

Multiple seat arbitration clause hit by Section 29 of the Indian Contract Act 1872?: A Case Study

The issue whether an arbitration clause providing multiple seats for arbitration is void in view of Section 29 of the Indian Contract Act 1872 was decided by the Hon'ble Delhi High Court in the case of Vedanta Limited v. Shreeji Shipping. This judgment was subsequently affirmed by the Hon'ble Supreme Court .

The Petitioner approached the Delhi High Court in a Section 11 petition filed under the Arbitration and Conciliation Act 1996 (herein after referred to as the "Petition") for seeking appointment of an arbitral tribunal to adjudicate upon the disputes that had arisen between the parties. The dispute between the parties was with respect to the shortfalls in the amount of coal to be transported under the Purchase Order in question as against the actual amount of coal transported.

The Petition was opposed by the Respondent inter alia on the ground that Clause 10.1 (ii) of the arbitration clause, which provided multiple options for the Seat of arbitration, was hit by Section 29 of the Indian Contract Act 1872 (Agreements void for uncertainty). The Respondent further argued that in such a situation Section 20 of the Code of Civil Procedure, 1908 would apply to determine the jurisdiction and that since no part of cause of action had arisen within the territorial jurisdiction of Delhi, the Delhi High Court lacked the territorial jurisdiction to entertain the petition. As per the Respondent, the cause of action had arisen in Gujarat and only the Courts at Gujarat would have the jurisdiction to entertain the Petition.

Before coming to the decision of the Court on the above issue and the reasoning given in support thereof, it is relevant to



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reproduce the arbitration clause in question and Section 29 of the Indian Contract Act 1872:

“10. ARBITRATION

10.1 Any dispute or difference whatsoever arising between the parties out of or relating to the interpretation, meaning, scope, operation or effect of this Agreement or the existence, validity, breach or anticipated breach thereof or determination and enforcement of respective rights, obligations and liabilities of the parties thereto shall be amicably settled by way of mediation. If the dispute is not conclusively settled within a period of twenty-one (21) days from the date of commencement of mediation or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the (Indian) Arbitration and Conciliation Act, 1996 (as amended from time to time), which are deemed to be incorporated by reference into this clause. The arbitration shall be conducted as follows:

A sole arbitrator shall be appointed in case the value of claim under dispute is less than 5,000,000 (Rupees Five Million Only) / \$ 100,000 (Hundred Thousand United States Dollars) and in any other event by a forum of three arbitrators with one arbitrator nominated by each Party and the presiding arbitrator selected by the nominated arbitrators.

The language of the mediation and arbitration proceedings shall be English. The seat of arbitration shall be [Local Jurisdiction in Goa / Local Jurisdiction in Karnataka /Delhi, India.”

.....

“11.2 The parties submit to the exclusive jurisdiction of the courts of [Local Jurisdiction in Goa / Local Jurisdiction Karnataka /Delhi], India and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Agreement.”

[Emphasis Supplied]

Section 29 of the Indian Contract Act 1872:

“Agreements void for uncertainty - Agreements, the meaning of which is not certain, or capable of being made certain, are void”

The Hon’ble Court, upon examining the above quoted arbitration clause, observed that there was no ambiguity in Clause 10.1 (ii) of the arbitration clause. The said clause, while clearly specifying the seat of the arbitration to be Goa, Karnataka or Delhi, gave parties the choice to

invoke either of the jurisdictions specified therein to govern the arbitration proceedings between the parties. The jurisdiction, in the opinion of the Court, was certain or capable of being made certain. Therefore, Section 29 of the Indian Contract Act 1872 would not apply to the arbitration clause in the instant case.

The Hon'ble Court further disagreed with the Respondent's contention that in a situation where three places are mentioned to have the seat of arbitration, the provisions of Sections 16-20 of the Code of Civil Procedure 1908 should be applied by the Court to determine which court would have the jurisdiction. In this regard, the Hon'ble Court relied upon the judgment passed by the Hon'ble Supreme Court in *Indus Mobile Distribution (P) Ltd. vs Datawind Innovations (P) Ltd.* wherein it was held that in arbitration law the moment a 'Seat' is determined, the same is akin to exclusive jurisdiction clause and parties have the liberty to file the Petition in the jurisdiction so specified. The Court accordingly held that in case the arbitration clause provides for three places as the seat of arbitration, parties will be at liberty to approach any one of the three places so specified. In view of the above, the Petition was allowed vide judgment dated 08.02.2024.

Aggrieved by the above judgment, the Respondent filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court found no reason to interfere with the judgment passed by the Hon'ble High Court and accordingly dismissed the SLP. With this affirmation, the judgment of the Delhi High Court is an authority on the subject issue.