

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH**

FAO No. 317 of 2017 (O&M)

Date of decision: October 14, 2019

S.P. Singla Constructions Pvt. Ltd.

...Appellant

Versus

BBR (India) Pvt. Ltd.

...Respondent

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present: Mr. Anirudh Wadhwa, Advocate, and  
Mr. Gurmohan Singh Bedi, Advocate and  
Mr. Pawandeep Singh, Advocate,  
for the appellant.

Mr. Mukund Gupta, Advocate,  
for the respondent.

**JAISHREE THAKUR, J.**

1. This Appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (henceforth referred as '**the Act of 1996**') seeking to challenge the order of Additional District Judge, Panchkula, dated 14.12.2016, by which the petition under Section 9 of the Act of 1996 filed by the appellant stands dismissed.

2. In brief, the facts are that the appellant and the respondent entered into an agreement dated 30.6.2011 at Panchkula for performance of certain construction works in the States of J&K and Punjab. On account of the disputes, which arose between the parties, the appellant initiated

arbitration proceedings and the 1<sup>st</sup> Arbitrator was appointed at Panchkula, who held the proceedings either at Panchkula or at Chandigarh. As per the reference, the dispute pertained to construction of 592 Mtr long cable stayed major permanent bridge over the river Ravi at Basoli road in Jammu and Kashmir State under project 'Sampark'. After filing of the claim petition, statement of defence along with counter claim and joineder thereto, the Arbitrator recused himself by his order dated 29.05.2015 and a 2<sup>nd</sup> Arbitrator was appointed, who fixed the venue to be Delhi. The arbitral proceedings culminated in an award dated 29.1.2016, which was passed at Delhi. Aggrieved against the said award the respondent herein preferred a petition under Section 34 of the Act of 1996 at Delhi, whereas the appellant, post the award, preferred an application at Panchkula under Section 9 of the Act of 1996 seeking interim relief. The said application was dismissed for want of jurisdiction by the Additional District Judge Panchkula giving rise to the instant appeal.

3. Mr. Anirudh Wadhwa, learned counsel appearing on behalf of the appellant, contends that by virtue of Section 42 of the Act of 1996 the jurisdiction vests with the courts at Panchkula, since the agreement was signed at Panchkula between the parties, part of the arbitration proceedings were held either at Panchkula or at Chandigarh, the scope of work to be done was either at Jammu and Kashmir or Punjab and moreover the appellant was based in Panchkula, whereas the respondent was based out in Bangalore. It is further argued that no cause of action, arising out of the agreement entered into between the parties, arose at Delhi other than part of

the arbitral proceedings being held there culminating in the award. It is further argued that the petition filed under Section 34 of the Act of 1996 would not be maintainable at Delhi and in fact the objection of territorial jurisdiction has already been taken up in those proceedings. Learned counsel for the appellant relies upon judgments rendered in **State of West Bengal and others Versus Associated Contractors (2015) 1 Supreme Court Cases 32, Union of India V. Hardy Exploration and Production (India) INC 2018 SCC OnLine SC 1640, M/s HII Lifecare Ltd. V. M/s Happy Lectricals 2018 SCC OnLine Del. 9814, M/s Adie Broswon Breweries Pvt. Ltd. Vs. M/s KLA Construction Technologies Private Limited and another, Civil Revision No. 4897 of 2018 decided on 22.2.2019 and Dwarika Projects Ltd. V. Superintending Engineer, Karnal, PWD (B&R), Haryana 2019 SCC OnLine Del. 8445.**

4. Per contra, Mr. Mukand Gupta, learned counsel appearing on behalf of the respondent, argues that the award has already been challenged before the High Court at Delhi on 28<sup>th</sup> of April 2016, which stands adjourned and the question of jurisdiction is pending consideration there. It is contended that the application/petition under Section 34 of the Act of 1996 was preferred prior in time to the invocation of Section 9 application at Panchkula. It is argued that the venue of the arbitration was fixed at Delhi by the Arbitrator and, therefore, the jurisdiction would vest before the courts in Delhi itself. It is argued that having accepted Delhi as a place of 'venue', the jurisdiction would vest with the courts at Delhi to decide any applications filed. Learned counsel places reliance on a judgment rendered

in **State of West Bengal and others Versus Associated Contractors (2015) 1 SCC 1**, to support his argument. Reliance is also placed upon a judgment rendered in **Brahmani River Pellets Limited vs . Kamachi Industries Limited 2019 SCC Online SC 929**.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings and the case law cited.

6. The only point for determination would be, whether the Additional District Judge erred in dismissing the application filed under Section 9 of the Act 1996 for want of territorial jurisdiction.

7. The facts as admitted are that the agreement did not specify either the seat or venue of arbitration. The agreement was silent to that effect. Simply put, the ‘venue’ which is not the same as ‘seat’ of arbitration, is merely a geographical location of the arbitration proceedings chosen on the basis of convenience. The seat of arbitration and the venue may be same however, it is the ‘seat’ that actually decides the appropriate court which will have exclusive jurisdiction to entertain and deal with the arbitration proceedings.

8. The relevant provisions of the Act are Sections 2 (1) (e) (i), 20 and 42. They read as under :-

**“2. Definitions.** - (1) In this Part, unless the context otherwise requires -

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*(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 subsection (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.*

*42. Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”*

9. To settle the difference between a 'seat' and a 'venue', the Hon'ble Supreme Court in its celebrated judgment of *Balco v. Union Carbide India Ltd.* (1981) 1 SCC 413, ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Service (2012) 9 SCC 648, held;***

*“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.”*

10. However, a question arose for determination in **Union of India v. Hardy Exploration and Production (India) INC Civil (2018) 7 SCC 374** before the two Judge Bench of the Supreme Court regarding the jurisdiction to challenge an arbitration award when the venue had been specified and not the seat. The matter was sought to be placed before a larger Bench by formulating the following question-

*“ The argument of both the learned senior counsel mainly centered around to one question which, in our opinion, does arise in the appeal, namely, when the arbitration agreement specify the “venue” for holding the arbitration sittings by the arbitrators but does not specify the “seat”, then on what basis and by which principle, the parties have to decide the place of “seat” which has a material bearing for determining the applicability of laws of a particular country for deciding the post award arbitration proceedings.”*

The larger Bench seized of the matter in **Union of India v. Hardy Exploration and Production (India) INC 2018 SCC OnLine SC 1640**, dealing with the issue of venue/seat, inter alia, laid down as under:-

*"27. In view of the aforesaid development of law, there is no confusion with regard to what the seat of arbitration and venue of arbitration mean. There is no shadow of doubt that the arbitration clause has to be read in a holistic manner so as to determine the jurisdiction of the Court. That apart, if there is mention of venue and something else is appended thereto, depending on the nature of the prescription, the Court can come to a conclusion that there is implied exclusion of Part I of the Act. The principle laid down in **Sumitomo Heavy***

*Industries Ltd. (supra) has been referred to in Reliance Industries Limited (II) and distinguished. In any case, it has no applicability to a controversy under the Act. The said controversy has to be governed by the BALCO principle or by the agreement or by the principle of implied exclusion as has been held in Bhatia International. (emphasis supplied).*

*28. Thus, we answer the reference accordingly."*

11. In the same judgment, the Supreme Court further elaborated the term 'determination' as mentioned in Section 20 (1) in the Act of 1996 by stating that Section 20 (1) mandates 'determination' of juridical seat, while Section 20 (2) leaves it open to the arbitral tribunal to choose the 'Venue'.

*"39. 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, 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** (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.**"*

*40. 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."( emphasis supplied)."*

Therefore, in the ultimate analysis, the Supreme Court in the case of **Hardy Exploration and Production (supra)**, held that the contractual clause between the parties to the contract stipulating the 'venue' of arbitration did not amount to a choice of juridical seat between the parties.

12. Under Section [20](#) (1) of the Act of 1996, the parties are free to agree on the place of arbitration. In the event of a specific agreement stating the place of jurisdiction, such place becomes the seat of arbitration and the seat would have to be given effect to. However, if the agreement is silent

and does not confer exclusive jurisdiction upon a place, the seat of arbitration can be determined by the Arbitral Tribunal under Section 20 (2) of the Act of 1996. As held in **Hardy Exploration and Production (supra)** *“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.”* The Court observed that the words "place" and "seat" cannot be used interchangeably. A venue may become a seat only if something is added to it as a natural accompaniment.

13. Mr. Mukund Gupta learned counsel for the respondent relies upon a judgment rendered in **Brahmani River Pellets Limited vs. Kamachi Industries Limited Civil Appeal No. 5850 of 2019 (Arising out of SLP(C) No. 15672 of 2019) 2019 SCC Online SC 929** to contend that once a venue has been decided then it is only those courts that would have jurisdiction to entertain an application under Section 9 of the Act of 1996. However, this judgment would not be applicable to the facts of the present case as there was no specific clause in the agreement regarding the venue or the seat. The agreement was silent to that effect. In **Brahmani River Pellets Limited (supra)** it has been held as :-

*“18. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the “venue” of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik, non-use of words like “exclusive*

*jurisdiction”, “only”, “exclusive”, “alone” is not decisive and does not make any material difference.”*

14. In **State of West Bengal and others Versus Associated Contractors (2015) 1 SCC 32**, the Supreme Court was seized of the question as to which of the courts would have jurisdiction to entertain an application under Section 34 of the Act of 1996 after the award had been passed and Section 42 of the Act of 1996 came up for consideration. The facts of the case as mentioned above, was that an agreement had been entered into between the State of West Bengal and Associated Contractors for execution of work of excavation and lining of a canal in District Jalpaguri in West Bengal. The contractor filed an application under Section 9 of the Act of 1996 for interim orders in the High Court of Calcutta and an ad-interim ex-parte injunction order was allowed which was continued from time to time till it was confirmed by an order dated 10.12.1998. In the meantime, on an application filed under Section 11 of the Act of 1996, an Arbitrator was appointed to adjudicate upon the dispute between the parties. The State filed an application for recalling the order confirming the injunction which was dismissed and was the appeal filed against that order was allowed with a direction for the Arbitrator to conclude his hearings. The award of the Arbitrator was challenged by the State before the courts at Jalpaiguri under Section 34 of the Act of 1996. Whereas the contractor filed a petition under Article 227 of the Constitution of India before the High Court of Calcutta challenging the jurisdiction of the courts at Jalpaiguri. The High Court allowed the petition holding that the State had already submitted itself to the jurisdiction of the High Court and, therefore, the district court at

Jalpaiguri would not have the jurisdiction to entertain a petition under Section 34 of the Act of 1996. Aggrieved against this decision, the matter was taken up before the Supreme Court. Both the Sections 2 (1) (e) and Section 42 of the Act of 1996 were interpreted and the Supreme Court held as under: –

*“25. Conclusions therefore on Section 2(1)(e) and Section 42 of the Arbitration Act, 1996 are as follows:*

*(a) Section 2(1)(e) contains an exhaustive definition marking out only the Principal Civil Court of Original Jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as “court” for the purpose of Part I of the Arbitration Act, 1996.*

*(b) The expression “with respect to an arbitration agreement” makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an award is pronounced under Part I of the 1996 Act.*

*(c) However, Section 42 only applies to applications made under Part I if they are made to a court as defined. Since applications made under Section 8 are made to judicial authorities and since applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.*

*(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.*

*(e) In no circumstances can the Supreme Court be “court” for the purposes of Section 2(1)(e), and whether the Supreme Court does or does not retain seisin after appointing an arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the*

*State or a Principal Civil Court having original jurisdiction in the district, as the case may be.*

*(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part I.*

*(g) If a first application is made to a court which is neither a Principal Court of Original Jurisdiction in a district or a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject-matter jurisdiction would be outside Section 42.*

*The reference is answered accordingly.”*

15. Admittedly, the agreement took place at Panchkula and was silent regarding either seat or Venue. Thereafter, the arbitration was invoked at Panchkula. Arbitration was initiated and initial proceedings were held at Panchkula/Chandigarh and thereafter the venue was changed to Delhi on the appointment of a new Arbitrator. The appellant's main office/registered office is in Panchkula. Even the subject matter of the suit does not fall within the jurisdiction of Delhi. The respondent has no branch office at Delhi. Though the award was signed at Delhi, the Arbitrator did not determine that Delhi would be the Juridical seat in terms of Article 31 of the UNCITRAL Model Law on International Commercial Arbitration (1985). All that the Arbitrator did was to fix Delhi as a venue so as to conclude the proceedings which had been initiated at Chandigarh/Panchkula, which can not be construed as determining the Juridical seat or jurisdiction as well. In my view, there no exclusive jurisdiction of the Court at Delhi as sought to be contended by the counsel for the respondent.

16. In view of the above discussion, I am of the view that in absence of clear exclusive jurisdiction clause of courts and as agreement was executed at Panchkula, part of the arbitration proceedings having been held in Panchkula, the Court of Panchkula would be competent to deal with the present case.

17. Consequently, the impugned order dated 14.12.2016 passed by the Additional District Judge, Panchkula is set aside and it is held that the courts at Panchkula would be competent to deal with the present case.

18. The parties are directed to appear before the District Judge, Panchkula, on 8.11.2019.

**October 14, 2019**

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**(JAISHREE THAKUR)  
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

Yes