

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 02ND DAY OF NOVEMBER 2018

THE HON'BLE MR.JUSTICE C.SARAVANAN

O.P. No.398 of 2018

In the matter of Arbitration
& Conciliation Act, 1996

And

In the matter of Sales
Contract dated 21/04/2014

And

In the matter of Disputes
between M/s.Kamachi
Industries Ltd. (Formerly
known as M/s.Kamachi Sponge
and Power Corn. Ltd.)

And

M/s.Brahmani River Pallets
Ltd.

M/s.Kamachi Industries Ltd.
(Formerly known as M/s.Kamachi Sponge
and Power Corpn. Ltd.)
No.39, Old No.50, 3rd Floor, ABC Trade Centre,
(Inside Devi Theatre Complex), Anna Salai,
Chennai - 600 002.

... Petitioner

Vs

M/s.Brahmani River Pallets Ltd.
At/Po - Nadiabhanhanga, Duburi - Dailari Expressway,
Kalinga Nagar, District - Jaipur,
Odisha - 755 026

... Respondent

Original Petition praying that this Hon'ble Court be
pleased to appoint a Sole Arbitrator on behalf of the
parties to resolve the dispute in terms of the Contract of
Sale dated 21.04.2014 between the petitioner and the

respondent.

This Original Petition coming on this day before this court for hearing, the court made the following order:-

The above petition has been filed for appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. The petitioner and the respondent have entered into contract of sale bearing reference No. 001/BRPL/Kamachi / 2014-2015 dated 21.4.2014 and another contract of sale bearing reference ESTIL/PP/Sales/14-15/003 dated 9.7.2014. Respective contracts contain arbitration clause as detailed below:



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Clause 18 of the Contract of Sale bearing No.001/BRPL/ Kamachi/ 2014-15 daed 21.04.2014	Clause 14 of the Contract of Sale 114-15/003 dated 09.07.2014.
18.0 ARBITRATION Arbitration shall be under Indian Arbitration and Conciliation Law, 1996 and the Venue of Arbitration shall be Bhubaneswar.	18.0 ARBITRATION Arbitration shall be under Indian Arbitration and Conciliation Law, 1996 and the Venue of Arbitration shall be Bhubaneswar. 14 ARBITRATION 14.1 if at any time, any question, disputes or differences of what-so-ever nature shall arise between Seller and Buyer upon or in relation to or in connection with the contract either party may, forthwith, give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to the adjudication of the 2 (two) arbitrators, one each to be nominated by the BUYER and SELLER or in the case of the said arbitrators not agreeing, then to the adjudication of an umpire to be appointed by the arbitrators, in writing, before proceeding with the reference. 14.2 The award of the arbitrators or of the umpire appointed by them (in the

3. On 8.6.2015 the petitioner herein issued legal notice to the respondent and called upon the respondent to pay an amount of Rs.3,72, 84, 994/-together with interest at 24% per annum.

4. The respondent by a reply notice dated 1.9.2015 denied the liability. Under these circumstances by letter dated 7.10.2014, the petitioner invoked the arbitration clause in the contract of sale dated 21.4.2014.

5. The petitioner proposed to appoint Honourable Mr. Justice K. Venkatraman (Retired), High Court, Madras as the sole arbitrator to resolve the dispute and called upon the respondent to consent for his appointment.

6. By letter dated 7.10.2016, the petitioner sought to substitute the name of the sole arbitration with the name of Hon'ble Mrs. Justice Aruna Jagadeesan (Retired), High Court, Madras.

7. By a reply dated 23.11.2016, the respondent submitted that clause 18 as extracted above did not

contemplate resolution of dispute by way arbitration for the following reasons:-

(a) Clause 18 does not provide for reference of dispute between the parties to the arbitrator.

(b) It does not make the decision of the arbitrator final and binding on the parties.

(c) It does not disclose any intention to make any person as an arbitrator in respect of dispute that may arise between the parties.

8. It was therefore submitted that clause 18 of the alleged agreement does not entitle the parties to resolve the dispute by way of arbitration.

9. Under these circumstances, the above petition came to be filed for appointment of an arbitrator under the provisions of the Act by petitioner.

10. The respondent has filed a formal counter opposing the prayer for appointment of the arbitrator and has questioned the jurisdiction of the Court to entertain the petition on the ground that the remedy lies before a different court, as the seat of the arbitration is

admittedly in the Bhubaneswar and therefore the present petition was liable to be dismissed.

11. Heard Mr.S.R.Ragunathan, learned counsel for the petitioner and Mr.M.S.Krishnan, learned Senior Counsel for the Respondent.

12. The learned Senior counsel for the respondent has raised a preliminary objection regarding the maintainability of the present petition before this Court on the ground that clause 18 of the agreement did not contemplate resolution of dispute by way of arbitration.

13. It was further submitted that in any event the venue of arbitration being Bhubaneswar and therefore in the light of the decision of the Honourable Supreme Court in **Hardy Exploration and Production (India) Incorporated** 2018 SCC online SC 1640 pursuant to reference to a larger bench in (2018) 7 SCC 374 when a place is agreed for the arbitration, it gets the status of a seat which means that the juridical seat and therefore, only Orissa High Court of the Jurisdiction to entertain the petition.

14. It was submitted that when the place is stated or mentioned and no other condition is postulated, it is equivalent to seat and that finalises the facet of jurisdiction. Only if there is a condition precedent attached to the term "place", the said condition has to be satisfied so that the place can become equivalent to seat.

15. In the instant case, as there are no two distinct riders as observed in the said case and therefore, Bhubaneswar being the venue for arbitration under the agreement is the seat of arbitration.

16. The learned senior counsel for the respondent also relied on the following decisions:

(i) **K.K.Modi Vs. K.N.Modi** (1998) 3 SCC 573.

(ii) **Roger Shashoua Rodemadan Holdings Limited Stancroft Trust Limited Vs. Mukesh Sharma** (2009) EWHC 957 (Comm).

(iii) **Green Builders & Promoters Pvt. Ltd., Vs. Ramesh and Ors**, in Arbitration Case No.33 of 2017, 07.10.2017.

17. The decision of the Hon'ble Supreme Court in **K.K.Modi Vs. K.N.Modi** (1998) 3 SCC 573 followed in plethora of decisions of the Hon'ble Supreme Court in **State of**

Orissa Vs. Bhagyadhar Dash (2017) 7 SCC 406 was referred to buttress the point that there is no arbitration agreement between the parties.

18. Issue in K.K.Modi case supra was whether clause 9 of the Memorandum of Understanding dated 24-1-1989 constitutes an arbitration agreement and whether the decision of the Chairman, IFCI dated 8-12-1995 constitutes an award Clause 9 read as under:-

"Implementation will be done in consultation with the financial institutions. For all disputes, clarifications etc. in respect of implementation of this agreement, the same shall be referred to the Chairman, IFCI or his nominees whose decisions will be final and binding on both the groups."

19. The Court therefore held that clause 9 was not intended to be for any different decision than what was already agreed upon between the parties to the dispute. It was meant for a proper implementation of the settlement already arrived at. A judicial determination, recording of evidence etc. were not contemplated. The decision of the Chairman, IFCI was to be binding on the parties. Moreover,

difficulties and disputes in implementation may not be between the parties to the Memorandum of Understanding. The Court held that " Looking to the scheme of the Memorandum of Understanding and the purpose behind clause 9, the learned Single Judge, in our view, has rightly come to the conclusion that this was not an agreement to refer the disputes to the arbitration.

20. In **Roger Shashoua Rodemadan Holdings Limited Stancroft Trust Limited Vs. Mukesh Sharma** the Court held that venue was synonymous with seat of arbitration. In the above case, the venue of the arbitration was London, U.K., though arbitration was to be in accordance with the Rules of the ICC, in Paris.

21. There the Court held that the parties have not simply provided for the location to be in London for the sake of convenience and there is indeed no suggestion that London would be convenient in itself in the light of the governing law of the shareholders agreement, the nature and terms of that agreement and the nature of the dispute which were likely to arise and which did infact arise.

22. The Court further held that "London arbitration" is a well known phenomenon which is often chosen by foreign nationals with a different law, such as the law of New York, governing the substantive rights of the parties. This is because of the legislative framework and supervisory powers of the courts here which many parties are keen to adopt.

23. The Court further provided that when there is an express designation of the arbitration venue as London and no designation of any alternative place as the seat, combined with a supranational body of rules governing the arbitration and no other significant contrary indicia, the inexorable conclusion is, to my mind, that London is the juridical seat and English law the curial law.

24. In **Green Builders & Promoters Pvt. Ltd., Vs. Ramesh and Others**, wherein it was held as follows:-

"I have, however, come to the conclusion that clause 31 which falls for my consideration uses the term venue to mean the seat or place of arbitration. However, the provisions of Sections 16 to 20 of the Code of Civil Procedure would not negate the jurisdiction of the Court if the place of seat of arbitration is located within its territorial jurisdiction even if no part of the

cause of action arises within the territorial jurisdiction of that Court. A view to the contrary would militate against the observations in paragraph-19 of the judgment of the Supreme Court in **Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd.** 2016 SCC Online Del 3744."

25. Clause 31 of the agreement in the above case stipulated that this agreement shall be subject to the exclusive jurisdiction of the Court of Gurgram and the venue of the arbitration would be Delhi alone. The Court held that the venue in the clause 31 of the agreement refers to the place or seat/juridical seat of arbitration.

26. The learned senior counsel also relied on the decision of the Supreme Court in **Indus Mobile Distribution (P) Ltd versus Data wind Innovations (P) Ltd.** (2017) 7 SCC 678 wherein the decision of the Supreme Court in **Balco Industries Versus Kaiser Aluminium Technical Services Incorporated** (2012) 9 SCC 552 was referred.

27. Per contra, the learned counsel for the petitioner submitted the petitioner had opened two letters of credit in favour of the respondent.

28. He submitted that the respondent failed to supply the material as a result of which the petitioner was forced to place orders from third-party and had to incur a total loss of rupees 3.6 crores and Rupees 3.72 crores.

29. It is not necessary to delve into the merits of the dispute for the purpose of granting relief in the petition under Section 11(6) of the Act in the light of the decision of the Hon'ble Supreme Court in **Duro Felguera** (2017) 9 SCC 729. If there exists a valid arbitration clause between the parties Court has to merely refer the case for arbitration.

30. After the amendment to the Arbitration and Conciliation Act, 1996 vide Arbitration and Conciliation Amendment Act, 2015, the court has to merely see the existence of an arbitration clause.

31. The Honourable Supreme Court in **Duro Felguera S.A versus Gangavaram Port Ltd** (2017) 9 SCC 729 held that "from a reading of section 11 (6-A), the intention of the legislature is crystal clear i.e. the court should and need

only look into one aspect-the existence of an arbitration agreement.

32. Learned counsel also relied on few other judgments in support of his plea for appointment of an arbitrator by this Court.

33. The learned counsel for the petitioner additionally relied on the decisions of the Hon'ble Supreme Court in **Bharat Aluminum Company Vs. Kaiser Aluminum Technical Services Inc.**, (2012) 9 SCC 552 (BALCO Case for short) and **Enercon (India) Limited Vs. Enercon GmbH** (2014) 5 SCC 1, wherein the Hon'ble Supreme Court has held at para 101 that it is necessary not to confuse the legal seat of Arbitration with geographically convenient place or places for holding hearings. In para 117 the Hon'ble Court in BALCO's case held as under:-

117. It would, therefore, follow that if the arbitration agreement is found or held to provide for a seat/place of arbitration outside India, then the provision that the Arbitration Act, 1996 would not make Part I of the Arbitration Act, 1996 applicable or enable the Indian courts to exercise supervisory jurisdiction over the

arbitration or the award. It would only mean that the parties have contractually imported from the Arbitration Act, 1996, those provisions which are concerned with the internal conduct of their arbitration and which are not inconsistent with the mandatory provisions of the English procedural law/curial law. This necessarily follows from the fact that Part I applies only to arbitrations having their seat/place in India.

34. I have considered the submission and the cases cited by either of the parties.

35. I am unable to agree with the contention of the learned senior counsel for the respondent that clause 18 of agreement does not contemplate resolution of dispute by arbitration. There is indeed an arbitration clause. It has been clearly stipulated that arbitration shall be under Indian Arbitration and Conciliation Act, 1996. Therefore, the decision of the Hon'ble Supreme Court in **K.K.Modi case** is of no assistance to the respondent.

36. As far as jurisdiction is concerned, it is noted that the decision cited by both parties pertain to international commercial arbitration and therefore the

decision cited in the context of international commercial arbitration cannot be imported wholesale in the context of domestic commercial arbitration. It has to be imported with caution as the seat of arbitration in an international arbitration has special significance whereas if it has no significance in the domestic arbitration.

37. The jurisdiction of the court has to be decided in the context of Section 2 (e) read with Section 42 of the Arbitration and Conciliation Act, 1996 and clause 12 of the Letter Patent.

38. Needless to say the law laid down in the context of determination of seat of arbitration in international commercial arbitration cannot be imported wholesale to confer or oust the jurisdiction of the Court.

39. As per Section 20, the Arbitration and Conciliation Act, 1996, the arbitral tribunal may after consultation among its members, for hearing witnesses, experts or the parties or for inspection of documents, goods or other property may also sit at a place other than the agreed place of arbitration.

40. The parties are free to agree on the place of arbitration. In case, there is no place prescribed the arbitral Tribunal can determine the place of arbitration having regard to the circumstances of case including convenience of the parties.

41. If the venue of the arbitral tribunal is to be considered as the seat of arbitration, in the light of the decisions of the Hon'ble Supreme Court rendered in the context of international arbitration, no doubt only Bhubaneswar High Court alone would have jurisdiction as per the decision of the Honourable Supreme Court in **Indus Mobile Distribution Private Limited versus Data wind Innovations Private Limited** *supra*.

42. The Court there referred to para 98 of its earlier decision in **BALCO v. Kaiser Aluminium Technical Services Inc.**, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , SCC pp. 606-08)

"98. We now come to Section 20, which is as under:

'20. Place of arbitration.-(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be

determined by the Arbitral Tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the Arbitral Tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

A plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any "place" or "seat" within India, be it Delhi, Mumbai, etc. In the absence of the parties' agreement thereto, Section 20(2) authorises the tribunal to determine the place/seat of such arbitration. Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.

99. The fixation of the most convenient "venue" is taken care of by Section 20(3). Section 20 has to be read in the context of Section 2(2) which places a threshold limitation on the applicability of Part I, where the place of arbitration is in India. Therefore, Section 20 would also not support the submission of the extra-territorial applicability of Part I, as canvassed by the learned counsel for the appellants, so far as purely domestic arbitration is concerned.

100. True, that in an international commercial arbitration, having a seat in India, hearings may be necessitated outside India. In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but it would not have the effect of changing the seat of arbitration which would

remain in India. The legal position in this regard is summed up by Redfern and Hunter, *The Law and Practice of International Commercial Arbitration* (1986) at p. 69 in the following passage under the heading "The Place of Arbitration":

'The preceding discussion has been on the basis that there is only one "place" of arbitration. This will be the place chosen by or on behalf of the parties; and it will be designated in the arbitration agreement or the terms of the reference or the minutes of proceedings or in some other way as the place or "seat" of the arbitration. This does not mean, however, that the Arbitral Tribunal must hold all its meetings or hearings at the place of arbitration. International commercial arbitration often involves people of many different nationalities, from many different countries. In these circumstances, it is by no means unusual for an Arbitral Tribunal to hold meetings—or even hearings—in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses.... It may be more convenient for an Arbitral Tribunal sitting in one country to conduct a hearing in another country—for instance, for the purpose of taking evidence.... In such circumstances, each move of the Arbitral Tribunal does not of itself mean that the seat of arbitration changes. The seat of the arbitration remains the place initially agreed by or on behalf of the parties.'

This, in our view, is the correct depiction of the practical considerations and the distinction between "seat" [Sections 20(1) and 20(2)] and "venue" [Section 20(3)]. We may point out here that the distinction between "seat" and "venue" would be quite crucial in the event, the arbitration agreement designates a foreign country as the "seat"/"place" of the arbitration and also

selects the Arbitration Act, 1996 as the curial law/law governing the arbitration proceedings. It would be a matter of construction of the individual agreement to decide whether:

- (i) the designated foreign "seat" would be read as in fact only providing for a "venue"/"place" where the hearings would be held, in view of the choice of the Arbitration Act, 1996 as being the curial law, or
- (ii) the specific designation of a foreign seat, necessarily carrying with it the choice of that country's arbitration/curial law, would prevail over and subsume the conflicting selection choice by the parties of the Arbitration Act, 1996."

43. In para 19 the Court held as under:

19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. 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 Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at

Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties”.

44. In para 20 it was held as under:-

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.* [*Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in *B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.* [*B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.*, (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427]. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [*Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly.

45. The court therefore has held that there is a distinction between “seat” [20(1) and 20(21)] and

"venue"[Section 20 (3)] and that the distinction is quite crucial in the event, arbitration agreement designates a foreign country as the "seat"/"place" of the arbitration and also selects the Arbitration and Conciliation Act, 1996 as the curial law/law governing the arbitration proceeding.

46. The decision in **Green Builders & Promoters Pvt. Ltd.**, cited is based on the decision of the Hon'ble Supreme Court in **Indus Mobile Distribution (P) Ltd versus Data wind Innovations (P) Ltd.** (2017) 7 SCC 678. In this case, the parties have not excluded the jurisdiction of the Court.

47. If such a clause exists, the court can decline to exercise the power vested under Section 11 of the Arbitration and Conciliation Act, 1996.

48. The ratio of the Honourable Supreme Court in **Jindal Vijayanagar Steel (JSW Steel Ltd.,) Vs. Jindal Praxair Oxygen Com. Ltd.**, (2006) 11 SCC 521, though also rendered in the context of international arbitration is nevertheless relevant to decide the question of Jurisdiction of the Court. There, in paras 28 and 65, the

Hon'ble Court held as under:-

28. In our view, an arbitration petition is required to be filed in a court having jurisdiction. The definition of the "court" under the 1996 Act is as follows:-

"2. (1) (e) 'Court' means the Principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;"

The composite definition of Court as above is not different from Section 2(1) (e) of the very different from the amended Section 2(1) (e) (ii) of the Arbitration and Conciliation Act, 1996. The Court in para 65 observed as under:-

65. We considered the above argument of Mr Nariman. Our answer to the above argument is as under:-

Though the Bombay High Court has in the impugned order dated 2-3-2006 observed that no part of the cause of action has arisen at Mumbai, it is submitted that the cause of action against the respondents has in fact arisen within the ordinary original jurisdiction of the Bombay High Court for the following reasons: It may be noted that the following sub-paragraphs below have been noted by the Bombay High Court in the

impugned order dated 2-3-2006:

(a) The parties themselves have chosen Mumbai to be the situs for the arbitration proceedings [clause 17.2(i) of the agreement].

(b) The arbitration clause specifically provides for a dispute resolution meeting to be held to resolve the dispute between the parties as a precondition for invocation of the arbitration clause which meeting was held at Bombay at the request of the appellant.

(c) The pipeline supply agreement (under which the disputes have arisen) was approved by the Board of Directors of the appellant Company in Bombay.

(d) The pipeline supply agreement as amended was reviewed and discussed by the Board of Directors of the appellant Company in Bombay.

(e) The settlement agreement dated 23-6-2003 was adopted at the meeting of the respondent's Board of Directors where the appellant's nominees on the respondent's Board were also present.

(f) That the entire senior management of the appellant is located at Mumbai. It may be noted that in *Mayar (H.K.) Ltd.v.Owners & Parties, Vessel MV Fortune Express* [(2006) 3 SCC 100] this Court (in para 27) observed that the principal place of business would be where the governing power of the corporation is exercised or the place of a corporation's Chief Executive Offices which is typically viewed as the nerve centre or the place designated as the principal place of business of the corporation in its incorporation under various statutes.

(g) When Section 9 petition was filed, the appellant had its office at Mumbai and was carrying on business at Mumbai and its Directors were stationed in Mumbai.

(h) The appellant had in fact shifted its

registered office to Mumbai during the pendency of Section 9 petition in the Bombay High Court as it was more convenient to operate its registered office from Mumbai. It is submitted that where a court has jurisdiction to try the suit when it comes up for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date of institution as held in Sudhir G. Angurv.M. Sanjeev [(2006) 1 SCC 141] (SCC para 11).

(i) That at the time the question of jurisdiction was heard and gone into and decided by the Bombay High Court, the registered office of the appellant had been shifted and was in fact situated in Mumbai. The Bombay High Court in *Fazlehussein Haiderbhoy Buxamusa v. Yusufally Adamji* [AIR 1955 Bom 55 : 56 Bom LR 955] , para 2 has held that: (AIR pp. 55-56)

"Even if the Court had jurisdiction to entertain the suit as filed, if by reason of subsequent events the Court has lost jurisdiction to entertain or try the suit, the Court will not be justified in dealing with the suit with reference to circumstances as they existed at the date of the institution of the suit, but must proceed to decide the dispute on the footing that if the suit had been filed at the later date, the Court would have been incompetent to grant the reliefs in respect of the properties and of the persons who are not within the limits of the jurisdiction of the Court. Normally a court must have regard to circumstances existing as at the date when the issue of jurisdiction is tried and must decide it in the light of circumstances existing as at that date."

49. Ultimately the Court held that the Bombay High

Court had jurisdiction to entertain Section 9 application of the respondents herein.

50. In a domestic arbitration, unless the parties tie them selves down to an exclusive jurisdiction of a Court in the agreement, venue or the place of arbitration is merely a venue/place of arbitration which can be altered under Section 20 of the Act. It has no special significance barring convenience of the arbitral tribunal and the parties and therefore should not be given a different meaning than what the parties to the agreement have contemplated at the time of signing of the agreement.

51. I am of the view, the jurisdiction of both the High Courts were available to parties to approach under Section 11 in absence of specific restriction in the agreement. Respondent having failed to exercise their rights to participate in the appointment of arbitrator have ceded their rights. The present petition is thus maintainable before this Court.

52. Under these circumstances, the Hon'ble Mr. Justice Rajeswaran, (Retired), High Court of Madras, residing at No.AA-67, II Street, Near Rountana Nalli Silk House, Anna

Nagar, Chennai - 40, is appointed as the sole arbitrator to resolve the dispute between the parties.

53. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

54. Accordingly, this original petition is allowed.

Sd/-C.S.N.J

02.11.2018

//Certified to be a true copy//

Dated this the day of 2019
JJ 23/01/19

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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