

2      These two arbitration petitions have been filed by the Petitioner-  
Municipal Corporation for the Cities of Kalyan and Dombivali. The  
petitions challenge two separate aspects of one arbitral award, namely, (i)

grant of relief in favour of the Respondent and (ii) refusal to grant relief claimed in the counter claim of the Petitioner. The Respondent has taken out Notice of Motion No.1302 of 2016, contesting the jurisdiction of this Court to entertain these arbitration petitions. The contest is on the ground that the District Court at Thane, which anyway would have been a court of concurrent jurisdiction, is actually the court of exclusive jurisdiction, having been approached by the party in a prior application under Section 9 of the Arbitration And Conciliation Act, 1996 ("Act") as well as by way of an arbitration petition challenging the award under Section 34 of the Act. It is submitted that, in the premises, this Court has no jurisdiction to entertain these two arbitration petitions by virtue of the provisions of Section 42 of the Act. The Petitioner, for its part, has taken out a miscellaneous application for transfer of the challenge petition filed under Section 34, which is pending before the Thane Court.

3 It is not a matter of contest that the District Court at Thane is a court of competent jurisdiction with reference to the cause of action in the present reference. Several important events which form part of the cause of action have indeed occurred in Thane. It is also not a matter of contest that the District Court at Thane was the court approached first by way of an application under Part-I of the Act. What is, however, submitted by Mr. Chinoy, learned Senior Counsel appearing for the Petitioner, whilst opposing the Notice of Motion of the Respondent, is that Mumbai having been determined as the place of arbitration, this Court, exercising its ordinary original civil jurisdiction over Mumbai, is the court of exclusive jurisdiction over the arbitration reference. Based on the judgment of Supreme Court in the case of **Indus Mobile Distribution Private Limited**

**Vs. Datawind Innovations Private Limited**<sup>1</sup>, it is submitted that in a challenge arising out of an arbitration reference, one has not to go merely by jurisdiction in terms of the cause of action, but also in terms of “subject-matter of the arbitration” and that includes the conduct of the reference itself. Relying on the judgment of **Indus Mobile**, it is further submitted that once the seat of the arbitration is designated or gets fixed, such designation or fixation has the effect of conferring exclusive jurisdiction on the court which exercises supervisory jurisdiction over the arbitration with reference to the seat of arbitration.

4 Supreme Court in the case of **Indus Mobile** has indeed laid down as a matter of law that any agreement between the parties as to the seat of arbitration is in the nature of an exclusive jurisdiction clause. This exclusive jurisdiction clause would then oust the jurisdiction of any other court having concurrent jurisdiction. Further, such exclusive jurisdiction clause would forbid Section 42 having any play for the purpose of determination of jurisdiction of the Court. As held by the Supreme Court in the case of **State of West Bengal Vs. Associated Contractors**<sup>2</sup>, where the agreement between the parties restricted jurisdiction to only one particular court out of courts having concurrent jurisdiction, that court alone would have jurisdiction, since neither Section 31(4) nor Section 42 contains a non obstante clause wiping out a contrary agreement between the parties. In other words, if there is a contrary agreement between the parties conferring exclusive jurisdiction on one particular court, it is that court and that court alone which will entertain any challenge to an arbitral award. There is no difficulty thus far. The difficulty arises when we come

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1 2017 SCC OnLine SC 442

2 (2015) 1 Supreme Court Cases 32

to consider whether or not there is indeed a seat of arbitration fixed or agreed between the parties in the present case. It is important to note that a seat of arbitration, as observed by the Supreme Court in case of **Indus Mobile**, is a place chosen by or on behalf of the parties; it is designated either in the arbitration agreement or in the terms of the reference or reflected in the minutes of proceedings or in some other way as “place or seat of arbitration”. As far as the agreement between the parties in the present case is concerned, there is indeed no place of arbitration chosen. If at all, the agreement points to a seat outside Mumbai inasmuch as the jurisdiction to arbitrate, under the agreement, is conferred on the Commissioner of Municipal Corporation for the cities of Kalyan & Dombivli, whose seat is indisputably beyond the city of Mumbai. Mr. Chinoy, learned Senior Counsel appearing for the Petitioner, however, submits that in the face of this agreement, when this Court was approached under Section 11 of the Act, an independent arbitrator was chosen. It is submitted that this Arbitrator held the proceedings of the reference in Mumbai, with the concurrence of the parties and also declared his award in Mumbai. Learned Counsel submits that there being nothing contrary either in the agreement or in the minutes of proceedings or otherwise, the very fact that the meetings in the arbitration reference were held, and the award was made, in Mumbai, fixes the seat of arbitration in Mumbai. I am afraid that is not a correct way of ascertaining the seat of arbitration. The seat of arbitration, in the context of fixation of jurisdiction of the curial Court, is not the same as the venue where the arbitral forum held its sittings or the place where it made its award. In fact, there is a well known distinction between the venue of arbitration and seat of arbitration. Even if the parties by their contract designate any place as the

seat of arbitration, the arbitral forum is free to hold sittings at any place other than the seat of arbitration. For that matter, all sittings can be held and even an award can be made, at a location outside the place of seat of arbitration. In the face of this distinction, the simple fact of conduct of arbitration reference or making of an award at a particular place, in this case, Mumbai, is neither here nor there. In the present case, the seat of arbitration having not been designated either in the contract between the parties or in the terms of the reference or in the minutes of proceedings or otherwise, the city of Mumbai cannot be termed as the seat of arbitration, going by the sheer conduct of meetings in the reference there. Even there, as a matter of fact, it is not disputed that some of the meetings in the arbitration references were actually held in Thane, within the jurisdiction of the District Court at Thane, though even that fact, on the reasoning discussed above, is hardly relevant.

5 In the premises, the combined effect of the law laid down by the Supreme Court in the cases of **Indus Mobile** and **Associated Contractors** (supra), does not imply ouster of jurisdiction of the District Court at Thane. As noted above, it is not in dispute that the cause of action did arise in Thane and application/s under Part-I was/were infact made before the Court at Thane prior to the present arbitration petitions. The District Court at Thane, accordingly, has curial jurisdiction over the award within the meaning of Section 42 read with Section 2(1)(e) of the Act. It is the only Court to exercise jurisdiction in any challenge to the arbitral award, and not this Court.

6 In the premises, the challenge to the jurisdiction of this Court on the

part of the Respondent succeeds. Notice of Motion No.1302 of 2016 is, accordingly, allowed in terms of prayer clause (a). The arbitration petitions shall be returned to the Petitioner for being presented to the District Court at Thane. The office may transmit the papers and proceedings in the commercial arbitration petitions to that Court accordingly.

7 At the request of learned Senior Counsel for the Petitioner, the office is directed to hold its hands and not transmit papers and proceedings to the District Court at Thane for a period of eight weeks from today.

8 In view of the order passed in the Notice of Motion of the Respondent, Misc. Application No.193 of 2016 filed by the Petitioner for transfer of proceedings from the District Court at Thane to this Court, does not survive and the same is also disposed of.

**(S.C. GUPTE, J.)**