Delhi High Court follows the law laid down by English courts of Appeal in Naviera Amazonica Peruana S.A and in Sul America Cia Nacional to Decide the Seat of Arbitration in an ICC Arbitration Case Conducted in Singapore

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By a recent judgment **(Carzonet India Pvt Ltd., Vs Hertz International Limited)** dated 30th June 2015 Justice Mr. Muralidhar of Delhi High court rejected the preliminary objection raised by the decree holder that the arbitral award cannot be challenged in India under S.34 of the Indian Arbitration and Conciliation Act, 1996, since the implied seat of arbitration is Singapore and the ICC awards under challenge are Foreign awards. He further held that the consistent view of the Supreme Court of India following the English Judgments in the matters of ***Naviear Amazonica Peruana S.A. and Sul America Cia Nacional,*** with regard to finding the proper law governing the arbitration agreement is either by the **(i)** express choice of the parties **(ii)** implied choice of the parties or **(iii)** closest and the most real connection to the contract. It was held that in the absence of the express choice with regard to proper law of the arbitration agreement, in the absence of any other connection between Singapore and the contract, just because the arbitration took place in Singapore cannot be the ground for finding the closest connection to the contract. It was further held that since the contractual obligations were performed by the parties in India as per the Indian laws, the contract has the close and real connection only to India and hence seat of Arbitration is India and Singapore was only the venue of arbitration. Hence it was held that the Respondent has every right to challenge the said ICC awards given in Singapore, under S.34 of the Indian Arbitration and Conciliation Act, 1996.

Brief Facts of The Case: The parties ended up in an arbitration held in Singapore under ICC rules and the law governing the contract was Indian law. There were interim awards and a final award were passed by the arbitral tribunal and the petitioner chose to challenge the said awards in the High Court of Delhi invoking the jurisdiction of the High Court under S.34 of the Arbitration and Conciliation Act,1996. A preliminary objection was raised by the award holder (respondent) that

the challenge under S.34 of the Arbitration and Conciliation Act, 1996 is not maintainable on the ground that the awards are foreign awards passed in Singapore and as per ICC Rules. The High Court of Delhi by a detailed and well-reasoned judgment dated 30th June 2015 rejected the objection raised by the Respondent.

Contention of the parties: The petitioner contended that the agreement clause 14 specifically states that the agreement between the parties is Indian law and there and arbitration clause is a part of the agreement between the parties. In the absence of any thing contrary the law applicable to the agreement shall be the law applicable to the arbitration agreement as well. Hence consequentially the seat of arbitration shall be India, supervising courts shall be Indian Courts and hence the application seeking to set aside the arbitral award filed under S.34 of the Arbitration and Conciliation Act, 1996 is maintainable.

The Respondent contended that once the place of arbitration is mentioned in the contract between the parties, which should be taken as the seat of arbitration. In the present case the agreement between the parties specifically state that Singapore will be the place of arbitration and hence the parties have expressly chosen Singapore as the seat of Arbitration.

Decision of the Court: The High Court went into all the Judgments referred to by the parties and came to the conclusion that the venue of arbitration is different and the seat of arbitration is different. In the present case Singapore is the venue of arbitration but the seat is only India. The Court further held that in the absence parties specifically selecting a seat or a law governing the arbitration agreement then the best option is to see the closest and real connection to the contract which would be the seat. Hence it was found that India is the seat of arbitration and hence an application under S.34 of the Arbitration and Conciliation Act, 1996 is maintainable.