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**Roger Shashoua & Ors. v. Mukesh Sharma & Ors., 2025 SCC OnLine Del 5773 – Delhi High Court enforces ICC foreign awards despite objections on jurisdiction and public policy**

**The Court reaffirmed India’s pro-enforcement stance, holding that objections to foreign arbitral awards must fall strictly within Section 48 of the Arbitration and Conciliation Act, 1996, and cannot involve a re-examination of the merits**

The dispute traces back to a Shareholders’ Agreement (SHA) executed in July 1998, regulating the affairs of International Trade Expocentre Ltd. (ITEL), a joint venture created to establish and operate an exhibition centre in Noida. The SHA granted equal shareholding and management control to two groups, represented respectively by the Petitioners and the Respondents. It contained elaborate provisions governing governance, transfer restrictions, and resolution of deadlocks. Critically, it incorporated a broad arbitration clause providing for arbitration under ICC Rules with London as the seat.

Disputes soon erupted over competing businesses, disputed share issuances, and allegations of siphoning of funds. In 2005, arbitration was invoked under the ICC framework. The tribunal issued four awards: a

jurisdictional award in 2007 confirming the SHA as a binding contract; a costs award later that year; a partial final award in 2010 directing transfer of Respondents’ shares to the Petitioners due to breaches; and a final award in 2011 reiterating share transfer directions and awarding further costs. The Petitioners sought enforcement of the 2010 and 2011 awards before the Delhi High Court.

The Respondents resisted enforcement on multiple grounds. They argued that the tribunal exceeded its mandate by ordering transfer of shares, relief which, they contended, only the Company Law Board/NCLT could grant under provisions on oppression and mismanagement. They also claimed the SHA was merely a preliminary document and not binding, that successors and assigns could not be bound, and that the tribunal’s orders amounted to expropriation of shares contrary to Indian public policy. Limitation objections were raised as well, asserting that enforcement petitions were filed beyond the three-year limit under Article 137 of the Limitation Act.

The Court began by addressing limitation. Although acknowledging that Article 137 governs enforcement of foreign awards, it condoned delay. It emphasized the legal uncertainty that prevailed for years after *Bhatia International v. Bulk Trading S.A.* and *BALCO v.*

*Kaiser Aluminium*, when courts entertained Section 34 challenges to foreign awards, which by law made them inexecutable. The Supreme Court's later ruling in *Roger Shashoua v. Mukesh Sharma*, 2017 14 SCC 722 clarified that Indian courts had no jurisdiction over such foreign-seated arbitrations. Given this shifting legal landscape, the Court found sufficient cause to condone delay and proceed with enforcement.

Turning to jurisdiction, the Court emphasised that an arbitral tribunal derives its authority from the parties' agreement. The SHA contained a broad clause covering disputes concerning the validity, interpretation, implementation, or breach of its provisions. The tribunal had carefully reviewed contemporaneous correspondence, financial transactions, and share transfers, concluding that the SHA was binding and extended to successors and permitted assigns. The Court accepted this reasoning, observing that the SHA expressly contemplated inclusion of nominees and transferees, thereby binding parties like Rodemadan, Stancroft, and ITE. Thus, the tribunal's findings that successors and assignees were bound could not be re-opened at the enforcement stage.

The more significant objection was that the tribunal exceeded its mandate by ordering transfer of shares, relief supposedly confined to statutory company law proceedings. The Court

rejected this, noting that the relief flowed directly from contractual obligations under the SHA. Article 4.7 contemplated arbitration in the event of board deadlocks, and the tribunal was empowered to craft effective remedies to resolve the unworkable deadlock. Moreover, both parties had themselves proposed buyout solutions during proceedings, undermining their later contention that such relief was beyond the tribunal's powers.

On public policy, the Court reiterated the settled principle that Section 48 provides only narrow grounds for resisting enforcement of foreign awards. Following *Renusagar Power Co. Ltd. v. General Electric Co.* and *Shri Lal Mahal Ltd. v. Progetto Grano SPA*, it held that public policy objections are limited to violations of fundamental policy of Indian law, basic notions of morality or justice, or fraud and corruption. The Court stressed that errors of fact or law, even if assumed, cannot bar enforcement. The allegation of expropriation was dismissed, with the Court observing that Respondents had themselves diluted Petitioners' shareholding in violation of the SHA. Far from being inequitable, the tribunal's orders restored balance by directing share transfers proportionate to investments made.

The Court also highlighted India's international obligations under the New York Convention. Section 48 mirrors Article V of the Convention,

which envisages a pro-enforcement bias. Judicial review of foreign awards is therefore tightly circumscribed, ensuring that national courts do not sit in appeal over arbitral findings. The Delhi High Court emphasised that enforcing the ICC awards advanced India's public policy by protecting foreign investors and reinforcing ease of doing business, rather than undermining it.

In conclusion, the Delhi High Court dismissed all objections and declared the foreign awards enforceable under Sections 47 and 49 of the Arbitration and Conciliation Act, 1996, imposing costs on the Respondents for protracted resistance. The decision shines light on several principles: foreign awards will be enforced unless they fall squarely within the narrow confines of Section 48; tribunals are empowered to grant effective remedies within the scope of broad arbitration clauses; and delay in enforcement petitions may be condoned where prior legal uncertainty justifies it. By enforcing the ICC awards, the Court reaffirmed India's pro-enforcement bias, signalling to foreign investors and arbitral institutions that contractual bargains will be respected and arbitral autonomy preserved.

Section 48 of the Arbitration and Conciliation Act, 1996 embodies India's commitment to the New York Convention, restricting judicial

review of foreign arbitral awards to narrow grounds such as incapacity, invalidity of the arbitration agreement, breach of natural justice, excess of jurisdiction, or conflict with India's fundamental public policy. Courts cannot re-examine merits or factual findings. Once enforceability is confirmed under Section 49, the award is deemed a decree of the court and executed accordingly, reflecting India's pro-enforcement bias in international arbitration.

**PI Opportunities Fund & Ors. v. Financial Software and Systems & Ors., 2025 SCC OnLine Mad 7113 – Madras High Court enforces foreign arbitral award despite objections under Section 48**

**The Court reaffirmed the pro-enforcement approach under the Arbitration and Conciliation Act, 1996, rejecting multiple objections based on buyback restrictions, election of remedies, waiver, and fraud**

The petitions arose from enforcement proceedings relating to a foreign arbitral award dated 05 July 2024, rendered under the SIAC Rules in Singapore, in disputes between a group of private equity investors and the promoters of Financial Software and Systems (FSS), a major Indian digital payments services company. The investors had acquired shares under a Share Acquisition and Shareholders' Agreement

(SASHA) of 2014, as amended in 2018. The SASHA included a detailed “exit waterfall” mechanism (Clause 19), offering investors secondary sale, buyback, IPO, or strategic sale as successive exit routes.

When efforts to secure a Qualified IPO or a secondary sale failed, the investors issued notices in 2020-21 to trigger their rights. They alleged that the promoters materially breached their obligations by failing to secure an exit. Before the arbitral tribunal, the investors claimed damages equivalent to the contractual exit price (Clause 19.1) and sought specific performance of the right to implement a strategic sale (Clause 19.6). The promoters disputed these claims, arguing that no absolute obligation existed under Clause 19.1, that investors had waived their rights by participating in a split sale process, that remedies under Clause 24.6 were mutually exclusive, and that liability was capped under Clause 22.

The tribunal issued a detailed award granting damages equivalent to the exit price and directing that, if such damages were not paid within 90 days, the investors could proceed with a strategic sale. To prevent double recovery, the tribunal further required surrender of shares if damages were paid. On clarification, the tribunal held that remedies under Clause 24.6 were alternative, and that only one remedy, damages or strategic sale, could ultimately be enforced.

Before the Madras High Court, the promoters (Respondents 2 and 3) resisted enforcement under Section 48 of the Arbitration and Conciliation Act, 1996. They argued that: (i) the award amounted to an illegal “buyback” of shares, violating Sections 66-68 of the Companies Act, 2013; (ii) investors had impermissibly pursued both termination and strategic sale, contrary to the doctrine of election; (iii) by participating in split sale discussions, investors waived their rights under Clause 19.1; (iv) the tribunal failed to consider affirmative vote matters; (v) the award violated provisions of the Specific Relief Act; and (vi) investors concealed an Ernst & Young report on FSS’s financials, amounting to fraud.

The High Court rejected each objection, emphasising the narrow scope of Section 48. On the buyback issue, the Court distinguished between “buyback” under Section 68 of the Companies Act and “surrender” of shares upon payment of damages. It noted that the award directed damages against individual promoters, not a company-led buyback, and that surrender was incidental to prevent double recovery. It further held that statutory provisions regulating capital reduction or buyback did not by themselves represent fundamental policy of Indian law.

On the doctrine of election, the Court observed that the investors had invoked both remedies

simultaneously, and the tribunal had chosen to give effect to strategic sale while allowing termination rights to lapse. This, it held, did not violate natural justice. Citing *Vijay Karia v. Prysmian Cavi* and *Vedanta v. Government of India*, the Court reiterated that Section 48 does not permit reopening contractual interpretation.

Similarly, the waiver objection was dismissed. The Court noted that Clause 29.5 of SASHA required any waiver to be in writing, and no such waiver was evidenced. Participation in split sale discussions did not amount to waiver. The Singapore High Court, acting as the seat court, had already rejected this objection, and principles of transnational issue estoppel prevented its re-litigation.

On alleged breach of the Specific Relief Act, the Court emphasised that the 2018 amendments made specific performance the rule, applicable retrospectively. Therefore, granting damages coupled with strategic sale did not contravene Indian law. The Court also rejected arguments about affirmative vote matters, finding them to be attempts to reopen merits.

The fraud objection, based on non-disclosure of the EY report, was also rejected. The Court noted that Respondents 2 and 3 were aware of the report during arbitration, yet failed to raise it. It held that mere allegations without substantial evidence do

not meet the high threshold under Section 48(2)(b)(i). Importantly, it distinguished the *Devas v. Antrix* precedent, where fraud was proven by regulatory and judicial findings.

Reaffirming settled law, the Court traced the jurisprudence from *Renusagar v. GE* (1994) through *Shri Lal Mahal v. Progetto Grano* (2014) and *Vijay Karia v. Prysmian* (2020), reiterating that “public policy” under Section 48 must be construed narrowly. Enforcement may be refused only if the award is induced by fraud, violates fundamental policy of Indian law in a non-derogable way, or shocks basic notions of justice or morality. Errors of fact, misinterpretation of contract, or statutory infractions that are regulatory or rectifiable do not suffice.

In its conclusion, the Court declared the award enforceable under Sections 47-49, converting it into a decree. It imposed costs of INR 25 lakh on the objecting respondents for raising untenable objections and delaying enforcement. The Court stressed India’s international commitment under the New York Convention and noted that entertaining such objections would undermine global confidence in India as an arbitration-friendly jurisdiction.

This judgment is significant for three reasons. First, it clarifies that contractual damages linked to share surrender are distinct from statutory

buybacks, ensuring that foreign awards involving investor exits are enforceable. Second, it reinforces that objections under Section 48 cannot be used to re-litigate issues or reopen contractual interpretation already decided by the tribunal or the seat court. Third, it demonstrates the Indian judiciary's commitment to pro-enforcement of foreign awards, even in high value disputes involving allegations of corporate law violations and fraud. By doing so, the Court aligns Indian law with international best practice, promoting predictability and investor confidence in cross-border deals.

Exit mechanisms in shareholder agreements, such as secondary sale, buyback, IPO, or strategic sale, are enforceable contractual rights in investor agreements. Arbitral tribunals may grant damages for breach of these obligations and couple them with remedies like share surrender or strategic sale to prevent double recovery. Courts have clarified that such contractual remedies, when crafted within the framework of the agreement, do not amount to statutory buybacks under the Companies Act, 2013.

**GEA Westfalia Separator India Pvt. Ltd. v. SVS Aqua Technologies LLP, 2025 SCC OnLine Bom 3157 – Bombay High Court declines jurisdiction over MSMED arbitral award challenges**

**The Court clarified that statutory arbitrations under the MSMED Act are territorially anchored to the Facilitation Council where the supplier is located, and contractual arbitration clauses do not override this statutory framework**

The petitions arose under Section 34 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”), where GEA Westfalia Separator India Pvt. Ltd. (“GEA”) sought to set aside awards dated 18 November 2024 rendered by the Micro and Small Enterprises Facilitation Council, Pune (“Facilitation Council”). The Facilitation Council, acting under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (“MSMED Act”), had directed GEA to pay dues and interest to SVS Aqua Technologies LLP (“SVS Aqua”) arising from a manufacturing and supply agreement of November 2019.

At the threshold, SVS Aqua raised an objection to territorial jurisdiction. It argued that since arbitration was conducted under Section 18 before the Facilitation Council in Pune, challenges under Section 34 must lie before the principal civil court in Pune. GEA countered that Clause 23 of the contract provided for arbitration “in Mumbai” under ICADR Rules, which implied Mumbai as the “seat” of arbitration, thereby

conferring jurisdiction on the Bombay High Court.

The Court identified this jurisdictional issue as the preliminary point. Clause 23 provided for disputes to be resolved “exclusively by arbitration in Mumbai” with a three-member tribunal under ICADR Rules. However, the arbitration culminating in the impugned awards was not held under Clause 23 but under the statutory mechanism in Section 18 of the MSMED Act. Once conciliation failed, Section 18 deemed an arbitration agreement to exist, and the Facilitation Council assumed jurisdiction. The proceedings were therefore statutory arbitrations, independent of the contractual clause.

The Court emphasised that Section 18(4) of the MSMED Act confers jurisdiction on the Facilitation Council within whose territory the supplier is located, overriding contrary agreements. SVS Aqua being based in Pune meant the Pune Facilitation Council was the statutory forum. The arbitration was held entirely in Pune, under the MSMED Act, and not under ICADR Rules. The impugned awards were thus products of statutory arbitration, not of the contractual arbitration clause.

The Court distinguished between “seat” and “venue” in arbitration law. Under contractual arbitration, identifying a seat typically determines

supervisory court jurisdiction. But here, there was no arbitration under Clause 23. Pune was not merely a venue but the statutory seat under Section 18, fixed by law where the supplier operates. GEA’s attempt to treat Mumbai as the seat by invoking Clause 23 was “untenable,” because the clause was never acted upon.

The Court also noted that the agreement lacked any exclusive jurisdiction clause vesting court jurisdiction in Mumbai. Section 2(1)(e) of the Arbitration Act defines “Court” for Section 34 purposes as the principal civil court with jurisdiction had the dispute been the subject of a civil suit. On these facts, such a suit would lie in Pune, where SVS Aqua was based and the Facilitation Council exercised jurisdiction. No material connection linked the dispute to Mumbai.

GEA relied on *Gammon Engineers & Contractors v. Rohit Sood*, (2024) SCC OnLine Bom 3304, where the Bombay High Court upheld party autonomy in choosing Mumbai courts despite an MSMED arbitration elsewhere. The Court distinguished that precedent, observing that in *Gammon Engineers* the parties had an explicit exclusive jurisdiction clause naming Mumbai courts. In contrast, the present agreement had no such clause; Clause 23 only designated Mumbai as the arbitral location for contractual arbitrations under ICADR, which were never invoked.

Further, the Court underlined that judgments must be read in their factual context. It cited *Ravi Ranjan Developers v. Aditya Kumar Chatterjee*, 2022 SCC OnLine SC 568, emphasising that precedents cannot be abstracted from their specific factual setting. Applying this, it held that *Gammon Engineers* does not apply where there is no exclusive jurisdiction clause and the statutory framework of MSMED prevails.

In its analysis, the Court concluded that the relevant arbitration agreement was not Clause 23 of the contract but the statutory agreement deemed under Section 18 of the MSMED Act. The arbitral tribunal was the Facilitation Council in Pune, and the seat was statutorily fixed as Pune. The arbitration clause in the contract, never acted upon, could not be used as a springboard to shift jurisdiction to Mumbai.

In conclusion, the Court held: (a) the contract had no exclusive jurisdiction clause; (b) the arbitration actually conducted was wholly under the MSMED Act; (c) statutory territorial jurisdiction fixed the seat in Pune; and (d) challenges under Section 34 lay before the competent civil court in Pune, not Mumbai. Accordingly, the petitions before the Bombay High Court were dismissed for want of jurisdiction.

By reinforcing that statutory arbitration under the MSMED Act stands independent of party autonomy clauses, the decision balances the special legislative intent of protecting MSMEs with the broader framework of the Arbitration Act. It underscores that contractual designations of arbitral seats or rules are irrelevant once Section 18 is invoked; the statutory scheme prevails. This ensures certainty of forum and curtails attempts to shift proceedings away from the statutory seat fixed by the MSMED Act.

Arbitrations under Section 18 of the MSMED Act operate through a statutory arbitration agreement, deemed to exist once conciliation fails. The Facilitation Council where the supplier is located has territorial jurisdiction to conduct such proceedings. This statutory seat prevails over any contractual arbitration clause, unless the agreement expressly contains an exclusive jurisdiction clause for courts. As a result, challenges under Section 34 must be filed before the courts at the place where the Facilitation Council conducted the arbitration.

**Chakardhari Sureka v. Prem Lata Sureka & Ors., Civil Appeal No. 11840 of 2025 (SLP(C) No. 20480 of 2025) – Supreme Court clarifies execution of arbitral awards pending appeal under Section 37**

**The Court held that execution proceedings cannot be deferred merely because an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is pending, unless an interim stay is granted**

The dispute arose out of an arbitral award that was challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”). The Section 34 application was dismissed, leaving the award intact. The award-debtor then filed an appeal under Section 37 of the Act. Although that appeal remained pending, no interim stay was granted by the appellate court. In the meantime, the award-holder initiated execution proceedings before the Delhi High Court.

The Execution Court, however, adjourned the matter, observing that since a Section 37 appeal was pending, it would not proceed with enforcement. The award-holder carried the matter to the Supreme Court, contending that such deferment was impermissible in the absence of a stay order.

The central issue before the Supreme Court was whether execution of an arbitral award can be stalled solely because a Section 37 appeal is pending, even though no stay order has been granted.

The appellant award-holder argued that Section 36 of the Arbitration Act provides the statutory framework for enforcement. Under Section 36(2), mere filing of an application to set aside the award under Section 34 does not render it unenforceable unless the court grants a stay. Section 36(3) empowers the court to grant stay on conditions, but until such stay is ordered, the award is enforceable as if it were a decree. This principle, the appellant argued, applies equally at the appellate stage under Section 37, pending appeal without stay cannot freeze execution.

The respondents contended that certain objections regarding executability of the award were still open and should be considered by the Execution Court. They submitted that since the Section 37 appeal was pending, the Execution Court was justified in deferring enforcement to avoid prejudice.

The Supreme Court rejected this line of reasoning. It observed that once a Section 34 petition is dismissed, the award becomes enforceable. The pendency of a Section 37 appeal by itself does not alter the award-holder’s right to enforce. Section 36 makes it clear that the award remains enforceable unless stayed. To hold otherwise would defeat the pro-enforcement framework of the Arbitration Act, which aims to minimize delay in realization of awards.

The Court held that while the Execution Court is empowered to examine objections relating to executability in accordance with law, it cannot decline to proceed merely because a Section 37 appeal is pending. Unless an interim order is passed in the appellate proceedings, the Execution Court must proceed with enforcement.

Importantly, the Supreme Court also emphasised that execution objections can be addressed on their merits in due course. The decision does not prevent the award-debtor from raising issues of executability under the Code of Civil Procedure, 1908, but the pendency of appellate proceedings cannot be used as a blanket shield to defer enforcement.

In conclusion, the Court allowed the appeal and clarified the legal position: the Execution Court is free to proceed with enforcement of an arbitral award subject only to any interim orders passed in pending appellate proceedings. Where no such interim order exists, execution cannot be stalled. The appeal was disposed of with these directions

This judgment reinforces three important principles in Indian arbitration law. First, it underscores the legislative intent of the 2015 amendments to Section 36, which eliminated the automatic stay previously available on filing a Section 34 petition. That logic extends to Section 37 appeals as well. Second, it draws a sharp

distinction between pendency of proceedings and grant of interim relief, only the latter can affect enforceability. Third, it strengthens the pro-enforcement bias of Indian arbitration jurisprudence, ensuring that award-holders are not deprived of the fruits of their award merely because appellate proceedings are pending without stay.

By clarifying that Section 37 appeals cannot by themselves stall execution, the Supreme Court has advanced certainty and speed in the enforcement process. This decision is a step towards reassuring award-holders and further align Indian arbitration practice with global standards that favour timely enforcement of awards.

Under Section 36 of the Arbitration and Conciliation Act, 1996, an arbitral award remains enforceable as a decree unless stayed by the court, while Section 37 provides for appeals against orders. However, the mere pendency of an appeal under Section 37 does not bar execution proceedings. Execution Courts must proceed with enforcement unless an interim stay is specifically granted, though they may still consider objections relating to executability under the Code of Civil Procedure.

