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INDIAN COURTS CANNOT APPOINT ARBITRATORS IN FOREIGN-SEATED ARBITRATION: A COMMENTARY ON THE 2025 SUPREME COURT JUDGEMENT

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Case Title:
Balaji Steel Trade v. Fludor Benin S.A. & Ors.

Judges: Justice Pamidighantam Sri Narasimha & Justice Atul S. Chandurkar

Date:21 November 2025

Citation: 2025 INSC 1342

Court: Supreme Court of India

Introduction

In this case, the Supreme Court dismissed a petition filed under Section 11 of the Arbitration & Conciliation Act, 1996, seeking the constitution of an arbitral tribunal in India. The petitioner, **Balaji Steel Trade**, had entered into a Buyer-Seller Agreement (BSA) with **Fludor Benin S.A.** The BSA and its addendum provided that arbitration would take place in **Benin** and that **Benin law** would govern disputes. Subsequent contracts (Sales Contracts and High Sea Sale Agreements) were held to be ancillary and not capable of altering the main dispute-resolution clause in the BSA. The Court reaffirmed its earlier jurisprudence (e.g., in *BALCO*, *Mankastu*, *BGS SGS SOMA JV*, *PASL Wind Solutions*) that where the parties have deliberately chosen a foreign seat and foreign curial law, **Part I** of the Indian Arbitration Act (which includes Section 11) does not apply, and hence Indian courts **have no jurisdiction** to appoint an arbitrator.

Facts

1. **Parties and Contracts**
    1. The petitioner is **Balaji Steel Trade**, an Indian partnership firm.
    2. The 1st respondent is **Fludor Benin S.A.**, incorporated under the laws of the Republic of Benin.
    3. The parties initially entered into a **Collaboration Agreement** (for "manufacture and sale of cottonseed cakes") with an arbitration clause.
    4. This was followed by a **Buyer-Seller Agreement (BSA)** dated 6 June 2019, for a term of five years, setting out supply and sale obligations.
    5. The BSA includes an arbitration clause (Article 11), specifying that *"if Arbitration becomes … only option then it will take place in Benin*
2. An **Addendum** to the BSA (Art. 5) provides that the agreement shall be "construed, governed and interpreted in accordance with the laws of Benin."

3. **Subsequent Contracts**
    1. After the BSA, Balaji Steel Trade enters into **Sales Contracts** with a second respondent (Vink Corporations DMCC, Dubai), for certain shipments.
    2. Also, **High Seas Sale Agreements (HSSAs)** are executed with a third respondent (Tropical Industries International Pvt. Ltd., New Delhi).
    3. These subsequent contracts reportedly contain arbitration clauses **with seat in India** (New Delhi).
4. **Dispute & Arbitration in Benin**
    1. Disputes arise between Balaji Steel and Fludor Benin regarding shortfall in supply and payments.
    2. Balaji issues a termination notice under the BSA (and Addendum).
    3. Fludor Benin invokes arbitration (as per BSA) in Benin. A **Benin Court appoints a sole arbitrator**.
    4. That arbitrator eventually delivers a final award (May 2024).
5. **Indian Litigation**
    1. Balaji Steel files an **anti-arbitration injunction suit** in the Delhi High Court, seeking to restrain the Benin arbitration.
    2. The Delhi High Court dismisses that suit.
    3. Meanwhile, Balaji files a petition under **Section 11(6)** (read with Section 11(12)(a)) of the Arbitration & Conciliation Act, 1996, before the Supreme Court, seeking appointment of a sole arbitrator in India.
    4. Balaji also argues for a **composite reference** (i.e., a single arbitral tribunal) including all three respondents (Fludor Benin + Vink DMCC + Tropical), based on the "group of companies" doctrine.

Arguments of the Parties

Petitioner (Balaji Steel Trade)

1. **Invoking Section 11**
    a) Balaji argues that Indian courts (Supreme Court) should appoint an arbitrator under Section 11 because of the subsequent contracts (Sales Contracts and HSSAs) which have arbitration clauses seated in India.
    b) They contend that these later contracts (with Indian seat) effectively change or override the BSA arbitration clause, by novation or through their own dispute resolution clauses.
2. **Composite Reference / Group of Companies Doctrine**
    a) Balaji relies on "group of companies" doctrine: all three entities (Fludor Benin, Vink DMCC, Tropical Industries) belong to the same group (TGI Group), so the disputes should be consolidated into a single arbitration.
    b) They argue that the arbitration should be heard by a single tribunal in India to cover all legal relationships and parties, hence efficient adjudication.
3. **Jurisdictional and Relational Contentions**
    a) Balaji possibly argues that the BSA, Addendum, and the other contracts form a composite transaction, not completely independent, so their arbitration clause (in India) should be enforceable.

b) They might also question whether the seat specified in the BSA (Benin) is *really* intended as the juridical seat (and not just a venue), based on parties' conduct or other indicators. Indeed, in Delhi High Court, they argued that Benin was just a venue, not the real seat.

c) They asserted that Fludor Benin did not include all relevant parties in the Benin arbitration, e.g., respondents 2 and 3, even though they are part of group / same business.

d) They may allege "issue estoppel" or misuse of arbitration to avoid other obligations.

4. **Natural Justice & Procedural Fairness**

a) They argued that the Benin arbitration process was not fair: in the Delhi High Court, they claimed they were not informed properly about the appointment of arbitrator (lack of audi alteram partem).

b) They may have raised concerns about parallel arbitrations: since Indian contracts provided for arbitration under Indian law, starting a parallel one in Benin is "inconvenient, oppressive" etc. (as per their Delhi HC plea) .

Respondent (Fludor Benin S.A. & Others)

1. **Primacy of the BSA ("Mother Agreement")**

a) Fludor contends that the **BSA and its Addendum** constitute the principal, or "mother," agreement, forming the core of the commercial relationship.

b) According to them, the BSA clearly stipulates (in Article 11) that arbitration will take place in Benin, and the Addendum makes Benin law the governing / curial law.

c) That deliberate choice must govern disputes, and cannot be displaced by later ancillary contracts (Sales Contracts / HSSAs) that have independent arbitration clauses.

2. **Exclusion of Part I (Section 11) Jurisdiction**

a) They argue (and the Court agrees) that because the seat is in Benin (a foreign seat), **Part I** of the Indian Arbitration Act (which includes Section 11) does **not apply**.

b) They rely on Section 2(2) of the Arbitration & Conciliation Act, 1996 — which provides that Part I applies only when the place of arbitration is in India.

3. They also cite well-established Indian precedents (e.g., **BALCO**, **Mankastu**, **BGS SGS SOMA JV**, **PASL Wind**) to argue that Indian courts lack the power to appoint arbitrators for foreign-seated arbitrations.

4. **Autonomy of Parties' Contractual Design**

a) They emphasize the autonomy of the parties: the choice of foreign seat and foreign law was a "clear and deliberate" choice.

b) The respondent argues that allowing Indian courts to reconstitute the arbitral tribunal (or appoint in India) would violate the parties' contractual design, undermining both the seat (Benin) and the choice of law (Benin).

5. **Issue Estoppel / Previous Litigation**

a) The Court notes (in favor of Fludor) that Balaji Steel had earlier filed a **Delhi High Court suit** (anti-arbitration injunction) and lost.

b) Because that issue was already litigated, the Supreme Court finds Balaji **estopped** from raising the same contention again.

6. Rejection of Group of Companies Doctrine

a) Fludor (and the Court) reject Balaji's reliance on the "group of companies" doctrine for composite reference: the Court holds that mere shareholding overlap or common ownership is not enough to bring non-signatories into arbitration. There was no sufficient evidence of a "composite transaction" that would justify treating the three respondents as part of a single arbitration clause.

Legal Issues

1. **Jurisdiction under Section 11 when Seat is Foreign**

a) Does Section 11 of the Arbitration & Conciliation Act, 1996, empower Indian courts to appoint an arbitrator when the parties have agreed to a foreign seat (Benin)?

b) Whether Part I of the Act applies to arbitrations seated outside India, and whether it is excluded in such a case by virtue of Section 2(2).

2. **Effect of the Mother Agreement vs Ancillary Contracts**

a) Whether the arbitration clause in the **principal contract (BSA)**, which provides for Benin-seated arbitration, can be overridden or displaced by arbitration clauses in **later contracts** (Sales Contracts / HSSAs) that specify arbitration in India.

b) Whether those subsequent contracts constitute a *novation* or completely independent arrangements, or whether they must be read in the context of the mother agreement.

3. **Group of Companies Doctrine / Composite Reference**

a) Whether non-signatories (or related entities) can be roped into a single arbitration via the "group of companies" doctrine.

b) Whether there is a "composite transaction" justifying a single arbitral tribunal for all contracts and parties.

4. **Res Judicata / Issue Estoppel**

a) Whether the earlier decision of the Delhi High Court (anti-arbitration injunction suit) precludes re-litigating certain contentions in the Supreme Court (i.e., whether issue estoppel applies).

b) Whether the petitioner's conduct (failing to challenge Benin arbitration properly) bars them from seeking relief under Section 11 now.

5. **Autonomy of Parties and Finality of Foreign Award**

a) To what extent must Indian courts respect the parties' choice of foreign seat and foreign curial law, even if it means denying Indian institutional involvement (like appointment under Section 11).

b) Whether allowing a parallel Indian arbitration (or appointing a tribunal here) after a foreign

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tribunal has already issued an award would violate the principle of finality and supervisory autonomy of the seat court.

Supreme Court Holding

The Supreme Court held that Indian courts have no jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator when the arbitration is foreign-seated, reaffirming the seat-centric approach to international arbitration. Since the parties had expressly chosen Benin as the juridical seat and Benin law as the governing and curial law, the Court held that Part I of the Act stood excluded**,** leaving no scope for judicial intervention by Indian courts. Central to the Court's reasoning was the primacy of the *Buyer-Seller Agreement (BSA)* and its Addendum, which constituted the **"**mother agreement**"** reflecting the deliberate choice of a foreign seat and foreign law. The subsequent Sales Contracts and High Seas Sale Agreements (HSSAs) were treated as ancillary and subordinate, incapable of overriding, contradicting, or novating the arbitration clause contained in the BSA. The Court further held that Balaji Steel was estopped from reopening the issue because it had earlier challenged the arbitration clause before the Delhi High Court, which had already dismissed its objections. It also rejected Balaji's attempt to invoke the Group of Companies doctrine to bind non-signatory entities such as Vink DMCC and Tropical, clarifying that the doctrine is exceptional and requires a clear intention to bind non-signatories—an intention absent in this case. Emphasizing party autonomy and the finality of the foreign-seated arbitration, the Court warned that allowing the constitution of a second arbitral tribunal in India, despite arbitration already being initiated or completed in Benin, would undermine coherence and create jurisdictional conflict. Consequently, the Court dismissed the Section 11(6) petition as **"**fundamentally misconceived**"** and legally untenable.

Reasoning of the Supreme Court

The Supreme Court held that Indian courts have no jurisdiction to appoint an arbitrator in a foreign-seated arbitration because the parties had expressly chosen Benin as the seat of arbitration and Benin law as the governing law, making party autonomy the central guiding principle. The Court emphasized that once parties agree to a foreign seat, the legal consequence is that the courts of that foreign country alone possess supervisory authority over the arbitral process, and therefore the provisions of Part I of the Indian Arbitration and Conciliation Act, 1996**,** including Section 11, automatically stand excluded. The Court rejected the petitioner's argument that subsequent Sales Contracts and High Seas Sale Agreements displaced the primary arbitration clause in the Buyer-Seller Agreement (BSA). It reasoned that the BSA was the principal contract governing the commercial relationship, and the later agreements were merely ancillary and incapable of overriding the express stipulation of the foreign seat unless there was an explicit novation, which was absent. The Court further noted that the petitioner had earlier challenged the arbitration clause in the Delhi High Court, which had already upheld its validity; therefore, the petitioner was estopped from re-litigating the same issue in the form of a Section 11 petition. The Court also rejected the invocation of the Group of Companies doctrine**,** observing that the non-signatory parties had no direct role in negotiation or performance of the BSA and that the doctrine could not be stretched to bind entities that were neither signatories nor intended participants in the arbitration agreement. Allowing appointment of an arbitrator in India despite an ongoing arbitration in Benin would lead to parallel proceedings and conflicting awards, undermining the integrity of the arbitral process. Thus, the Court concluded that the Section 11 petition was not merely unsustainable but inherently misconceived, as Indian courts lacked jurisdiction once the parties had chosen

a foreign seat, foreign curial law, and foreign supervisory jurisdiction. The petition was accordingly dismissed.

Legal Principles

The Supreme Court reaffirmed several foundational legal principles governing international commercial arbitration. First, it reiterated that party autonomy is the cornerstone of arbitration, meaning that when parties choose a *foreign seat* and *foreign governing law*, such a choice is binding and must be respected by domestic courts. The legal effect of selecting a foreign seat is that the arbitration becomes an offshore arbitration**,** automatically excluding the application of Part I of the Arbitration and Conciliation Act, 1996, unless expressly incorporated. As a result, Indian courts have no jurisdiction to entertain applications for appointment of arbitrators under Section 11 in such cases. Second, the Court emphasized the *seat–curial law doctrine*, holding that the seat of arbitration determines the procedural law and supervisory jurisdiction. Thus, the courts of the seat here, Benin alone can regulate the constitution of the tribunal, interim measures, challenges, and other procedural interventions.

The Court also clarified that an arbitration clause contained in the principal or "mother" agreement governs all disputes, unless there is an explicit novation or supersession. Ancillary or transaction-specific agreements cannot displace the main arbitration clause by implication. This reinforces the principle that the arbitration agreement is separable and continues to bind the parties independently of the performance contracts. Another important principle reiterated was that of estoppel and finality of litigation. Where a party has earlier challenged the validity or enforceability of the arbitration clause and the challenge has been rejected by a competent court, the same party cannot subsequently seek relief under Section 11 by re-arguing issues already decided. The Court further held that the Group of Companies doctrine is exceptional and cannot be invoked mechanically to bind non-signatories; it applies only when there is clear intention, direct participation, and mutuality of obligations.

Finally, the Court underscored that allowing Indian courts to appoint an arbitrator when a foreign-seated arbitration is already in progress would undermine the principles of non-interference**,** comity of courts**,** and finality of the arbitral seat**,** leading to parallel tribunals and inconsistent awards. Collectively, these principles reinforce India's jurisprudence that the choice of a foreign seat is determinative, exclusive, and jurisdiction-ouster in nature, rendering any Section 11 petition before Indian courts legally untenable.

Conclusion

The decision in *Balaji Steel Trade v. Fludor Benin S.A.*, 2025 INSC 1342, reinforces India's consistent pro-arbitration jurisprudence by unequivocally holding that Indian courts cannot intervene in foreign-seated arbitrations. By affirming the primacy of party autonomy, the Supreme Court made it clear that the choice of a foreign seat carries definitive legal consequences, including the exclusion of Part I of the Arbitration and Conciliation Act, 1996, and the ouster of jurisdiction of Indian courts under Section 11. The Court's refusal to dilute the agreed terms through ancillary contracts, estoppel arguments, or the Group of Companies doctrine strengthens the legal certainty surrounding international commercial agreements. The ruling also prevents the possibility of parallel tribunals and conflicting awards, thereby promoting coherence, predictability, and respect for the chosen arbitral forum. In essence, the judgment upholds the sanctity of party agreements, reinforces the seat-centric approach of Indian arbitration law, and fortifies India's position as a jurisdiction that respects and supports the autonomy and integrity of international arbitration.

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