

Seat of Arbitration: Exclusive Jurisdiction of Court





Hon'ble Supreme Court's bench comprising of Hon'ble Justice Pinaki Chandra Ghose and Hon'ble Justice Rohinton F. Nariman delivered a judgement in the Indus Mobile Distribution Pvt. Ltd.(Appellant) vs. Datawind Innovations Pvt. Ltd. & Ors.(Respondents) case on 19th April 2017 and held that where an exclusive jurisdiction clause in an arbitration agreement states that the Courts at a particular place alone would have jurisdiction in respect of disputes arising under the agreement, it would oust all other Courts' jurisdiction in the matter including in the case where no part of the cause of action arises at that place.

Brief facts of the case under discussion are set out as below:

1. The Respondent in the said matter was engaged in business of manufacturing, marketing and distribution of mobile phones, tablets and their accessories, having its registered office at Amritsar, Punjab. The Respondents supplied the goods to the Appellant at Chennai from New Delhi.
2. The Appellant desired to do business with Respondents as its retail chain partner following which an agreement dated 25th October 2014 was entered between the Parties ("Agreement").
3. Emphasis was laid on Clause 18 and 19 of the agreement that dealt with the dispute resolution mechanism between the parties. In relation to the terms, any disputes between the parties were to be referred and finally settled by Arbitration under the Arbitration and Conciliation Act, 1996 ("Act"). The Arbitration would be conducted in Mumbai, as agreed categorically under the agreement.
4. Separately, Clause 19 provided that all disputes arising out of or in connection with the agreement would be subject to the exclusive jurisdiction of the Courts of Mumbai only.
5. Subsequently, disputes arose between the parties and thereafter, the Respondents invoked Arbitration Clause and appointed a sole Arbitrator, which was objected to by the Appellant. Accordingly, Petition under Section 9 of the Act for interim relief was filed by the Respondents whereby the Hon'ble High Court of Delhi issued notice and passed an order on 22nd September 2015 restraining the Appellant from alienating, transferring and/or creating any third party interests in respect of a certain property in Chennai. Further, another Petition under Section 11 of the Act was filed by the Respondent for appointment of an Arbitrator. Thereafter both the Petitions were disposed by the impugned judgment.

Hon'ble High Court of Delhi Observation - Impugned Judgment:

The Hon'ble High Court of Delhi held that as no part of the cause of action arose in Mumbai, only the Courts of three territories could have jurisdiction namely (Delhi, Chennai and Amritsar). The Court therefore held that the exclusive jurisdiction clause would not apply on facts, as the Courts in Mumbai would have no jurisdiction at all.

Hence, it determined that the Hon'ble High Court of Delhi being the first Court of approach would have jurisdiction in the matter and proceeded to confirm interim order passed on 22nd September 2015 and proceeded to dispose off Section 11 petition by appointing a sole arbitrator to the proceedings. The Judgment recorded that the conduct of the arbitration would be in Mumbai.



Supreme Court's Observation - Appeal

The Apex Court whilst considering the Appeal, referred to its erstwhile judgments passed in *Bharat Aluminium Co. vs. Kaiser Aluminium Technical Service Inc. (2012) 9 SCC 552*; *Enercon (India) Ltd., vs. Enercon GmbH (2014) 5 SCC 1* and *Reliance Industries Ltd., vs. Union of India (2014) 7 SCC 603* and was of the opinion that this Court has time and again reiterated that once the seat of an Arbitration has been decided and fixed, it would be in the nature of an exclusive jurisdiction clause as to the Courts which exercise supervisory powers over the arbitration.

The Apex Court referred to the judgment of *Reliance Industries Ltd* (supra) and stated that a “juridical seat” is nothing but the “legal place” of arbitration. The Apex Court further relied on the Law Commission’s Report prior to the amendment of the Act, wherein the Commission illustrated the difference between “seat” and “venue”. The concept of “seat” as per Arbitration law is created in order to assist the parties by way of an option to select their choice of a neutral venue of Arbitration. The Court clearly stated that a neutral venue may not in the classical sense have jurisdiction – that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to Section 21 of Civil Procedure Code, 1908 would be attracted.

Therefore, it was held by the Apex Court in the present case that the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai Courts with exclusive jurisdiction for the purpose of regulating arbitral proceedings arising out of the agreement between the parties.

Clasis Law - Analysis

Although the present judgment clarifies the most common issue that arises when an Arbitration clause refers to a particular place as the seat, however, the parties approach courts of other jurisdictions as per their ease and convenience thus breaching their terms of the arbitration agreement. In view of the amendments to the Act and with reference to the judgments as discussed above, it is necessary for parties to understand that this judgment has clarified the exclusive jurisdiction aspect whilst aiming to rectify the general misconception as to when would the courts actually have jurisdiction in legal proceedings arising out of or in relation to Arbitration.

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