

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. R. No. 4897 of 2018

Reserved On : January 24, 2019

Pronounced On : February 22, 2019

M/s Adie Broswn Breweries Pvt. Ltd. Petitioner

vs.

M/s KLA Construction Technologies
Private Limited and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Chetan Mittal, Senior Advocate
with Mr. Kunal Mulwani, Advocate
Mr. Mayank Aggarwal, Advocate
and Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Arjun Dewan, Advocate
Mr. G. S. Bedi, Advocate
and Ms. Anupama Kumar, Advocate
for respondent no. 1.

* * *

DEEPAK SIBAL, J. :

The present petition is directed against the order dated 27.03.2018 passed by the Additional District Judge, Gurdaspur (for short – the Trial Court) dismissing a petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (for short – the Act) on the ground that the Trial Court at Gurdaspur lacked territorial jurisdiction to entertain such petition.

The facts, in brief, which are required to be noticed for adjudicating upon the instant petition are that the petitioner intended to set

up a brewery in Village Kiri Afgana, Tehsil Batala, District Gurdaspur (Punjab) and for that purpose, invited bids, in pursuance whereof, respondent no. 1 submitted its bid which was accepted. On 16.09.2010, the parties entered into an agreement which contained the terms and conditions governing the execution of the work. Clause 13.17 of the agreement pertained to arbitration and the same reads as under :-

“13.17.1 *All disputes and differences of any kind whatsoever arising out of or in connection with the Contract or carrying out of the Works (whether during the progress of the works or after their completion and whether before or after the determination, abandonment or breach of the Contract), any claims relating to the meaning of specifications, design, drawings and instructions herein before mentioned and so as to the quality of materials or workmanship used in the Works or as to any other question, claims, right, matter whatsoever arising out of or relating to this Contract be referred to in writing as a notice to be given to the Project Manager as pursuant to terms of this Contract, and amicably settled by the Project Manager through friendly negotiations and agreement with the Contractor. A written notice specifying the*

decisions shall be issued within 30 (thirty) days by the Project Manager.

13.17.2 *In case the matters referred to above in the immediately preceding Clause cannot be settled amicably and the Contractor be dissatisfied with the decisions given by the Project Manager as above, either party (the Project Manager and the Contractor) may within 28 (twenty eight) days after receiving the notice of such decisions, give a written notice to other party through the Employer, requesting that such matters in dispute be arbitrated upon. Such written notice shall specify clearly the matters which are in dispute and such dispute or differences of which such written notice has been given; no other matters shall be entertained upon for the Arbitration.*

13.17.3 *The Arbitration shall be conducted by a Sole Arbitrator who shall be appointed on mutually agreeable basis by both parties (The Employer and the Contractor) within 15 (fifteen) days of giving written notice as aforesaid in immediately preceding paragraph. In case a mutual agreement on appointing such an Arbitrator cannot be reached, both the Employer and the*

Contractor shall appoint an Arbitrator of their choice and the two appointed Arbitrators shall further appoint a third Arbitrator, who shall act as Presiding Arbitrator. The proceedings of the Arbitration shall follow the Indian Arbitration and Conciliation Act 1996 or any latest amendments, if any, then in force.”

As per the work order through which the petitioner awarded the work to respondent no.1, the parties further agreed that all the disputes which may arise between them would be subject to Gurdaspur (Punjab) Courts only. The relevant clause of the work order is as under :-

“All disputes are subject to the Gurdaspur (Punjab) courts jurisdiction only.”

In connection with the execution of the aforesaid work and qua payments to be made for the same, disputes arose between the parties. Relying on the afore-quoted clause 13.17 of the agreement, respondent no.1 sent a notice to the petitioner for settling their disputes through arbitration and sought appointment of an Arbitrator but when the petitioner failed to do so, respondent no.1 filed a petition under Section 11 of the Act before this Court being **Arb. Case No. 16 of 2013 – KLA Construction Technologies Pvt. Ltd. vs. Adie Broswon Breweries Pvt. Ltd.** Such petition was disposed of by this Court on 14.05.2013 appointing Justice D. K. Jain (Former Judge, Supreme Court of India) as sole Arbitrator. On refusal by Justice D. K. Jain to act as the Arbitrator, the doors of this Court

were again knocked for appointing another Arbitrator and on 16.08.2013, Justice Mukul Mudgal (Former Chief Justice of this Court) was appointed as Arbitrator in place of Justice D. K. Jain. Justice Mukul Mudgal acted as an Arbitrator between the parties and conducted proceedings at Delhi. On 18.10.2017, an Award was rendered by the Arbitrator, against which the petitioner filed objections under Section 34 of the Act before the Trial court at Gurdaspur. The grounds on which such objections were filed being not relevant for the purpose of the present proceedings are not being discussed. The Trial Court at Gurdaspur was of the view that since the seat of arbitration had not been agreed to between the parties, the venue of the arbitration would be taken as its seat which in the present case was Delhi. Thus, placing reliance on the law laid down by the Hon'ble Apex Court in **Indus Mobile Distribution Pvt. Ltd. vs. Datawind Innovations Pvt. Ltd. and others - (2017) 7 SCC 678**, the Trial Court held that the Courts at Delhi had exclusive jurisdiction to entertain and adjudicate upon the petitioner's objections and therefore, declined to entertain such objections filed before it. However, liberty was granted to the petitioner to file its objections before the competent Court at Delhi. It is such order of the Trial Court which is the subject matter of challenge in the present proceedings.

Mr. Chetan Mittal, learned senior counsel appearing on behalf of the petitioner assailed the order passed by the Trial Court by submitting that in the agreement between the parties, the seat of arbitration had not been agreed to and while rendering his Award, no such seat had also been determined by the Arbitrator in terms of Section 31 of the Act. Therefore,

simply because the arbitration proceedings had taken place in Delhi, it could not be said that only the Courts at Delhi would have territorial jurisdiction to entertain the petitioner's petition. According to Mr. Mittal, since the work was executed at Gurdaspur, the Courts at Gurdaspur, in addition to the Courts at Delhi, would also have jurisdiction to entertain and adjudicate upon the petitioner's objections especially in view of the jurisdiction clause agreed to between the parties that the disputes between them would be subject to the jurisdiction of the courts at Gurdaspur only. He further submitted that the Trial Court erred in dismissing the petitioner's objections by relying on **Indus Mobile (supra)** as that judgment had no application since in that case, the seat as also the jurisdiction clause had been agreed to by the parties which was not so in the present case.

Mr. Mittal placed reliance on the following judgments of the Hon'ble Apex Court :-

1. **Emkay Global Financial Services Limited vs. Girdhar Sondhi – (2018) 9 SCC 49** and
2. **Union of India vs. Hardy Exploration and Production (India) INC - AIR 2018 SC 4871.**

Mr. Arjun Dewan, learned counsel for respondent no. 1 countered the arguments raised on behalf of the petitioner by submitting that in the initial notice sent by the Arbitrator informing the parties with regard to his appointment as an Arbitrator, as also at the time of fixing the first date of hearing before him, it had clearly been brought to the notice of both the parties that the arbitration proceedings would take place at Delhi

where they actually and factually also took place. According to him, in pursuance to the aforesaid notices, once the petitioner took part in such proceedings at Delhi, by its conduct, it accepted Delhi to be the seat of arbitration and that being so, only the Courts at Delhi would have jurisdiction to entertain and adjudicate upon the objections filed by the petitioner. In support of his contentions, he placed reliance on a judgment of the Delhi High Court in **Ashiana Infrahomes Pvt. Ltd. and others vs. Adani Power Ltd. - 2018 SCC Online Del 9110**, as also a Single Bench judgment of this Court in **Green Builders & Promoters Pvt. Ltd. vs. Ramesh and others (PHHC) – 2017 SCC Online P&H 4353**.

Mr. Dewan further went on to submit that the reliance placed by the petitioner on **Emkay Global's** case (*supra*), was misplaced as in that case, the seat of the Arbitrator as also the jurisdiction clause had been agreed to by the parties. Further, according to him, **Hardy's** case (*supra*) was also not applicable to the facts of the present case as that case pertained to international arbitration where the parties had agreed that the procedure before the Arbitrator would be governed by Indian laws. In the light of these facts, in **Hardy's** case (*supra*), the Hon'ble Apex Court held that even if the arbitration had taken place in Malaysia, the Courts in Delhi would have jurisdiction to entertain and adjudicate upon the objections filed under Section 34 of the Act.

The relevant provisions of the Act are Sections 2(1)(e)(i), 20 and 31(4). They read as under :-

“2. Definitions. - (1) In this Part, unless the

context otherwise requires -

xx xx xx xx xx

(e) **“Court”** means -

(i) *in the case of an arbitration other than international commercial arbitration, 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;*

- 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.*

31. Form and contents of arbitral award. –**(1) – (3) xx xx xx xx**

(4) *The arbitral award shall state its date and the place of arbitration as determined in accordance with [section 20](#) and the award shall be deemed to have been made at that place.”*

The issue with regard to juridical seat of the Arbitral Tribunal was gone into by a Constitution Bench of the Hon'ble Apex Court in **Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc. - (2012) 9 SCC 552**. Paragraphs no.96, 98 and 99 which are relevant read as under :-

“96.....*We are of the opinion, the term “subject matter of the arbitration” cannot be confused with “subject matter of the suit”. The term “subject matter” in [Section 2\(1\)\(e\)](#) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in [Section 2\(1\)\(e\)](#) has to be construed keeping in view the provisions in [Section 20](#) which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render [Section 20](#) nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e.*

the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under [Section 17](#) of the Arbitration Act, 1996, the appeal against such an interim order under [Section 37](#) must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located.

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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, good 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\(2\)](#) authorizes 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.”

In **Indus Mobile's** case (*supra*), the question that arose before the Hon'ble Apex Court was that if the seat of arbitration, as reflected in the arbitration clause agreed to between the parties, was Mumbai and an exclusive jurisdiction clause to adjudicate the disputes arising between the parties also conferred jurisdiction upon the Courts in Mumbai alone, would such facts oust the jurisdiction of all other Courts including the Courts at Delhi where the arbitration had actually taken place. After noting that in the arbitration clause, the parties had agreed that the seat of arbitration shall be at Mumbai and that all disputes and differences that may arise out of or in connection with their agreement had further been agreed to be subject to the exclusive jurisdiction of the Courts at Mumbai only, the Hon'ble Apex Court held that to entertain and adjudicate upon the petitions/applications that may arise out of the arbitral proceedings between the parties, the Courts at Mumbai would have exclusive jurisdiction. The relevant observations of the Hon'ble Apex Court are 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 Section 16 to 21 of the 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.

20. *It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see [Swastik Gases Private Limited v. Indian Oil Corporation Limited](#), (2013) 9 SCC 32. This was followed in a recent judgment in [B.E. Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited](#), (2015) 12 SCC 225. 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 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. Appeals are disposed of accordingly.”

In Emkay Global's case (*supra*), in the agreement, the parties therein had agreed to abide by the provisions of the Depositories Act, 1996 as also the 1996 Bye-Laws and Operating Instructions issued by CDSL from time to time. The parties further agreed to submit to the exclusive jurisdiction of the Courts at Mumbai. The Hon'ble Apex Court noted the facts therein and held as under :-

“2. The appeal arises out of an agreement dated 03.07.2008, which contains the following clauses:

General Clause

1. The parties hereto agree to abide by the provisions of the Depositories Act, 1996, SEBI (Depositories and Participants) Regulations, 1996 Bye-Laws and Operating Instructions issued by CDSL from time to time in the same manner and to the same extent as if the same were set out herein and formed part of this Agreement.

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Arbitration

11. The parties hereto shall, in respect of all disputes and differences that may arise between them, abide by the provisions relating to arbitration and conciliation specified under the Bye-Laws.

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Jurisdiction

12. The parties hereto agree to submit to the exclusive jurisdiction of the courts in Mumbai in Maharashtra (India).

3. Though the bye-laws referred to in the agreement are under the provisions of the Depositories Act, 1996, it is common ground that the arbitration proceeding took place under the National Stock Exchange Bye-laws. Under these Bye-laws, Chapter VII speaks of dealings by trading members and grants exclusive jurisdiction to the civil courts in Mumbai in relation to disputes that arise under the Bye-laws as follows:

CHAPTER VII

DEALINGS BY TRADING MEMBERS

Jurisdiction.

(1)(a) Any deal entered into through automated trading system of the Exchange or any proposal for buying or selling or any acceptance of any such proposal for buying and selling shall be deemed to have been entered at the computerised processing unit of the Exchange at Mumbai and the place of contracting as between the trading members shall be at Mumbai. The trading members of the Exchange shall expressly record on their contract note that they have excluded the jurisdiction of all other Courts save and except, Civil Courts in Mumbai in relation to any dispute arising out of or in connection with or in relation to the contract notes, and that only the Civil Courts at Mumbai have exclusive jurisdiction in claims arising out of such dispute. The provisions of this Bye-law shall not object the

jurisdiction of any court deciding any dispute as between trading members and their constituents to which the Exchange is not a party.

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8. *The effect of an exclusive jurisdiction clause was dealt with by this Court in several judgments, the most recent of which is the judgment contained in Indus Mobile Distribution Pvt. Ltd. (supra). In this case, the arbitration was to be conducted at Mumbai and was subject to the exclusive jurisdiction of courts of Mumbai only. After referring to the definition of "Court" contained in Section 2(1)(e) of the Act, and Section 20 and 31(4) of the Act, this Court referred to the judgment of five learned Judges in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552, in which, the concept of juridical seat which has been evolved by the courts in England, has now taken root in our jurisdiction. After referring to several judgments and a Law Commission Report, this Court held:*

“19. A conspectus of all the aforesaid provisions shows that 7 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.

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. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. [B.E. Simoes 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.”*

9. *Following this judgment, it is clear that once courts in Mumbai have exclusive jurisdiction thanks to the agreement dated 03.07.2008, read with the 8 National Stock*

Exchange bye-laws, it is clear that it is the Mumbai courts and the Mumbai courts alone, before which a Section 34 application can be filed. The arbitration that was conducted at Delhi was only at a convenient venue earmarked by the National Stock Exchange, which is evident on a reading of bye-law 4(a)(iv) read with (xiv) contained in Chapter XI.”

In **Hardy's** case (*supra*), the Hon'ble Apex Court interpreted Section 20 and Section 31 of the Act as under :-

“27. *It is submitted by Mr. Tushar Mehta, learned Additional Solicitor General appearing for the Union of India that there is no specific mention of juridical seat but reference is to the venue. He has also drawn our attention to the UNCITRAL Model Law which is referred to in Article 33.9 of the agreement. Article 20 of the UNCITRAL Model Law reads as follows :-*

“Article 20. Place of arbitration.—(1) The parties are free to agree on the place of arbitration. Failing such agreement, 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.

(2) *Notwithstanding the provisions of paragraph (1) of this article, 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 goods, other property or documents.”*

[Emphasis added]

Thus, Article 20(1) mandates “determination” of “juridical seat” while Article 20(2) leaves it open to the Arbitral Tribunal to select “venue”.

28. *Article 31(3) of the UNCITRAL Model Law is as follows :-*

“Article 31. Form and contents of award.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.”

29. *On a perusal of Articles 20 and 31(3) of the UNCITRAL Model Laws, we find that the parties are free to agree on the place of arbitration. Once the said consent is given in the arbitration clause or it is interpretably deduced from the clause and the other concomitant factors like the case of Harmony Innovation Shipping Ltd. which states about the venue and something in addition by which the seat of arbitration is determinable. The other mode, as Article 20 of the UNCITRAL Model Law provides, is that where the parties do not agree on the place of arbitration, the same shall be determined by the Arbitral Tribunal. Such a power of adjudication has been conferred on the Arbitral Tribunal. Article 31(3) clearly stipulates that the Award shall state the date and the place of arbitration as determined in accordance with Article 20(1).*

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31. *In the present case, the place of arbitration was to be agreed upon between the parties. It had not been agreed upon ; and in case of failure of agreement, the Arbitral Tribunal is required to determine the same taking into consideration the convenience of the parties. It is also incumbent on the Arbitral Tribunal that the determination shall be clearly stated in the “form and contents of award” that is postulated in Article 31. There has been no determination.*

32. *Be it noted, the word “determination” requires a positive act to be done. In the case at hand, the only aspect that has been highlighted by Mr. C.U. Singh, learned senior counsel, is that the arbitrator held the meeting at Kuala Lumpur and signed the award. That, in our considered opinion, does not amount to determination. The clause is categorical. The sittings at various places are relatable to venue. It cannot be equated with the seat of arbitration or place of arbitration which has a different connotation as has been held in Reliance Industries Ltd. (I), (II) (supra), Harmony Innovation Shipping Limited (supra) and in Roger Shashoua (supra).*

33. *The word “determination” has to be contextually determined. When a “place” is agreed upon, it gets the status of seat which means the juridical seat. We have already noted that the terms “place” and “seat” are used interchangeably. When only the term “place” is stated or mentioned and no other condition is*

postulated, it is equivalent to “seat” and that finalises the facet of jurisdiction. But if a condition precedent is attached to the term “place” the said condition has to be satisfied so that the place can become equivalent to seat. In the instant case, as there are two distinct and disjunct riders, either of them have to be satisfied to become a place. As is evident, there is no agreement. As far as determination is concerned, there has been no determination. In Ashok Leyland Limited and State of T.N. and another, (2004) 3 SCC 1, the Court has reproduced the definition of “determination” from Law Lexicon, 2nd Edition by Aiyar, P. Ramanatha and Black's Law Dictionary, 6th Edition. The relevant paragraphs read thus:-

“Determination or order.— The expression “determination” signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal. The expression “order” must have also a similar meaning, except that it need not operate to end the dispute. Determination or order must be judicial or quasi-judicial. **Jaswant Sugar Mills Ltd. v. Lakshmi Chand, AIR 1963 SC 677, 680** (Constitution of India, 1950 Article 136).”

“A “determination” is a “final judgment” for purposes of appeal when the trial court has completed its adjudication of the rights of the parties in the action. Thomas Van Dyken Joint Venture v. Van Dyken, 90 Wis 236, 27 NW 2d 459, 463.”

The said test clearly means that the expression of determination signifies an expressive opinion. In the instant case, there has been no adjudication

and expression of an opinion. Thus, the word “place” cannot be used as seat. To elaborate, a venue can become a seat if something else is added to it as a concomitant. But a place unlike seat, at least as is seen in the contract, can become a seat if one of the conditions precedent is satisfied. It does not ipso facto assume the status of seat. Thus understood, Kuala Lumpur is not the seat or place of arbitration and the interchangeable use will not apply in stricto sensu.

34. *In view of the aforesaid analysis, the irresistible conclusion is that the Courts in India have jurisdiction and, therefore, the order passed by the Delhi High Court is set aside. Resultantly, the appeal stands allowed and the High Court is requested to deal with the application preferred under Section 34 of the Act as expeditiously as possible. There shall be no order as to costs.”*

Under Section 20 (1) of the Act, the parties are free to agree on the place of arbitration. In the event of such agreement, as expressly reflected through the arbitration clause or to be deduced therefrom, the agreed place becomes the seat of arbitration. If there is no such agreement, the seat of arbitration can be determined by the Arbitral Tribunal under Section 20(2) read with Section 31(4) of the Act. However, such determination by the Arbitral Tribunal should be reflected through a positive act by the Arbitrator by making specific mention in this regard in the Award.

In the event of the seat of arbitration having been agreed upon or determined as above, the Courts, which have jurisdiction over the place where such seat of arbitration has been agreed upon or determined, would be vested with exclusive territorial jurisdiction to entertain and adjudicate upon the proceedings which may arise out of the arbitral proceedings between the parties. However, if the seat has not been agreed upon or determined, as above, then the Courts where the arbitration actually takes place, in addition to the Courts where part of the cause of action may have arisen, would have territorial jurisdiction to regulate the arbitral proceedings between the parties.

In the present case, a perusal of the arbitration clause in the agreement between the parties clearly reveals that in terms of Section 20 (1) of the Act, the parties did not agree to any place of arbitration. No other factors are also found in the instant case which when read with the arbitration clause would lead to a deduction that the parties had agreed to a particular place to be the seat of arbitration. The Award also does not reflect any determination of the seat of arbitration by the Arbitrator in terms of Section 20(2) read with Section 31(4) of the Act. Further, the jurisdiction clause agreed to between the parties specifically confers exclusive territorial jurisdiction on the Courts at Gurdaspur (Punjab) to adjudicate all disputes between them. Thus, Delhi, where the arbitration proceedings actually took place would merely be considered as a convenient venue for arbitration in terms of Section 20 (3) of the Act and in the light of these facts as also the position of law, as discussed earlier,

the Courts at Delhi would not be conferred with exclusive jurisdiction to entertain and adjudicate upon the petitioner's petition.

Mr. Dewan had submitted that two notices dated 30.08.2013 and 17.09.2013 had been sent by the Arbitrator to the parties wherein it had specifically been stated that the arbitration proceedings would take place at New Delhi, and once the petitioner, in response thereto, had taken part in the arbitration proceedings at New Delhi, then the petitioner, by its conduct, agreed to Delhi as the seat of arbitration and as a result thereof, only the Courts in Delhi would have exclusive jurisdiction to entertain and adjudicate the petitioner's objections. Such argument of Mr. Dewan does not warrant a favourable consideration as a perusal of these notices show that through them, the Arbitrator had merely informed the parties that the venue of the arbitration proceedings would be at the Arbitrator's office in New Delhi. No seat of arbitration had been determined. The notices are reproduced below for ready reference :-

Notice dated 30.08.2013

“30th August, 2013

***KLA CONSTRUCTION TECHNOLOGIES
PRIVATE LIMITED Claimant***

Versus

ADIE BROSWON BREWERIES PVT. LTD.

..... Respondent

ORDER

***I have been appointed as an Arbitrator by Hon'ble
Justice Jasbir Singh, Judge of Punjab and***

Haryana High Court in respect of the dispute between KLA CONSTRUCTION TECHNOLOGIES PRIVATE LIMITED and ADIE BROSWON BREWERIES PVT. LTD. by the order dated 16.08.2013.

Accordingly, I fix 17th September, 2013 at 5.30 p.m. as the first date for preliminary meeting of the parties to fix the schedule of the proceedings. Both the parties are required to appear themselves or through their counsel duly instructed on the date and time fixed.

The venue for the hearing will be the Arbitrators office at A-1 LGF, Nizamuddin East, New Delhi – 110013. Both the parties are to pay Rs. 1000/- each per hearing towards Establishment Expense.”

Notice dated 17.09.2013

“17th September, 2013

***KLA CONSTRUCTION TECHNOLOGIES
PRIVATE LIMITED Claimant***

Versus

ADIE BROSWON BREWERIES PVT. LTD.

..... Respondent

PRESENT :-

***For Claimant : Mr. Arjun Dewan, Advocate with
Mr. K. K. Shukla, AR and Mr. S. K. Mittal***

***For Respondent : Mr. Rahul Kumar, Ms. Snigdha
Sharma, Advocates***

ORDER

(FIRST HEARING)

Schedule of steps to be taken :

In consultation with the learned counsel for the parties, the following dates are appointed for taking steps as under

<i>On or Before</i>	<i>Steps to be taken</i>
<i>31.10.2013</i>	<i>Statement of Claim</i>
<i>15.12.2013</i>	<i>Statement of Defence and Counter claim, if any, to be filed by the Respondent</i>
<i>15.01.2014</i>	<i>Rejoinder to the Statement of Defence and reply to Counter claim to be filed by the Claimant</i>
<i>15.02.2014</i>	<i>Rejoinder to the Reply to the Counter Claim to be filed by the Respondent</i>

Practice Directions :

- 1. Each pleading will be accompanied by documents in support of the case pleaded by the party.*
- 2. Rejoinder is not necessarily to be filed. If filed, it shall remain confined only to such para of the Statement of Defence the averments made wherein need to be explained by raising necessary pleadings.*
- 3. Filing by either party of any pleading, document, application and communication, etc. shall be deemed to have been effectively done only on having been delivered to the Tribunal and copy having been previously or simultaneously delivered to the opposite party.*
- 4. Brief applications/communications to the Tribunal to be made by e-mail. All substantive pleadings, applications and documents shall*

necessarily be filed as hard copies along with a soft copy sent by mail.

5. *Communications and orders by the Tribunal to the parties will be made by e-mail on the e-address given hereunder, email communications shall be treated as effective communication to the tribunal and the parties and the learned counsel.*

For Claimant : legalcell@klaworld.com

arjun.dewan85@gmail.com

For Respondent : Rahul@kanthcorp.com

Next hearing :

*The Tribunal shall next assemble on **18th February, 2014 at 4.30 pm** for filing the Statement of Claim and for further directions.*

Fees of the Arbitrator :

It has been agreed that the fees of the Arbitrator shall be Rs.80,000/- (Eighty Thousand) per hearing to be shared by both the parties equally.

*Both the parties are directed to deposit their share of Arbitrator's fees for 4 hearings on or before **15th October, 2013.***

Permanent Account Number and email address of the Arbitrator are as under :-

Justice Mukul Mudgal – AARPM0073A

E-mail mudgalmukul@gmail.com

Venue for the hearing :

The venue for the hearings henceforth will be the Arbitrator's office at A-1 LGF, Nizammudin East, New Delhi – 110013.

[Emphasis supplied]”

merely to an information supplied to it by the Arbitrator with regard to the venue of the arbitral proceedings. Such response by the petitioner cannot be considered to be an express or implied agreement on its part to accept the venue of the arbitral proceedings as the seat of arbitration especially when a perusal of the Award shows that the Arbitrator himself also did not determine the venue of the arbitration as the seat of arbitration in terms of Section 20 (2) read with Section 31 (4) of the Act.

In **Ashiana Infrahomes** (*supra*), in the arbitration clause, the parties had agreed that the arbitration shall take place in Gurgaon. However, during the arbitration proceedings, by their consent, they agreed that the arbitration shall take place at Delhi. Such conduct/agreement by them was duly reflected in the orders passed by the Arbitrator. No such consent or order has been shown in the present case. Therefore, on facts, the judgment of the Delhi High Court in **Ashiana Infrahomes** (*supra*) would have no application.

In **Green Builders** (*supra*), the issue before this Court was with regard to the appointment of an Arbitrator under Section 11 (6) of the Act whereas the present case pertains to determination of territorial jurisdiction of a Court to entertain and adjudicate upon an objection petition filed under Section 34 of the Act which is necessarily to be after the Award has been rendered. Thus, in **Green Builders** (*supra*), the stage of determination of the seat of arbitration by the Arbitrator under Section 20(2) read with Section 31(4) of the Act had not yet reached. Even otherwise, since the judgment in **Green Builders** (*supra*) is dated 07.10.2017, it could

not and did not consider the law laid down by the Hon'ble Apex Court in Emkay Global's case (*supra*) as also Hardy's case (*supra*) pronounced on 22.08.2018 and 25.09.2018 respectively. Thus, Green Builders (*supra*) would be of no assistance to respondent no. 1.

The Trial Court wrongly placed reliance on Indus Mobile's case (*supra*) to hold that it lacked territorial jurisdiction to entertain and adjudicate upon the petitioner's objections as in that case, the seat of arbitration had been agreed upon by the parties to be at Mumbai and such agreement was duly reflected through the arbitration clause. The parties had further consented that if any dispute arose between them, the same shall be decided by the Courts at Mumbai only. It was in the light of these facts that the Hon'ble Apex Court held that even if the arbitration had taken place at Delhi, any proceeding regulating the arbitration proceedings would lie in Mumbai only irrespective of the fact that the arbitration had actually taken place in Delhi.

In view of the above discussion, in the facts of the present case, Delhi was not the seat of arbitration. It was merely a convenient venue where the arbitration proceedings actually took place. Therefore, the Courts at Delhi are not conferred with exclusive jurisdiction to entertain and adjudicate upon the objections filed by the petitioner and since admittedly, a part of the cause of action arose in Gurdaspur, the Courts at Gurdaspur would also have jurisdiction to entertain and decide the petitioner's objections, especially in view of the jurisdiction clause agreed to between the parties conferring jurisdiction upon the Courts at Gurdaspur to decide

disputes arising between them.

Resultantly, the impugned order dated 27.03.2018 passed by the Additional District Judge, Gurdaspur is set aside and the matter is remitted to the Trial Court for adjudication of the objections filed by the petitioner on its merits, in accordance with law.

The petition is allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

February 22, 2019
monika

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>