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DISORTHO S.A.S. V. MERIL LIFE SCIENCES PVT. LTD.: DETERMINING THE GOVERNING LAW OF ARBITRATION AGREEMENTS IN TRANSNATIONAL DISPUTES

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ABSTRACT

International commercial arbitration often involves the interaction of multiple legal systems, particularly the lex contractus, lex arbitri, and lex fori. Difficulties arise when these frameworks are not clearly aligned within a contract. The decision of the Supreme Court in Disortho S.A.S. v. Meril Life Sciences Pvt. Ltd. addresses one such conflict, where the agreement simultaneously subjected disputes to Indian law and courts, while providing for arbitration proceedings in Bogotá.

This paper examines how the Court resolved this inconsistency by treating Indian law as governing the arbitration agreement and upholding the jurisdiction of Indian courts. It argues that while the judgment attempts to bring clarity, it raises concerns regarding party autonomy, the seat–venue distinction, and the proper application of conflict-of-laws principles. The paper further evaluates the implications of this approach for international arbitration involving Indian parties.

Keywords: International arbitration, lex arbitri, seat and venue, party autonomy, jurisdiction

International commercial arbitration is meant to make dispute resolution easier in cross-border transactions, but in practice, it often raises complicated questions about which law should apply. This is especially true when contracts refer to different legal systems at the same time. In such situations, courts have to decide how to interpret these clauses without defeating the purpose of arbitration.

A major source of confusion comes from the interaction between different legal frameworks, namely the law governing the contract (lex contractus), the law governing the arbitration agreement (lex arbitri), and the law governing court procedures (lex fori). Although these are treated as separate concepts in theory, they often overlap in practice, making it difficult to clearly separate them in every case.

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The Supreme Court's decision in Disortho S.A.S. v. Meril Life Sciences Pvt. Ltd.[2] deals with this exact problem. The contract in question referred to Indian law and courts, but at the same time provided for arbitration in Bogotá. This created a conflict regarding whether Indian courts could still exercise jurisdiction in relation to the arbitration.

The Court ultimately held that Indian law governed the arbitration agreement and allowed Indian courts to retain jurisdiction. While this approach attempts to resolve the inconsistency, it has been criticised for creating further confusion, particularly in relation to the seat–venue distinction and the role of party autonomy in arbitration. The case therefore becomes important in understanding how Indian courts are currently approaching such conflicts in international arbitration.

THE PROBLEM OF MULTIPLE GOVERNING LAWS IN ARBITRATION

In international arbitration, one of the main difficulties is deciding which law applies to different parts of the dispute. Usually, three types of laws are involved: the law governing the contract, the law governing the arbitration agreement, and the law governing court procedures.[3] While these categories are useful in theory, in practice they often overlap, especially when contracts are not clearly drafted.

The law governing the arbitration agreement is particularly important because it determines issues such as validity, scope, and jurisdiction.[4] This becomes relevant when there are conflicting clauses in the contract, as courts then have to interpret which law should prevail. Over time, courts have developed certain tests to deal with this problem.

One commonly used approach is the three-stage test laid down in Sulamérica, where courts first look for an express choice of law, then an implied choice, and finally the system of law most closely connected to the arbitration agreement.[5] More recently, decisions such as Enka have suggested that in the absence of a clear choice, the law of the contract may apply, unless there are strong reasons to depart from it.[6]

Despite these frameworks, the real difficulty lies in how these principles are applied in practice. Contracts are rarely drafted with perfect clarity, and different clauses may reflect different commercial

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[2] *Disortho S.A.S. v. Meril Life Sciences Pvt. Ltd.,* 2025 SCC OnLine SC 570.
[3] *Supra note 1*, para 3.
[4] *Ibid,* para 5.
[5] *Sulamérica Cia Nacional de Seguros S.A. v. Enesa Engenharia S.A.,* [2012] EWCA Civ 638, para 25.
[6] *Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb*, [2020] UKSC 38, para 14.

priorities rather than a single, coherent legal intention. As a result, courts are often required not just to interpret the agreement, but to reconstruct the likely intention of the parties from competing indicators. This exercise is inherently uncertain, as it involves deciding which clause should be given greater weight, and at what stage of the analysis.

However, these principles are not always applied consistently. As some commentators have pointed out, courts sometimes rely too heavily on the governing law of the contract, even when other indicators such as the seat of arbitration suggest a different outcome. This lack of consistency has contributed to uncertainty, particularly in cases where contractual clauses point in different directions. It is within this already unsettled legal position that the decision in Disortho v. Meril must be understood.

WHEN CLAUSES COLLIDE: THE DISORTHO–MERIL DISPUTE

The dispute in Disortho S.A.S. v. Meril Life Sciences Pvt. Ltd. arose out of an international distribution agreement between a Colombian company and an Indian entity. The agreement contained two seemingly conflicting clauses. While one clause provided that the contract would be governed by Indian law and that disputes would fall under the jurisdiction of Indian courts, another clause provided for arbitration proceedings to be conducted in Bogotá under institutional rules.

This created a clear inconsistency. On one hand, the contract pointed towards India as the governing legal system; on the other, it indicated that disputes would be resolved through arbitration in a foreign forum. The central issue before the Supreme Court was whether Indian courts could still exercise jurisdiction, particularly in relation to the appointment of arbitrators, despite the reference to arbitration in Bogotá.

In resolving this issue, the Court relied on established principles relating to the determination of the law governing the arbitration agreement. It noted that in the absence of an express choice, such law may be inferred from the terms of the contract. Applying this approach, the Court held that the choice of Indian law as the governing law of the contract indicated an implied intention that Indian law would also govern the arbitration agreement. [7]

[7] *Supra note 1,* para 32.

The Court further distinguished between the "seat" and "venue" of arbitration. It held that the reference to Bogotá did not necessarily make it the juridical seat of arbitration, but merely indicated the place where proceedings could be conducted. As a result, it concluded that Indian courts retained jurisdiction under the Arbitration and Conciliation Act, 1996, including the power to appoint arbitrators.

While this reasoning offers a way to reconcile the conflicting clauses, it raises a deeper question: whether the Court has genuinely interpreted the parties' intentions, or instead reconstructed them by prioritising certain clauses over others—an issue that becomes central to evaluating the soundness of the judgment.

RECONSTRUCTING PARTY INTENT: A QUESTIONABLE APPROACH?

The central problem with the Court's reasoning in Disortho lies in the way it reconstructs party intent. The Court begins by treating the governing law of the contract as a strong indicator of the law governing the arbitration agreement. At first glance, this appears to be a practical solution to resolve conflicting clauses. However, this assumption becomes problematic once it is examined more closely. By relying heavily on the lex contractus, the Court effectively assumes that parties intended a single legal system to govern all aspects of their relationship, even when the structure of the agreement suggests otherwise.

This approach becomes difficult to sustain when viewed alongside the doctrine of separability. The arbitration clause is meant to operate independently of the main contract, precisely to avoid being affected by inconsistencies within it. Yet, by deriving the governing law of the arbitration agreement directly from the contract, the Court blurs this distinction. In doing so, it reduces the independent character of the arbitration agreement and treats it as an extension of the main contract rather than a separate juridical arrangement.

Once this link is established, it begins to influence the Court's treatment of other aspects of the dispute, particularly the seat–venue distinction. If Indian law is assumed to govern the arbitration agreement, it becomes easier for the Court to interpret Bogotá not as the juridical seat, but merely as a venue. However, this conclusion does not fully engage with the indicators present in the agreement, such as the choice of institutional rules and the designation of Bogotá as the place of arbitration. These factors could reasonably suggest that the parties intended Bogotá to function as the seat. By

downplaying these indicators, the Court's reasoning appears to follow from its initial assumption rather than from a balanced interpretation of the contract as a whole.

This issue is further compounded by the Court's limited engagement with existing precedent. Indian jurisprudence on the seat–venue distinction has not been entirely consistent, with decisions such as Hardy[8] and BGS SGS SOMA [9] adopting different approaches. In such a situation, a more careful reconciliation of these authorities would have been necessary. Instead, the judgment proceeds without fully addressing this tension, thereby leaving the underlying doctrinal uncertainty unresolved.

Taken together, these steps reveal a broader concern. What begins as an attempt to resolve a conflict between contractual clauses ultimately results in expanding the role of domestic courts in a setting that appears, at least in part, to have been designed as a foreign-seated arbitration. By prioritising the lex contractus and narrowing the significance of the arbitral seat, the Court risks limiting party autonomy, which remains a foundational principle of international arbitration.

BETWEEN UNIFORMITY AND UNCERTAINTY

The approach adopted in Disortho appears, at least on the surface, to be aimed at bringing clarity to situations where contractual clauses point in different directions. By relying on the governing law of the contract and allowing Indian courts to retain jurisdiction, the Court attempts to provide a consistent method for resolving such conflicts. In that sense, the judgment can be seen as an effort to avoid fragmentation and ensure that arbitration agreements are not rendered ineffective due to drafting inconsistencies.

However, the consequences of this approach suggest a different outcome. By prioritising the lex contractus and reducing the significance of the arbitral seat, the judgment introduces a degree of uncertainty in how arbitration clauses will be interpreted in the future. Parties entering into international contracts may no longer be certain whether the designation of a foreign seat will be sufficient to exclude the jurisdiction of Indian courts, especially when other clauses point towards Indian law.

This uncertainty has practical implications. One of the key attractions of international arbitration is predictability parties choose a seat and governing law in order to clearly define the legal framework of the dispute. If courts begin to reinterpret these choices by placing greater weight on certain clauses

[8] *Union of India v. Hardy Exploration and Production (India) Inc.,* AIR 2018 SC 4871.
[9] ***BGS SGS Soma JV v. NHPC Ltd.,* AIR 2019 SC 1720.**

over others, it may discourage parties from relying on arbitration as a neutral forum. The risk is not merely theoretical; it directly affects how contracts are drafted and how parties assess legal risk in cross-border transactions.

At the same time, the judgment reflects an ongoing tension in Indian arbitration law. On the one hand, decisions such as PASL have emphasised party autonomy and recognised the ability of parties to choose a foreign seat.[10] On the other, Disortho suggests that such choices may not be absolute, particularly when the contract also indicates a connection with Indian law and courts. This creates a situation where the law appears to move in two directions at once towards greater autonomy, while simultaneously retaining avenues for judicial intervention.

In this sense, the judgment does not merely resolve a contractual dispute but contributes to a broader uncertainty in the arbitration framework. While it provides a solution in the specific facts of the case, it leaves open important questions regarding the balance between party autonomy, territoriality, and judicial control in international arbitration.

CONCLUSION

The decision in Disortho S.A.S. v. Meril Life Sciences Pvt. Ltd. attempts to resolve a genuine problem arising from conflicting contractual clauses in international arbitration. By relying on the governing law of the contract to determine the law of the arbitration agreement, the Court offers a practical solution to such inconsistencies. However, this approach comes at a cost.

As discussed, the judgment blurs important distinctions between different legal concepts, particularly the relationship between the arbitration agreement and the main contract, as well as the role of the arbitral seat. In doing so, it risks weakening the principle of party autonomy, which is central to international arbitration. The decision also adds to the existing uncertainty in Indian arbitration jurisprudence, especially in cases involving foreign-seated arbitrations with connections to Indian law. While the judgment provides clarity in the specific facts of the case, its broader implications remain unclear. A more consistent and principled approach one that carefully balances contractual interpretation with established arbitration doctrines would be necessary to ensure greater predictability in the future.

[10] *PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.,* (2021) 7 SCC 1.