on the ground that Part-I of the Act does not apply to foreign awards and the Hon''ble Supreme Court reversed that judgment by applying the principle in Bhatia International (2 supra). The reversal of the judgment in Bhatia International (2 supra), would normally bring about a totally different result, since the proceedings were pending by the time the judgment BALCO (4 supra) was rendered. However, one cannot afford to ignore the specific directive contained in paragraph 197 thereof. Though arguments advanced by the learned Senior Counsel on the aspect of prospective overruling are convincing enough, we express our inability to accept his contention that the suit or O.P. filed by the 1st respondent, by invoking the proceedings under Part-I of the Act must be dismissed on the ground that the judgment in Bhatia International (2 supra), was reversed in BALCO (4 supra). Once the Supreme Court held that the judgment in BALCO (4 supra) would apply only to agreements executed after the date of judgment, i.e. September 6, 2012, the contention to the contrary, cannot be accepted. We have to proceed on the assumption that the institution of the suit or OP is not barred on account of the interpretation placed u/s 2(2) of the Act. The point is answered accordingly.

Point No. 2:

49. One of the important contentions advanced on behalf of the appellant is that the principle of "issue estoppel" gets attracted in the proceedings between the parties and the suit or O.P. filed by the 1st respondent in Indian Court becomes untenable. The reason stated therefor is that soon after the award was passed,- the 1st respondent approached the U.S. District Court for the Northern District of Illinois, on 13-04-2006, and on coming to know that, the appellant filed a suit at Michigan Court, to enforce the award, being Case No. 2:06-x-50351 RHC, the 1st respondent has withdrawn the suit filed in the Court at Illinois, on 25-04-2006, and has chosen to contest the matter on merits, before the Court at Michigan; and in that very Court, the 1st respondent filed cross-petition with a prayer to set aside the award.

50. The record discloses that apart from opposing the suit filed by the appellant at Michigan, on merits, the 1st respondent has filed a cross-petition for rejection of the suit, and the concerned Court adjudicated the matter. The contention is that, once the 1st respondent suffered an adverse order in the Court at Michigan, it cannot institute proceedings on the same subject-matter, involving the same issues in the Court in India.

51. This Court is, indeed faced with a typical situation, where the parties have fought a full round of litigation in the Courts in U.S.A. and even at the initial stage of the proceedings instituted in India, the matter went twice before the Hon''ble Supreme Court. While the 1st respondent pleads that on several aspects, such as maintainability of the suit, or, on some grounds, touching merits, the Supreme Court expressed final view, the appellant contends that at more places than one, the Hon''ble Supreme Court made it clear that, it did not express any view on merits. It is in this situation, that we are required to tread with caution, lest it be said that this Court has ventured on any issue that has been finally decided by the Supreme Court in the earlier proceedings.

52. It is in this process, that we make reference to the following observations made by the Supreme Court, in Venture Global-I (1supra), and Venture Global-II (3 supra). In the first case, their Lordships in paragraph 37 observed,

...It is relevant to point out that in this proceeding, we are not deciding the merits of the claim of both parties, particularly, the stand taken in the suit filed by the appellant herein for setting aside the award. It is for the court concerned to decide the issue on merits and we are not expressing anything on the same. The present conclusion is only with regard to the main issue whether the aggrieved party is entitled to challenge the foreign award which was passed outside India in terms of Section 9/34 of the Act...

53. In the same judgment, in concluding paragraph 47, their Lordships observed,

...We have not expressed anything on the merits of claim of both the parties...

54. In Venture Global-II (3 supra), their Lordships observed,

Para-46: Nothing said in this judgment will be construed as even remotely expressing any opinion on the legality of the award. That question will be decided by the court where the setting-aside proceeding is pending...

55. In its cross-petition, the 1st respondent has raised several grounds, touching on the merits as well as the provisions of law, indicating thereby, that it invited adjudication, on merits. It is important to note some of the contentions advanced by the 1st respondent, before the Court at Michigan: They are,

Para-14: In resolving this outcome-determinative issue, the Arbitrator applied only an unreported federal district court case (provided by Satyam) applying New York substantive law.

Para-15: Nowhere does the Award treat the Michigan Supreme Court decision cited by Venture Global that governs exercise of an option in Michigan:

"[A]n option is but an offer, strict compliance with the terms of which is required: acceptance must be in compliance with the terms proposed by the option both as to the exact thing offered and within the time specified; otherwise the right is lost"

LeBaron Homes v. Pontiac Housing Fund, 319 Mich. 301, 313, 29 N.W. 2d 704(1947), quoting Bailey v. Grover, 237 Mich. 548, 554; 213 N.W.2d 137(1927). In other words, Satyam by failing to give notice within the time period provided in S8.03 of the Shareholder Agreement, lost its right to buy Venture Global''s shares of SVES. And, as a result, Venture Global has no obligation to sell its shares in SVES or disgorge past royalties (Award at 11 6.1(A) and (B)).

Para-16: In applying New York law despite the clear and unambiguous language of the Arbitration Clause that required the Arbitrator to construe the Shareholder Agreement according to Michigan law, the Arbitrator exceeded his authority under the Arbitration Clause. In addition, the Arbitrator reached this decision in violation of the procedures agreed to by the parties in the Arbitration Clause, specifically that any disputes would be arbitrated by the London Court of International Arbitration under Michigan law.

Para-17: As a result of the failure of the Arbitrator to follow the agreed arbitral procedure of applying Michigan law, the Arbitrator ordered that Venture Global transfer its SVES shares to Satyam and disgorge royalties from the point at which the shares of Venture Global were to have been delivered to Satyam in connection with exercising the option. (Award at 11 6.1(A) and (B)).

Para-18: The Award is unenforceable on its face as the Arbitrator''s reliance on New York law to resolve an outcome-determinative issue violates the arbitral procedure prescribed by the Arbitration Clause which requires all disputes be resolved under Michigan law.

Para-19: Also, the Arbitrator could not have reached the decisions set out in 11 6.1(A) and (B) of the Award if he had not exceeded the authority granted him under the Arbitration Clause and had otherwise followed the procedure agreed to by the parties. In short, the Award fundamentally violated the Arbitration Clause pursuant to which any disputes were to be arbitrated in the London Court of International Arbitration using Michigan substantive law.

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Para-22: Thus, Satyam requests this Court by enforcement of the Award to compel Venture Global, a foreign resident, to undertake actions in India, namely to accomplish transfer of the stock in an Indian company, SVES, to another Indian company, under the laws of India. Such actions are governed by Indian law, specifically the Foreign Exchange Management Act of 1999 (FEMA), and approval of such stock transfers is reserved solely to the Reserve Bank of India. (See No. 1 in Exhibit Appendix, Declaration of Neera) Tuli, 113-6, i 2).

Para-23: Satyam has taken no steps to secure the approval of the Reserve Bank of India to the transfer of SVES stock nor has it initiated any action in India to compel Venture Global to immediately transfer the SVES stock, in accordance with the Foreign Exchange Management Act.

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Para-28: Given the foregoing, Venture Global filed suit for Declaration and Permanent Injunction in the Courts of India, Case No. 3462, on April 28, 2006 challenging as violative of Indian law and public policy that part of the Award directing Venture Global to accomplish an immediate transfer of the shares of, SVES in India at a depressed value. (See No. 2 in Exhibit Appendix, 11 21-50).

Para-29: The award also violates the public policy of this country because it:

i) directs a U.S. company to take action that will expose it to punitive penalties for violation of Indian law; and

ii) attempts to enforce in this Court that portion of the Award requiring actions in India that are subject to India''s sovereign laws or interpretation by the courts of India, thus violating principles of international comity.

Para-30: Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention," as implemented by the Federal Arbitration Act, 9 U.S.C. S201 of seq., provides that recognition and enforcement of an award in an international arbitration may be refused at the request of the party against whom it is invoked upon proof of various grounds. A ground for refusal is Article V, 1(d). That

clause provides:

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place.

Para-31: Article V of the Convention (S2(b)) also provides that recognition and enforcement of an award may be refused on grounds that:

The recognition or enforcement of the award would be contrary to the public policy of that country.

Para-32: As a result of the foregoing, the Award is not enforceable under the Convention, as implemented by the Federal Arbitration Act, 9 U.S.C. S201 of seq., including, without limitation, by operation of Article V, 1(d) and 2(b).

Para-33: Venture Global is entitled to a declaration that 11 6.1(A), 6.1(B) and 6.1(D) of the Award are not enforceable, or, alternatively, the enforcement action should be dismissed or stayed so that such action may proceed in India.

WHEREFORE, Venture Global requests the following relief:

A. A declaration that 11 6.1(A), 6.1(B) and 6.1(D) of the Award are not enforceable under the Convention and should therefore be enjoined or vacated in relevant part because under Articles V.1(d) or V.2(b) those aspects of the Award; i) exceed the authority conferred by the terms of the Arbitration Clause; ii) violate the procedural proscriptions of the Arbitration Clause; iii) are both unenforceable under and violative of India law; and iv) violate public policy; or

B. Alternatively, dismissal or stay of any enforcement of the Award on grounds that principles of comity or forum non conveniens compel allowing enforcement to proceed first in India.

56. The Court at Michigan dealt with each and every aspect pleaded by the appellant, on the one hand, and the 1st respondent, on the other hand, it held, inter alia,

...First, the court finds that the private interest factors do not weigh in favour of declining jurisdiction. Because VGE''s public policy argument presents a legal question, resolving it should not require access to sources of proof beyond the declarations already on hand, nor should it hinge upon the availability of witnesses or the viewing of premises. Second, the court finds that the public interest factors do not weigh in favour of declining jurisdiction. Instead, the court finds that there is sufficient local interest to retain jurisdiction, inasmuch as: VGE is a Michigan limited liability company, the Award involves transfer of a Michigan company''s assets, and the Award stems from agreements entered into in accordance with Michigan law. Although VGE is correct that the Award calls for transfer of stock in an Indian company, that alone is not enough to make venue preferable in an Indian court.

Since VGE has failed to meet its burden to demonstrate that the United States forum would be genuinely inconvenient and an Indian venue would be significantly preferable, see Kryvicky, 807 F.2d at 517, the court rejects VGE''s argument that the court should decline to exercise jurisdiction on forum non conveniens grounds.

VGE suggests, as explained above, that enforcing the Award would contravene United States public policy, because transferring the stock at book value would violate Indian law and subject VGE to punitive sanctions in India. The court has concluded above, however, that the approval granted by the RBI authorizes the transfer to take place at the price determined in the Award, rendering moot VGE''s argument that enforcing the Award would result in a violation of Indian law. Accordingly, the court will deny Respondent''s Cross-Petition.

IV. CONCLUSION

IT IS ORDERED that Petitioner''s ""'Motion to Supplement Satyam''s Response to VGE''s ''Cross-Petition'"" [Dkt.//20] and Respondent''s "Motion to Supplement the Record with Certified Copies of Injunction Orders Issued in India" [Dkt.//26] are GRANTED.

IT IS ALSO ORDERED that Petitioner''s "Petition to Enforce" [Dkt.//1] is GRANTED and Respondent''s "Cross-Petition to Refuse and Deny Recognition and Enforcement of Award Dated April 3, 2006 or Stay Enforcement" [Dkt.//12] is DENIED.

IT IS FURTHER ORDERED that the parties present to the court a judgment, stipulated as to form, no later than July 20, 2006. If the parties are unable to agree on the form of a stipulated judgment, they are ordered to file their respective proposed judgments by the same date.

57. This was carried in appeal to the U.S. Court of Appeals for the Sixth Circuit by the 1st respondent. For enforcement of this judgment, proceedings were initiated and appropriate orders were passed. The appeal was rejected on 09-04-2009 and the judgment of the District Court of Michigan was upheld. When argument was advanced to the effect that proceedings were instituted before an Indian Court, it was observed that the 1st respondent is free to pursue the said proceedings, but the judgment rendered by the Michigan Court does not warrant interference. A further appeal is said to be pending before a superior Court.

58. The very contentions that were urged before the Michigan Court are pleaded in the present suit. In a way, the suit which gave rise to the present appeal resembles the proceedings presented in foreign Court, in its content. It is relevant to mention that O.S. No. 80 of 2006 presented on 28-04-2006 does not fit into the one expected u/s 34 of the Act. The prayer in the suit reads,

In the circumstances, it is most respectfully prayed that this Hon''ble Court may be pleased to:

a) grant a declaration that the Award dated 3rd April 2006 by the Sole Arbitrator Paul Hannon is invalid and unenforceable and set aside the Award as such,

b) and consequently pass a decree of permanent injunction thereby restraining the Defendant No. 1 and Defendant No. 2 their directors, principals, partners, representatives, associates, subsidiaries, successors, assigns, agents, officials, employees, representatives from seeking or effecting a transfer of shares belonging to the Plaintiff in the Defendant No. 2, whether under the terms of the Award dated 3rd April 2006 or otherwise.

c) Pass a decree of permanent injunction thereby restraining the Defendant No. 1 and Defendant No. 2 their directors, principals, partners, representatives, associates, subsidiaries, successors, assigns, agents, officials, employees, representatives from in any manner utilizing proprietary knowledge, know how, employees services and methodology belonging to the Plaintiff.

d) Award costs of the suit to the Plaintiff.

e) Any other relief deemed fit and proper in the facts and circumstances of the case may also be granted in favour of the Plaintiff and against Defendant No. 1 and 2.

59. In Venture Global-I (1 supra), a point was raised to the effect that the suit cannot be treated as O.P., u/s 34 of the Act. Their Lordships of the Supreme Court observed, as under:

...It is further made clear that if it is found that the court in which the appellant has filed a petition challenging the award is not competent and having jurisdiction, the same shall be transferred to the appropriate court...

60. In view of this, the suit was numbered as O.P. No. 390 of 2008. Keeping aside any plausible objection as to the form of plaint, it needs to be observed that, every ground, that was pleaded in the cross-petition before the Michigan Court, was repeated in the present O.P. It is a different matter that the elaborate submissions were made, on merits.

61. ''Issue estoppel'' is one of the facets of the principles of res judicata. The purport thereof is that, if a party has instituted proceedings in any forum of competent jurisdiction against another party, and invited adjudication thereon, it cannot be permitted to agitate the same issues before another Court. The precedents on this aspect are mostly in relation to the cases, where, both the proceedings have been instituted in the Courts in India. However, if one takes into account, the purpose for which the Act came to be enacted, viz., that all the member countries UNCETRAL must give due consideration to the Model law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitral practice, there is no reason why the proceedings instituted in respect of the foreign award in a foreign country be not tested with the principle of ''issue estoppel'', when another set of proceedings, in relation to the same matter

are instituted in a Court in India

62. If the 1st respondent was of the view that the Courts in U.S.A. do not have jurisdiction to enforce the award, it was incumbent upon it to raise an objection without submitting itself, to the jurisdiction of that Court, and to pursue that very line, in the hierarchy of Courts in that country. It did not do so. It has already been observed that it is the 1st respondent, that has taken the first step to challenge the award in a Court at Illinois, and then filed a cross-petition in the Court at Michigan, in a suit instituted by the appellant, for enforcement of the award. Nowhere in the pleadings, in all these proceedings, any objection was raised or reservation was expressed, as to the competence of Courts in U.S.A. to enforce the award. The order passed by the District Court at Michigan was affirmed in the U.S. Court of Appeals for Sixth Circuit.

63. In a way, the exercise undertaken by the 1st respondent amounts to forum shopping. It has first chosen to test its luck in the Courts of the country of its origin, and sensing that it may not get any favourable result there, it has chosen to institute a suit in India. It ought to have withdrawn the proceedings in one of the Courts. Instead, it pursued both. The proceedings in the Courts in U.S.A. progressed of a greater pace, so much so, that not only the objections raised by the 1st respondent as to enforceability of the award were rejected, but also the award came to be implemented in accordance with the procedure prevailing in that country. Therefore, the institution of the proceedings in the Civil Court in India, that too in the manner in which, the 1st respondent did, is hit by the principle of ''issue estoppel''.

Point No. 3:

64. The result of finding in Point No. 1 is that it is competent for the 1st respondent to institute proceedings by invoking the Part-I. Notwithstanding a fairly serious defect as to the form of the O.P., let it be assumed that it was filed by invoking Section 34 of the Act with a prayer to set aside the award and it was presented within the period of limitation stipulated under that section. The Act maintains a clear dichotomy between the awards passed in India, on the one hand, and foreign awards, on the other, particularly in the context of enforcement thereof. Here itself, it needs to be noted that, the judgment in Bhatia International (2 supra) was rendered in relation to an application filed u/s 9 of the Act, for interim measures and was not dealing with a post award scenario.

65. The parameters for adjudication of the petitions filed for enforcement of award, or for setting aside the same under Part-I, on the one hand, and Part-Il on the other hand, are substantially different. Once a party has chosen to invoke the procedure under Part-I, it cannot cite the provisions, that are contained in Part-II of the Act, while seeking the relief of setting aside the award. In the instant case, but for the fact that the 1st respondent has invoked the procedure under Part-I, it could not

have maintained an application u/s 34 of the Act for setting aside the award. However, it has extensively taken recourse to Section 48 of the Act, which occurs in Part-II. The following paragraphs demonstrate this:

Para-45: Accordingly an arbitral award such as the one in question which is contrary to the substantive provisions of Indian law would be unlawful and the Courts should interfere with the award in accordance with S. 48(2)(b) of the Act as being violative of public policy

Para-48: The Plaintiff submits that the Award should be, '' set aside because of the following additional grounds:

a) S. 48(1)(a) of the Act is applicable given the fact that the Shareholder Agreement entered into between the parties, in so far as it allowed for the transfer of shares at a price other than the fair value and without seeking RBI approval, is void. Accordingly this Agreement is not valid under the law to which the parties have subjected it to inter alia Indian law. In such circumstances, the Award squarely falls within the provisions of S. 48(1)(a) and is therefore liable to be set aside.

b) S. 48(1)(d) of the Act is applicable given that in view of paragraph 13(d) above, the arbitral procedure was not in accordance with the agreement of parties. The parties had expressly stipulated Michigan law as the governing law, but the arbitrator made his significant findings based on New York law. In such circumstances, the Award squarely falls within the provisions of S. 48(1)(d) and is therefore liable to be set aside.

c) S. 48(1)(e) of the Act is applicable given the fact that the Award requires the immediate transfer of shares from the Plaintiff to Defendant No. 1 at a value which is admittedly less than the fair and equitable value of these shares. The Plaintiff has established that the transfer of shares at a value other than a fair value requires the prior permission of the RBI. Absent such permission, a transfer would be illegal and in violation of FEMA and the Regulations notified thereunder and as such the Award has not yet become binding on the parties. In such circumstances, the Award squarely falls within the provisions of S. 48(1)(e) and is therefore liable to be set aside.

66. It is a different matter that the judgment in Bhatia International (2 supra) was held to be no longer good law by the Hon''ble Supreme Court, in BALCO (4 supra). All the same, the judgment in Bhatia International (2 supra) continues to apply to the arbitration proceedings, in relation to the agreements, that were entered into before the date of judgment in BALCO (4 supra). A perusal of the judgment in Bhatia International (2 supra) does not give an indication whatever, that a party can take recourse to Part-I as well as Part-II of the Act, that too, in the same proceedings. On the other hand, an indication is given to the effect that any provision in Part-I would apply to international arbitrations also, unless it is excluded either expressly or through necessary implication. Since Section 48 of the Act is a comprehensive

provision in Part-II, not only dealing with the enforcement of a foreign award, but also for setting aside thereof, application of the procedure prescribed u/s 34 of the Act, in Part-I, in the proceedings referable to section 48 of the Act stands excluded. Viewed in this context, the O.P filed by the 1st respondent, invoking some provisions of Part-I and some, of Part-II, is opposed to the very scheme of the Act. When the Parliament has enacted a comprehensive legislation, prescribing different procedures, in respect of different categories of awards, in conformity with the UNCITRAL Model laws, and in recognition of its international obligations, it is not at all permissible for a party to jumble the provisions of both the parts in the same proceeding. The point is answered accordingly.

Point No. 4:

67. One of the grounds on which the trial Court has set aside the award is that there was ''fraud'' on the part of the appellant and in particular, Mr. Ramalinga Raju, and that the same induced the 1st respondent to become part of the joint venture and the subsequent transactions. In fact, this ground did not form part of the pleadings before the Court at Michigan, nor was it pleaded in the suit, as originally presented, or after it was converted into an O.P. At a later stage, it was added by filing I.A. No. 1331 of 2009 under Order VIII Rule 9 C.P.C., in the form of additional pleadings.

68. The gist of the contention was that, Mr. Ramalinga Raju, the Chairman and Founder of the appellant declared and admitted that the balance sheets of the appellant were fraudulently inflated to the tune of Rs. 7,880 crores and as a result, the auditor, Price Waterhouse Cooper declared that the financial statements could no longer be considered as accurate or reliable. The I.A. was allowed through order dated 12-06-2009. This Court has reversed the order of the trial Court; in C.R.P. No. 5712 of 2009. In Venture Global-II (3 Supra), the Hon''ble Supreme Court confirmed the order of the trial Court and reversed the order in C.R.P. No. 5712 of 2009.

69. On behalf of the 1st respondent, it was pleaded that the whole gamut of transactions between itself and the appellant are vitiated on account of ''fraud'' and had the same been brought to the notice of the Arbitrator, the award would certainly have been different, from the one, that has been passed. The appellant opposed this plea, stating that it was not raised before the Arbitrator, at all, and no ground, that was not pleaded before an Arbitrator can constitute the basis to challenge it before a Civil Court. Another contention advanced by them is that wherever the ground, such as fraud, undue influence, coercion and the like, are raised, necessary particulars thereof must be furnished in the pleadings and relevant evidence in relation thereto, must be adduced. In reply, the 1st respondent pleaded that once the Hon''ble Supreme Court has permitted the ground to be raised, it is deemed to have been taken note of, and no further plea or evidence is necessary.

70. In Venture Global-II (3 supra), the Hon''ble Supreme Court took note of the relevant passage from the treatise on ''Kerr on Fraud and Mistake'', (see 7th Edn., p.1), Section 17 of the Indian Contract Act, the judgment of the House of Lords in ELEKRIM ER All v. 2 365 (Comm) (2007) (Comm), 11 EWHC 2007 SA, Universal Vivendi SA and made the following observation:

Para-41: [T]his Court is unable to accept the contentions of the learned counsel for the respondents that facts which surfaced subsequent to the making of the award, but have a nexus with the facts constituting the award, are not relevant to demonstrate that there has been fraud in the making of the award. Concealment of relevant and material facts, which should have been disclosed before the arbitrator, is an act of fraud. If the argument advanced by the learned counsel for the respondents is accepted, then a party, who has suffered an award against another party who has concealed facts and obtained an award, cannot rely on facts which have surfaced subsequently even if those facts have a bearing on the facts constituting the award. Concealed facts in the very nature of things surface subsequently. Such a construction would defeat the principle of due process and would be opposed to the concept of public policy incorporated in the Explanation.

71. This, however, is far from recording a finding to the effect that there existed an element of fraud on the part of the one party or the other to the proceedings. The dispute at that stage was only as to whether the further pleadings on behalf of the 1st respondent can be allowed or not. That their Lordships did not express any view on merits or proof of the plea, is evident from paragraphs 45 and 46 of the judgment: They read,

Para-45: Whether the award will be set aside or not is a different question and that has to be decided by the appropriate court. In this appeal, this Court is concerned only with the question whether by allowing the amendment, as prayed for by the appellant, the Court will allow material facts to be brought on record in the pending setting-aside proceeding. Judging the case from this angle, this Court is of the opinion that in the interest of justice and considering the fairness of procedure, the Court should allow the appellant to bring those materials on record as those materials are not wholly irrelevant or they may have a bearing on the appellant''s plea for setting aside the award.

para-46: Nothing said in this judgment will be construed as even remotely expressing any opinion on the legality of the award. That question will be decided by the court where the setting-aside proceeding is pending. The proceeding for setting aside the award may be disposed of as early as possible, preferably within 4 months.

72. The Hon''ble Supreme Court, in the said judgment, repelled the contention that, a fact, which came into light, subsequent to the award, cannot be pleaded as a ground to challenge the same. Therefore, it has to be proceeded on the basis that, if the 1st respondent is able to prove any acts of fraud or misrepresentation on the

part of the appellant, even if they have come to light subsequent to the award, they can be taken note of by the Court in an O.P., filed u/s 34 of the Act. Therefore, it needs to be seen as to whether the plea of fraud was proved.

73. A perusal of the additional pleadings discloses that the various events that have taken place as a sequel to the statement made by Mr. Ramalinga Raju, are stated in detail. Reference is made to the investigation by different agencies and to the letter dated 07-01-2009, said to have been addressed by Mr. Ramalinga Raju to the Board of the 2nd respondent herein. The relevant portion reads,

Para-4. That on 7th January 2009 it was reported that the Securities and Exchange Board of India (SEBI) directed an investigation into this matter. The Petitioner refers to the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure B:

Startled by the disclosure of fudging of accounts by Satyam founder B Ramalinga Raju, market regulator SEBI on Wednesday ordered probe into share market operations and inspection of the IT Company.

"SEBI has ordered an investigation into the affairs relating to buying, selling or dealing in the shares of Satyam Computers" it said in a release.

The basis of the information in this behalf was stated as under:

Para-5: That on 8m January 2009 it was reported that the Government of India directed the inspection of the financial statements and books of 8 subsidiaries of Respondent No. 1. The inspection was to be conducted in accordance with Section 209A of the Companies Act 1956. The Petitioner states that Respondent No. 2 was one of the subsidiaries which was inspected. The Petitioner refers to the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure C:

The Government on Thursday ordered probe into the books of accounts of eight subsidiaries of the Satyam Computer Services, whose head B Ramalinga Raju admitted that the company was declaring forged accounts.

The inspection would be conducted as per the provisions of section 209A of the Companies Act, Corporate Affairs Minister Prem Chand Gupta told Reporters today. The subsidiaries whose accounts will be verified by the government are Maytas Properties, Maytas Infrastructure, Satyam BPO, Nipuna Services, Knowledge Dynamics, Nitor Global Solutions, Ca Satyam ASP and Satyam Venture Engineering Services.

Para 6: That on 13th January 2009 Price Waterhouse which acted as statutory auditors to Respondent No. 1 issued a letter to its Board stating that in view of Mr. Raju''s disclosures, its opinion on the financial statements for the period June 2000 till 30th September 2008 could no longer be considered reliable. The Petitioner

extracts certain relevant paragraphs from that letter which is enclosed as Annexure D:

As statutory auditors, we performed audits of Satyam Computer Services Ltd. (the Company) from the quarter ended June 2008 until the quarter ended September 30, 2008 (Audit Period).

As you are aware, vide a letter dated January 7, 2009 (Chairman''s Letter) addressed to the erstwhile Board of Directors of the Company, the former Chairman of the Company, Mr. Ramalinga Raju has stated that the financial statements of the Company have been inaccurate for successive years. The contents of the said letter, even if partially accurate, may have a material effect (which effect is currently unknown and cannot be quantified without a thorough investigation) on the veracity of the Company''s financial statements presented to us during the Audit Period. Consequently our opinions on the financial statements may be rendered inaccurate and unreliable.

Para 7: That on 13th January 2009 it was reported that the Government of India, directed the Serious Fraud Investigations Officer (SFIO) to investigate the matter. The Petitioner refers to the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure E:

The Ministry of Corporate Affairs on Tuesday ordered investigation into the Satyam scandal by the Serious Frauds Investigation Office (SFIO) a multi functional investigation agency that has representations from the ministry of home affairs Enforcement Directorate and the Intelligence department.

The governments decision came on the basis of a report it received from the Registrar of Companies in Hyderabad, that was assigned the work of inquiring into the affairs of Satyam Computer Services. "The SFIO will submit its report in 3 months". Ministry for Corporate Affairs Prem Chand Gupta said.

The ROC had inspected the books of account and collected evidence against Satyam and its 8 group i companies. Mr. Gupta however refused to share any specific details of the ROC Report.

Para 8: That on 21st January 2009 it was reported that Mr. Raju admitted to diversion of funds from Respondent No. 1 and the Petitioner relies upon the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure F:

Disgraced founder and former Chairman of Satyam Computer Services B Ramalinga Raju has confessed that he diverted funds of the IT Company to the two real estate firms promoted by his family, state police sources said here on Wednesday.

Raju, who was grilled on Wednesday for the fourth day by officials of Criminal Investigative Department (CID) of Andhra Pradesh Police, also reportedly admitted

using the Satyam money to by prime land in and around Hyderabad. CID sources said Raju told interrogators funds were diverted during the past four to five years. This means Raju''s Jan 7 statement that he inflated company accounts was a red herring.

Para 9: That on 25th January 2009 it was reported that partners of PricewaterhouseCoopers (PwC) who were statutory auditors of Respondent No. 1 (and also statutory auditors for Respondent No. 2) were arrested for their alleged role in the misstatement of Respondent No. 1''s accounts. The Petitioner refers to the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure G:

In an incident thought to be the first of its kind in India, partners of the auditing firm PricewaterhouseCoopers (PwC) were arrested on Saturday for their alleged role in the Satyam scandal.

Senior Partner S. Gopalakrishnan and Srinivas Talluri were booked by Andhra Pradesh Police CID on charges of fraud (Section 420 of the IPC) and criminal conspiracy (120B) in the Rs. 7,800 crore scam.

Para 10: That the Petitioner submits that the Award arrived at the value of the Petitioner''s 50% shareholding in Respondent No. 2''s by a Stipulation between the Parties. A copy of the Stipulation is enclosed herewith and marked as Annexure H. It is submitted that the basis of the Stipulation was the SVES Financial statement and was based upon discussion between the Parties respective damages/financial experts. A copy of Satyam''s Experts Report which calculated the book value of Respondent No. 2 shares is enclosed herewith and marked as Annexure 1. The Expert relies upon the balance sheet for Respondent No. 2 for the years ended March 31, 2003, 2004 and 2005. Copies of these balance sheets are enclosed herewith and marked as Annexure J. It is submitted that the all three balance sheets are signed and audited by S. Gopalakrishnan, Partner for and on behalf of PriceWaterhouse, Chartered Accountant.

Para 11: That on 27th January 2009, it was reported that the Income Tax Department directed an investigation into Respondent No. 1''s operations. The Petitioner refers to the relevant extracts from the press report which is enclosed herewith and marked as Annexure K:

The Income Tax Department is independently probing the Rs. 7,800 crore accounting fraud in Satyam with a focus on tax deducted at source and benami deels.

"We are conducting an independent probe into the Satyam case" Central Board of Direct Taxes Chairman NB Singh told reporters here on Tuesday.

The I.T department will look into tax deducted at source and benami deals, if any, by Satyam, he said.

Para 12: That on 8th February 2009 it was reported that the PwC Auditors confessed before the Police that Mr. Raju employed an elaborate scheme to structure and conceal the exaggeration of accounts. The Petitioner refers to the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure L:

Talluri Srinivas and S. Gopalakrishnan, the two Price Water House auditors arrested in the scam have told cops that the agenda used to be clear in the meetings though the word fudging was not used. Everyone present was aware of the motive of the meetings which was to falsify the accounts, they said during the interrogation over the last week.

The meetings were usually chaired by Ramalinga Raju himself but in his absence Rama Raju, his brother or Srinivas Vadlamani, the chief financial officer, would officiate. It is not known whether the PW auditors told police the identity of other company managers who were regular at these meets. But the auditors said that the internal audit department of Satyam with qualified Chartered Accountants was fully aware of the goings on.

Para 13: That on 17th February, 2009 it was reported that the Central Bureau of Investigation (CBI) was asked to probe the Satyam matter. The Petitioner refers to the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure M:

A CBI probe into the Satyam mega corporate fraud has been ordered with the Centre clearing a formal request from the Andhra Pradesh government received over the weekend. The decision was taken after CBI agreed to accept the case. The agency is expected to form a special investigation team (SIT) to probe the scam.

Para 14; That on 22nd March 2009 it was reported that the scope of the accounting fraud relative to Respondent No. 1 could be over Rs. 9,600 crores. The Petitioner refers to the following paragraphs from the press clip which is enclosed herewith and marked as Annexure N:

Its probe into the accounting fraud in Satyam Computer has given CBI enough reason to believe that the scam involves a much bigger amount close to Rs. 10,000 crore than what was disclosed by the IT company''s founder Ramalinga Raju, who is now awaiting trial.

Sources said the agency has retrieved over 7,000 fake invoices and forged documents showing fixed deposits and bank balances and their evaluation shows that the size of the scam is over Rs. 9,600 crore, much more than the Rs. 7,800 crore disclosed by Raju on January 7.

Para 15: That on 5th April 2009, it was reported that the Enforcement Directorate directed an Investigation into this matter. The Petitioner refers to the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure O:

The Enforcement Directorate will register a case against Satyam Computer and its tainted founder-Chairman B. Ramalinga Raju for alleged money laundering.

The ED stepped into the multi crore rupee fraud in Satyam after it claimed to have found prima facie evidence against Raju and others of violating the Prevention of Money Laundering Act.

Para 16: That on 7th April 2009 it was reported that the CBI filed its charge sheet in relation to the accused persons which included Mr. Raju, Mr. Gopalakrishnan and Mr. Nalluri. The charge sheet is enclosed herewith and marked as Annexure P and the Petitioner refers to the select paragraphs below:

As per the records maintained by the Institute of Chartered Accountants of India (ICAI) Shri S. Gopalakrishnan (A-4) is partner in the firm ''M/s. Price Waterhouse, Bangalore'' and not in ''M/s. Price Waterhouse''. By affixing his signature on the Audit Reports for and on behalf of ''Price Waterhouse'' he deliberately with the knowledge of its implications and consequences violated the requirements of Auditing and Assurance Standards (AAS) 28.

In the Agreement entered into between M/s. SCSL and M/s. Price Waterhouse, instead of affixing his signature Sri S. Gopalakrishnan (A-) has signed as ''Price Waterhouse'' contrary to the established procedure and practice whereby it is incumbent on individual partner of the firm to affix his signature as representative of the Auditor Firm authenticating the contents of the report. Sri S. Gopalakrishnan (A-4j having been aware of the fact that he never represents ''M/s. Price Waterhouse'' designated statutory auditors for M/s. SCSL has signed as "Price Waterhouse" and thereby cheated the investors in furtherance of the conspiracy with Sri V. Srinivas (A-3), Sri B. Ramalinga Raju (A-1) and Sri B. Ramaraju (A-2).

Sri Talluri Srinivas (A-6) has consciously overlooked the accounting irregularities committed by Mis SCSI since 2007 showing his complicity in the commission of the above said offences and he is liable as a co-conspirator.

There is a discrepancy with regard to the existence of the Price Water House, Hyderabad as Auditors in the registration with ICAI, a statutory body. The ICAI has confirmed that Sri Talluri Srinivas (A-5) is a member of "Price Water House Bangalore" and not "Price water house". As such the certification of Statutory Audit Reports by such non member audit firms consequently invalidates the Annual Financial Statement of the Company which is a statutory requirement under law to invite investments from the prospective investors.

Para 17: That on 13th April 2009 it was reported that the SFIO submitted its report to the Government. The Petitioner refers to the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure Q:

The Serious Fraud Investigation Office (SFIO) is believed to have completed the investigation of the Satyam-fraud case and submitted its report to the Government.

"The deadline was April 13. The report has been prepared and submitted today" sources said but no official confirmation could be obtained from the Ministry of Corporate Affairs.

Para 18: That on 17th April 2009 the SFIO reported that the PwC auditors were a party to the falsification of Respondent No. 1''s accounts. The Petitioner refers to the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure R:

Holding global auditors Price Waterhouse guilty of wrongdoings in the multi crore Satyam scam, the Serious Fraud Investigative Office has informed the government that the bookkeepers were involved in falsification of accounts of the IT firm.

Detailing the role of Price Waterhouse partners in the scam involving thousands of crores of rupees, the probing arm of the corporate affairs ministry has concluded after a three month-long investigation that the auditors kept silent despite knowing about the failure of the IT firm''s audit system in 2007.

Para 19: That on 20th April 2009 it was reported that the SFIO has found evidence that Respondent No. 1 diverted foreign earnings. The Petitioner refers to the relevant extracts from the press clipping which is enclosed herewith and marked as Annexure S:

The Serious Fraud Investigations Office (SFIO) has found clear indications that Satyam Computer Services diverted part of its foreign earnings even before they reached the country, a government official said. According to SFIO, Satyam diverted part of its foreign earnings to tax havens like Mauritius before routing it back to Maytas infra and other entities owned by founder and former Chairman B. Ramalinga Raju and his relatives, a senior official privy to the confidential report told ET on condition of anonymity.

74. After extracting those reports, the 1st respondent stated in paragraphs 20 and 21, as under:

Para-20: That the Petitioner states that as matters currently stand these subsequent events and developments are directly and materially relevant to the disputes between the Parties and also craves leave to further add and supplement to its submissions if further information comes to light.

Para 21: That there are multi agency investigations ongoing in respect of fraud and diversion of monies relative to Respondent No. 1. That inter alia this is directly relevant to the TRW business argument which was contested in the arbitration. It is submitted that Respondent No. 1 did not provide verified financial statement reflecting the amount of TRW revenue diverted and the Petitioner was left to assess such amounts based upon various representations relating to the financial statements made by the Respondent No. 1. In view of these subsequent developments and the PwC declaring its audits of Respondent No. 1''s financial

statements as being unreliable, such representations made by the Respondent No. 1 are no longer tenable and cannot be the basis of any finding/conclusion on the TRW business argument".

75. The penultimate paragraph 24 reads,

Para 24: That the Petitioner respectfully submits that the aforesaid subsequent events should be brought on and made part of the Court record. That the Petitioner states that the Investigation by multiple agencies against Respondent No. 1 and connected investigation into Respondent No. 2 are continuing and/or the findings of these agencies are not in the possession of the Petitioner. It is respectfully submitted that the Petitioner be permitted to bring such additional material and/or reports on record as and when such material/reports come within the possession of the Petitioner".

76. Ultimately, what is prayed for, was, that

a) "subsequent developments and events as stated in the petition in para 3 to 21 together with the accompanying documentation be brought on record: and

b) such other or further orders as may be necessary in the interests of justice

77. A plain reading of the relevant portions of the additional pleadings discloses that the 1st respondent was very much aware of the fact that investigation by various agencies was in progress and no finding was recorded as to the truth or otherwise of the allegation. It has also sought permission of the trial Court to bring such additional material or reports on record, as and when they come into possession thereof.

78. Fraud, or misrepresentation, if proved, would certainly vitiate any state of affairs, that have been brought about with the help of them. The ordinary rules of limitation, acquiescence, and waiver do not come in the way of the Court, to grant the relief in this behalf. Since those factors have such a devastating effect, the C.P.C. made a special provision for them in the context of pleadings. The general mandate under Rule 1 of Order VI C.P.C. is that the pleadings must be a statement in concise form of material facts, and not evidence, by which, such factors are to be proved (see Rule 2 of Order VI C.P.C.). However, whenever a plea, of fraud, or malice is taken, the requirement is some-what different. Rule 4 of Order VII C.P.C. reads,

O.VI R.4: Particulars to be given where necessary.--In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

79. From a reading of this, it becomes clear that the particulars of events that constitute fraud, misrepresentation, breach of trust must be stated in the pleadings

themselves. For compliance with this, the first requirement is that, the party, who pleads fraud, and other similar ground must be clear in its mind and confident, that the other party had committed such acts. Secondly, it must be able to furnish the facts, together with the dates and events, which according to it, constitute fraud. In the instant case, the 1st respondent did not even mention that fraud of a particular description has taken place. Even according to it, the entire episode is under the investigation by different agencies. It is only when the outcome of such investigations or enquiries establishes that the person or agency accused of, has committed fraud and that in turn is shown to have effected the transaction between the 1st respondent and the appellant or the other party, that an occasion would arise for pleading the same. Except that it has reproduced the same excerpts from the newspapers or other reports, it did not assert any specific fact. We, therefore, are of the view that the pleadings in relation to the ground of fraud did not accord with law.

80. Assuming that the pleadings are in order, it needs to be seen as to whether they have been proved. This is a typical case in which not a single witness was examined. We desperately searched the entire record to find out whether any observation, suggesting that the respective parties have expressed their no objection for the documents filed by the other side, and that all the records can be treated as proved. In fact, there is a serious complaint on behalf of the appellant, that the trial Court did not refer to quite large number of documents filed by them.

81. Howsoever well-framed a plea in a suit may be, and howsoever reliable the source from which, a document, filed in a suit has been retrieved is, neither the plea, nor the document can be taken as proved, unless oral evidence is adduced in relation thereto. The only exception is, where any admission in relation thereto, either in the pleadings or at a later stage, in a different form emanates from the opposite party. There is no such admission by either party, in relation to the facts pleaded by the other, in the instant case.

82. After taking note of the fact that the additional pleadings to raise the ground of fraud were permitted, the trial Court began its discussion, as under:

(g) Now it is vital to note the starting point of chain of events related to fraud and material suppression of facts. The same have come to light and became part of the public domain only on 07.1.01.2009 when Mr. Ramalinga Raju of the 1st respondent made a confession openly that the financial statement and books of accounts of Is'' respondent had been exaggerated and over stated and the same led to the further events and subsequent events as referred to in the additional pleadings of the petitioner and reply additional pleadings of the respondents. Thus, the suppressed material facts and the fraud have come to light only after much water has flown under the bridge and long after the award was made on 03.04.2006 by the learned arbitral tribunal. The fraud and material suppression of facts, which related to the books of account and the balance sheet of from the year 2002-2003 and onwards,

had continued till the disclosure and confessional statements of Mr. B. Ramalinga Raju. Therefore, by the date the 1st respondent had alleged in February 2005 that the petitioner had committed an event of default under SHA, the material suppression of facts and the fraud and the resultant misstatement of facts and figures in the accounts and balance sheet of 1st respondent was already there, but was under a cover of concealment due to non-disclosure of the same.

83. It proceeded to observe,

...Thus, as rightly contended the non-disclosure of material facts and the fraud either prior to the award or at the earliest point of time incapacitated the petitioner to take any steps which the petitioner would have been otherwise entitled to take. The fact remains that the 1st respondent concealed material facts and indulged in fraud even prior to and during the arbitral proceedings. Had these facts been disclosed the arbitral tribunal would have been called upon to examine as to who committed the first breach, on whose part was the first event of default and who would have been entitled to acquire 50% shareholding in the 2nd respondent company from the other of the two. Subsequent to the disclosure of the fraud there was a change in control and administration of the 1st respondent is not in dispute...

84. In every alternative sentence, the word ''fraud'' has been used and it was proceeded as though fraud was proved. It is important to mention that the trial Court did not record any finding to the effect that fraud has been proved by the 1st respondent, much less any reference was made to the oral and documentary evidence.

85. It hardly needs any mention that the OP was required to be tried as a suit, particularly when allegations of far-reaching consequences were made. However, the trial Court was mostly impressed by the contents of the charge-sheet filed against Mr. Ramalinga Raju by the investigating agencies. Even while the cases are pending trial before the respective Courts, it has proceeded as though the allegation as to fraud was proved. For all practical purposes, it has rendered the trial before the concerned Courts, nugatory.

86. We are, therefore, of the clear view that the finding of the trial Court on the question of fraud does not accord with law.

Point No. 5:

Extensive arguments have been advanced before the trial Court that the award is opposed to ''public policy''. The reason mentioned was that the transfer of shares as directed by the Arbitrator could not have taken place, except with the specific permission of the Reserve Bank of India (RBI) and the direction in the award, requiring the 1st respondent to transfer the shares, in the absence of permission from the RBI, is opposed to public policy, and thereby liable to be set aside.

87. The result of the award is that, the 1st respondent shall transfer its shares in the joint venture, in favour of the appellant, at the book value. Since the payment of the book value of the shares to the 1st respondent is to be in US Dollars, the permission of the RBI is necessary for this purpose. The appellant pleaded that soon after the award was passed, it submitted an application before the RBI, and on processing the same, the RBI virtually expressed its readiness to accord permission. The plea raised by the 1st respondent, however, is that, unless the permission was ready in hand, by the time the proceedings before the arbitrator assume finality, the award becomes a nullity, as being opposed to public policy. Reference is made to certain clauses in the SHA and NCA and some provisions of law.

88. There is no quarrel with the proposition of law. If an award is opposed to public policy of a country, the same cannot be sustained. Even if what was directed in the award is not opposed to public policy of a country, in which it was made, the public policy of the country in which it is sought to be enforced becomes the deciding factor.

89. Firstly, the learned Arbitrator did not direct that the transfer of the shares in favour of the appellant or the payment of the value of the shares in favour of the appellant shall be in contravention of any provisions of the concerned domestic law. Strictly speaking, that is not at all in the domain of an Arbitrator. He was to just express his opinion on the respective rights of the parties and leave the matter at that. How the further steps must be taken, is squarely governed by the provisions of the relevant law.

90. Take for example, in an indigenous arbitration, one of the directions issued by an Arbitrator in his award is that the respondent before him shall construct a building for the benefit of the claimant on receiving a stipulated amount of consideration and by that time, not even an application was submitted to the Municipal Corporation, seeking permission to construct. It hardly needs any mention that construction of any building within the limits of the Municipal Corporation without obtaining permission would be contrary to law, or one can go to the extent of saying that it is opposed to public policy. However, it is difficult, if not impossible to infer that the Arbitrator has directed the respondent before him to construct the building without obtaining permission or in contravention of the other provisions of law. It is implied that the construction must be after obtaining permission. On the same analogy, if a foreign Arbitrator directed a particular state of affairs to come into existence, it is presumed that the same must be brought into existence, strictly in accordance with law. It is no part i of the duty of the Arbitrator to mention the steps that are required to be taken in accordance with the laws of a particular country. This is particularly so, in the financial regime, where the regulations and other provisions of law keep on changing, depending on the policies and expedience of the concerned State.

91. The precedent directly on the point is, the one handed out by the Hon''ble Supreme Court, in Escorts v. LIC (I(sic) supra). One of the complaints by the parties to the litigation was that, by the time the transfer of shares was directed, the permission of the RBI was not obtained. At a later point of time, such permission came to be obtained. The Hon''ble Supreme Court observed that no irregularity has taken place, and the absence of permission from the RBI for transfer of shares would not, by itself, vitiate the direction or decision for transfer thereof. The principle gets attracted here.

92. The 1st respondent can certainly have a genuine grievance, if the appellant sought to pay the value of the shares, without there being permission of the RBI, or it was compelled to transfer the shares in the absence of that. Here again, the trial Court assumed to itself, several facts. Though the relevant precedents were taken note of, it proceeded, as though, the award violated FEMA. It is important to note that the trial Court itself observed that the Supreme Court held that permission of RBI can be obtained ex post facto also, and reference was made to the judgment of the Supreme Court, in Escorts v. LIC (5 supra). The contention that the said ground was not raised before the Arbitrator, and in view of the judgments of the Supreme Court, in Burn Standard Company Ltd. Vs. M/s. McDermott International Inc. and another, The Tata Hydro-Electric Power Supply Co. Ltd. and Others Vs. Union of India (UOI), , Nalini Singh Associates Vs. Prime Time - IP Media Services Ltd., the ground cannot be raised in the O.P., was repelled, observing,

...In my well considered view this contention of the learned counsel had no acceptable merit as in the very matter between the parties, i.e., in the instant matter the Hon''ble Supreme Court permitted new and additional pleadings to be taken. In fact the petitioner had filed an interlocutory application No. 1331/2009 to bring certain facts on record and also filed additional pleadings. The Court, vide its Order dated 3rd November, 2009, allowed the application of the petitioner...

93. It is also important to mention that I.A. No. 1331 of 2009 did not contain any plea as to public policy. It was only in relation to alleged fraud. The observation of the trial Court is erroneous and contrary to record.

94. It is possible to argue that, if the complaint itself is that the award is opposed to public policy, an aggrieved party cannot be expected to raise that plea before the Arbitrator; and if the violation of the public policy is brought about by the award, the complaint cannot be made at any stage, anterior to that. However, when a ground of that nature is raised u/s 34 of the Act, it must be demonstrated as to how the award is opposed to public policy. Even at the cost of repetition, it can be said that, it is only when the award exhorts a party to the proceedings to take steps, that has the effect of contravening law of the land, in which it is to be enforced, that the ground can be invoked. There is not even a semblance of finding by the trial Court in this behalf. It is trite that every step for enforcing the award must be in accordance with the relevant provisions of law. Therefore, we answer this point in favour of the

appellant.

Point No. 6:

95. There existed a comprehensive law, covering the arbitration in India, in the form of Arbitration Act, 1940. It did not present any problem in regulating the arbitrations, that took place within the country and provisions were also incorporated over the period, to deal with the foreign awards. However, in the light of the liberalization of the economic policies in India, an urgent need was felt to bring about a law, which instills confidence in foreign investors and entrepreneurs. For all practical purposes, certain Chapters of United Nations Commission on International Trade Law (UNCETRAL) were physically lifted and planted in the Act with some cosmetic changes. The emphasis in the entire statement of objectives is that comity among the nations is ensured and a mechanism of amicable resolution of disputes, in the context of international commercial relations is provided. The Parliament was so conscious about the rights of the parties of foreign origin, that in Part II of the Act, one chapter is devoted to Geneva Convention Award. It has already been mentioned in the earlier part of the judgment, that Sections 2 to 43 of Part-I of the Act apply only to Indian awards, suggesting indirectly that foreign awards are to be governed by the separate set of provisions.

96. Before the Act came into force, the UNCETRAL Model Law was adopted by the International Commercial Arbitration in 1985 and India is a party to various conventions, connected therewith. Article 51 of the Constitution of India, which occurs in the Directive Principles of State Policy, requires the State to ensure inter alia,

51. Promotion of international peace and security.--The State shall endeavour to-

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and

(d) encourage settlement of international disputes by arbitration.

97. Great emphasis is added to foster respect for international law and to encourage settlement of international disputes through arbitration. Whether one goes by the purport of Article 51 of the Constitution, or the statement of objectives of the Act, every effort must be made to respect the international obligations. Honouring the judgment rendered in a country which is a party to the treaty along with India, is the minimum, one expects from the countries. If adjudication on an issue, having international implications takes place simultaneously in both the countries, or the result of the adjudication in one such country is ignored or set aside directly or indirectly, by a Court in India, serious dent occurs to the international relations and

comity of nations. If such maneuvers are permitted, by the same analogy, the adjudication that takes place in India can be treated as nonest by the Courts of the other countries and we forego the right to protest.

98. If one of the parties is not satisfied with it, the result in the adjudication in a foreign Court, it cannot be permitted to approach an Indian Court with a prayer to set at naught, the entire adjudication process, that has taken place in a foreign country. This is particularly so when the result of the adjudication has been enforced as per the agreement between the parties. Even if the adjudication undertaken in the foreign country does not accord with the tenets of Indian Law, or there exists a second view on the matter, international comity and the objective underlying the Constitution of India and the Arbitration and Conciliation Act mandate that the adjudication that has assumed finality in the foreign Courts cannot be re-opened in an Indian Court.

99. On behalf of the respondents, it is pleaded that an observation was made by one of the American Courts that it shall be open to the 1st respondent to agitate their contentions before the Courts in India. It only shows the respect, which that particular Court has shown to the Indian Judicial System. No Court in a civilized country can tell one of the parties before it, that it cannot institute proceedings in the Court in another nation. What all it has to see is, as to whether the proceedings instituted before it are in accordance with law, or they are barred by any provision of law.

100. For all practical purposes, the trial Court has nullified not only the judgments rendered by the American Courts in the respective proceedings, but also the implementation, that has already been accomplished. It is important to note that the 1st respondent, in a way, stated its no objection for a portion of the award, covered by 6.1(C), and its grievance was only in relation to certain other paragraphs i.e. 6.1(A) and 6.1(B). However, in the OP, the award, in its entirety, was challenged. The plea as to acquiescence also comes into play. The enterprise undertaken by the 1st respondent is larger, in its scope, than the one, of mere forum shopping.

Point Nos. 7 & 8:

101. The Rules framed by the High Court for determination of the petitions filed under the Act mandate that the procedure prescribed in C.P.C. would apply to them, unless it is specifically excluded. It is just ununderstandable as to how the trial Court has proceeded to decide the OP, without any evidence of the parties, particularly that of the 1st respondent, unless both the parties agreed to treat the record in the OP as proved. When there was so much of contest in each and every aspect, the controversy could have been resolved only through evidence, to be adduced by the parties. In the context of taking certain documents on record also, no basis is indicated as to how they are marked as exhibits. Substantial portion of the documentary evidence filed on behalf of the 1st respondent included the press

clippings, such as Exs. P-11 to P-15, and P-17 to P-19. Even a charge sheet filed by the CBI in the concerned case was marked as Ex. P-16. How the matter in the press clippings can be treated as proved; was not even discussed. Further, the contents of the charge sheet were treated as proved facts. We are of the view that the judgment rendered by the trial Court does not accord with the stipulated procedure.

102. For the foregoing reasons, C.M.A. No. 832 of 2012 is allowed, and the order dated 31-01-2012. passed by the trial Court in O.P. No. 390 of 2008 is set aside. C.M.A. Nos. 834 and 864 of 2012 are allowed and the orders challenged therein are set aside.

103. C.M.A. Nos. 831 and 865 of 2012 are filed against certain interlocutory orders passed in O.S. No. 87 of 2012. The suit has since been transformed into O.P. No. 390 of 2008. In view of the fact that the O.P is dismissed, C.M.A. Nos. 831 and 865 of 2012 are dismissed as infructuous.

104. C.R.P. Nos. 3821 and 3822 of 2012 are dismissed as infructuous and superfluous.

105. Before parting with the judgment, we place on record, our appreciation, for the effective and meritorious assistance rendered by the respective counsel for the parties. We also make it clear that though quite large number of precedents were cited, and detailed written-arguments and supporting material were submitted, we have made reference only to such of the precedents and arguments, which, we felt, would be necessary for the adjudication of the matter before us.

106. The miscellaneous petitions filed in these appeals and revisions shall also stand disposed of.

107. After the Judgment was delivered, Sri S. Niranjan Reddy, learned counsel for the respondents in C.M.A. No. 831 of 2012, made a request to keep the Judgment, rendered by this Court, in abeyance, for a period of four weeks.

108. Learned counsel for the appellant, however, submitted that the same arrangement, that was indicated by the Hon''ble Supreme Court in Venture Global-I (1 supra) may be directed to be continued. We direct that the arrangement that was directed by the Supreme Court in paragraph No. 47 of the judgment in Venture Global-I (1 supra) shall be maintained for a period of four (04) weeks from today.