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## **BALCO V. KAISER ALUMINIUM TECHNICAL SERVICES INC.: A CASE COMMENT & COMPARATIVE ANALYSIS OF INVOLVED LEGAL ASPECTS**

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### **ABSTRACT:**

*According to Halsbury's Law of England, Arbitration is the dispute-resolution mechanism with binding effects based on disagreement made between the parties by a person or individuals rather than a national court with competent jurisdiction, after hearing both parties. There are numerous cases pending before Indian judiciary due to which its citizens are heavily relying on an alternative dispute mechanism to resolve dispute quickly without any delay of courts. The Indian Arbitration Act of 1996 contains two distinct parts dealing with arbitration. Part I deals with domestic and foreign disputes if the seat of arbitration is in India whereas, Part II includes the New York and Geneva Conventions into Indian law and also includes the provisions related to recognition and enforcement of arbitration agreements and arbitral awards given in a foreign seat. Foreign industries were having great concern due to interference of Indian Courts in Foreign arbitration matters. The five judge bench of Supreme Court of India gave its much-awaited decision in Bharat Aluminium Co. v/s Kaiser Aluminium Technical Service Inc. (Balco) on 6 September 2012 and overruled its earlier decision provided in Bhatia International v. Bulk Trading S.A and Ventur Global Engineering v. Satyam Computer Services Ltd. and held that Indian courts doesn't have jurisdiction in the matter of arbitral proceeding outside India. The purpose of this paper is to examine the judicial intervention earlier and after the BALCO case.*

**Keywords:** Foreign Arbitration, Judicial Intervention, BALCO, Bharat Aluminium, Bhatia International, Ventur Global Engineering, The Indian Arbitration Act of 1996.

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## INTRODUCTION

International Commercial Arbitration has gained the considerable significance since the establishment of the World Trade Organization (WTO), Which has accelerated globalization and strengthened economic integration among nations. As economies have become increasingly interconnected, International Arbitration has gradually evolved as one of the crucial mechanisms for resolving commercial disputes, particularly if transactions involve parties whose assets and international commercial activities situated in different jurisdictions.<sup>3</sup> Arbitration provides a streamlined timeline, confidentiality, neutrality and flexible procedures, while litigation provides public records, formal rule and procedure, delay of courts as well as broader appeals in higher courts.<sup>4</sup> Arbitration has been recognized through national laws and international laws and conventions, including the New York Convention, 1958, Geneva Convention, and UNCITRAL Model Law on International Commercial Arbitration. In modern days, many states have modernized their law of arbitration. Further, few of them have stepped forward and established themselves as neutral/impartial states by providing infrastructures like, arbitration centres.<sup>5</sup>

The Arbitration and Conciliation Act, 1996 has been enacted in India with an aim to modernize regime in India to conform to the concept prevalent in foreign Jurisdiction. But the arbitration in India has long remained constrained by narrow and traditional judicial approaches.<sup>6</sup> Rather than being regarded as an independent mechanism supported by the judicial system, arbitration was often viewed as an uncertain form of dispute resolution conducted by non-judicial persons and therefore requiring judicial regulation and supervision.<sup>7</sup> Part I of the 1996 act has provided the arbitration that is held in India as well as International arbitration also provided that the seat of arbitration must be within India only whereas, Part II includes the New York Convention, 1958 on recognition and enforcement of foreign arbitral awards. It shows that the act itself says clearly that Arbitration within territory of India is Governed specifically through Part I and International arbitration is governed through law of international jurisdiction; and enforcement

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<sup>3</sup> Alan Redfern and Martin Hunter, Law and Practice of International Commercial Arbitration, (4th edn, Kluwer Law International, 2004)

<sup>4</sup> <https://thelegalguide.org/arbitration-versus-litigation-key-differences-practical/> (last visited; 6 August 2026, 4:08 a.m.)

<sup>5</sup> Nick Oury Craig Tevendale Jerome Temme Elizabeth Kantor, “ Neutrality under pressure: How geopolitics is reshaping party choice in arbitration”, HERBERTH SMITH FREEHILLS KRAMER (last visited 6 August 2026 4:27 a.m.)

<sup>6</sup> Nikhil Kanekal, Arbitration in India: a glass half empty or half full? Mint, <https://www.livemint.com/Politics/fM9jjavLW438ixw0FyLKEM/Arbitration-in-India-a-glass-half-empty-or-half-full.html> (last visited 6 August 2026, 4:43 a.m.)

<sup>7</sup> T.T. Arvind, The ‘transplant effect’ in harmonization, 59 Intl. & Comp. L.Q. 65, 71 (2010)

of such foreign arbitral award in India is governed by Part II.<sup>8</sup>

Arbitral awards provided are final and binding and not subject to appeal in the courts except certain exceptions as laid down under Art. 5 of the UNCITRAL MODEL LAW which states that “In matters governed by this Law, no court shall intervene except where so provided in this Law.” Further, Art. 34 and Art. 5 of the New York Convention provides the recognition and enforcement of foreign award with certain restricted grounds. Therefore, on this ground a court may set aside any award or enforce provided that reasonable restriction applies on it.

But the exact meaning of Part I of the 1996 act in few years after its enactment was subject to uncertainties due to the dubious and ambiguous judicial interpretation in respect of arbitrations where seat of arbitration is outside India. The previously given judgements in *Bhatia International v. Buk Trading S.A.* and *Venture Global Engineering v. Satyam Computer Services Ltd.* gave a power to Indian Courts in the matter of jurisdiction of courts in India by allowing them to exercise the jurisdiction held in other nations also if explicitly or implicitly not mentioned. It brought various criticism as it enhanced judicial interference, restricted party autonomy and created an impact on credibility of India as arbitration friendly. It can be a challenging for international parties because of their knowledge in Indian legal field, unknown civil laws and various judicial priorities.<sup>9</sup>

The Five-judge bench judgement of *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc. (BALCO)* considered to be a landmark judgement in history of Indian arbitration law. In this case, The Supreme Court has confirmed the position of “territoriality principle” in the Arbitration and Conciliation Act, 1996, and stated that Part-I of the act only governs with Indian-Centric arbitrations and clarified the differences between “seat” and “venue” of arbitration. This judgement prevented the judicial interferences in arbitrations if seat is outside India.

This paper examines the facts, legal issues, logical reasoning of the courts, arguments made by parties, judgement and consequences of the judgement. It also explores the laws in few other countries, effect of decision in contemporary scenario and in international commercial arbitration in India and development in Indian laws. This research adopts a doctrinal legal research methodology. Primary sources include the Arbitration and Conciliation Act, 1996, judgments of the Supreme Court of India and relevant international arbitration instruments. Secondary materials include scholarly commentary, legal literature, and comparative

<sup>8</sup> The Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996)

<sup>9</sup> Sachin Pujari, AOR - Supreme Court and Counsel - Chambers of SS Pujari  
<https://legal.economictimes.indiatimes.com/news/opinions/is-indias-judicial-system-failing-to-enforce-commercial-disputes-effectively/122392408> , ETLegalWorld (last visited; 6 August 2026, 5:10 a.m.)

arbitration jurisprudence.

## **Analysis of BALCO Case**

### **1. Fact of the Case**

The dispute in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO) arose from an agreement dated April 22, 1993, under which Kaiser was to install a computer system at BALCO's premises. The agreement provided that disputes would be resolved through arbitration seated in London and governed by English law, while Indian law would govern the underlying contract. Following disputes between the parties, the matter was referred to an arbitral tribunal in England, which issued two awards. BALCO subsequently challenged these awards before the District Court at Bilaspur under Section 34 of the Arbitration and Conciliation Act, 1996. The challenge was rejected by the District Court and subsequently by the Chhattisgarh High Court, prompting BALCO to appeal to the Supreme Court of India.

### **2. Legal Issues raised Before the Court**

1. Whether Part I of the Arbitration and Conciliation Act, 1996 extends to arbitrations seated outside India.
2. Whether a foreign-seated arbitral award can be challenged before Indian courts under Section 34 of the Act.
3. Whether Indian courts have the authority under Section 9 to grant interim measures in foreign-seated arbitrations.
4. What is the meaning of "place/seat of arbitration" under Sections 2(2) and 20 of the Arbitration and Conciliation Act, 1996?
5. Whether the rulings in Bhatia International v. Bulk Trading S.A. and Venture Global Engineering v. Satyam Computer Services Ltd. correctly interpreted the scope and application of the 1996 Act.

This paper aimed to critically analyze the impact of the decision given in BALCO case. For this purpose, this paper analyzed the position prior to the Judgment and also position in various Countries around the world.

### **3. Judicial Position Before BALCO**

The legal framework governing arbitration in India before BALCO was primarily

influenced by two landmark decisions: *Bhatia International v. Bulk Trading S.A.*<sup>10</sup> and *Venture Global Engineering v. Satyam Computer Services Ltd.* In *Bhatia International*, the hon'ble S.C. of India held that Part-I of the 1996 Act could apply to international commercial arbitrations conducted outside India, unless the parties expressly or impliedly excluded its application. The Court identified several difficulties that would arise if Part I were completely excluded from foreign-seated arbitrations:

1. Sections 2(4) and 2(5) would become inconsistent with Section 2(2) if Part I were confined exclusively to India-seated arbitrations.
2. Parties to foreign-seated arbitrations would be unable to seek interim measures from Indian courts under Section 9, even when the relevant assets were situated in India.
3. Part I would continue to apply to international commercial arbitrations in Jammu & Kashmir, including those conducted outside India, creating an inconsistency with its application elsewhere in India.
4. Arbitrations conducted in non-convention countries would lack an applicable legal framework under the Act.<sup>11</sup>

This judgement was heavily criticized by many foreign authors, jurists as judicial interventions.<sup>12</sup>

#### 4. CASES REFERRED

1. *Bhatia International v. Bulk Trading S.A.*
2. *Venture Global Engineering v. Satyam Computer Services Ltd.*<sup>13</sup>
3. *Konkan Railway Corporation Ltd. v. Rani Construction Pvt. Ltd.*<sup>14</sup>
4. *SBP & Co. v. Patel Engineering Ltd.*<sup>15</sup>
5. *Nalinakhya Bysack v. Shyam Sunder Halder*<sup>16</sup>

<sup>10</sup> *Bhatia International v. Bulk Trading S.A.* (2002) 4 SCC 105; AIR 2002 SC 1432.

<sup>11</sup> Non-convention countries are countries that are not signatories to any one of the following protocols/conventions- Geneva Protocol on Arbitration Clauses, 1923; Geneva Convention on the Execution of Foreign Arbitral Awards, 1927, New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ('the Convention').

<sup>12</sup> Vasudha Sharma & Pankhuri Agarwal, *Rendering India into an Arbitration Friendly Jurisdiction- Analysis of the Proposed Amendments to the Arbitration and Conciliation Act, 1996*, 3 NUJS L. REV. 535 (2010); Fali S. Nariman, *India and International Arbitration*, 41 GEO. NV4SH. INTL. L. REV. 367, 374-376 (2009)

<sup>13</sup> MANU/SC/0333/2008.

<sup>14</sup> MANU/SC/0053/2002.

<sup>15</sup> MANU/SC/1787/2005.

<sup>16</sup> MANU/ SC/0076/1953.

6. Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court<sup>17</sup>
7. National Thermal Power Corporation v. Singer Company<sup>18</sup>
8. R. Vishwanatha Pillai v. State of Kerala<sup>19</sup>
9. Adhunik Steels Ltd. v. Orissa Manganese and Minerals Pvt. Ltd.<sup>20</sup>
10. State of Orissa v. Madan Gopal Rungta<sup>21</sup>
11. Deoraj v. State of Maharashtra<sup>22</sup>
12. Oil and Natural Gas Commission v. Western Company of North America<sup>23</sup>
13. A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies<sup>24</sup>
14. InterGlobe Aviation Ltd. v. N. Satchidanand<sup>25</sup>
15. TDM Infrastructure Pvt. Ltd. v. UE Development India Pvt. Ltd.
16. Guru Nanak Foundation v. Rattan Singh<sup>26</sup>
17. Hansraj Gupta v. Official Liquidators of Dehra Dun Mussoorie Electric Tramway Co.<sup>27</sup>
18. Umed v. Raj Singh & Ors<sup>28</sup>
19. R.S. Raghunath v. state of Karnataka<sup>29</sup>
20. Gwalior Rayons Silk Mfg Co. Ltd v. Custodian of Vested Forests, Pahalgat & Ors<sup>30</sup>
21. Cotton Corporation of India Ltd. v. United Industrial Bank Ltd<sup>31</sup>

## 5. RELEVANT LEGAL PROVISIONS

Sec. 2(2), Sec. 28, and Sec. 34 of the Indian Arbitration and Conciliation Act, 1996.

## 6. ARGUMENTS

### A. From Petitioner's Side (Balco)

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<sup>17</sup> MANU/SC/0479/1990.

<sup>18</sup> MANU/SC/0146/1993.

<sup>19</sup> MANU/SC/0023/2004.

<sup>20</sup> MANU/SC/2936/2007.

<sup>21</sup> MANU/SC/0012/1951.

<sup>22</sup> MANU/SC/0314/2004.

<sup>23</sup> MANU/SC/0014/1987.

<sup>24</sup> MANU/SC/0001/1981.

<sup>25</sup> MANU/SC/0799/2011.

<sup>26</sup> MANU/SC/0001/1981.

<sup>27</sup> MANU/PR/0062/1932.

<sup>28</sup> MANU/SC/0278/1974.

<sup>29</sup> MANU/SC/0012/1992.

<sup>30</sup> MANU/SC/0308/1990.

<sup>31</sup> MANU/SC/0375/1983.

- i. BALCO (Petitioner) argued before the hon'ble court that Part I of the 1996 Act should be applied to foreign-seated arbitrations until and unless if it is explicitly or implicitly not excluded by the parties in their arbitral agreement. Petitioner relied on the judgement given in Bhatia International v. Bulk Trading S.A. and it reiterated in Venture Global Engineering v. Satyam Computer Services Ltd. and they argued that the 1996 Act doesn't expressly prohibits the application of Part I to arbitrations having a seat outside India. Sec. 2(2) of the 1996 Act clearly says that Part-I shall apply where arbitration has place in India but it was misinterpreted as inclusion of foreign-seated arbitration also.
- ii. Petitioner stated that Part-I provides a remedy and if it excluded will lead to leave Indian parties aggrieved and injustice to them, particularly u/s. 9 and 34 of the 1996 Act. Further it was argued that party own selection can't override the statutory provisions provided in the 1996 Act especially where one part belongs to India.
- iii. BALCO argued that the **"place of arbitration"** should be interpreted broadly, allowing Indian courts to exercise jurisdiction where there is a substantial connection with India. It also contended that Section 48 permits Indian courts to examine the validity and legality of a foreign arbitral award under the law governing the award.
- iv. The petitioner further argued that the petition was maintainable as it provides interim reliefs in preserving assets and also strict with Indian law.

**B. From Respondent's Side (Kaiser Aluminium Technical Services Inc.)**

- i. The respondent on the other clearly stated that Part-I of the 1996 Act only applies on arbitration seated within territory of India and territorial in nature and further, supported by Sec. 2(2) which says that Part-I applies only to arbitration seated within Indian territory. Hence, Part-II should be applied on arbitration seated outside India.
- ii. The petitioner heavily relied on Territoriality principle and further, argued the founding principles of UNCITRAL Model Law and its articles and mentioned that seat of arbitration decides the jurisdiction and application of laws of any country. Here, the seat of arbitration is within London and therefore, English courts would have jurisdiction over it.

- iii. The petitioner further, argued that the hon'ble court in case of Bhatia International was inconsistent and ambiguous in nature and allowing the jurisdictions of the Indian Courts where arbitration seat is outside India will lead to judicial intervention, defeat the provisions of the 1996 Act and its objectives also which says about party autonomy and arbitration friendly country.
- iv. The respondent further argued that just because of interim relief in Indian Courts and legal consequences in other countries can't be a valid ground for the jurisdiction and also opposed the maintainability of suit for interim relief on ground that the 1996 act provides correct and exact frameworks for arbitration matters and allowing such type of suits would encroach and misinterpret the 1996 Act and lead to multiple vague proceedings.

### Findings of the Court

- i. The Constitutional bench of the Supreme Court analyzed the Arbitration and Conciliation Act, 1996 in alignment with UNCITRAL Model Law which is strictly based on "territoriality principle". Which clearly states that law of any country applies only to arbitrations seated within its territory.<sup>32</sup>
- ii. The "seat" of any arbitration decides the jurisdictional home of that arbitration and the law to adjudicate and initiate the proceedings. Here, the parties have opted the seat in London which means they will be governed a/c to English arbitration Law and it excludes the application of Indian Law, i.e, Part-I of the 1996 Act.
- iii. The Court held that the "place of arbitration" means the juridical seat, which determines the applicable curial law and supervisory courts. If the seat is outside India, Part I of the Arbitration Act does not apply, so Indian courts cannot grant interim relief or set aside the award. Under Section 48 and Article V(1)(e) of the New York Convention, the relevant law is the law of the arbitral seat, and only the courts of that seat can annul or suspend the award.
- iv. The court further held, that the judgement given by hon'ble S.C. of India in Bhatia International was misinterpreted as it extended Part-I to foreign-seated arbitrations.

In few judgements passed in recent times, however, it held that in such cases Part-I was

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<sup>32</sup> United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration, 1985 (as amended in 2006)

impliedly excluded.<sup>33</sup> In various cases, Indian Courts held that Part-I will be implicitly excluded, when there is foreign seated arbitrations and the procedural law was not the act. For example, in case of *Hardy Oil and Gas Ltd. v. Hindustan Oil Exploration Co. Ltd.*<sup>34</sup> the substantive law of the contracts was Indian Law while, the substantive law of arbitral agreement was English the venue was London and arbitration had to be conducted as per the laws of London Court. Then, the hon'ble Gujarat High court upheld that Part-I of the 1996 Act was implicitly excluded as a ground that, parties had opted English Law. In *Yograj Infrastructure Ltd. v. Ssangyong Engineering & Construction Ltd.*<sup>35</sup>, the agreement provided for the arbitration Rules of the Singapore International Arbitration Centre ('SIAC') as the rules of arbitration and the seat was Singapore. The Court held that Part-I was excluded although the substantive law of contract as per the agreement was Indian law. In contrast, in *Aurohill Global Commodities Ltd. v. MSTC Ltd.*<sup>36</sup> and *Paragon Steels Pvt. Ltd. v. European Metal Recycling Ltd.*<sup>37</sup>, the contract was governed by Indian substantive law, while London was the venue and non-Indian procedural rules applied. The courts nevertheless held that Part I of the Arbitration Act was not excluded. Bhatia International significantly restricted party autonomy by making the application of Part I dependent on how parties drafted their arbitration agreement. Although parties could exclude some or all provisions of Part I, including Section 9, the complexity of the law made arbitration clauses difficult to draft and increased transactional costs, particularly for businesses without legal expertise.<sup>38</sup>

## ARBITRATION IN OTHER COUNTRIES

### 1. ENGLAND LAW ON INTERNATIONAL ARBITRATION

English courts<sup>39</sup> possess statutory authority to grant anti-arbitration injunctions; however, such relief is exercised sparingly and only in exceptional circumstances. An injunction will ordinarily be granted where the court is satisfied that the arbitral proceedings have been improperly or unjustifiably commenced and that there are compelling grounds for restraining

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<sup>33</sup> *Liverpool and London Steamship Protection and Indemnity Association Ltd. v. Arabian Tankers Co.*, 2003 (3) Arb LR 537 (Bor), *Max India v. General Binding Corporation*, (2009) 112 DRJ 611, *DGS Realtors Pvt. Ltd. v. Realogy Corporation*, MANU/DE/2115/2009, *Dozco India P Ltd. v. Doosan Infracore Co. Ltd.* (2011) 6 SCC 179.

<sup>34</sup> 2006(1) Arb LR 61 (Guj).

<sup>35</sup> (2011) 9 SCC 735; 2011(4) Arb LR 82 (SC).

<sup>36</sup> (2007) 7 SCC 120; AIR 2007 SC 2706.

<sup>37</sup> 2006(4) Arb LR 299 (Ker).

<sup>38</sup> (2002) 4 SCC 105; AIR 2002 SC 1432.

<sup>39</sup> United Kingdom has incorporated the Model Law in the Arbitration Act, 1996.

the arbitration.<sup>40</sup> In *Weissfisch v. Julius*<sup>41</sup>, the English High Court considered an application seeking a declaration that an arbitration agreement governed by Swiss law, with Switzerland designated as the seat of arbitration, was invalid, together with an injunction restraining the appointed sole arbitrator from proceeding with the arbitration. The only material connection with England was that the arbitrator, an English-qualified lawyer, was subject to the jurisdiction of the English court. The Court nevertheless declined to grant the relief sought. It emphasized that the parties had expressly agreed to submit their disputes to arbitration seated in Switzerland and governed by Swiss law. Consequently, any question concerning the validity or scope of the arbitration agreement was primarily a matter for the Swiss courts and the arbitral process under Swiss law. The decision reflects the principle that courts should ordinarily respect the parties' chosen arbitral seat and governing law and should be reluctant to interfere with foreign-seated arbitral proceedings merely because an arbitrator happens to fall within their territorial jurisdiction.<sup>42</sup> English courts generally uphold the parties' choice of arbitral seat and governing law and avoid unnecessary interference in arbitration. Similarly, in *Elektrim S.A. v. Vivendi Universal S.A.*<sup>43</sup>, the court refused to restrain LCIA arbitration, emphasizing that judicial intervention before an arbitral award should remain very limited. The court refused to grant an injunction under Section 37 of the Supreme Court Act, holding that doing so would undermine the parties' agreement to submit disputes to LCIA arbitration. Since the tribunal had already refused to stay the proceedings and the Arbitration Act 1996 provided no basis for pre-award judicial review, the decision emphasized arbitral autonomy, party choice, and minimal judicial intervention.

## FRANCE

French courts generally adopt a pro-arbitration approach and exercise strong judicial restraint.<sup>44</sup> Under Article 1458 of the Nouveau Code de Procédure Civile<sup>45</sup>, State courts must decline jurisdiction when a dispute is covered by an arbitration agreement, unless the agreement is manifestly null and void. This reinforces kompetenz-kompetenz, arbitral autonomy, and the principle of minimal judicial interference.

<sup>40</sup> The Arbitration and Conciliation Act, 1996, S. 72(1) and the Supreme Court Act, 1981, S. 37.

<sup>41</sup> *Weissfisch v. Julius*, [2006] EWCA (Civ) 218.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Elektrim S. A. v. Vivendi Universal S. A.*, [2007] EWHC 571 (Comm.).

<sup>44</sup> JULIAN D. M. LEW, CONTROL OF JURISDICTION BY INJUNCTIONS ISSUED BY NATIONAL COURTS, IN INTERNATIONAL ARBITRATION 2006: BACK TO BASICS? 185, 201 (Albert Jan van den Berg ed., 2007).

<sup>45</sup> New Code of Civil Procedure.

## SWITZERLAND

Swiss law generally discourages anti-arbitration injunctions, with most powers to grant interim relief entrusted to the arbitral tribunal. This reflects Switzerland's preference for arbitral autonomy and limited court intervention.<sup>46</sup> In *Air (PTY) Ltd. v. International Air Transport Association*<sup>47</sup>, the Geneva Court of First Instance held that anti-suit and anti-arbitration injunctions are incompatible with Swiss law, reflecting Switzerland's strong support for arbitral autonomy and limited judicial interference. This is because such injunctions are considered inconsistent with the principle of *kompetenz-kompetenz*<sup>48</sup>, under which the arbitral tribunal has the authority to determine its own jurisdiction, including the validity and scope of the arbitration agreement. This principle of *kompetenz-kompetenz* is a well-established principle of Swiss arbitration law, recognizing the tribunal's authority to determine its own jurisdiction.<sup>49</sup>

## BALCO CASE JUDGEMENT

The BALCO judgment sought to correct the shortcomings of earlier decisions like *Bhatia International* and *Venture Global Engineering*. In line with the New York Convention and UNCITRAL Model Law, it encouraged Indian courts to adopt a pro-arbitration approach, respect party autonomy, and minimize judicial intervention in arbitral proceedings.

- i. The Court held that Part I of the Arbitration and Conciliation Act, 1996 applies only to India-seated arbitrations. Therefore, Sections 9 and 34 do not apply to foreign-seated arbitrations. Indian courts can intervene only under Part II, mainly for the recognition and enforcement of foreign awards.
- ii. The Court overruled *Bhatia International* and *Venture Global Engineering*, holding them inconsistent with the Arbitration Act and international standards. However, the ruling was applied prospectively, affecting only arbitration agreements made after 6 September 2012.
- iii. The Court reaffirmed that the seat of arbitration determines the supervisory jurisdiction, and courts of the seat alone have the authority to intervene in arbitral proceedings or set

<sup>46</sup> Swiss Private International Law Act, 1987 Article 183

<sup>47</sup> Tribunal de Premiere Instance [TPI] [Court of First Instance] May 2, 2005, Case No. C/ 1043/2005-15SP (Switz.), translated in 23 A.S.A. BULL. 739 (2005).

<sup>48</sup> PHILIPPE FOUCHARD et al., *INTERNATIONAL COMMERCIAL ARBITRATION* 397 (Emmanuel Gaillard and John Savage eds., 1999); BORN, *supra* note 1, 85; HOWARD M. HOLTZMANN and JOSEPH E. NEUHAUS, *A GUIDE TO THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION: LEGISLATIVE HISTORY AND COMMENTARY* 478; STEPHEN SCHWEBEL, *INTERNATIONAL ARBITRATION: THREE SALIENT PROBLEMS* 2 (1987); Model Law, Article 16(1).

<sup>49</sup> *Lot Fidrale* du 18 Ddcembre 1987 sur le droit international prive (Swiss Private International Law Act of December 18, 1987), Article 186(1).

aside awards. Indian courts cannot assume such jurisdiction merely because one of the parties is Indian or the contract has connections with India.

- iv. The Court held that interim relief must be sought under the Arbitration Act, and independent civil suits for interim measures are generally not maintainable when the dispute is governed by arbitration.
- v. The BALCO judgment transformed Indian arbitration law by reducing judicial interference, strengthening party autonomy, and ensuring greater certainty in international arbitration. It aligned Indian law with global arbitration standards and became a landmark precedent for making India more arbitration-friendly.<sup>50</sup>

## SIGNIFICANCE AND APPLICATION OF THE JUDGMENT

1. The BALCO judgment is a landmark in Indian arbitration law<sup>51</sup>. By adopting the territoriality principle, it held that Part I of the Arbitration and Conciliation Act, 1996 applies only to arbitrations seated in India. This aligned Indian law with the UNCITRAL Model Law and international standards, thereby providing greater legal certainty in international arbitration.
2. The BALCO judgment created a gap by restricting Section 9 interim relief to India-seated arbitrations. Consequently, parties can no longer approach Indian courts under Section 9 to freeze assets, bank accounts, or seek anti-suit injunctions in support of foreign-seated arbitrations. This was considered a less favorable aspect of the judgment, as such relief had previously been available under Bhatia International. Unless the Arbitration and Conciliation Act, 1996 is amended, parties cannot seek interim relief under Section 9 from Indian courts in support of foreign-seated arbitrations. The Court clarified that only Parliament can address this legislative gap, and Indian courts cannot grant such relief on their own.
3. BALCO clarified that Indian courts cannot entertain ordinary civil suits for interim relief in support of foreign-seated arbitrations. Such interim relief does not constitute an independent cause of action under Indian law. Thus, the position in India was similar to the earlier position in English law<sup>52</sup>, before legislative reforms addressed the issue.

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<sup>50</sup> <https://lawnotes.co/case-analysis-bharat-aluminium-co-v-kaiser-aluminium-technical-services-balco-case-2012/> (last visited 8 August 2026, 4:00 p.m.)

<sup>51</sup> MANU/SC/0185/2002.

<sup>52</sup> Siskina (Cargo Owners) v. Distos Compania Naviera SA AC 210

4. The BALCO judgment was a landmark development that significantly reshaped Indian arbitration law and international transactions involving India. Unlike *Bhatia International*, it limited the jurisdiction of Indian courts over foreign-seated **arbitrations**, thereby strengthening the territoriality principle and reducing judicial intervention.

## CONCLUSION

The BALCO judgment represents a landmark development in Indian arbitration law and significantly changed the approach towards foreign-seated international commercial arbitration. Before BALCO, the decisions in *Bhatia International* and *Venture Global Engineering* allowed Indian courts to exercise jurisdiction over foreign-seated arbitrations, which resulted in greater judicial intervention and uncertainty regarding the application of Part I of the Arbitration and Conciliation Act, 1996. The BALCO Constitution Bench resolved this uncertainty by adopting the territoriality principle and holding that Part I applies only to arbitrations seated in India.

The judgment further clarified the importance of the seat of arbitration, holding that the seat determines the supervisory jurisdiction and the applicable procedural law. Consequently, where the seat is outside India, Indian courts cannot set aside the award or grant interim relief under Section 9, and the courts of the arbitral seat have the primary supervisory authority. BALCO also strengthened party autonomy by respecting the parties' choice of seat and governing law and reduced unnecessary judicial interference in arbitral proceedings.

Although the judgment created a limitation concerning interim relief in India for foreign-seated arbitrations, it brought greater certainty and consistency to Indian arbitration law. The comparison with England, France and Switzerland also demonstrates the importance of judicial restraint, arbitral autonomy and respect for the chosen seat. Overall, BALCO aligned Indian arbitration law more closely with the UNCITRAL Model Law and international arbitration principles and contributed to making India a more arbitration-friendly jurisdiction.