

# Dispute Resolution Hotline

April 26, 2017

## SUPREME COURT OF INDIA CLARIFIES SCOPE OF THE SEAT'S EXCLUSIVE JURISDICTION IN INDIA-SEATED DOMESTIC ARBITRATIONS

- Designating the seat in an arbitration agreement would confer Courts of the seat with exclusive jurisdiction over and in relation to the arbitral proceedings

### INTRODUCTION

Exclusive jurisdiction clauses confer jurisdiction on a specific court in respect of disputes that may arise between the parties to an agreement. The recognition of this principle is particularly important since it may not necessarily be convenient for a party to be taken to court at any place solely on the basis that cause of action had arisen there. It would thus be preferable to have a pre-determined jurisdiction, by way of allowing courts of a specific place (as determined by law or party consent) to assert exclusive jurisdiction.<sup>1</sup> In a similar vein, the Supreme Court of India ("SC"), in its decision of *Indus Mobile Distribution Private Ltd. ("Appellant") v. Datawind Innovations Private & Ors ("Respondents")*<sup>2</sup> held that fixation of Mumbai as the seat of arbitration is equivalent to assigning exclusive jurisdiction to the courts of Mumbai for any supervisory functions and/or in respect of non-arbitrable issues arising out of the agreement between the parties. Needless to say, such designation of the seat would oust the jurisdiction of all other courts.

### FACTS AND BACKGROUND

An agreement was entered into between the Appellant and the 1<sup>st</sup> Respondent on 25 October 2014 ("Agreement"), under which the latter would conduct business with the former as its retail chain partner. The Appellant's registered office is in Chennai, and as per the commercial arrangement between the parties, goods were to be shipped from Amritsar to New Delhi.

Subsequently, disputes arose between the parties and a dispute notice was sent by the 1<sup>st</sup> Respondent to the Appellant under Clause 18 of the Agreement, alleging that the Appellant had defaulted in making payments worth INR 5 crores. Clause 18 of the Agreement provided for a tiered dispute resolution mechanism, whereby on failure of the parties to amicably resolve disputes or differences arising out of or in relation to the agreement, disputes would be resolved by arbitration conducted under the provisions of the Arbitration and Conciliation Act, 1996 ("Act") at Mumbai, in English language. Further, Clause 19 of the Agreement vested exclusive jurisdiction on courts of Mumbai for all disputes and differences arising out of or in connection with the Agreement. The relevant extracts of these clauses are as below:

- "18. ...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..."
- 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."

The 1<sup>st</sup> Respondent *inter-alia* filed an application before the Delhi High Court ("HC") for interim relief under Section 9 of the Act, in order to prevent the Appellant from alienating or creating a charge on the property which was the subject matter of dispute.

### DECISION OF THE HC

The HC assumed jurisdiction, vide its order dated June 13, 2016. It reasoned that since no part of the subject matter jurisdiction arose in Mumbai, the courts of Mumbai would not be able to assert jurisdiction and decide the Section 9 petition. On facts, there were only three courts which had jurisdiction, i.e., the relevant courts at New Delhi, Chennai and Amritsar. Since the HC at Delhi was first approached, it would have jurisdiction and no other court, especially the courts of Mumbai could exercise jurisdiction over the Section 9 petition. Accordingly, the HC allowed the interim relief prayed for in the Section 9 Petition.

### DECISION OF THE SC

Admitting a Special Leave Petition filed by the Appellant, the SC set aside the decision of the HC. It came to a finding that once the seat of arbitration has been fixed, courts of such seat will exercise exclusive jurisdiction on the proceedings arising out of or in connection with the arbitration, including proceedings initiated under Section 9 of the Act.

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The SC observed that the courts in Mumbai, otherwise would not have had jurisdiction since no cause of action had arisen there and neither had any of the provisions of Section 16 to 21 of the CPC been attracted. However, on reference to Clause 18, the SC held that the seat of arbitration is Mumbai and Clause 19 (being the exclusive jurisdiction clause) further makes it clear that the courts in Mumbai, for all purposes in relation to the Agreement, would have exclusive jurisdiction. The Supreme Court relied on *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (“**BALCO**”),<sup>3</sup> and subsequent judgments such as *Reliance Industries Ltd. v. Union of India*,<sup>4</sup> *Harmony Innovation Shipping Limited v. Gupta Coal India Limited and Another*,<sup>5</sup> *Union of India v. Reliance Industries Limited and Others*,<sup>6</sup> and *Eitzen Bulk A/S v. Ashapura Manganese Limited and Another*<sup>7</sup> where the SC has given a consistent finding that when a seat of arbitration is chosen, by necessary implication, courts of that country would have supervisory jurisdiction over that arbitration.<sup>8</sup>

## ANALYSIS

While the ratio laid down in this decision that the Courts of the seat will have exclusive jurisdiction over arbitral proceedings is certainly a step in the right direction aimed at curtailing the confusion around which courts would have jurisdiction in court proceedings arising out of or in relation to arbitration, however its applicability should be restricted to India-seated domestic arbitration.

For instance, the principle laid down in this judgement cannot be extended to a foreign seated arbitration or even an Indian International Commercial Arbitration (“ICA”) as defined in Section 2(1)(f) of the Act; doing so would be contrary to the letter (as applicable to a foreign-seated arbitration, where the parties may want to approach an Indian court for *inter-alia* an effective interim relief) and spirit (in respect of a Indian-seated ICA, where the parties may want to approach a foreign court for *inter-alia* an effective interim relief) of the Act. The Act as amended by The Amendment Act of 2015 recognises situations wherein a party, in case of a foreign seated arbitration, would be entitled to approach courts in India seeking either grant of interim measures, subsequent appeals be heard, and assistance in gathering evidence.<sup>9</sup> As an extension of this thought, if a party to a foreign-seated arbitration can apply to Indian courts seeking the above reliefs, it should be open to a party to an Indian-seated ICA to apply to a foreign court, subject to the laws of such foreign country to seek such reliefs and the present judgment ought not to stand in its way.

One continues to hope that this decision would erase more confusion than its incorrect application is bound to create.

– **Shweta Sahu, Durga Priya Manda & Moazzam Khan**

You can direct your queries or comments to the authors

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<sup>1</sup> *Patel Roadways Ltd., Bombay v. Prasad Trading Co.* (1991) 4 SCC 270

<sup>2</sup> *Indus Mobile Distribution Private Ltd. v. Datawind Innovations Private & Ors* (Civil Appeal Nos. 5370-5371 of 2017 arising out of SLP (C) Nos. 27311-27312 of 2016)

<sup>3</sup> (2012) 9 SCC 552

<sup>4</sup> (2014) 7 SCC 603

<sup>5</sup> (2015) 9 SCC 172

<sup>6</sup> (2015) 10 SCC 213

<sup>7</sup> (2016) 11 SCC 508

<sup>8</sup> E.g. in *Union of India v. Reliance Industries Limited and Others*, (2015) 10 SCC 213, the Supreme Court referred to all the earlier judgments and held that in cases where the seat of arbitration is London, by necessary implication Part I of the Arbitration and Conciliation Act, 1996 is excluded as the supervisory jurisdiction of courts over the arbitration goes along with “seat”.

<sup>9</sup> Arbitration and Conciliation Act 1996, s 2(2) proviso: “(2) *This Part shall apply where the place of arbitration is in India: Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.*”

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