Selection & Determination of Applicable laws in International Commercial Arbitration[1]

S Ravi Shankar[2]

When the parties enter into a commercial contract that has parties from more than one Country, the parties require to decide the laws applicable to the contract and incorporate their choice of law either in the same contract or can enter into a separate agreement with regard to choice of law. The parties, if they are from the same country, they do not have right to make a choice of law since most of the national laws do not permit the citizens to circumvent the law of their own country. But in the international contracts parties have the power to choose the laws applicable to the contract. Such an express selection by the parties will avoid wastage of time and resources in getting the determination done by Tribunals or Courts. Such a determination may not finally express the actual intention of the parties, while entering into the contract. In the absence of an express selection by the parties the tribunals and courts try to determine the applicable laws, on the basis of various laws, Rules and global Practice. Determination of the law applicable to the contract without taking into consideration the will of the parties to the contract can lead to unhelpful uncertainty because of differences between solutions to the disputes, from State to State. For this reason, among others, the concept of "party autonomy" to determine the applicable law has been developed and thrived.[3] The concept of party autonomy in international contracts to choose the applicable laws ensures the power of parties to a contract to choose the law that governs that contract. The said concept recognises that parties to a contract may be in the best position to determine which set of legal principles is the most suitable one for their transaction. Mostly the parties try to choose a law that enhances certainty and predictability in case of a dispute between them. Many countries have recognised this concept and, as a result, giving effect to party autonomy to choose their choice of law in international arbitrations is a globally accepted concept today.

Hence parties while finalising the terms of the contract, should also choose the applicable laws to the contract and incorporate their choice of laws into the contract. The parties require to choose procedural law, substantive law and the law governing the arbitral agreement. They may choose three different laws from three different countries or laws from two or even one country. But while choosing the choice of laws they should understand the effects and implications of that selection, in case of a dispute between the parties. The Supreme Court of India in *Dozco India (P) Ltd case[4],* explained the above said concepts clearly

13. *The Supreme Court of India in ONGC Ltd. [(1998) 1 SCC 305] (at SCC p. 313, para 10) relied on the observations in Mustill and Boyd[5] to the effect:*

---

[1] This Paper was presented in the international Conference on " Challenges in International and Domestic Arbitration" organised by Indian Institute of Technical Arbitrators in Chennai on 23rd and 24th of September 2016

[2] The Author is an International & Domestic Arbitration lawyer practising in the Supreme Court of India and Senior Partner of Law Senate Law Firm having its offices in New Delhi, Mumbai & Chennai His email ID is ravi@lawsenate.com

[3] The Hague Principles on Choice of Law in International Commercial Contracts approved on 19th March 2015

[4] *Dozco India (P) Ltd. v. Doosan Infracore Co. Ltd.*, (2011) 6 SCC 179 : (2011) 3 SCC (Civ) 276 at page 185

[5] The law and Practice of Commercial Arbitration in England by Mustill and Boyd 2nd Edition

copyright @ 2016 Law Senate. All rights reserved

"It may therefore be seen that problems arising out of an arbitration may, at least in theory, call for the application of any one or more of the following laws—

1. The proper law of the contract i.e. the law governing the contract which creates the substantive rights of the parties, in respect of which the dispute has arisen.

2. The proper law of the arbitration agreement i.e. the law governing the obligation of the parties to submit the disputes to arbitration, and to honour an award.

3. The curial law i.e. the law governing the conduct of the individual reference.

*****

1. The proper law of the arbitration agreement governs the validity of the arbitration agreement, the question whether a dispute lies within the scope of the arbitration agreement; the validity of the notice of arbitration; the constitution of the tribunal; the question whether an award lies within the jurisdiction of the arbitrator; the formal validity of the award; the question whether the parties have been discharged from any obligation to arbitrate future disputes.

2. The curial law governs the manner in which the reference is to be conducted; the procedural powers and duties of the arbitrator; questions of evidence; the determination of the proper law of the contract.

3. The proper law of the reference governs the question whether the parties have been discharged from their obligation to continue with the reference of the individual dispute."

The first endeavour of the author is to deal with the importance and significance in expressly selecting the applicable laws and the factors to be taken into consideration while selecting them. The second endeavour of the author is to deal with the principles to be followed by the courts / arbitral tribunals while determining the applicable laws to a contract, in case of failure of the parties to expressly record their choice of law into the contract.

Procedural law or Lex Arbitri: The Procedural law or Lex Arbitri or the crucial law is the law, which governs the procedure of an international arbitration. That means the arbitration shall be conducted as per the provisions of the procedural law. For example, if parties have chosen Singapore International Arbitration Act (IAA), as the procedural law, the arbitration proceedings will be governed by IAA. That goes without saying that the procedural law governs the procedure to appoint arbitrators, removal of arbitrators, interim orders, court assistance with regard to seeking presence of witnesses, challenging of the arbitral awards etc., The parties should decide the said procedural law, keeping various issues that may arise from that choice of procedural law.

www.lawsenate.com
Delhi Office: B-3/73, LGF, Safdarjung Enclave, New Delhi-110029 India
Mumbai Office: 403, Tardeo A/C Market (4th floor), Tardeo Road, Mumbai-400034 India
Phone: 011-2610 4773, 011-2610 2873
arb@lawsenate.com, info@lawsenate.com
copyright @ 2016 Law Senate. All rights reserved

The Supreme Court of India relied on the observations made by Dicey and Morris in Sumitomo Heavy Industries case[6] about the legal frame work of arbitration as follows:

"**13.** *Mr Sorabjee relied upon observations in Dicey and Morris[7] on The Conflict of Laws. The first rule under the heading "Arbitration" in the chapter on "Arbitration and Foreign Awards" reads thus:*

> *"57. (1) The validity, effect and interpretation of an arbitration agreement are governed by its applicable law.*
>
> *(2) The law governing arbitration proceedings is the law chosen by the parties, or, in the absence of agreement, the law of the country in which the arbitration is held."*
>
> *In discussing clause (2) of the rule aforementioned, this is stated:*
>
> *"The procedural law of the arbitration will determine how the arbitrators are to be appointed, insofar as this is not regulated in the arbitration agreement; the effect of one party's failure to appoint an arbitrator, e.g., whether an arbitrator may be appointed by a court, or whether the arbitration can proceed before the sole arbitrator appointed by the other party, and whether the authority of an arbitrator can be revoked. That law will also determine what law the arbitrators are to apply, and whether they are expected or allowed to decide ex aequo et bono or as amiables compositeurs, and, if not, whether the parties can give them this power or impose on them this duty. That law will also determine the procedural powers and duties of the arbitrators, e.g., whether they must hear oral evidence (but not their jurisdiction to decide the dispute, which is governed by the arbitration agreement and the law applicable to it) or whether the arbitrators have been guilty of misconduct. It will also determine what judicial remedies are available to a party who wishes to apply for security for costs or for discovery or who wishes to challenge the award once it has been rendered and before it is sought to enforce it abroad, and the circumstances in which judicial remedies may be excluded."*

Seat of Arbitration and Procedural law: The simple meaning of Seat of Arbitration is the place/ country where the parties want to have their arbitration. But the legal consequence of choosing a seat of arbitration is not just giving a geographic location but much more than that. Once a party chooses a seat of arbitration, the arbitration law of that place automatically becomes the procedural law applicable to the contract. This is because the scheme of arbitration not only provides for a private mechanism to adjudicate the disputes between the parties but also provides the procedural law and also a court to supervise the arbitration proceedings. On that basis the Court having jurisdiction over the seat of arbitration becomes the Court with supervising powers for that particular arbitration, exercising the powers under the procedural law. Hence by choosing a seat of arbitration, parties automatically choose the procedural law applicable to the arbitration and the supervisory courts. A contract cannot have

[6] Sumitomo Heavy Industries Ltd. v. ONGC Ltd., (1998) 1 SCC 305 at page 314

[7] The Conflict of laws by Dicey and Morris, 12th Edn

Delhi Office: B-3/73, LGF, Safdarjung Enclave, New Delhi-110029 India
Mumbai Office: 403, Tardeo A/C Market (4th floor), Tardeo Road, Mumbai-400034 India
Phone: 011-2610 4773, 011-2610 2873
arb@lawsenate.com, info@lawsenate.com
copyright @ 2016 Law Senate. All rights reserved

Chennai as the seat of arbitration and Hong Kong law as the procedural law, because the Courts in Chennai can exercise only the powers under Indian law and not under the Arbitration Ordinance of Hong Kong. In the same way a Court in Hong Kong will not be able to supervise an arbitration happening in Chennai. Hence to have a valid arbitration clause the seat, the procedural law and the supervising courts, should be chosen from the same Country. In a very recent Judgement in **Eitzen Bulk case[8],** Supreme Court of India confirmed the relationship between the seat and the procedural law as follows:

"34. As a matter of fact, the mere choosing of the juridical Seat of arbitration attracts the law applicable to such location. In other words, it would not be necessary to specify which law would apply to the Arbitration proceedings, since the law of the particular country would apply ipso jure".

In Channel Tunnel Group case[9], an English Court held that the presumption in favour of the law of the seat was irresistible in the absence of an explicit choice of law.

Many Countries, to avoid any confusion, have expressly incorporated provisions in their arbitration laws making the procedural law of that country be applicable only to the international arbitrations seated in their country. In England, the 1996 Arbitration Act does not allow any scope for having a seat in England even with an express specification of a foreign procedural law, in an arbitral agreement. Swiss law also allows the applicability of the Swiss Arbitration law only for the Swiss Seated Arbitrations. Hence seat of arbitration determines the procedural law which will apply to the international arbitration.

Venue of Arbitration and Seat of Arbitration: The seat of arbitration has a jurisdiction element in it and hence it determines the procedure of arbitration, Procedural law and consequential rights and responsibilities of the parties. But for the convenience, the actual arbitration hearings may be happening in various countries or cities. In some arbitration clauses, even parties may choose to incorporate the venue in which the actual arbitration hearings will happen, in case of disputes. Such a mentioning of the venue of arbitration does not have any legal impact over the procedural law or the seat of arbitration. That means if parties choose Delhi as the seat of arbitration and Singapore as the venue of arbitration, the procedural law applicable will be "Arbitration and Conciliation Act,1996" and the supervising court will be courts in Delhi. In some Arbitration clauses parties signify a place of arbitration in one country and the procedural law of another country, while determining the seat the courts gave a meaning of "venue" to the "place of arbitration" and not the seat of arbitration. In such interpretations, always the tribunals and courts try to read the actual intention of the parties, while

[8] Eitzen Bulk A/S Vs Ashapura Minechem Ltd (2016) SCC online SC 523
[9] Channel Tunnel Group Ltd Vs Balfour Beatty Construction Ltd (1993) AC 334

www.lawsenate.com
Delhi Office: B-3/73, LGF, Safdarjung Enclave, New Delhi-110029 India
Mumbai Office: 403, Tardeo A/C Market (4th floor), Tardeo Road, Mumbai-400034 India
Phone: 011-2610 4773, 011-2610 2873
arb@lawsenate.com, info@lawsenate.com
copyright @ 2016 Law Senate. All rights reserved

entering into that contract. The Supreme Court of India while dealing *National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd.*, (2007) 5 SCC 692 at page 697, it held as follows:

***"9.** The rules of interpretation require the clause to be read in the ordinary and natural sense, except where that would lead to an absurdity. No part of a term or clause should be considered as a meaningless surplusage, when it is in consonance with the other parts of the clause and expresses the specific intention of parties. When read normally, the arbitration clause makes it clear that the matter in dispute shall be referred to and finally resolved by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (or any statutory modification, enactment or amendment thereof) and the venue of arbitration shall be Hong Kong. This interpretation does not render any part of the arbitration clause meaningless or redundant. <u>Merely because the parties have agreed that the venue of arbitration shall be Hong Kong, it does not follow that laws in force in Hong Kong will apply. The arbitration clause states that the Arbitration and Conciliation Act, 1996 (an Indian statute) will apply.</u> Therefore, the said Act will govern the appointment of arbitrator, the reference of disputes and the entire process and procedure of arbitration from the stage of appointment of arbitrator till the award is made and executed/given effect to."*

The Supreme Court of India discussed the frame work of International Arbitration including the differences between the seat of Arbitration and venue of Arbitration in detail in Enercon (India) Ltd[10]. case

***"152.** This apart, we have earlier noticed that the main contract, the IPLA is to be performed in India. The governing law of the contract is the law of India. Neither party is English. One party is Indian, the other is German. The enforcement of the award will be in India. Any interim measures which are to be sought against the assets of Appellant 1 ought to be in India as the assets are situated in India. We have also earlier noticed that Respondent 1 has not only participated in the proceedings in the Daman courts and the Bombay High Court, but also filed independent proceedings under the Companies Act at Madras and Delhi. All these factors would indicate that Respondent 1 does not even consider the Indian courts as forum non conveniens. In view of the above, we are of the considered opinion that the objection raised by the appellants to the continuance of the parallel proceedings in England is not wholly without justification. The only single factor which prompted Respondent 1 to pursue the action in England was that the venue of the arbitration has been fixed in London. The considerations for designating a convenient venue for arbitration cannot be understood as conferring concurrent jurisdiction on the English courts over the arbitration proceedings or disputes in general. Keeping in view the aforesaid, we are inclined to restore the anti-suit injunction granted by the Daman Trial Court*."

[10] *in Enercon (India) Ltd. v. Enercon Gmbh*, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59 : 2014 SCC OnLine SC 129 at page 66

www.lawsenate.com
Delhi Office: B-3/73, LGF, Safdarjung Enclave, New Delhi-110029 India
Mumbai Office: 403, Tardeo A/C Market (4th floor), Tardeo Road, Mumbai-400034 India
Phone: 011-2610 4773, 011-2610 2873
arb@lawsenate.com, info@lawsenate.com
copyright @ 2016 Law Senate. All rights reserved

New York Convention and Procedural law: While choosing the procedural law/ seat of Arbitration it is important to keep in mind that the seat should be a seat from a New York Convention country and also recognised by the countries, in which the final award may get enforced. The main reason for companies choosing international arbitration as the dispute resolution mechanism than the National Court litigations is the global enforceability of International Arbitral awards. The power of the said enforceability of International arbitral awards comes from the New York Convention[11] 1958. The said convention is signed by about 140 countries as of 2015, agreeing to recognise the international arbitral awards passed in the arbitral seats falling within the convention countries, subject to certain conditions. Even though all the signatories do not recognise the arbitral awards passed in all the member countries, the popular seats of Arbitration including London, Paris, Singapore, New York etc., are recognised by almost all the countries. India recognised China and Hong kong only from 2012 on reciprocity basis. Hence the seat chosen by party or the procedural law chosen by the party should lead to an arbitral seat which is recognised by the countries where the possible enforcement of the arbitral award will be. Hence the choice of Procedural law does not only decide the seat and supervising courts, but also determines the capability of the award getting enforced. Hence Parties should select the procedural law after taking into all the above said implications.

The Substantive law or Law Governing the Contract: The substantive law is the law which has to be applied by the arbitral tribunal while determining the disputes between the parties. The Parties may be from India and Malaysia but they can even choose a third law, say the UK law as the law governing the contract between the parties. It is not necessary that a third law has to be chosen always, but in their endeavour to have an equal (dis)advantage, parties these days chose the law of a neutral country as the governing law of the contract. The parties need not choose three different laws of three different countries as procedural, governing law and as the law governing the arbitration agreement but they should specifically express their choice for these three categories of law. While choosing three different laws for an arbitration agreement, the parties should keep in mind that finding an arbitrator or a counsel having some exposure to all the three laws may become a very difficult issue.

Determination of Substantive law in the absence of agreement between Parties: If the parties fail to expressly state their choice of laws, the courts or tribunals require to determine them. While considering the choice of substantive law it is essential to distinguish two circumstances, viz (1) Situations where there is no choice of law agreement and the tribunal must select the substantive laws solely by applying conflict of laws rules or directly choosing an applicable substantive law and (2) The situations where the parties have agreed upon the applicable substantive law. All Courts and all arbitral institutions do not even hesitate to apply the choice selected by the parties if they have expressed their choice of governing law in the contract. However the approach of different courts, institutions and tribunals to the selection of the governing law, in the absence of a choice-of-law agreement is not uniform. But all the National Arbitration legislations provide the authority to arbitrators and tribunals to

[11] New York Convention on Recognition and Enforcement of Foreign awards 1958

Delhi Office: B-3/73, LGF, Safdarjung Enclave, New Delhi-110029 India
Mumbai Office: 403, Tardeo A/C Market (4th floor), Tardeo Road, Mumbai-400034 India
Phone: 011-2610 4773, 011-2610 2873
arb@lawsenate.com, info@lawsenate.com
copyright @ 2016 Law Senate. All rights reserved

select law governing the substance of the dispute. For example, Article 28 of the UNCITRAL Model Law provides for the arbitrators to apply either the law chosen by the parties (Article 28(1)) or, in the absence of a choice of law agreement, the law chosen by the tribunal (Article 28(2)). The only difference is some National legislations expect the tribunal to apply the "conflict of laws Rules", while some allow the tribunal directly choose the applicable law which they consider appropriate and some provides narrow scope by stating certain conditions to such a determination by the tribunal. For Example, the English Arbitration Act,1996 is providing in S.46(3) that" if or to the extent that there is no choice or agreement the tribunal shall apply the law determined by the conflict of Laws rules which it considers applicable". New Zealand Arbitration Act, S28(2) provides "apply the law determined by the conflict of laws Rules which it considers applicable". Indian Arbitration and Conciliation Act S.28(1)(b)(iii) provides for an application of Rules of law it considers to be appropriate in the given circumstances surrounding the dispute. The US law also provides for a full freedom to the tribunal. In BALCO[12] case, the constitution Bench of Supreme Court of India dealt with the above said section and confirmed the powers of the tribunal under S.28 of the Act, which deals with the powers of the tribunal to determine, the Governing law. It was held that

"*118.* *It was submitted by the learned counsel for the appellants that Section 28 is another indication of the intention of Parliament that Part I of the Arbitration Act, 1996 was not confined to arbitrations which take place in India. We are unable to accept the submissions made by the learned counsel for the parties. As the heading of Section 28 indicates, its only purpose is to identify the rules that would be applicable to "substance of dispute". In other words, it deals with the applicable conflict of law rules. This section makes a distinction between purely domestic arbitrations and international commercial arbitrations, with a seat in India. Section 28(1)(a) makes it clear that in an arbitration under Part I to which Section 2(1)(f) does not apply, there is no choice but for the Tribunal to decide "the dispute" by applying the Indian "substantive law applicable to the contract". This is clearly to ensure that two or more Indian parties do not circumvent the substantive Indian law, by resorting to arbitrations. The provision would have an overriding effect over any other contrary provision in such contract. On the other hand, where an arbitration under Part I is an international commercial arbitration within Section 2(1)(f), the parties would be free to agree to any other "substantive law" and if not so agreed, the "substantive law" applicable would be as determined by the Tribunal."*

The tribunals have to make their decision to apply a particular substantive law, keeping in mind the approach provided by the procedural law of the seat of arbitration. If the procedural law does not provide for any restriction, then the tribunals can apply their own selection method or follow any "any conflict of law Rules "appropriate" or "applicable" in their opinion. If the procedural law provides for any restriction, then it is better for the tribunal to follow the directions of the procedural law, in order to

[12] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810 : 2012 SCC OnLine SC 693at page 618

copyright @ 2016 Law Senate. All rights reserved

avoid any future challenge to the award, on the ground of failure to apply the directives of the procedural law. For Example, earlier Courts in United States have taken a view that the substantive law of the seat of arbitration should be applied in the absence of choice of substantive law, selected by the parties, since it was felt that it was in line with the intention of the parties. But now the approach is slowly changing. In all Civil law countries, there has been a uniformity to apply the Conflict of Laws Rules of the seat to determine the applicable substantive law. Some Tribunals have taken a view that the Conflict of Law Rules of the State with close connection to the dispute shall be the basis for determination of the applicable substantive law. Some other tribunals have applied "closest connection" Rule and have taken a view that the substantive law of the State with closest connect to dispute shall be the best possible choice of law. In some other cases Institutional Rules provide certain guidelines for determining the substantive law, which can be followed if those institutions are administering the arbitration and it is not in conflict with procedural law of the seat of arbitration.

The Law Applicable to the Arbitration Agreement: Historically some Countries, surprisingly came out with amendments and laws, making the arbitral agreements unenforceable. Hence the international community invented the concept of seperability to make the arbitration clause survive even if the main contract does not survive. The law applicable to the arbitral agreement begins with the separability presumption. The law applicable to the Arbitration agreement has to be chosen by the parties and incorporate it into the arbitral agreement. The separability doctrine does not mean that the law applicable to the arbitration clause is necessarily different from that applicable to the underlying contract[13]. The procedural law governing the arbitration or the substantive law governing the contract may be or may not be the same. But it is necessary for the parties to specifically choose a law governing the arbitration agreement, failing which the tribunal is required to determine the same. The international arbitration agreement between the parties is separable from the underlying contract that is associated with which it is associated. It is important that to maintain an arbitration proceeding under an arbitration agreement, the agreement requires to be a valid one under the law to which parties have subjected to it.

Determination of the law governing the Arbitration agreement in the absence of express agreement between Parties: The New York Convention Article V(1)(A) which provides that an award need not be recognised if the arbitration agreement was not valid under the law to which parties have subjected it or, failing any indication thereon, under the law of the country where the award was made[14]. Hence New York Convention indirectly made a connection between the law Governing the arbitral agreement and the procedural law.

[13] Final award in ICC case No.1507, in S.Jarvin & Y Derains
[14]See A Ven Den Berg, The New York convention of 1958 282-83 (1981)

www.lawsenate.com
Delhi Office: B-3/73, LGF, Safdarjung Enclave, New Delhi-110029 India
Mumbai Office: 403, Tardeo A/C Market (4th floor), Tardeo Road, Mumbai-400034 India
Phone: 011-2610 4773, 011-2610 2873
arb@lawsenate.com, info@lawsenate.com
copyright @ 2016 Law Senate. All rights reserved

Another contemporary approach to selecting the law governing an International Arbitration agreement is application of the law Governing the underlying contract. In support of that view, various authorities have reasoned that, when entering into a contract, businessmen and business women do expect that the law they chose to govern their contract will also apply to the arbitration clause contained within their contract[15]. Our Indian view is also more or less the same which can be seen from the Judgments of the Supreme Court which are given below. In Shin-Etsu case[16] relying on the Judgment of the Supreme Court in NTPC case, Supreme Court held as follows:

80. *There is yet another strange result which may come about by holding that Section 45 requires a final finding. This can be illustrated by reference to the facts of the present case. The parties here have subjected their agreement to the laws of Japan. The question that will arise is: When a court has to make a final determinative ruling on the validity of the arbitration agreement, under which law is this issue to be tested? This question of choice of law has been conclusively decided by the judgment of this Court in National Thermal Power Corpn. v. Singer Co. [(1992) 3 SCC 551] where it was observed:*

> *"23. The proper law of the arbitration agreement is normally the same as the proper law of the contract. It is only in exceptional cases that it is not so even where the proper law of the contract is expressly chosen by the parties. Where, however, there is no express choice of the law governing the contract as a whole, or the arbitration agreement as such, a presumption may arise that the law of the country where the arbitration is agreed to be held is the proper law of the arbitration agreement. But that is only a rebuttable presumption." [Ibid., at SCC p. 563, para 23, per Thommen, J.]*

One of the most popular English Court Judgments in the case of Sulamerica[17] prescribed three stage test for determining the law applicable to an arbitration agreement and the steps are as follows: (1) Whether the parties expressly chose the law of arbitration agreement (2) Whether the Parties made an implied Choice of law of the arbitral agreement (3) In the absence of either the express or implied choice of parties, the system of law with which the arbitral agreement has the "closest and most real connection". The three step analysis is accepted and followed by many arbitral tribunals and courts all over the world. But the above English court came to the conclusion that the substantive law mentioned in the arbitration agreement has the "Closest and real connection" to the arbitration agreement was accepted by Courts in India but some other courts including the Singapore Court does not agree the said view of the English Court.

The Singapore High Court in First Link Investments case[18] highlighted the importance of making an express choice as to the law Governing an arbitration agreement and found that, in the absence of

---

[15] Gary Born International Commercial Arbitration (Kluwer Law International 2nd Edition, 2014)at P 580.
[16] *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234 at page 269*

[17] Sulamerica cia Nacional De Seguros SA Vs Enesa Engenharia S.A. (2012) EWCA Civ 638
[18] First Link Investments Corp Ltd V GT Payment Pte Ltd and others (2014) SGHCR 12

www.lawsenate.com
Delhi Office: B-3/73, LGF, Safdarjung Enclave, New Delhi-110029 India
Mumbai Office: 403, Tardeo A/C Market (4th floor), Tardeo Road, Mumbai-400034 India
Phone: 011-2610 4773, 011-2610 2873
arb@lawsenate.com, info@lawsenate.com
copyright @ 2016 Law Senate. All rights reserved

indications to the contrary, parties will have impliedly chosen the law of the seat as the proper law to govern the arbitration agreement, in a direct competition between the chosen substantive law and the law of the chosen seat of arbitration.

Conclusion: It is very important that the Parties to an international agreement to expressly choose the procedural, substantive and the law applicable to the arbitration agreement and incorporate into the main contract. In the absence of such an express selection of law by the parties, the arbitration may end up in unexpected interpretations either by the tribunal or by the courts which may delay the whole process of arbitration and frustrate the parties.

www.lawsenate.com
Delhi Office: B-3/73, LGF, Safdarjung Enclave, New Delhi-110029 India
Mumbai Office: 403, Tardeo A/C Market (4th floor), Tardeo Road, Mumbai-400034 India
Phone: 011-2610 4773, 011-2610 2873
arb@lawsenate.com, info@lawsenate.com
copyright @ 2016 Law Senate. All rights reserved