

Case Comment

Supreme Court: Courts at Juridical Seat of Arbitration to have Exclusive Jurisdiction

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Abstract

Recently, a Division Bench of the Supreme Court in *Indus Mobile Distribution Pvt. Ltd. v Datawind Innovations Pvt. Ltd. & Ors* (Civil Appeal Nos. 5370-5371 of 2017, decided on April 19, 2017) has answered in the affirmative the question “whether, when the seat of arbitration is Mumbai, an exclusive jurisdiction clause stating that the courts at Mumbai alone would have jurisdiction in respect of disputes arising under the agreement would oust all other courts”.

Key words : Case Comment – Seat of Arbitration, importance of “seat” discussed – courts of seat have exclusive jurisdiction – ousts jurisdiction of other courts

I. Factual Background

Datawind Innovations Pvt. Ltd. (“**Datawind**”), having its registered office in Amritsar, Punjab, is engaged in the manufacturing, marketing and distribution of mobile phones, tablets and their accessories. Datawind was engaged in the supply of goods from New Delhi to Indus Mobile Distribution Pvt. Ltd. (“**Indus**”) based in Chennai and subsequently, upon Indus’ desire to act as a retail chain partner for Datawind, the parties entered into an agreement in 2014 towards this end (“**Agreement**”). Clauses 18 and 19 of the Agreement contained the dispute resolution and jurisdiction clauses, as under:

“Dispute Resolution Mechanism:

Arbitration: In case of any dispute or differences arising between parties out of or in relation to the construction, meaning, scope, operation or effect of this Agreement or breach of this Agreement, parties shall make efforts in good faith to amicably resolve such dispute.

If such dispute or difference cannot be amicably resolved by the parties (Dispute) within thirty days of its occurrence, or such longer time as mutually agreed, either party may refer the dispute to the designated senior officers of the parties.

*If the Dispute cannot be amicably resolved by such officers within thirty (30) days from the date of referral, or within such longer time as mutually agreed, such Dispute shall be finally settled by arbitration conducted under the provisions of the Arbitration & Conciliation Act 1996 by reference to a sole Arbitrator which shall be mutually agreed by the parties. **Such arbitration shall be conducted at Mumbai, in English language.***

The arbitration award shall be final and the judgment thereupon may be entered in any court having jurisdiction over the parties hereto or application may be made to such court for a judicial acceptance of the

award and an order of enforcement, as the case may be. The Arbitrator shall have the power to order specific performance of the Agreement. Each Party shall bear its own costs of the Arbitration.

It is hereby agreed between the Parties that they will continue to perform their respective obligations under this Agreement during the pendency of the Dispute.

19. All disputes & differences of any kind whatever arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of courts of Mumbai only.” (Emphasis supplied).

A dispute arose between the parties and a notice was served by Datawind on Indus in September, 2015, wherein it was stated that Indus was in default of payment of outstanding dues amounting to Rs. 5 crores with interest thereon. Datawind also invoked arbitration under Clause 18 of the Agreement and appointed a sole arbitrator. Indus, *vide* its reply, objected to the appointment of the sole arbitrator and further, denied the contents of Datawind’s notice.

Subsequently, Datawind filed two petitions before the Delhi High Court – one under Section 9 of the Arbitration and Conciliation Act, 1996, as amended (the “**Arbitration Act**”) praying for certain interim reliefs in the matter and another under Section 11 of the Arbitration Act for the appointment of an arbitrator.

The Delhi High Court disposed of the two petitions by a common judgment (which was challenged by Indus before the Supreme Court) holding, *inter alia*, that since no part of the cause of action arose in Mumbai, the courts of only three territories *viz.*, Delhi and Chennai (being the places of origin and supply of goods, respectively), and Amritsar (where the registered office of Datawind is situated) could have jurisdiction in the matter. Therefore, the Delhi High Court concluded that the exclusive jurisdiction clause (*viz.* Clause 19 of the Agreement) would not apply on facts, as the courts in Mumbai would have no jurisdiction at all and the Delhi High Court, being the first court that was approached, would have jurisdiction. Accordingly, the Delhi High Court passed interim orders as well as appointed a sole arbitrator.

II. Decision of the Supreme Court

The Supreme Court, in its judgment (“**Judgment**”), has dealt with the concept of “*seat*” of arbitration in considerable detail and for the purpose, it has referred to its earlier judgments dealing with the principles of “*juridical seat*” and “*place*” of arbitration, notably *Bharat Aluminium Co. v Kaiser Aluminium Technical Services Ltd.*¹, (“**BALCO**”); *Enercon (India) Ltd. v Enercon GmbH*² (“**Enercon**”); *Reliance Industries Ltd. v Union of India*³, (“**Reliance 1**”); *Union of India v Reliance Industries Limited and Others*⁴, (“**Reliance 2**”); and *Eitzen Bulk A/S v Ashapura Minechem Limited and Another*⁵, (“**Eitzen**”). The Judgment also discussed the relevant provisions of the Arbitration Act, including Section 20⁶ which, *inter alia*, provides autonomy to the parties to an arbitration agreement to agree on the place of arbitration.

The following important principles emerge from the Judgment pursuant to discussion of the above mentioned judgments and the relevant provisions of the Arbitration Act:

It is clear that the regulation of conduct of arbitration and challenge to an award would have to be done by the courts of the country in which the arbitration is being conducted. Such a court is then the supervisory court possessed of the power to annul the award. This is in keeping with the scheme of the international instruments, such as the Geneva Convention and the New York Convention as well as the UNCITRAL Model Law. Accordingly, a choice of seat for the arbitration must be a choice of forum for remedies seeking to attack the award.⁷

It is an internationally accepted principle that arbitrations are anchored to the seat/place/situs of arbitration and therefore, the 'seat' of arbitration is intended to be its centre of gravity. However, choosing a 'seat' of arbitration does not mean that all proceedings of the arbitration are to be held at the seat of arbitration. The arbitrators are at liberty to hold meetings at a place which is of convenience to all concerned.⁸

Once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration.⁹

'Juridical seat' is nothing but the 'legal place' of arbitration. Once the parties have decided a particular place as the juridical seat or legal place of arbitration (a city in India or a foreign country), then the courts of that place alone would have jurisdiction over the arbitration. Therefore, in cases where the seat of arbitration is located outside India, by necessary implication Part I of the Arbitration Act is excluded as the supervisory jurisdiction of courts over the arbitration goes along with the "seat".¹⁰

The mere choosing of the juridical seat of arbitration attracts the law applicable to such location. In other words, it would not be necessary to specify which law would apply to the arbitration proceedings, since the law of the particular country would apply *ipso jure*. Accordingly, parties may well choose a particular place of arbitration precisely because its *lex arbitri* is one which they find attractive. Nevertheless, once a place of arbitration has been chosen, it brings with it its own law. If that law contains provisions that are mandatory so far as arbitration is concerned, those provisions must be obeyed.¹¹

III. Supreme Court Interpretation by the Supreme Court as under:

"Under the Law of Arbitration, unlike the Code of Civil Procedure, 1908 which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The 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 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties."

Thus, the Supreme Court arrived at the conclusion that the courts of the place where the seat of arbitration is located would have exclusive jurisdiction for the purpose of regulating arbitration proceedings between the parties. Accordingly, it was held that under the Agreement, the courts at Mumbai alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai.

IV. Comments on the Judgment:

Although in the instant case, there was a jurisdiction clause conferring jurisdiction on the courts of Mumbai, the judgment goes a step further to reiterate the principle that once "seat" is determined, the courts of that place will have exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

It must be noted that the judgment deals with situations where parties have to approach courts prior to commencement of or during the pendency of arbitration proceedings. The enforcement of arbitral awards will have to be in the jurisdiction where the award-debtor is situated and will have to be in accordance with applicable laws for enforcement of arbitral awards.

The Judgment is a welcome step towards making India an arbitration-friendly jurisdiction and another example where courts are interpreting provisions in a way that upholds party autonomy and prevents parties from renegeing on agreements relating to conduct of arbitral proceedings.

By holding that the courts located at the seat of arbitration will have exclusive jurisdiction to deal with matters relating to the conduct of arbitral proceedings (including filing of petitions for appointment of arbitrators and seeking interim reliefs as is the case in the present Judgment) will help in preventing parties from approaching courts as per their convenience as well as avoid multiplicity of proceedings being initiated by parties in different courts across the country.

References

1. (2012) 9 SCC 552
2. (2014) 5 SCC 1
3. (2014) 7 SCC 603
4. (2015) 10 SCC 213
5. (2016) 11 SCC 508
6. Section 20 – Place of Arbitration
 - (1) The parties are free to agree on the place of arbitration.
 - (2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
 - (3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.
7. Judgment quoted relevant paragraphs from BALCO.
8. Judgment quoted relevant paragraphs from Enercon.
9. Paragraph 14 of the Judgment.
10. Judgment cited Reliance 1 and Reliance 2 for the above principles.
11. Judgment cited relevant passages from Eitzen.