



ARBITRATION AND CONCILIATION

Seat of Arbitration is akin to an Exclusive Jurisdiction Clause

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The Supreme Court in a recent judgment in *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited & ORS* (Civil Appeal No in 5370-5371 of 2017) ruled that once the seat of arbitration in the arbitration agreement was fixed, it is equivalent to assigning exclusive jurisdiction to the courts in that place in respect of disputes arising under the agreement.

The Dispute

The dispute was with respect to a contract executed between the appellant and respondent for supply of some goods. The registered office of the respondent was in Punjab and the respondent supplied goods from Delhi to the appellant, who was based in Chennai. The contract between the parties provided for an arbitration in the event of dispute and the seat of arbitration was designated at Mumbai. Further, the contract also provided that courts in Mumbai will have exclusive jurisdiction over the contract.

Dispute arose between the parties and the Respondent filed two petitions before the Delhi High Court under sec. 9 for interim relief and sec.11 for appointment of an Arbitrator.

Decision of the High Court

The Delhi High Court in section 9 petition ruled that only the courts of three territories could have jurisdiction in the matter, namely, Delhi (from where the goods were supplied) and Chennai (where goods were received), and Amritsar (which was the registered office of the appellant company) and since no part of the cause of action arose in Mumbai, courts in Mumbai will not have any jurisdiction. 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. Therefore, Delhi, being the first Court that was approached, would have jurisdiction in the matter. As far as sec 11 petition was concerned an independent arbitrator was appointed.

Being aggrieved by the decision of the High Court, the appellant filed appeal before the Supreme Court.

Arguments

The Counsel for the appellant argued that even if it were to be conceded that no part of the cause of action arose at Mumbai, yet the seat of the arbitration being at Mumbai, courts in Mumbai would have exclusive jurisdiction in all proceedings over the same. The counsel for the respondent sought to support the judgment of the Delhi High Court by stating that no part of the cause of action arose in Mumbai..

Analysis/Judgment of the Supreme Court

Analysing the “seat” of arbitration in the agreement, the Supreme Court held that an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause. 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. The Court further observed that under the Law of Arbitration, unlike the Code of Civil Procedure 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.

Accordingly, the Court held that since the agreement designated Mumbai as the seat of arbitration, the exclusive jurisdiction would vest with Mumbai courts for purposes of regulating arbitral proceedings arising out of the agreement.

Concluding Remarks

The judgment of the Supreme Court is a welcome step as it recognises the right of the contracting parties to choose the venue for resolving the disputes. However, clarity is required whether the same principle would apply to arbitration conducted abroad as the parties to such arbitration may be required to approach Indian court for interim reliefs. It will be highly disadvantageous, if they are not allowed to approach Indian courts as the seat of arbitration is not in India.