

## Relevance of Seat in Conferring Jurisdiction to Courts in Domestic Arbitration

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Until the judgment was passed by the Hon'ble Apex Court in the matter of Bharat Aluminum Company v. KAISER Aluminum<sup>1</sup> ("**Balco**"), it was almost a settled position that place of arbitration proceedings does not confer any jurisdiction on courts to adjudicate upon matters arising out of or in relating to arbitration proceedings. Post Balco, there was a shift in the aforesaid thinking and the place of arbitration was recognized as one of the important factors conferring jurisdiction on the courts where arbitration proceedings are held. The Hon'ble Supreme Court in the case of BGS SGS-SOMA JV v. NHPC Ltd.<sup>2</sup>, held that venue mentioned in the arbitration clause will be akin to seat unless there is a contrary indicia in the agreement. Also, in the case of Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and Ors.<sup>3</sup> it was held that once a seat of arbitration is designated, the clause designating the seat of arbitration becomes an exclusive jurisdiction clause, as a result of which, only the courts within whose territorial limits, the seat is located would have jurisdiction to the exclusion of all other courts.

With the aforesaid rulings, the issue that was governing courts in deciding the jurisdiction of a particular court with respect to arbitration matter was as to whether the

arbitration clause provides only venue/place of the arbitration only venue/place of arbitration was specified, was there an agreement to confer jurisdiction to a particular court other than In this regard, a judgment of the Hon'ble Delhi



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<sup>1</sup> (2012) 9 SCC 552

<sup>2</sup> (2020) 4 SCC 234

<sup>3</sup> (2017) 7 SCC 678

High Court ("**DHC**") in the matter of ISGEC Heavy Engineering Ltd. v. Indian Oil Corporation Ltd.<sup>4</sup> held that in an arbitration clause mentioning venue as Delhi and conferring exclusive jurisdiction to court at Guwahati, there is a contrary indicia and the parties had conferred exclusive jurisdiction to court of Guwahati. In that background, the Hon'ble Delhi High Court held that merely providing Delhi as a venue was not sufficient and courts at Guwahati will have the exclusive jurisdiction.

Recently, the Hon'ble Apex Court was seized of a matter in the case of M/s Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee<sup>5</sup> where arbitration clause in question reads as under:

*"37. That in case of any dispute or difference between the parties arising out of and relating to this development agreement, the same shall be settled by reference of the disputes or differences to the Arbitrators appointed by both the parties and such Arbitration shall be conducted under the provisions of the Indian Arbitration and Conciliation Act, 1996 as amended from time to time and **the sitting of the said Arbitral Tribunal shall be at Kolkata.**"*

The Hon'ble Apex Court was hearing an appeal against order passed by Hon'ble Calcutta High Court ("**CHC**") appointing a sole arbitrator in Section 11 (6) petition filed by the Respondent- Aditya Kumar Chatterjee. The other party, namely, Ravi Ranjan Developers approached the Hon'ble Apex Court against the order of appointment by CHC on the premise that nothing had happened within the jurisdiction of CHC. It was pleaded that the Development Agreement containing arbitration clause pertained to development of a property situated at Muzaffarpur, Bihar. The Development Agreement was registered and executed at Muzaffarpur, Bihar and appellant, namely, Ravi Ranjan Developers (Respondent before the CHC) had registered office at Patna in Bihar. The appellant before the Apex Court took all these objections before the CHC, which were not considered by while appointing the arbitrator. The main plank of the argument of the Respondent before the Apex Court was that as the seat of arbitration was in Kolkata, the CHC will have jurisdiction to entertain the arbitration proceedings. Before the Hon'ble Apex Court several objections were raised, and the Hon'ble Apex Court proceeded with determination with the issue qua jurisdiction of CHC following the fundamental principle that a decree passed by a court without jurisdiction is a nullity and defect of jurisdiction cannot be cured by

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<sup>4</sup> ARB. P. 164/2021

<sup>5</sup> SLP (C) No. 17397-17398 of 2021

consent of the parties as held in case of *Kiran Singh and Ors. v. Chaman Paswan and Ors.*<sup>6</sup>. While deciding the issue as to whether the CHC will have jurisdiction, the Hon'ble Apex Court noted that the development agreement was executed and registered outside the jurisdiction of CHC, the property forming subject matter of development agreement was located at Muzaffarpur, Bihar, outside the jurisdiction of CHC, office of the developer i.e. appellant was in Patna outside the jurisdiction of CHC. Developer had no establishment, nor did it carry on any business within the jurisdiction of CHC. Lastly, no part of cause of action had arisen within the jurisdiction of CHC.

Taking note of the definition of "court" in Section 2 (1) (e) of the Arbitration and Conciliation Act, 1996, the Apex Court held that suit with respect to any property is to be instituted in a court within the local limits of whose jurisdiction, the property situates. Other civil suits can be filed in a court within whose local limits Defendant voluntarily resides or carries on business or cause of action or part thereof had arisen. On this basis, the Hon'ble Apex Court held that in the case before it no suit could have been filed in any court, or CHC exercises jurisdiction.

It was held that for the purpose of application under Section 11 (6), Section 11(6) as well as section 2 (1) (e) of the A&CA have to be harmoniously construed. On that basis, it was held that an application under Section 11 (6) of the A&CA can be filed before a high court which exercises superintendence or supervisory jurisdiction over a court within the meaning of Section 2(1)(e) of the A&CA. The Apex Court also noted the arguments of the Respondent i.e. arbitration agreement clearly provides that seat and/or place of arbitral tribunal shall be Kolkata. The court noticed Respondent's reliance on the judgements in the case of *Indus Mobile (supra)*, *Hindustan Construction Company Limited v. NHPC Limited and Anr.*<sup>7</sup> and *BGS SGS (supra)* to buttress their arguments that designation of seat of arbitration is akin to conferring exclusive jurisdiction to the court within whose local limit the seat of arbitration is located. The Apex Court held that the judgment in the case of *Baclo (supra)* and *BGS SGS (supra)* were passed in the context of International Commercial Arbitration with seat of arbitration outside India and that the question before the constitution bench in the said two cases was as to whether Part- I of Arbitration and Conciliation Act would apply to arbitration where place of arbitration is outside India. On the other hand, the judgment in case of *HCC (supra)* held that designation of seat in

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<sup>6</sup> (1955) SCR 117

<sup>7</sup> (2020) 4 SCC 310

arbitration clause would confer exclusive jurisdiction to the court within whose local limit the seat is situated. The Hon'ble Apex Court held that in the case before it, Kolkata was the venue for holding the sittings of the Arbitral Tribunal and was not agreed to be seat of arbitration. The Hon'ble Court further noticed that the Respondent before it had earlier filed a petition for interim protection under section 9 of the Act before the District Court, Muzaffarpur and hence the Respondent was estopped from contending that the parties had agreed to confer exclusive jurisdiction to the CHC to the exclusion of other courts. Holding that CHC inherently lacked jurisdiction to entertain the application of the Respondent under Section 11(6) of the Act, the Apex Court set aside the decision and appointed another arbitrator to outside the dispute between the parties.

In yet another decision passed by the DHC in the matter of Hunch Circle Pvt. Ltd. v. Future Technology Pvt. Ltd.<sup>8</sup>, the DHC was seized of a petition under Section 11 (6) of the Act for appointment of arbitrator. In the said matter, following two clauses, relating to 'Governing Law' and 'Arbitration' formed part of the main agreement between the parties:

#### **"8.1. Governing Law**

*This Agreement and the transactions contemplated hereby shall be governed by and construed under the Laws of India without regard to conflicts of Laws provisions. Subject to resolution of disputes by arbitration, **courts at the place where the Main Premises is located will have exclusive supervisory jurisdiction over matters arising out of this Agreement, especially for granting interim relief and enforcing arbitral awards.***

#### **8.2. Arbitration**

*Any dispute, controversy or claim arising out of or in relation to this Agreement, or at Law, or the breach, termination or invalidity of this Agreement, that cannot be settled amicably by agreement of the Parties to this Agreement shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 (as amended from time to time). by one arbitrator mutually appointed by the Parties. **The seat of arbitration shall be Delhi, India and the venue of arbitration shall be India.***"

The DHC noted that Clause 8.1 confers exclusive jurisdiction over matters arising out of the agreement, for granting of interim relief or enforcement of an award on the court within whose limit the main premises, the subject matter of the agreement situates, which is located at Gurgaon. On the other hand, Clause 8.2 fixes seat of arbitration at Delhi and venue of arbitration as India. DHC held that as the contract confers exclusive jurisdiction on courts at Gurgaon for the purpose of petition under Section 9 and Section 34 of the A&CA, the jurisdiction under Section 11 would necessarily lie with Hon'ble High Court of Punjab

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<sup>8</sup> ARB. P. 1019/2021

and Haryana which has jurisdiction over Gurgaon and not before the DHC, despite fixation of seat of arbitration at Delhi. Hon'ble Delhi High Court also referred to provision of Section 42 of the Act in support of its aforesaid conclusion.

### **CONCLUSION:**

In view of the law laid down by various judgments referred to above, one can say that there is still some lack of clarity on the issue of jurisdiction to be exercised by courts in respect of matters pertaining to arbitration. While it was appearing to be almost a settled position that designation of seat would confer exclusive jurisdiction on the court, which exercise supervisory jurisdiction over the seat of arbitration, the judgment of the Hon'ble Delhi High Court in the case of Hunch Circle (supra) takes a divergent view and confers supremacy to exclusive jurisdiction clause in the agreement and not the seat. Significantly, in the said case it was not the 'venue' but 'seat of arbitration' was specifically stated to be Delhi.

The Judgment of the Hon'ble Apex Court in Ravi Ranjan Developers Pvt. Ltd. case categorically holds that for the purpose of Section 11(6), provisions of Section 11(6) and Section 2(1)(e) must be harmoniously constructed. Therefore, in cases where court of designated seat does not have any jurisdiction as per the parameters of CPC, it would not be safe to file the Section 11 (or for that matter any other) petition under the A&CA before the court of seat. Again, an exclusive jurisdiction clause in contract will prevail over the clause mentioning about the seat of arbitration. To conclude, we may say that in case of domestic arbitrations, seat does not confer jurisdiction (exclusive or otherwise) to a court within whose local limit the seat is situated. Apparently, we are going back to pre-Balco era where seat of arbitration had no role in deciding the jurisdiction of court in domestic arbitration. The situation however remains same in respect of international commercial arbitration where seat of the arbitration will confer exclusive jurisdiction to the court, within whose local limit the seat locates, in respect of matters arising out of or relating to the arbitration proceedings.

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