

Shifting of Seat of Arbitration

In recent times, the arbitration law in India has evolved many folds. It has been settled by the Supreme Court that 'seat of arbitration' determines the jurisdiction of the court in an arbitration matter. However, what happens when the venue/ seat of arbitration is changed. The present article deals with a recent judgment passed by the Supreme Court in *Inox Renewables Ltd. vs. Jayesh Electricals Ltd.*¹ clarifying this aspect.

The above judgment finally settles a vital question of law regarding the shifting of seat of arbitration and the change in jurisdiction of court arising due to such shifting of seat of arbitration. The appeal before Supreme Court was preferred from the judgment passed by the High Court of Gujarat, holding that the courts at Jaipur, Rajasthan would have the exclusive jurisdiction to entertain application for setting aside the arbitral award under Section 34 of the Act.

Brief Facts of the Case:

In the present case, a purchase order dated 28.01.2012 ("**purchase order**") was entered into between M/s Gujarat Fluorochemicals Ltd. ('**GFL**') and Jayesh Electricals Ltd. ('**Respondent**') for the manufacture and supply of power transformers at wind farms. The arbitration clause contained in the said purchase order provided that the arbitration shall be conducted by three arbitrators in accordance with the Act and the venue of the arbitration shall be Jaipur, Rajasthan.

Thereafter, the entire business of GFL was sold to Inox Renewables Ltd. ('**Appellant**') by way of a *slump sale*.² The transfer of entire business was done by way of an Agreement dated 30.03.2012 ("**Agreement**") executed between Appellant and GFL, and the Respondent was not a party to the said Agreement. In the said Agreement, the seat of arbitration was designated as Vadodara and the exclusive jurisdiction qua disputes arising out of the agreement was also vested with courts at Vadodara. Thereafter, on an application filed by Respondent and on joint request of Appellant and Respondent, the Gujarat High Court on 05.09.2014 appointed a sole arbitrator to resolve the disputes arose between the parties in relation to the purchase order. The Sole Arbitrator thereafter, passed an award dated 28.07.2018 awarding a sum of Rs. 38,97,150/- along with interest of Rs. 31,32,650/- as well as Rs. 2,81,000/- towards quantified costs. The sole arbitrator also recorded that the venue/ place of arbitration was shifted to Ahmedabad from Jaipur by mutual consent of both the parties.

¹ MANU/SC/0285/2021; Civil Appeal No. 1556/2021 decided on 13.04.2021

² Section 2(42C) of Income Tax Act, 1961 - "slump sale" means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.



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The Appellant challenging the award dated 28.07.2018, filed an application under Section 34 of the Act before the Commercial Court, Ahmedabad. The Respondent, however, challenged the jurisdiction of the Commercial Court Ahmedabad and contended that courts at Vadodara would have jurisdiction in the matter. Such objection was accepted by the Court vide its judgment dated 25.04.2019. Aggrieved by the above judgment dated 25.04.2019, the Appellant preferred a special civil application before the Gujarat High Court. The High Court however, held that in view of the purchase order, the courts at Jaipur, Rajasthan would have jurisdiction and not the courts at Vadodara or Ahmedabad. The Appellant thereafter challenged the judgment of Gujarat High Court before the Supreme Court of India.

Case before Supreme Court:

The Appellant contended that since the place/ venue of the arbitration was shifted to Ahmedabad by mutual consent, therefore the seat of arbitration became Ahmedabad and hence, jurisdiction had also been vested with the courts at Ahmedabad. The Appellant relied on the judgment of *BSG SGS SOMA JV vs. NHPC Limited*³ to support its case. On the other hand, the Respondent, while relying on the judgments of *Videocon Industries Ltd. vs. Union of India*⁴ and *Indus Mobile Distributor Pvt. Ltd. vs. Datawind Innovations Pvt. Ltd.*⁵, argued that even if the venue is shifted to Ahmedabad by mutual agreement, the seat cannot be changed without a written agreement between the parties.

The Respondent also argued that vesting of exclusive jurisdiction with the courts at Rajasthan was independent of the arbitration clause. Respondent further argued that the mutual agreement for shifting of venue of arbitration was in reference of Section 20(3) of the Act only, which provided that unless otherwise agree between the parties, the Arbitral Tribunal may choose a convenient place to hold meetings and conduct hearings. Therefore, even if the venue of arbitration was shifted to Ahmedabad, the seat of arbitration always remained at Jaipur.

Supreme Court's Findings:

The Supreme Court while allowing the appeal of the Appellant, held that the shifting of 'venue' from Jaipur to Ahmedabad is in effect a shifting of the venue/ place of arbitration with reference to Section 20(1) of the Act, and not with reference to Section 20(3) of the Act. Section 20(1) of the Act provides that the parties are free to agree on place of the arbitration. The Court held that since the sole arbitrator has recorded that by mutual agreement, Jaipur as a 'venue' was replaced by Ahmedabad, therefore, the courts at Rajasthan are no longer vested with the jurisdiction to entertain any of the applications under any provision of the Act. The exclusive jurisdiction was vested with the courts at Ahmedabad, as the seat of the arbitration was changed to Ahmedabad. The Supreme Court in view of the above, referred the matter back to courts at Ahmedabad to hear the application under Section 34 afresh.

Conclusion:

The above judgment settled a vital issue regarding change in seat of arbitration by the parties and the effect of such change on the jurisdiction of the courts. It has been observed that many times parties tend to shift the venue of arbitration by mutual agreement at the stage of arbitration, but later on tend to resist the jurisdiction of courts which are not convenient for the resisting party. The above judgment also upheld the fundamental premise of arbitration i.e. party autonomy, which has been enshrined in the UNCITRAL model law also. The above judgment paved the way forward for the parties to mutually decide or shift the seat of arbitration even after the initiation of the arbitration proceedings.

³ (2020) 4 SCC 234

⁴ (2011) 6 SCC 161

⁵ (2017) 7 SCC 678

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