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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-10201-2014 (O&M)

Decided on : December 09, 2015

HARISH GOYAL

....Appellant

VERSUS

CITI GROUP WEALTH ADVISERS INDIA PVT. LTD. AND
OTHERS

....Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Puneet Bali, Senior Advocate alongwith
Ms. Neha Sonawane and
Mr. Paramveer Singh, Advocates
for the appellant.

Ms. Amrita Singh, Advocate alongwith
Mr. Sourabh Sharma, Advocate
for respondent No.1.

AMIT RAWAL, J (ORAL)

The appellant-objector is aggrieved of the order dated 31.07.2014 whereby the objecting Court has returned the objections filed against the ex parte Award dated 29.09.2008, for want of territorial jurisdiction.

Mr. Puneet Bali, learned Senior Counsel assisted by Ms. Neha Sonawane submits that three arbitration agreement of even date i.e. 01.08.2007 were entered into. As per the arbitration agreement, the jurisdiction according to him, is of Chandigarh Court for the following reasons:-

through the office of the National Stock Exchange and other under the Arbitration & Conciliation Act. In this respect, he has drawn the attention of this Court to the relevant clause No.5.2 (33-C and 33-D) of the agreement which reads as:-

“5.2 SEAT OF ARBITRATION

(a) The Relevant Authority may provide for different seats of arbitration for different regions of the country either generally or specifically and in such an event the seat of arbitration shall be the place so provide bythe Relevant Authority. Save as otherwise specified by the Relevant Authority, the seat of arbitration for different regions shall be as follows:-

<i>Seats of Arbitration-Regional Arbitration Centres (RACs)</i>	<i>States covered by the RAC</i>
<i>DELHI</i>	<i>Delhi, Haryana, Uttar Pradesh, Uttranchal, Himachal Pradesh, Punjab, Jammu & Kashmir, Chandigarh, Rajasthan.</i>
<i>KOLKATA</i>	<i>West Bengal, Bihar, Jharkhand, Orissa, Assam, Arunachal Pradesh, Mizoram, Manipur, Sikkim, Meghalaya, Nagaland, Tripura, Chhattisgarh.</i>
<i>CHENNAI</i>	<i>Andhra Pradesh, Karnataka, Kerala, Tamilnadu, Andaman & Nicobar, Lakshadweep, Pondicherry.</i>
<i>MUMBAI</i>	<i>Maharashtra, Gujrat, Goa, Daman, Diu, Dadra & Nagar Haveli, Madhya Pradesh.</i>

(b) The premises/location where arbitration shall take place shall be such place as may be identified by the

Exchange from time to time and intimated to the arbitrator and the parties to the dispute accordingly.”

“5.3 CRITERIA FOR SELECTION OF SEAT OF ARBITRATION.

Save as otherwise specified by the Relevant Authority, the criteria for selection of seat of arbitration for a particular matter is as follows:-

<i>Parties to Dispute</i>	<i>Place of filing the Application for Arbitration.</i>	<i>Place of hearing</i>
<i>T M* V/s TM</i>	<i>a) If the dealing offices of both trading members from where the dealing was carried is situated in any one of the states covered by a particular RAC then the Application for Arbitration shall be filed by the Applicant-Trading Member in that RAC.</i> <i>b) If the dealing offices of both Trading Members from where the dealing was carried out are situated in states covered by different RAC then the Application for Arbitration shall be filed in the RAC covering the state in which the Respondent-Trading Member's dealing office is situated.</i>	<i>The hearing shall be held at the RAC where the Applicant-Trading Member has filed the Application for Arbitration and the Respondent-Trading Member shall attend the hearing in that particular RAC.</i>

<i>Parties to Dispute</i>	<i>Place of filing the Application for Arbitration.</i>	<i>Place of hearing</i>
<i>TM V/S C* & C V/s TM</i>	<i>The Application for Arbitration shall be filed by the Applicant at the RAC covering the state in which the Constituent ordinarily resides.</i>	<i>The hearing shall be held in that RAC where the Applicant has filed the Application for Arbitration and the Respondent shall attend the hearing in that particular RAC.</i>

“TM” stands for “Trading member” and “C” stands for “Constituent.”

He submits that since the Arbitrator was appointed under clause 1 (9) of 33 C therefore as per bye laws and the regulations of the National Stock Exchange, arbitration in respect of the disputes of various states including the Chandigarh would be at Delhi but in case the afore-mentioned Rules & Regulations are read with Rules and Regulations 5, appellant being the constituent, the cause of action impugning the Award would arise in Chandigarh as he is resident of Chandigarh and rightly so jurisdiction of the Chandigarh Court, within a period of limitation, was invoked, thus, prays that the impugned order is not sustainable in the eyes of law.

Ms. Amrita Singh, learned counsel appearing on behalf of respondent No.1 submits that the parties to the agreement with consent had conferred the jurisdiction to Mumbai High Court and not to any other Courts, thus, the objections could be filed in Mumbai even if the seat of the arbitration was at Delhi Court, keeping in view of Clause 33-D already reproduced. No doubt, the arbitration proceedings were held at Delhi but the fact remains that the respondent being the resident of

Mumbai in case of Award having attained finality would be having a cause of action in Mumbai, in view of the Clause 33 (D).

In support of her contention she has relied upon the judgment of the Hon'ble Supreme Court in *Bharat Aluminium Co. versus Kaiser Aluminium Technical Services Inc.* 2012(9) SCC 552.

I have heard learned counsel for the parties and appraised the paper book.

Shorn of the fact as well as noticed above, the clauses of the agreement, it is not disputed that the dispute was to be resolved through the intervention of the National Stock Exchange by invoking Clause 33 (C) (i) by the respondents and the seat of the arbitration was at Delhi. Though, there is some force in the argument raised by Mr. Bali that by taking aid of the Regulation 5, *ibid*, that being aggrieved of the ex parte award his client would be within jurisdiction to seek the vindication of his grievance by filing the objection, being a constituent, residing within the jurisdiction of Chandigarh, but I am of the view since the seat of the arbitration was at Delhi and Rule 4 cannot be ignored for the adjudication of the lis between the parties which clearly prescribes place of arbitration in respect of various States, including Chandigarh, at Delhi but keeping in view the place of hearing, I am of the view that the objections would also lie within the jurisdiction of Delhi Court and not of Mumbai Court. For the sake of repetition, I would be referring to the expression, given under the head of the place of hearing as under:-

“The hearing shall be held at RAC (Regional Arbitration Centre) where the applicant has filed the application for arbitration and

the respondents shall attend the hearing in that particular RAC.”

Even as per the judgment rendered by the Hon’ble Supreme Court in Balco (Supra), the Hon’ble Supreme Court had an occasion to decide the place of arbitration after going into the provisions of the terms and conditions of the agreement and as well as provisions of Section 20 of the Code of Civil Procedure.

Since, I have already noticed above that the Arbitrator was appointed by the respondent under the Rules and Regulations of the National Stock Exchange and arbitration proceedings had already taken place in Delhi, I am of the view that the jurisdiction to entertain the objections will be only of Delhi Court and not of the Mumbai Court.

Accordingly, the order of the objecting Court is modified. The objections are ordered to be returned to the appellant to be filed in the competent Court that is Principal Court at Delhi. This Court cannot remain oblivious of the fact that the objections before the Principal Court at Chandigarh was filed within a period of limitation.

In view of what has been observed above, the impugned orders are set aside. The objections are ordered to be returned to the appellant-Objector with a liberty to file in a competent Court/Principal Court at Delhi within a period of one month from today.

Accordingly, the appeal is allowed.

December 09, 2015
rajneesh

(AMIT RAWAL)
JUDGE