



April 2025

## **Supreme Court of India holds that an arbitration agreement will be governed by Indian law where foreign location is not the seat but is only the venue of arbitration, and the substantive contract is governed by Indian law**

In a recent judgment, the Supreme Court of India (“**Supreme Court**”) in *Disortho S.A.S vs. Meril Life Sciences Private Limited*<sup>1</sup> has exercised jurisdiction under section 11 (6) of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) and appointed a sole arbitrator, wherein the dispute settlement clause in the contract, provided for disputes to be settled by arbitration in Bogota DC, Colombia, in accordance with the rules of the Arbitration and Conciliation Centre of the Chamber of Commerce of Bogota DC.

### **Brief facts**

Disortho S.A.S (“**Disortho**”), a Colombian company, and Meril Life Sciences Private Limited (“**Meril**”), an Indian company, entered into an International Exclusive Distributor Agreement (“**Contract**”) for distribution of medical products in Colombia.

The Contract specified that it would be governed and construed in accordance with the laws of India, and all matters arising in consequence of the Contract would be subject to the jurisdiction of the Courts in Gujarat, India.

The dispute settlement clause in the Contract required disputes to be resolved through conciliation, failing which by arbitration to be conducted at Bogota DC, Colombia, in accordance with the Rules of the Arbitration and Conciliation of the Chamber of Commerce of Bogota DC.

When disputes arose between the parties, Disortho filed an arbitration petition under Section 11(6) of the Arbitration Act, before the Supreme Court seeking the appointment of an arbitrator. Meril opposed the petition on jurisdictional grounds contending that Indian Courts do not have jurisdiction.

### **Decision of the Supreme Court**

The Supreme Court considered judicial precedents which discussed various legal systems which come into play in such trans-border arbitrations, viz., the law governing the substantive contract; the law governing the arbitration agreement; the law governing the performance of the arbitration agreement and the law governing the procedural aspects of arbitration.

---

<sup>1</sup> Arbitration Petition No.48 of 2023

As regards determining the law that governs the arbitration agreement, the Supreme Court considered the principles laid down by the UK Supreme Court in *Enka Insaat Ve Sanayi AS and OOO Insurance Company Chubb*<sup>2</sup> and held that the conclusions set out therein, including, that where the law governing the arbitration agreement is not specified, the law governing the substantive contract will generally apply to the arbitration agreement, which is part of the substantive contract, and that the choice of a different country as the seat of the arbitration is not, without more, sufficient to negate an inference that law governing the substantive contract was intended to apply to the arbitration agreement, state the correct legal position, except on aspects where Courts in India have taken a different view.

Interpreting the clauses in the Contract, based on principles laid down in various earlier judgements, the Supreme Court concluded that the seat of arbitration has not been expressly designated by the parties and Bogota DC is only the venue for arbitration. The Supreme Court further held that since the Contract stipulated that it would be governed and construed in accordance with the laws of India, and that all matters arising in consequence of the Contract would be subject to the jurisdiction of the Courts in Gujarat, India, it has jurisdiction over matters relating to the appointment of the arbitrator. The Supreme Court held that the designation of Bogota DC as the venue for arbitration and choice of the Rules of the Arbitration and Conciliation of the Chamber of Commerce of Bogota DC will not take away the jurisdiction expressly conferred on the Indian courts.

Noting that the Contract does not expressly identify a separate law governing the arbitration agreement, the Supreme Court held that by implication, Indian law governs the arbitration agreement. The Supreme Court further held that use of the premises of the arbitration centre at Bogota DC for the arbitration proceedings, will not imply that Colombian law will govern the arbitration agreement. The Supreme Court also held that the applicability of Colombian law is limited to the arbitration proceedings and matters relating to the award.

## Conclusion

The judgement is an addition to the earlier judgements of the Supreme Court, wherein the Supreme Court had discussed the complexity involved in interpretation, when different legal systems come into play in contracts involving parties from different jurisdictions. The judgement underscores the importance of carefully drafting arbitration clauses, especially in international contracts, to avoid jurisdictional ambiguities.

---

<sup>2</sup> (2020) UK SC 38. This judgement followed the principles of *Sulamerica Cia Nacional De Seguros S.A. and others Vs Enesa Engenharia S.A and Others* (2012) EWCA Civ 638

## Disputes Practice

With domain experts and strong team of dedicated litigators across the country, JSA has perhaps the widest and deepest commercial and regulatory disputes capacity in the field of complex multi-jurisdictional, multi-disciplinary dispute resolution. Availing of the wide network of JSA offices, affiliates and associates in major cities across the country and abroad, the team is uniquely placed to handle work seamlessly both nationally and worldwide.

The Firm has a wide domestic and international client base with a mix of companies, international and national development agencies, governments and individuals, and acts and appears in diverse forums including regulatory authorities, tribunals, the High Courts, and the Supreme Court of India. The Firm has immense experience in international as well as domestic arbitration. The Firm acts in numerous arbitration proceedings in diverse areas of infrastructure development, corporate disputes, and contracts in the area of construction and engineering, information technology, and domestic and cross-border investments.

The Firm has significant experience in national and international institutional arbitrations under numerous rules such as UNCITRAL, ICC, LCIA, SIAC and other specialist institutions. The Firm regularly advises and acts in international law disputes concerning, amongst others, Bilateral Investor Treaty (BIT) issues and proceedings.

The other areas and categories of dispute resolution expertise includes; banking litigation, white collar criminal investigations, constitutional and administrative, construction and engineering, corporate commercial, healthcare, international trade defense, etc.

**This Prism is prepared by:**



**Vinod Kumar**  
Partner



**Saibarath**  
Senior Associate



18 Practices and  
41 Ranked Lawyers



7 Ranked Practices,  
21 Ranked Lawyers



12 Practices and 50 Ranked  
Lawyers



14 Practices and  
12 Ranked Lawyers



20 Practices and  
22 Ranked Lawyers



Ranked Among Top 5 Law Firms in  
India for ESG Practice



Recognised in World's 100 best  
competition practices of 2025



Among Top 7 Best Overall  
Law Firms in India and  
11 Ranked Practices



Asia M&A Ranking 2024 – Tier 1

Employer of Choice 2024



**Ranked #1**  
**The Vahura Best Law Firms to Work**  
**Report, 2022**

11 winning Deals in  
IBLJ Deals of the Year

Energy and Resources Law Firm of the  
Year 2024

Top 10 Best Law Firms for  
Women in 2022

11 A List Lawyers in  
IBLJ A-List - 2024

Litigation Law Firm  
of the Year 2024



Innovative Technologies Law Firm of  
the Year 2023

7 Practices and  
3 Ranked Lawyers

Banking & Financial Services  
Law Firm of the Year 2022

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

[www.jsalaw.com](http://www.jsalaw.com)



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This Prism is not an advertisement or any form of solicitation and should not be construed as such. This Prism has been prepared for general information purposes only. Nothing in this Prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this Prism disclaim all and any liability to any person who takes any decision based on this publication.