IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 8094 OF 2025
IN
COMMERCIAL ARBITRATION PETITION NO. 1110 OF 2025

Total Energies Gas & Power Limited …Applicant

In the matter between:

Total Energies Gas & Power Ltd. …Petitioner

Versus

Western Concessions Private Limited …Respondent

Mr. Zubin Behramkamdin, Senior Advocate a/w Mr. Abhileen Chaturvedi, Mr. Akhil Mahesh, Ms. Anjali Kumari and Ms. Prachurya Sahu i/b. Cyril Amarchand Mangaldas, for the Applicant/Petitioner.

Mr. Aspi Chinoy, Senior Advocate a/w Mr. Zarir Bharucha, Senior Advocate a/w Mr. Chandrasekhar Haridh, Mr. Rishi Thakur, and Ms. Dhwani Gala i/b. Bimal Rajasekhar, for the Respondent.

CORAM : ARIF S. DOCTOR J.
RESERVED ON : 10th SEPTEMBER 2026
PRONOUNCED ON : 19th NOVEMBER 2026

JUDGMENT:

1. The present Petition is filed under the provisions of Sections 47 and 49 of the Arbitration and Conciliation Act, 1996 (**"the Arbitration Act"**) and seeks enforcement of a Final Arbitral Award dated 23rd April 2025 (**"the Final Award"**) passed in a London seated arbitration between the Petitioner and the Respondent conducted under the ICC Rules 2021. The Petitioner was the Claimant in the arbitration.

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Brief Facts:

2. On 18th October 2017, the Petitioner, as "Service Provider", and one H-Energy Gateway Private Limited, i.e., now the Respondent, as "Terminal Owner", entered into a Binding Agreement for Regasification Services ("**Binding Agreement**"). The Service Provider had undertaken, under the Binding Agreement to provide the Respondent with the services of a Floating Storage and Regasification Unit ("**FSRU**"), called the "Cape Ann", which was to be moored at the Jaigarh Port, Maharashtra, operated by JSW Jaigarh Port Limited ("**JSW**") for receiving, regasifying and delivering regasified natural gas to the onshore gas grid as part of the LNG storage and regasification terminal project being developed by the Respondent at Jaigarh Port pursuant to a Sub-Concession Agreement entered into with JSW. Section 14(a)(vi) of Exhibit A to the Binding Agreement ("**Section 14(a)(vi)**") required the FSRU to have, either on board or promptly available electronically, the certificates, documents and equipment required by applicable law. Clause 8 of the Binding Agreement provided for arbitration in the event of any disputes arising between the Parties thereto.

3. Subsequently, in 2019, GDF Suez LNG Supply S.A. was absorbed into Global LNG S.A.S. ("**GLNG**"), and by a Deed of Novation and Amendment ("**Deed of Novation**") effective from 13th March, 2020, all rights and obligations of GLNG as the Services Provider stood novated in favour of the Petitioner.

4. Disputes then arose between the Petitioner and the Respondent with regard to the Conditions of Use Agreement ("**COU**"), which JSW required to be executed for permitting the Vessel to enter and operate at Jaigarh Port. The COU

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was to be executed between JSW and SRV Joint Gas Two Ltd., the Vessel Owner, with the Petitioner and Respondent facilitating negotiations on their respective behalves. The proposed COU governed, *inter alia*, the allocation of liabilities arising from the Vessel's use of the Port. JSW proposed liability limits of USD 1 billion for oil pollution and USD 350 million for other accidents or occurrences, whereas the Petitioner maintained that the Vessel's liability should not exceed USD 150 million. Consequently, despite negotiations between the Petitioner and the Respondent from the latter half of 2018 to April 2020, no agreement was reached on the terms of the COU.

5. Section 14(a)(vi) of Exhibit A to the Binding Agreement required the FSRU to have, either on board or promptly available electronically, the certificates, documents and equipment required by applicable law. The Respondent contended that the COU fell within this requirement and that the failure to conclude the same constituted a material breach of the Binding Agreement. It further contended that the Vessel's consequent inability to enter Jaigarh Port and perform its fundamental contractual obligations amounted to a repudiatory breach. The Petitioner disputed that the COU was a document required under Section 14(a)(vi).

6. On 15th March 2020, the Vessel arrived outside Jaigarh Port and tendered a Notice of Arrival. However, in the absence of an agreed COU, the Vessel could not enter the Port. Thereafter, on 9th April 2020, the Respondent issued a notice terminating the Binding Agreement. The Petitioner disputed this termination on the same day.

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7. The Petitioner thereafter called upon the Respondent to furnish proof of maintenance of the Terminal Owner insurance required under the Binding Agreement and separately drew down USD 10,445,035.93 in May 2020 from Standby Letters of Credit (**"Letters of Credit"**) issued by the Respondent on account of unpaid invoices, which the Respondent failed to replenish, and hence the Petitioner, on 30th June, 2020, issued a notice terminating the Binding Agreement and invoked arbitration under Clause 8.8 of the Binding Agreement by a Request for Arbitration dated 4th November, 2021.

8. A three-member Arbitral Tribunal (**"Tribunal"**) was then constituted under the ICC Rules, the seat of arbitration being London and the governing law of the Binding Agreement being the law of England and Wales.

9. The Respondent raised a jurisdictional objection in arbitration, which was rejected by a Partial Final Award dated 14th April 2023 (**"the Partial Award"**). The Tribunal published the Final Award on 23rd April 2025, upholding the Petitioner's termination and directing the Respondent to pay the following amounts to the Petitioner within twenty-one days:

(i) a termination fee of USD 24,750,000

(ii) an outstanding invoice balance of USD 67,305

(iii) interest of USD 5,172,132.45 up to December 6, 2024, and USD 4,369.59 per day thereafter until payment

(iv) GBP 2,579,409.54 towards legal costs and expenses

(v) USD 445,000 towards costs of the arbitration.

10. The Respondent has admittedly not challenged either the Final Award or

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the Partial Award under the provisions of the English Arbitration Act, 1996 (**"the English Arbitration Act"**), which would govern any such challenge. Also, the Respondent, despite being called upon by communications dated 28th April 2025 and 13th May 2025 to make payments in accordance with the Final Award, has not done so.

11. Thus, the present Petition.

Submissions on behalf of the Petitioner:

12. Mr. Behramkamdin, Learned Senior Counsel appearing on behalf of the Petitioner, at the outset, submitted that the Final Award arose from a commercial legal relationship between the parties, pursuant to a written arbitration agreement governed by English law, and was rendered in the United Kingdom, a territory notified by the Central Government as a reciprocating territory under the New York Convention, pursuant to the Central Government Notification dated 25th October 1976. He therefore submitted that the Final Award satisfied the requirements of Section 44 of the Arbitration Act, and was a Foreign Award which was capable of being recognised and enforced in India.

13. He also pointed out that the Petitioner had complied with the requirements of Section 47 of the Arbitration Act since the Petitioner had produced (i) a duly authenticated copy of the Final Award and (ii) a certified copy of the Binding Agreement, which contained the arbitration clause, both of which were in English and hence did not require any translation or any further evidence under Section 47(1)(c) of the Arbitration Act.

14. He submitted that it was an admitted position that neither the Partial

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Award nor the Final Award had been challenged by the Respondent before the Courts in England under the provisions of the English Arbitration Act, which governed any such challenge. In support of his contention, he placed reliance upon the affidavit dated 2nd October, 2025, of Mr. Mark Howel Wash, an English solicitor and Partner of Clyde & Co. LLP, which confirmed that no proceedings had been initiated to challenge either the Partial Award or the Final Award. He accordingly submitted that the Final Award had become binding and enforceable on 21st May, 2025, in accordance with Clause 8 of the Binding Agreement and Article 35(6) of the ICC Rules.

15. Mr. Behramkamdin further submitted that none of the grounds for refusing enforcement of the Final Award under Section 48 of the Arbitration Act were applicable to the facts of the present case. He submitted that the arbitration agreement was valid under English law and that the Tribunal was constituted in accordance with the agreement of the parties and the ICC Rules and that the matters determined by the Tribunal fell within the scope of the reference to arbitration. He also submitted that the Final Award was neither induced nor affected by fraud or corruption, nor was its enforcement contrary to the public policy of India. He therefore submitted that there was no statutory impediment to the enforcement of the Final Award and hence prayed that the present Petition be allowed.

Submissions on behalf of the Respondent:

16. Mr. Chinoy, Learned Senior Counsel appearing on behalf of the Respondent, opposed the Petition on the ground that the Tribunal had completely

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failed to consider, let alone adjudicate upon, the Respondent's case of repudiatory breach. He submitted that the Respondent had specifically pleaded repudiatory breach, in the alternative to its case of material breach, as was plainly evident from the following viz.

i. **The Respondent's communication dated 14th April 2020** to the Petitioner, following the Respondent's termination of the Binding Agreement on 9th April 2020, in which the Respondent had specifically reiterated that the absence of a valid COU and the Vessel's consequent inability to commence operations at the Jaigarh Port constituted a repudiatory breach of the Petitioner's fundamental obligations under the Binding Agreement.

ii. **The Respondent's Answer to the Request for Arbitration dated 21st January 2022**, particularly paragraphs 43 to 45, wherein the Respondent expressly alleged both material breach and repudiatory breach.

iii. **The Terms of Reference**, particularly Issues 38.3 to 38.6 and 38.8, thereof, which addressed the parties' respective obligations concerning the COU and whether the Respondent was entitled to terminate the Binding Agreement on Section 26(a)(vii) of Exhibit A to the Binding Agreement or otherwise.

iv. **The Respondent's Statement of Defence and Counterclaim dated 21st August 2023**, particularly paragraphs 13 and 52, in which the Respondent pleaded that the Vessel's inability to enter the Jaigarh Port deprived the Respondent of substantially the whole benefit of the Binding Agreement and thereby constituted a repudiatory breach of the Petitioner's fundamental

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obligation, which the Respondent accepted by terminating the Binding Agreement.

v. **The Petitioner's Reply and Defence to Counterclaim dated 25th September 2023**, particularly paragraph 5(viii), which expressly addressed the Respondent's plea of repudiatory breach, albeit while disputing it.

17. Mr. Chinoy submitted that the parties' opening submissions, filed on 25th October 2024, demonstrated that repudiatory breach remained squarely in play when the hearing commenced on 4th November 2024. He pointed out that the Petitioner's Opening Submissions recorded the Respondent's case that the Petitioner's failure to enter into the COU was fundamental, since it deprived the Respondent of substantially the whole benefit of the Binding Agreement and was therefore repudiatory in nature. He pointed out that in paragraphs 9 and 67 of the Petitioner's Opening Submissions the Petitioner had acknowledged the Respondent's case of repudiatory breach.

18. He submitted that the Respondent's opening submissions were equally explicit on the issue of repudiatory breach and pointed out that the Respondent had specifically, in paragraph (II) of the opening submissions, framed the following issue, viz.

> "*Was WCPL entitled to terminate for material or repudiatory breach?*"

He also pointed out that in paragraph 100.3 of the opening submissions, the Respondent had submitted that the failure to obtain the COU constituted "*a fundamental failure of performance under the Binding Agreement*", since, without the COU, "*the Cape Ann could not and did not enter the Port, and the Vessel could not be used for the primary purposes agreed under the Binding Agreement*". He thus submitted that the Respondent had specifically pleaded a case of repudiatory breach.

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19. He pointed out that even the Petitioner's closing submissions, in the speaking note dated 8th November 2024, expressly acknowledged that the Respondent's case included repudiation and pointed out that in paragraph 85 thereof, the Petitioner had stated as follows, viz.

> *"whatever might have later been said about a repudiatory breach and a common law right to terminate… what matters for the purposes of Clause 26 of the Binding Agreement is the specific breach which is said to give rise to the contractual right of termination."*

Mr. Chinoy submitted that this was a clear acknowledgement of the fact that at the closing stage of the hearing, the Respondent had advanced a case of repudiatory breach in addition to material breach.

20. Mr. Chinoy then pointed out that the Tribunal itself, in paragraphs 51 and 53 of the Final Award, expressly recorded that the Respondent had pleaded in its Statement of Defence and Counterclaim that the Petitioner's failure to have a COU in place amounted to both a material breach of Section 14(a)(vi) and a repudiatory breach of the Binding Agreement. He also pointed out that the Petitioner's Reply and Defence to the Counterclaim had likewise acknowledged the Respondent's plea of repudiatory breach, which he pointed out the Petitioner had described as embarrassing in paragraph 5(viii).

21. He submitted that the Tribunal, despite having recorded the Respondent's plea of repudiatory breach, had proceeded to determine only the issue of material breach, i.e., whether the COU was a document required by Indian law to be available on the Vessel within the meaning of Section 14(a)(vi). He submitted that the Tribunal had not decided the issue of whether the Petitioner's refusal to

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conclude the COU and the Vessel's consequent inability to enter Jaigarh Port amounted to a repudiatory breach of the Petitioner's fundamental contractual obligations. He pointed out that the Tribunal only held that the COU was merely a contractual licence granted by JSW and was not a requirement of Indian law. It was solely on that basis that the Tribunal held that there had been no breach by the Petitioner of Section 14(a)(vi) and accordingly held that the Respondent's termination under Section 26(a)(vii) of the Binding Agreement was invalid.

22. Mr. Chinoy further pointed out that, at paragraphs 210 to 212 of the Final Award, the Tribunal had expressly identified certain other grounds which had not been pursued further by the Respondent and therefore did not require determination. He was, however, at pains to point out that no similar finding was made by the Tribunal in respect of the Respondent's case of repudiatory breach. He therefore submitted that there was nothing in the Final Award to show that the Tribunal had even considered the Respondent's case of repudiatory breach, much less rejected the same despite the fact that the Respondent had not withdrawn or abandoned the case of repudiatory breach.

23. He therefore submitted that the Tribunal's complete failure to consider the Respondent's specifically pleaded case of repudiatory breach rendered the Final Award contrary to the public policy of India within the meaning of Section 48(2)(b), read with Explanation 1(iii) thereof, this he submitted was because the Tribunal had proceeded to allow the Petitioner's claim despite the fact that, from 15th March 2020, when the Vessel tendered its Notice of Readiness, until the

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Respondent's Termination Notice dated 9th April 2020, the Vessel was admittedly unable to enter Jaigarh Port, where it was required to perform its services.

24. Mr. Chinoy then placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Vijay Karia v. Prysmian Cavi E Sistemi SRL***[1] which he pointed out approved the decision of the Delhi High Court in ***Campos Brothers Farms v. Matru Bhumi Supply Chain Pvt. Ltd***[2] which held that a foreign award which fails to determine a material issue which goes to the root of the matter or fails to adjudicate a claim or counterclaim in its entirety may be resisted on the ground that the award is contrary to the public policy of India since such an award would shock the conscience of the Court and offend a most basic notion of justice.

25. Mr. Chinoy further submitted that, in ***Campos Brothers Farms***, the Delhi High Court held that where an arbitrator had ignored a party's submissions in their entirety irrespective of the merits of those submissions, the resulting award could not be enforced since such an award would be contrary to the public policy of India under Section 48(2)(b), read with Explanation 1(iii) of the Arbitration Act. He also pointed out that the Delhi High Court, in paragraphs 56 and 76 of ***Campos Brothers***, held that where an arbitrator was not alive to certain material issues that arose for determination and had returned no reasons in respect thereof, the award was a non-speaking award.

1 (2020) 11 SCC 1.

2 2019 SCC OnLine Del 8350.

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26. Mr. Chinoy then placed reliance upon the decision of the Hon'ble Supreme Court in ***I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.***,[3] to submit that a complete failure to return a finding on a vital issue specifically pleaded by a party was fundamentally different from a mere inadequacy or insufficiency of reasons. He submitted that, although the decision in the case of ***I-Pay*** was rendered in the context of a challenge to a domestic arbitral award under Section 34 of the Arbitration Act, paragraph 10 thereof was significant because it recorded that the arbitrator had awarded a substantial sum without determining the specific issue pleaded by the parties. This principle he submitted would apply equally when considering enforcement of a foreign award in which the Tribunal had similarly omitted to determine a specific issue. He pointed out that the Hon'ble Supreme Court had in paragraph 41 of the decision in ***I-Pay Clearing Services Pvt. Ltd.***, held as follows, viz.

> *"41. Under the guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the arbitrator, where there are no findings on the contentious issues in the award. If there are no findings on the contentious issues in the award …….. the same are acceptable grounds for setting aside the award itself. Under the guise of either additional reasons or filling up the gaps in the reasoning, the power conferred on the Court cannot be relegated to the arbitrator. In absence of any finding on contentious issue, no amount of reasons can cure the defect in the award."*
>
> (emphasis supplied)

27. Mr. Chinoy also pointed out that the Hon'ble Supreme Court had, in paragraphs 78-79 of ***Vijay Karia***, approvingly referred to the decisions of the

3 2022 SCC OnLine SC 4.

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Singapore Court of Appeal in ***AKN v. ALC***[4] and ***BAZ v. BBA,***[5] which held that failure to consider an important pleaded issue would constitute a breach of natural justice. He fairly accepted that the inference of such failure must be clear and virtually inescapable and could not be drawn merely because the Tribunal had misunderstood a party's case, committed an error of law or considered it unnecessary to address a particular argument. He, however, submitted that the facts of the present case satisfied the threshold of a complete absence of any determination of repudiatory breach, despite its express inclusion in the pleadings and issues.

28. He also placed reliance upon the decisions of the Singapore High Court in the case of ***JVL Agro Industries v. Agritrade International***[6] and ***BTN v. BTP***[7] in support of the contention that an issue raised in the pleadings remains 'in play' throughout the arbitration unless expressly withdrawn, regardless of the vigour with which the party ultimately advances it. That principle, he submitted, applied directly to the facts of the present case since nothing in the Final Award suggested that the Respondent had withdrawn or abandoned its case of repudiatory breach.

29. Mr. Chinoy then pointed out that Section 68(2)(d) of the English Arbitration Act recognises that a Tribunal's failure to deal with all issues put to the Tribunal is a serious irregularity. He then placed reliance upon the decision of

4 [2015] SGCA 271.
5 [2018] SGHC 275.
6 [2016] SGHC 126.
7 [2021] SGHC 271.

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the Privy Council in ***RAV Bahamas Ltd & Anr. v. Therapy Beach Club***[8], which held that an arbitrator must determine an issue that is essential or crucial to the resolution of a claim or defence where fairness demands its determination. He pointed out that this decision referred to the observations of ***Toulson J*** in ***Ascot Commodities NV v. Olam International Ltd.***,[9] which also recognised that failure to address an important issue was inherently capable of causing substantial injustice.

30. He then took pains to point out that the Respondent need not establish that had such an issue been considered, the outcome would necessarily or even probably have been different. He submitted that it was sufficient to show that the outcome might have been different had the issue been determined. He further submitted that an issue need not necessarily appear in a formally settled list of issues, provided that the pleadings and submissions sufficiently drew the Tribunal's attention to it.

31. Mr. Chinoy also placed reliance upon the decision of the English Commercial Court in ***World Trade Corporation Ltd v. Czarnikow Sugar Ltd.***[10] to submit that the relevant test for determining whether an issue that the Tribunal had not dealt with, was an essential issue was whether such a dispute had been litigated before a Court, the issue that the Tribunal had not dealt with, would have formed part of an agreed list of issues before the Court. Applying this test, he submitted that repudiatory breach was plainly a material issue requiring

8 [2021] AC 907 (PC).

9 [2002] CLC 277.

10 [2004] EWHC 2332 (Comm).

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independent adjudication since it went to the root of the matter. He reiterated that repudiatory breach had been expressly pleaded, repeatedly addressed in the parties' submissions, and directly affected the Respondent's right to terminate the Binding Agreement. He therefore submitted that the Tribunal was required to determine the said issue and reiterated that the Tribunal's failure to adjudicate upon the same constituted a fundamental defect in the Final Award rendering it unenforceable under Section 48(2)(b) of the Arbitration Act.

Submissions on behalf of the Petitioner in Rejoinder:

32. Mr. Behramkamdin submitted that the Respondent's contention that the Tribunal had failed to determine the issue of repudiatory breach was entirely an afterthought and a desperate attempt by the Respondent to resist enforcement of a Final Arbitral Award which was binding and enforceable in every sense.

33. He submitted that the case of repudiatory breach had not been argued before the Tribunal and, therefore, if pleaded, had been abandoned. Alternatively, and without prejudice, he submitted that the case of repudiatory breach had been pleaded with such vagueness that the question of considering the same did not arise. He then submitted that, in any event, the Tribunal's determination of the breach of Section 14(a)(vi) had effectively disposed of the issue of repudiatory breach.

Repudiation was never argued and, even if pleaded, was abandoned.

34. Mr. Behramkamdin pointed out that the transcripts of the oral submissions advanced on behalf of the Respondent demonstrated that the Respondent's case was confined only to the alleged breach of Section 14(a)(vi). He invited my

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attention to the said transcript to point out that the first heading therein was "*whether WCPL was entitled to terminate for material breach*". He then pointed out that the Respondent's counsel had advanced three principal reasons as to why the COU was a document required under Section 14(a)(vi), together with practical and commercial considerations supporting that construction. He then pointed out from the said transcripts that no distinct case of repudiatory breach was ever argued or developed by Respondent's Counsel.

35. He then submitted that it was well settled that an issue which was pleaded but not argued is deemed to have been abandoned. In support of his contention, he placed reliance upon the decisions in ***Daman Singh v. State of Punjab***[11], ***Common Cause v. Union of India***[12] and ***Mohd. Akram Ansari v. Chief Election Officer***.[13] He further placed reliance upon the decision in ***Vijay Karia v. Prysmian Cavi E Sistemi SRL,*** particularly paragraphs 91, 92 and 96, wherein the Hon'ble Supreme Court, while considering objections to the enforcement of a foreign arbitral award, held that the Tribunal could not be faulted for failing to determine a case which had not been properly pleaded or advanced before it, and that such an objection could not constitute a ground for refusing enforcement under Section 48 of the Arbitration Act.

36. Mr. Behramkamdin, without prejudice to the above, submitted that, even accepting the contention that the case of repudiatory breach had been pleaded, it had been pleaded with such vagueness and lack of particulars that the Petitioner

11 (1985) 2 SCC 670.
12 (2004) 5 SCC 222.
13 (2008) 2 SCC 95.

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could not reasonably have been expected to meet such a case. On the other hand, he pointed out that the Respondent's case of material breach under Section 14(a)(vi) was pleaded in great detail, as was plainly evident from the Reply to the Request for Arbitration, Statement of Defence and Counterclaim, Opening and Closing Submissions and hearing transcripts, whereas reference to repudiatory breach was merely fleeting and devoid of any detail.

37. Mr. Behramkamdin pointed out that the relevant pleadings and submissions demonstrated that the Respondent's case was consistently advanced on the basis of material breach, and not on repudiatory breach. This he submitted, as was evident from the following:

i. In the Reply to the Request for Arbitration, paragraphs 18 and 23 set out the Respondent's case on material breach, while paragraph 45, which referred to repudiatory breach, substantially reiterated the Respondent's case on material breach without developing any distinct case of repudiation, simply stating that "*it was also a repudiatory breach*".

ii. In the Statement of Defence and Counterclaim, paragraphs 9, 42, 50,51, 53 and 69 dealt exclusively with material breach and the Respondent's entitlement to the contractual termination fee under Section 26(E) of the Binding Agreement. Repudiatory breach was referred to, only in paragraph 13 and, by way of an avoidance-of-doubt qualification, in paragraph 52. Neither paragraph set out any independent factual particulars in support of a case of repudiatory breach.

iii. In the Respondent's Opening Submissions, Mr. Behramkamdin fairly acknowledged that paragraph II, under the heading of issues, referred to the

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question of whether the Respondent was entitled to terminate the Binding Agreement for material or repudiatory breach. He, however, submitted that repudiatory breach was never developed into a substantive argument and pointed out that paragraphs 3, 4, 9, 81 and 104 in particular addressed only the interpretation of Section 14(a)(vi) and the requirement of materiality, without advancing any distinct case based on repudiatory breach.

iv. All references to repudiatory breach completely disappeared from the Respondent's Closing Submissions. He pointed out that Paragraphs 69 to 71, 121, 151, 156, and 165 to 167 addressed the Respondent's case exclusively in respect of material breach, with reference to Section 14(a)(vi). He further submitted that although Issues 38.4, 38.6 and 38.8 in Appendix I referred to the Respondent's entitlement to terminate the Binding Agreement, including under Sections 26(a)(vii) of Exhibit A or otherwise, no distinct case of repudiatory breach had been developed or urged by the Respondent in support of such entitlement. He submitted that all the above references, when taken together, demonstrated that, notwithstanding the isolated references to repudiatory breach in the pleadings and the opening submissions, the Respondent's case was in substance confined only to material breach of Section 14(a)(vi) by the Petitioner. He submitted that the progression from an incidental reference to repudiatory breach in the earliest pleading to a bare reference in the heading of the Opening Submissions and ultimately to complete silence in the Closing Submissions demonstrated that the Respondent had never seriously urged the case of repudiatory breach as an independent ground of termination and, if pleaded, had abandoned the same.

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38. He submitted that the Petitioner had, in any event, addressed the case of repudiatory breach to the extent it was stated by the Respondent. He pointed out that the Petitioner had, in the Reply and Defence to the Counterclaim filed by the Respondent, stated that it was "*unclear whether there is a breach being alleged which is different to that alleged in relation to Section 14(a)(vi)*". He also submitted that the Respondent had not identified any contractual provision other than Section 14(a)(vi) as having been breached and that the Respondent had not identified any correspondence communicating acceptance of the alleged repudiation. He also pointed out that the Petitioner had described the Respondent's claim of repudiatory breach as "embarrassing" and had reserved its rights to address such a claim if necessary. He submitted that the Respondent did not thereafter meet or develop the case of repudiation, which further demonstrated that the Respondent did not seriously pursue the case of repudiatory breach.

The purported repudiation case was, in any event, unsustainable.

39. Mr. Behramkamdin submitted that, had the Respondent properly pleaded and pursued a case of repudiatory breach, the Petitioner would have met that case on merits. He submitted that the Respondent's case of repudiatory breach was plainly untenable since (i) there was no contractual obligation under the Binding Agreement to execute a COU; (ii) there was no refusal by the Petitioner to facilitate the execution of a COU in respect of the Cape Ann, as was borne out by the admission of the Petitioner's own witness in cross-examination; (iii) the execution of the COU was subject to the vessel owner's P&I Club approval, and

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under the Head Charter Agreement, the COU was required to be acceptable to the vessel owner's P&I Clubs which requirement was also expressly recorded by the Tribunal in the Final Award; (iv) the Respondent was itself aware of the requirement for P&I Club approval, which was admitted by the Respondent's witness in the cross-examination; (v) that the Petitioner was actively engaging with the proposed COU arrangements immediately before termination, despite which the Respondent proceeded to terminate the Binding Agreement just two days later, on 9th April 2020; and (vi) the parties continued negotiating for the COU for over a month after the notice of termination issued by the Respondent.

40. Basis the above, he submitted that the essential ingredients to sustain a case of repudiatory breach were wholly absent in the facts of the present case since there was no evidence whatsoever of any intention on the part of the Petitioner to refuse performance of its obligations or to renounce the Binding Agreement. He placed reliance upon the decision of the Hon'ble Supreme Court in ***Claude-Lila Parulekar v. Sakal Papers (P) Ltd.***,[14] in support of his contention that in order to sustain a case of repudiation, there must be a clear renunciation of the intention to perform the contract in question.

41. He also placed reliance on the decision in ***Eminence Property Developments Ltd. v. Heaney,***[15] to point out that the English Court of Appeal had applied the following threefold test for determining repudiation (i) the party who was alleged to have broken the contract must have clearly evinced an intention to

14 (2005) 11 SCC 73.

15 [2010] EWCA Civ 1168.

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abandon the contract and altogether refuse performance thereof; (ii) the inquiry must be fact-sensitive, and an innocent or obvious mistake would not suffice to establish repudiation; and (iii) all the surrounding circumstances must be considered objectively. Mr. Behramkamdin submitted that the chronology of events in the present case made evident the fact that the Respondent had failed to satisfy any of these three requirements.

42. He then, without prejudice to the above, submitted that the Respondent's alleged case of repudiatory breach was, in substance, subsumed within and was determined by the Tribunal's finding on the issue of material breach. He submitted that from the Respondent's pleadings, written submissions and transcripts, it was clear that the Respondent had consistently anchored repudiatory breach to Section 14(a)(vi). He submitted that the alleged failure to execute the COU was the factual basis for both the material-breach and repudiatory breach. He also submitted that the Respondent's contention that execution of a COU was "*standard, customary and market practice*" had subsequently been abandoned, as recorded by the Tribunal in the Final Award.

43. He submitted that once the Tribunal had found that there had been no breach of Section 14(a)(vi), the substance of the Respondent's case of repudiatory breach necessarily dissipated. He pointed out that the Respondent had not identified any separate act or omission constituting repudiation beyond the very conduct that the Tribunal had found did not constitute a breach of Section 14(a)(vi).

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44. Mr. Behramkamdin then placed reliance upon the decisions in the case of ***Santa Sila Devi v. Dhirendra Nath Sen***[16] and ***Vijay Karia v. Prysmian Cavi E Sistemi SRL*** to submit that an award must be read as a whole and that an Arbitral Tribunal is not required to deal separately with every contention raised by a party.

45. He pointed out that the Respondent had failed to avail of the remedies under Section 57(3) and (4) of the English Arbitration Act, which allows a party to apply to the Tribunal for an additional award for any claim made but not dealt with by the Tribunal. He also pointed out that Section 58 of the English Arbitration Act clearly provides that an award made under an arbitration agreement is final and binding on the parties unless otherwise agreed and does not affect the statutory rights of challenge or any right of challenge under the English Arbitration Act.

46. He submitted that Section 68(1) and (2)(d) of the English Arbitration Act permit a challenge to an arbitral award on the ground of serious irregularity, including the Tribunal's failure to deal with all issues put to it, subject to the time limit under Section 70(3) of the English Arbitration Act. He submitted that the Respondent had admittedly invoked neither Section 57(3) nor Section 68(2)(d) of the English Arbitration Act to challenge the Final Award He then placed reliance upon the decisions in the case of ***Neilan International Co. Ltd. v. Powerica Ltd.***,[17] ***Westland Helicopters Ltd. v. Sheikh Salah Al-Hejailan***[18] and ***Naval Gent Maritime***

16 1963 SCC OnLine SC 149.

17 2024 SCC OnLine Bom 3654.

18 [2004] EWHC 1625 (Comm).

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Ltd. v. Shivnath Rai Harnarain (I) Ltd.[19] to submit that the Respondent not having challenged the Final Award had consequently attained finality and become binding upon the parties, and that the Respondent could not, at the stage of enforcement, seek to reopen matters which it had failed to challenge before the Courts at the seat of arbitration.

47. Mr. Behramkamdin placed reliance upon Section 73 of the English Arbitration Act to point out that a party participating in arbitral proceedings without raising an objection to an irregularity within the prescribed time may not subsequently raise that objection before the Tribunal or Court, unless it did not know and could not with reasonable diligence have discovered the grounds for the objection. He submitted that the Respondent had never raised the issue of non-determination of the Respondent's allegedly pleaded case of repudiatory breach before the Tribunal or the English Courts and had thus lost the right to object and was precluded by Section 73 of the English Arbitration Act from raising the issue at the enforcement stage. In support of his contention, he placed reliance upon the decisions in ***POL India Projects Ltd. v. Aurelia Reederei Eugen Friederich GmbH***[20] and ***Prysmian Cavi E Sistemi S.R.I. v. Vijay Karia***[21].

48. Mr. Behramkamdin further submitted that a party who elects not to challenge a foreign award before the appropriate Court cannot subsequently resist enforcement on the ground of alleged non-determination of the Respondent's case of repudiatory breach. In support of his contention, he placed

19 2009 SCC OnLine Del 2961.

20 2015 SCC OnLine Bom 1109

21 2019 SCC OnLine Bom 19.

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reliance upon the decisions in ***Cruz City 1 Mauritius Holdings v. Unitech Limited,***[22] ***Nagaraj V. Mylandhu v. PI Opportunities Fund-I,***[23] ***Mitsui OSK Lines Ltd. v. Orient Ship Agency (P) Ltd.***[24] and ***HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd***.[25]

The narrow scope of Section 48 of the Arbitration Act, 1996.

49. Mr. Behramkamdin concluded by submitting that the grounds for refusing enforcement of a foreign award must be construed narrowly. He submitted that the grounds enumerated in Section 48 were exhaustive and that a party resisting enforcement must necessarily meet the very high threshold set out therein. He pointed out that the Court's inquiry under Section 48 did not extend to a review of the merits of the foreign award. In support of his contention, he placed reliance upon the decisions in ***Gemini Bay Transcription Private Limited v. Integrated Sales Service Limited,***[26] ***Avitel Post Studioz Limited v. HSBC PI Holdings (Mauritius) Limited,***[27] ***Union of India v. Vedanta Ltd.,***[28] ***Shri Lal Mahal Limited v. Progetto Grano SPA,***[29] ***Nagaraj V. Mylandhu*** and ***Vijay Karia***.

Submissions on behalf of the Respondent in Sur-Rejoinder:

50. Mr. Chinoy, in response to the Petitioner's contention that repudiatory breach had not been advanced before the Tribunal, submitted that the plea had

22 2017 SCC OnLine Del 7810.
23 2026 SCC OnLine SC 1218.
24 2014 SCC OnLine Bom 158.
25 2014 SCC OnLine Bom 102
26 (2022) 1 SCC 753.
27 (2024) 7 SCC 197.
28 (2020) 10 SCC 1.
29 (2014) 2 SCC 433

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been expressly raised in the arbitral pleadings, incorporated into the Terms of Reference and addressed in the parties' opening submissions. He submitted that the mere absence of any reference to repudiatory breach in the Respondent's oral closing submissions did not amount to the abandonment of the issue. He reiterated that an issue once pleaded remained 'in play' unless expressly withdrawn, as held in ***JVL Agro Industries v. Agritrade International*** and ***BTN v. BTP***.

51. Mr. Chinoy then submitted that the decisions in the case of ***Daman Singh, Mohd. Akram Ansari, Common Cause*** and ***Vijay Karia,*** upon which the Petitioner had placed reliance, would not apply since those decisions were rendered in the context of Writ Petitions, Election Petitions or proceedings for clarification or review. He submitted that these decisions did not govern the obligation of an Arbitral Tribunal to determine material issues placed before such Tribunal. He further submitted that in the cases cited by the Respondent, the aggrieved party had avenues of review or clarification which were unavailable once a foreign arbitral award had been rendered. This distinction, he submitted, was reinforced in the case of ***I-Pay Clearing Services***, where the Supreme Court made clear that a matter could not simply be remitted to the arbitrator for want of a finding.

52. As regards ***Vijay Karia***, Mr. Chinoy submitted that paragraphs 91, 92, 95 and 96 thereof did not support the broader proposition advanced by the Petitioner. He pointed out that in paragraphs 91 and 92, the Hon'ble Supreme Court had rejected the Appellant's case concerning breach because it had "*never been pleaded*" and was raised only at the "*fag end*" of the proceedings. Similarly,

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he pointed out that paragraphs 95 and 96 concerned the Appellants' grievance that the Tribunal had failed to determine the Counterclaim. He submitted that the Tribunal had held that the disputes relating to the Trade Mark Licence Agreement and Technical Assistance Agreement were outside its jurisdiction and that any dispute under Clause 9 of the JVA was not the case advanced by the Respondent in their pleadings. He therefore submitted that the Hon'ble Supreme Court had noted that the transcripts also disclosed that no argument had been advanced on the said issue. This he submitted was unlike the present case, where repudiatory breach had been expressly pleaded and put in issue.

53. In dealing with the contention that the case of repudiatory breach was vaguely pleaded, Mr. Chinoy submitted that paragraphs 13 and 52 of the Statement of Defence and Counterclaim set out sufficient particulars with regard to the Respondent's case of repudiatory breach. He submitted that these paragraphs identified the alleged breach, namely the Petitioner's failure to conclude the COU, its consequence, namely the Vessel's inability to enter the Port and perform its fundamental obligations, and the Respondent's acceptance of that repudiation by terminating the Agreement. He also pointed out that the Tribunal had not held that the case of repudiatory breach was vaguely or inadequately pleaded. He then, from the decision in ***Campos Brothers Farms v. Matru Bhumi Supply Chain Pvt. Ltd.,*** further pointed out that the alleged insufficiency of a plea does not justify the Tribunal's failure to determine it.

54. Mr. Chinoy then addressed the contention that the Tribunal's finding under Section 14(a)(vi) necessarily disposed of the case of repudiatory breach. He

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submitted that while the former, i.e., material breach, concerned whether the COU was required by Indian law, the latter, i.e., repudiatory breach, concerned whether the vessel's inability to enter the port and perform the services contemplated by the Binding Agreement constituted a fundamental breach of the Petitioner's obligations, which would entitle the Respondent to terminate the Binding Agreement under common law, irrespective of whether the COU was a statutory requirement under Indian law. He pointed out that the Hon'ble Supreme Court, in paragraph 83 of ***Vijay Karia***, held that the failure to determine a material issue that goes to the root of the matter would, in an appropriate case, shock the conscience of the Court.

55. He also placed reliance upon the decision in ***Santa Sila Devi v. Dhirendra Nath Sen*** to point out that, while ordinarily, silence on a claim amounts to an adjudication against such a claim, the Court recognised the exception that this was so only when "*the matter so set up from its nature requires to be specifically adjudicated upon*". He submitted that repudiation, being an independent and alternative ground for termination, clearly fell within this exception.

56. Mr. Chinoy then submitted that the Petitioner's reliance upon Sections 57(3)(b) and 73 of the English Arbitration Act was misplaced. He placed reliance upon the decision of ***Torch Offshore LLC v. Cable Shipping Inc.***[30] to submit that Section 57(3)(b) of the English Arbitration Act permitted an additional award in respect of a claim that had not been decided by a Tribunal. He, however, submitted that the issue at hand was entirely distinct from the failure of a

30 [2004] EWHC 787 (Comm).

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Tribunal to consider as an issue arising within a claim or defence, the latter being separately addressed by Section 68(2)(d) of the English Arbitration Act. He submitted that since repudiatory breach was an issue concerning the validity of the Respondent's termination and not an independent claim, recourse to Section 57(3)(b) of the English Arbitration Act was unavailable to the Respondent, and he also submitted that Section 73 of the English Arbitration Act was equally inapplicable, since the Respondent could not reasonably have known, before the Final Award was rendered, that the Tribunal would have failed to determine the issue of repudiatory breach.

57. Mr. Chinoy submitted that the contention that the Respondent's failure to challenge the Final Award before the English Courts precluded the Respondent from resisting its enforcement was entirely untenable. He placed reliance upon the decision of the Hon'ble Supreme Court in ***Government of India v. Vedanta Limited*** to point out that (i) enforcement is a subsequent and distinct proceeding from proceedings to set aside an award at the seat; (ii) the enforcement Court exercises a "secondary" or "enforcement" jurisdiction to determine recognition and enforceability of the Award; and (iii) an enforcement court independently examines objections under Section 48 and is not constrained by the findings of the Courts at the seat.

58. He therefore submitted that even where the seat Court had upheld an award, the Courts in India can independently determine whether enforcement would offend the public policy of India. Mr. Chinoy submitted that the decision of ***Nagaraj V. Mylandhu v. PI Opportunities Fund-I***, relied upon by the Petitioner, in

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fact supported the Respondent. He pointed out that while paragraph 57 of the said decision held that a party could not reopen, before the enforcement Court, factual issues argued on merits which had been determined by the seat Court, paragraph 76 made specifically clear that such transnational issue estoppel did not extend to objections founded upon public policy. He submitted that such objections, following the approach of the Singapore Court of Appeal in ***Republic of India***, remained open to consideration by the enforcement Court notwithstanding a decision of the seat Court upholding the award. He submitted that this was also the approach adopted by this Court in ***Prysmian Cavi E Sistemi S.R.I. v. Vijay Karia***.

59. Mr. Chinoy submitted that the other authorities relied upon by the Petitioner, namely ***POL India Projects Ltd. v. Aurelia Reederei Eugen Friederich GmbH***, ***Mitsui OSK Lines Ltd. v. Orient Ship Agency (P) Ltd.*** and ***HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd.*** were all distinguishable since all those cases concerned jurisdictional objections relating to the existence or scope of the arbitration agreement or the composition of the Tribunal. He submitted that such objections were governed by the law of the seat and were materially different from an objection founded upon public policy.

60. He submitted that this distinction between jurisdictional and public-policy objections was recognised in ***Vijay Karia,*** which held that a prior challenge before the seat Court was not a precondition for resisting enforcement in India on public-policy grounds. He pointed out that the decision of ***Cruz City 1 Mauritius Holdings v. Unitech Limited*** also did not assist the Petitioner since the Delhi High

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Court in that case held that failure to challenge an award before the Court of the seat did not, by itself, preclude a party from resisting enforcement in India. In any event, Mr. Chinoy submitted that the decision of the Hon'ble Supreme Court in ***Vedanta,*** recognised that the enforcement Court exercises an independent jurisdiction in determining whether a foreign award is enforceable in India.

61. Finally, Mr. Chinoy submitted that the decision of this Court in ***Neilan International Co. Ltd. v. Powerica Ltd.,*** was rendered in the context of a partial award which determined the issue of jurisdiction and not a final award as in this case. He pointed out that the decision in ***Naval Gent Maritime Ltd. v. Shivnath Rai Harnarain (I) Ltd.*** concerned whether an award had become final and binding in its Country of Origin. He therefore submitted that neither of the said decisions dealt with a Tribunal's failure to determine a material issue placed before it, particularly one going to the validity of a party's termination of the contract. He therefore submitted that neither authority had any application to the Respondent's objection in the present case, namely, that the Final Award failed to determine a material issue going to the validity of the Respondent's termination.

62. Basis this, Mr. Chinoy submitted that the Respondent's case of repudiatory breach was a distinct and material issue which had been specifically pleaded and placed before the Tribunal, and that the Respondent had neither abandoned it nor had the Tribunal adjudicated upon it. He submitted that such failure went to the root of the matter and rendered the Final Award contrary to the public policy of India within the meaning of Section 48(2)(b) of the Arbitration Act. He thus reiterated that the enforcement of the Final Award ought to be refused.

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Reasons and Conclusion:

63. After hearing Learned Senior Counsel for the Parties and having considered the rival contentions and the extensive case law upon which reliance has been placed, I find that the Petition deserved to be allowed. I say so for the following reasons, viz.

A. It is well settled that the grounds for refusing enforcement of a foreign award, as enumerated in Section 48 of the Arbitration Act, are exhaustive and must be construed narrowly. Therefore, a party resisting the enforcement of a foreign award is required to meet a very high threshold. It is equally well settled that, when considering objections to the enforcement of a foreign award, the Court cannot undertake a review of the merits of such an award. In this regard, I find the Petitioner's reliance upon the decisions in ***Gemini Bay Transcription Private Limited v. Integrated Sales Service Limited***, ***Avitel Post Studioz Limited v. HSBC PI Holdings (Mauritius) Limited***, ***Union of India v. Vedanta Ltd.***, ***Shri Lal Mahal Limited v. Progetto Grano SPA***, ***Nagaraj V. Mylandhu*** and ***Vijay Karia v. Prysmian Cavi E Sistemi SRL***, to be apposite.

B. In the present case, the sole ground on which the Respondent has resisted enforcement of the Final Award is that the Arbitral Tribunal has failed to, in any manner, deal with the Respondent's case of repudiatory breach, which, according to the Respondent would go to the root of the matter. It is thus that the Respondent has contended that the Final Award is contrary to the public policy of India within the meaning of Section 48(2)

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(b) of the Arbitration Act and one that would shock the conscience of the Court. Given this, in my view, three principal questions would therefore arise for determination. *First*, was repudiatory breach an issue which the Tribunal was required to determine? *Second*, if so, was the issue of repudiatory breach really distinct from the issue of material breach under Section 14(a)(vi), which the Tribunal did determine conclusively, or did it stand or fall with the Tribunal's finding on material breach? *Third*, even if the first two questions are answered in the Respondent's favour, would the Tribunal's failure to consider repudiatory breach satisfy the test for resisting enforcement of the Final Award under Section 48(2)(b) of the Arbitration Act.

I. **Was repudiatory breach an issue which the Tribunal was required to determine?**

C. While there can be little doubt that the expression 'repudiatory breach' finds mention in the Respondent's Answer to the Request for Arbitration and the Statement of Defence and Counterclaim, what really has to be seen is whether the Tribunal was required to have specifically addressed or returned a finding on what the Respondent now claims was its pleaded case of repudiatory breach. In my unhesitating view, the Tribunal was not required to do either. I say so because (i) the pleadings are entirely bereft of any particulars or details as to what, according to the Respondent, constituted a repudiatory breach; (ii) the issues framed by the Tribunal make no specific reference to repudiatory breach, while specifically

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referring to material breach; (iii) the transcripts of the Respondent's closing arguments make it abundantly clear that no case of repudiatory breach was even advanced before the Tribunal; (iv) if it was indeed the Respondent's case that repudiatory breach had been pleaded and had not been adjudicated upon, it was open to the Respondent to have sought an additional award from the Tribunal under Section 57(3)(b) of the English Arbitration Act; and (v) if the Respondent's grievance was that the Tribunal had failed to deal with all the issues submitted to it, the appropriate recourse was then to challenge the Final Award under Section 68(2)(d) of the English Arbitration Act, 1996. In these circumstances, it is, in my view, wholly untenable for the Respondent to contend that the Final Award is contrary to the public policy of India or that the Tribunal's failure to return a finding on repudiatory breach is such that it would shock the conscience of this Court.

D. Additionally, even during the course of oral arguments in the present Petition and in the Written Submissions filed to oppose the present Petition, the Respondent has not identified any argument or case on repudiatory breach that was advanced before the Tribunal and which, according to the Respondent, was not considered. This, in my view, is also telling since, if the Respondent's case of repudiatory breach was indeed 'alive' and was as compelling a case as the Respondent has in these proceedings urged it to be, surely some details of what the Tribunal had omitted to consider would have been pointed out to this Court.

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E. I find that apart from the fact that the words repudiatory breach have been stated in the Respondent's pleadings and the parties' opening submissions, there is no submission or contention with respect to repudiatory breach that the Tribunal has failed to consider. On the contrary, the undisputed transcripts of the arguments before the Tribunal are copiously silent with regard to any submission by the Respondent on "repudiatory breach". In fact, a perusal of the transcripts would make it clear beyond the pale of doubt that the Respondent's entire case before the Tribunal was based solely on the aspect of material breach and not on repudiatory breach as now contended.

F. Hence, for the reasons set out in (**C**) and (**D**) above, I find that a plain reading of the decisions of ***JVL Agro Industries vs. Agritrade International*** or ***BTN vs. BTP,*** upon which reliance was placed by the Respondent, would show that those decisions concerned issues which had, at some stage, been the subject of arguments before the Tribunal but were subsequently contended to have been abandoned by reason of their omission at a later stage. The facts of the present case are materially different. Since although the Respondent had referred to repudiatory breach in its pleadings, the case which was substantively developed and urged before the Tribunal was one of material breach. The plea of repudiatory breach was neither developed as a distinct case nor independently urged before the Tribunal. In these circumstances, the question of the Respondent having to expressly withdraw such a plea did not arise. I am therefore unable to accept the

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contention that the issue of repudiatory breach continued to remain "in play" merely because it had not been expressly withdrawn.

G. If the Respondent's case of repudiatory breach was as compelling as the Respondent has now urged it to be, it is baffling why it was not pleaded in detail or pressed before the Tribunal with the same seriousness as has been done in these proceedings. Also, if the issue of repudiatory breach was indeed so crucial to the Respondent's case, then, in my view, it was incumbent upon the Respondent to have sought a specific issue in that regard to be framed by the Tribunal. It is not even the Respondent's case that the Tribunal was called upon to frame a specific issue of repudiatory breach and had failed to do so.

H. In my view, the decisions in the case of ***RAV Bahamas Ltd. v. Therapy Beach Club*** and ***World Trade Corporation Ltd v. Czarnikow Sugar Ltd.***, upon which reliance was placed by the Respondent would in fact assist the Petitioner and not the Respondent. A careful reading of the said decision would show that the relevant inquiry is whether the Tribunal's attention was "sufficiently clearly drawn" to the issue of repudiatory breach. This test, in my view, would operate against the Respondent in the facts of the present case since, although repudiatory breach was mentioned in the pleadings and the Opening Submissions, the manner in which the Respondent ultimately advanced its case before the Tribunal makes clear that its arguments were confined only to the alleged material breach of Section 14(a)(vi) and not a repudiatory breach.

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I. Equally, I find that the Respondent's reliance upon the decisions in the case of ***Vijay Karia***, approving ***AKN v. ALC*** and ***BAZ v. BBA***, to be misplaced. The said decisions hold that the inference that an Arbitral Tribunal has overlooked an issue must be "*clear and virtually inescapable*". The Court must be cautious in drawing such an inference where the facts are equally consistent with the conclusion that the Tribunal did not overlook the issue but instead regarded a different and narrower question/issue as constituting the operative dispute and accordingly decided the same. This is precisely what appears to have been done in the facts of the present case since the oral arguments of both the parties proceeded on the basis of the Respondent's case of material breach, and the dispute turned upon whether the requirement of a COU fell within the ambit of Section 14(a)(vi).

J. I also find merit in the Petitioner's contention that the principle that an issue pleaded but not argued is one which may be treated as having been abandoned, as held in the case of ***Daman Singh v. State of Punjab, Mohd. Akram Ansari v. Chief Election Officer*** and ***Common Cause v. Union of India.*** Though these decisions were not rendered in the context of arbitration proceedings, I see no reason why the principle laid down therein should not apply to arbitration proceedings. An Arbitral Tribunal cannot be faulted for not deciding an Issue which was neither adequately pleaded nor pressed. The Hon'ble Supreme Court has, in the case of ***Vijay Karia***, in fact, held that the principle that a plea which is not pressed may

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be treated as having been abandoned would apply to arbitration proceedings.

K. Thus, I find that the repudiatory breach was only vaguely stated and was not adequately pleaded, nor was it even urged in the arguments advanced on behalf of the Respondent before the Tribunal. In these facts, it cannot be said that the Tribunal failed to consider a material issue that would shock the conscience of this Court or that the Final Award is contrary to the public policy of India.

II. Was repudiation, in any event, an issue distinct from Section 14(a)(vi)?

L. Even otherwise, I am not satisfied that the Respondent's case of repudiatory breach was genuinely independent of its case of material breach under Section 14(a)(vi). This is, in my view, clear from the Respondent's own pleadings. I say so because in Answer to the Request for Arbitration, the Respondent has alleged that the Petitioner had committed several "*fundamental repudiatory breaches*", including, apart from the Petitioner's failure to conclude the COU, the failure to obtain certain statutory and customs clearances and to maintain credit support in terms of Section 22(d) of the Binding Agreement. However, by the time the Statement of Defence and Counterclaim were filed, these additional grounds had been completely abandoned, and a perusal of the said pleadings makes clear that the Respondent's case of repudiatory breach, as pleaded in paragraphs 13 and 52 of the Statement of Defence and Counterclaim, rested entirely upon material breach under Section 14(a)

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(vi), namely, the failure to conclude the COU and the consequent inability of the Vessel to enter the Jaigarh Port.

M. For the reasons set out above, I am unable to accept that a claim which, in the Respondent's operative pleading, has been reduced to the same underlying factual basis as its claim of material breach under Section 14(a)(vi), can properly be characterised as a distinct case or as an issue that required separate adjudication. Hence, in the facts of the present case I find that the decision in the case of ***Torch Offshore LLC v. Cable Shipping Inc.***, upon which the Respondent has placed reliance, would not apply. The Tribunal's findings in paragraphs 120, 257 to 262 and 267 make it evident that it went beyond a mere determination that the COU was not a document *"required by law"*. The Tribunal further found that the COU was a contractual licence granted by JSW, to which the Petitioner was, in substance, a stranger. Once this finding is accepted, as the Respondent infact has, then it is not open to challenge the correctness of such finding in the present enforcement proceedings. It therefore becomes difficult to see how the Respondent could sustain a case of repudiatory breach on the part of the Petitioner in respect of an obligation which, on the Tribunal's findings, as accepted by the Respondent, the Petitioner never owed to the Respondent in the first place.

N. Also, in my view, the Respondent's reliance upon the decisions in ***Santa Sila Devi v. Dhirendra Nath Sen*** and ***Harrison v. Cresswick*** is entirely misplaced. The former decision, *inter alia,* holds that, although silence in

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an award on a particular claim may ordinarily be construed as its rejection, a separate adjudication may be necessary where the nature of the matter so requires. This would, however, not apply since, in the present case, both the material breach and repudiatory breach were founded on the same underlying fact, in respect of which the Tribunal returned a considered finding rejecting any wrongdoing on the part of the Petitioner, leaving no separate issue requiring specific adjudication. Hence, I accept the Petitioner's reliance upon the decision of the Hon'ble Supreme Court in ***Vijay Karia***, which makes clear that an arbitrator is not required to address every claim seriatim and that an award must be read as a whole.

O. There is, in addition, a further difficulty with the Respondent's case of repudiatory breach, as is evident from the chronology of events which shows that the parties continued to negotiate the terms of the COU for more than a month after the conduct which, according to the Respondent, constituted the basis for termination. This conduct is difficult to reconcile with the Respondent's assertion that the Petitioner had clearly and unequivocally repudiated the contract. In the context of these facts, the Petitioner has relied upon the decisions in ***Claude-Lila Parulekar v. Sakal Papers (P) Ltd.*** and ***Eminence Property Developments Ltd. v. Heaney***, which lay down that repudiation requires a clear and unequivocal indication of an intention not to be bound, which is clearly not borne out by the

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Petitioner's conduct in the present case and is thus entirely apposite to the facts of the present case.

III. Would the omission, in any event, meet the threshold for refusal under Section 48(2)(b)?

P. In light of my findings on the first two questions, although it is strictly unnecessary to determine this issue, I nevertheless consider it appropriate to address it briefly. The Respondent has placed reliance upon the decisions in ***Campos Brothers Farm v. Matru Bhumi Supply Chain Pvt. Ltd.*** and ***I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.,*** for the proposition that a complete failure to determine a material issue renders an award unenforceable, irrespective of the merits of that issue.

Q. As a matter of principle, the above proposition may be correct. The same would not arise in the facts of the present case. The decision of ***Campos Brothers*** concerned circumstances in which the arbitrator, on an erroneous and factually incorrect basis, refused to consider a party's evidence and submissions at all in an arbitral procedure conducted solely on written submissions and without an oral hearing. ***I-Pay Clearing***, in turn, concerned a challenge to a domestic award under Section 34, where the arbitrator had awarded a substantial sum without making any finding whatsoever on the central question of whether termination of the underlying contract was lawful. That question could not, in any view, be regarded as having been subsumed within another finding actually made by the arbitrator. Neither case is comparable to the present circumstances.

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Here, the Tribunal permitted and heard full oral argument. More importantly, for the reasons already set out, the issue said to have been overlooked was, in substance, encompassed within and answered by the Tribunal's finding.

Conclusion:

64. Therefore, in light of the reasons set out from (A) to (Q) above, I find that the Respondent has failed to establish that the Final Award is contrary to the public policy of India within the meaning of Section 48(2)(b) of the Arbitration and Conciliation Act, 1996.

ORDER

i. The Petition is allowed in terms of prayer clause (a) of the Commercial Arbitration Petition No. 1110 of 2025.

ii. In view of the disposal of the Commercial Arbitration Petition, Interim Application No. 8094 of 2025 does not survive and is accordingly disposed of.

iii. There shall be no orders as to costs.

[ARIF S. DOCTOR, J.]

After Pronouncement:

65. Mr. Bharucha has prayed for a stay of the operation of this Order for a period of eight weeks. Mr. Behramkamdin has submitted that if the Court is inclined to grant any stay, then the same would have to be in terms of the

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statement made by the Respondent as recorded in the Order of this Court dated 4th May 2026, which reads this. Mr. Bharucha submits that the statement as recorded in paragraph 2 of the Order dated 4th May 2026 shall continue for a period of eight weeks. His statement is accepted. Accordingly, the operation of this Order shall remain stayed for a period of eight weeks from today.

[ARIF S. DOCTOR J.]

Vaibhav

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