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THE VENUE OF YOUR DOMESTIC ARBITRATION MAY JUST ALSO BE ITS SEAT: SUPREME COURT OF INDIA

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Introduction

Recently, a division bench of the Hon'ble Supreme Court (Supreme Court) comprising Justices R. Banumathi and A.S. Bopanna, in the case of *Brahmani River Pellets Ltd v Kamachi Industries Ltd (Civil Appeal No. 5850 of 2019)*, examined the question of whether an arbitration agreement between two Indian parties, expressly stating the 'venue' of the arbitration, amounted to an exclusive jurisdiction clause for disputes under the agreement. Contrary to previous precedents holding the field, which created a conscious distinction between the term 'venue' and 'seat' for the purposes of domestic arbitration, the Supreme Court in this case held that the mere designation of 'venue' of the arbitration, would confer exclusive jurisdiction on the High Court having jurisdiction over that 'venue' to supervise the arbitration.

Facts

A dispute arose between the parties regarding the price and payment terms for the supply of iron ore pellets. The loading port of the Iron ore pellets was Odisha. The destination port was Chennai. The arbitration clause in the agreement between the parties read as under:

"18. Arbitration shall be under Indian Arbitration and Conciliation Law, 1996 and the Venue of the Arbitration shall be Bhubaneswar."

Given that some part of the cause of action in the dispute arose in Chennai, the respondent before the Supreme Court had approached the Madras High Court for the appointment of an arbitrator. The said High Court held that mere designation of "venue" by the parties does not oust the jurisdiction of other courts, and in the absence of any express clause excluding the jurisdiction of other courts, both the Madras High Court and the Orissa High Court would have jurisdiction over the proceedings. Accordingly, it appointed the sole arbitrator. Aggrieved by this decision, the appellant filed an appeal before the Supreme Court.

Issue

The question before the Supreme Court was whether the Madras High Court could exercise jurisdiction under section 11(6) of the Arbitration & Conciliation Act 1996 (Act), despite the express choice of Bhubaneswar as the 'venue' of the arbitration.

Previous decisions of the Supreme Court

Swastik Gases (P) Ltd v Indian Oil Corporation Limited, (2013) 9 SCC 32 (Swastik Gases)

The Supreme Court in *Swastik Gases* dealt with an arbitration clause which stipulated that the agreement would be subject to the jurisdiction of the courts at Kolkata. Despite this jurisdiction clause, the appellant invoked the arbitration clause and filed an application under section 11(6) of the Act before the Rajasthan High Court for appointment of the arbitrator. This was basis its contention that some part of the cause of action arose in Rajasthan. The Rajasthan High Court rejected the application, citing the exclusive jurisdiction clause. This was appealed before the Supreme Court. The Supreme Court held that while it was not disputed that part of cause of action has arisen both in Jaipur and Kolkata, the exclusive jurisdiction clause in the agreement made the intention of the parties to exclude the jurisdiction of other courts clear. Therefore, the Supreme Court held that the courts at Kolkata alone would have exclusive jurisdiction.

Indus Mobile Distribution (P) Ltd v Datawind Innovations (P) Ltd And Ors, (2017) 7 SCC 678 (Indus Mobile).

In *Indus Mobile*, the Supreme Court dealt with an arbitration clause where the arbitration was expressly stated to be held in Mumbai. The said agreement further stipulated that the courts in Mumbai would have exclusive jurisdiction over any disputes under the agreement. In this judgment, the Supreme Court followed the judgment of the Supreme Court in the case of *BALCO v Kaiser Aluminium Technical Services Inc, ((2012) 9 SCC 552) (BALCO)* and held that the reference to Mumbai in the arbitration clause indicated that it was the intent of the parties to designate Mumbai as the 'seat' of the arbitration. Consequently, the Supreme Court held that the designation of a 'seat' is akin to an exclusive jurisdiction clause. This judgment however observed that 'seat' must be distinguished from the choice of a neutral 'venue'. The Supreme Court, in *Indus Mobile*, further observed that this distinction was made clear in *BALCO*.

Present Judgment

The instant judgment concluded that since the parties had agreed that the 'venue' of the arbitration shall be at Bhubaneswar, they intended to exclude all other courts and hence, the Supreme Court set aside the order of the Madras High Court. The Supreme Court held that the Madras High Court erred in assuming jurisdiction since only the Orissa High Court will have jurisdiction to entertain the petition filed under section 11(6) of the Act.

This decision by the Supreme Court appears to have departed from the previous precedents that created a conscious distinction between the terms "seat" and "venue" in arbitration agreements. This judgement principally relies on the judgments of the Supreme Court in *Indus Mobile* and *Swastik Gases*. Both these judgments dealt with agreements that had exclusive jurisdiction clauses. No such exclusive jurisdiction clause was included in the present case. Therefore, the transposition of the reasoning in these judgments, on different facts in this case, has resulted in the instant judgment by the Supreme Court.

Further, traditionally, the designation of a 'venue' is purely for the administrative convenience of the parties to hold hearings at different places. The 'venue' of an arbitration changes from a hearing to hearing basis, depending on parties' convenience. Further, a perusal of the present judgment does not indicate that the designation of 'venue' was intended to be a 'seat'. There does not appear to be any analysis to impute such an intention. Therefore, domestic arbitration agreements that merely designate a 'venue' as Mumbai would by virtue of such a designation, imply the exclusive jurisdiction of the courts in Mumbai to supervise the arbitration. In view of the instant judgment,

agreements containing only the 'venue' of an arbitration, with no reference to 'seat' or 'exclusive jurisdiction' would be bound by the present ruling. Essentially, parties to such agreement would have to approach the relevant high court having jurisdiction over the venue.

The instant judgment brings to light the increasing nuances associated with the choice of arbitration as a dispute resolution mechanism in India. Litigants ought to be mindful of the various terminologies associated with an arbitration clause governed by Indian law. Importantly, with this added dimension blurring the distinction between traditionally distinct terminologies of "venue" and "seat", it is possible that litigation surrounding the jurisdiction for appointment of an arbitrator in domestic arbitrations would increase.

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