

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

FAO-7225-2018 (O&M)

Date of Decision: 07.02.2019

Abhinav Cotspin Ltd.

..Appellant

Versus

M/s The Cotton Corporation of India and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr Saurav Verma, Advocate
for the appellant.

Mr. Sandeep Khunger, Advocate
for respondent No.1.

JAISHREE THAKUR, J. (Oral)

1. The instant appeal has been filed seeking to challenge the order of the Addl. District Judge, Bathinda dated 28.03.2018 whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 against the award of the Arbitrator dated 20.01.2014 has been dismissed primarily on the ground that the said Court would not have jurisdiction to entertain the objection petition.

2. In brief, the facts as culled out are that, there was an agreement between the parties with regard to supply of cotton bales. An agreement dated 01.11.2004 was entered into at Bathinda between the appellant i.e. Abhinav Cotspin Ltd. and respondent No.1 i.e. M/s Cotton Corporation of India regarding supply of cotton bales. Since a dispute arose between the parties, the matter was referred to an Arbitrator by the respondent No.1-

Corporation, who conducted part proceedings at Bathinda but gave its award at Delhi. Aggrieved against the said award, objections were filed by the appellant before the District Judge at Bathinda, who without going into the merits of the case dismissed the objections on the ground that since the award had been passed in Delhi, the Courts at Bathinda would have no jurisdiction. Aggrieved against the dismissal order, the instant appeal has been filed and a limited point has been raised therein.

3. Mr. Saurav Verma, learned counsel for the appellant urges that there is a patent error and illegality in the order of the Additional District Judge in dismissing the objections on the count being without jurisdiction. It is argued that in a judgment rendered in “**Bharat Aluminium Company vs. Kaiser Aluminium Technical Services INC (2012) 9 SCC, 552**”, the Supreme court would allow both courts to have jurisdiction i.e where the cause of action arose and the seat where the arbitrator is located.

4. Per contra, Mr. Sandeep Khunger, learned counsel appearing on behalf of respondent No.1-Corporation urges that the matter is no longer res-integra since our High Court has already rendered judgments in “**M/s Manjit Singh Bedi vs. M/s L&T Finance Ltd and others**” in **FAO-3328-2014**, **Kamlesh Yadav and others vs. Mahindra & Mahindra Financial Services Ltd., Mumbai and another in FAO-1328-2014**, wherein it has been held that only that Court would have the jurisdiction where the award was passed.

5. I have heard learned counsel for the parties and perused both the judgments rendered by the Apex Court and the Judgments rendered by the the Co-ordinate Bench of this Court.

6. The Agreement of Sale of 1500 bales of cotton was entered into between the parties at Bathinda on 1.1.2004. Amongst other terms, clause 8 pertained to Arbitration which is reproduced hereunder:

‘8 Arbitration:

a) no quality arbitration shall lie after the buyer, himself or through any of his represent the table, approves the bales at spot or the samples thereof received by the buyer through courier or in any other manner.

b) in case of any dispute or differences arising out of or in relation to the contract, same shall be referred to arbitration of an arbitrator (other than an employee of the seller) to be appointed by the director (purchase and sales) of the seller and whose decision shall be final and binding upon the parties hereto. The arbitration will be governed by the provisions of the Arbitration And Conciliation Act, 1996.’

7. As a dispute arose between the parties, an arbitrator was appointed by the Director-Purchase and Sales of Cotton Corporation of India vide letter dated 16.03.2005 to adjudicate dispute between the parties. As is evident from the award itself, the arbitrator issued notice to both parties, who directed that proceedings be held at Circuit House, Civil Station, Bathinda on 10.05.2005 at 10:30a.m.. Thereafter, some proceedings took place at Bathinda and the proceedings were adjourned to 09.09.2005, again to be held at Circuit House, Civil Station, Bathinda for arguments regarding objections received. On that date another request for an adjournment was received and the matter was again adjourned to 22.10.2005. Objections were received by the Arbitrator to his appointment and also to the venue of the arbitration proceedings at Bathinda. Consequently proceedings were adjourned to 18.12.2005, on which date a request was made from the respondent No.1- Corporation for an

adjournment and once again the proceedings were adjourned to 14.01.2006, for the proceedings to be held at Bathinda. Eventually, the appellant herein was proceeded ex-parte and the Arbitrator vide order dated 14.01.2006 held that the respondent No.1-Corporation was competent to appoint an arbitrator and rejected the plea of the appellant for conducting the proceedings at Delhi, holding that Delhi and Chandigarh are equidistant to Bathinda and that the witness sought to be produced were from Bathinda itself. On an application filed, the ex-parte order was set aside and permission was given to join proceedings and file reply. Thereafter, the proceedings were conducted at Delhi and the award was passed. In this background, can it be held that the ADJ at Bathinda had rightly rejected the objections filed, on the ground of lack of jurisdiction? The answer would be in the negative.

8. The Arbitration clause is silent as to the venue of the arbitration proceedings while specifying that the Arbitration and Conciliation Act 1996 would be applicable. In the case referred to as ***Bharat Aluminum Co. Vs Kaiser Aluminum Technical Services 2012 (9) SCC 552*** the Hon'ble Supreme Court while considering Section 2(1) (e) of the Arbitration Act 1996 held that:

*“ 96. Section 2(1)(e) of the Arbitration Act, 1996 reads as under:
2.Definitions.—(1) In this Part, unless the context otherwise requires—
 (a)-(d)****

(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;”

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.”

This view stands further fortified in the judgment rendered in

‘Union Of India Vs Hardy Exploration And Production (India)2018 AIR

(SC) 4871', wherein the question of territorial jurisdiction has been answered in Para 23 as

“ 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.”

In a similar case where the question of Sections 20 and 42 of the Arbitration and Conciliation Act 1996 came up for interpretation and a dispute arose as to which court would be the court of competent jurisdiction, the High Court at Mumbai in **Municipal Corporation Vs Rudranee Infrastructure Ltd (Bombay) 2018 (2) Civil LJ 457** held:

“ 4. Supreme Court in the case of Indus Mobile has indeed laid down as a matter of law that any agreement between the parties as to the seat of arbitration is in the nature of an exclusive jurisdiction clause. This exclusive jurisdiction clause would then oust the jurisdiction of any other court having concurrent jurisdiction. Further, such exclusive jurisdiction clause would forbid Section 42 having any play for the purpose of determination of jurisdiction of the Court. As held by the Supreme Court in the case of 'State of West Bengal v. Associated Contractors (2015) 1 Supreme Court Cases 32', where the agreement between the parties restricted jurisdiction to only one particular court out of courts having concurrent jurisdiction, that court alone would have jurisdiction, since neither Section 31(4) nor Section 42 contains a non-obstinate clause wiping out a contrary agreement between the parties. In other words, if there is a contrary agreement between the parties conferring exclusive jurisdiction on one particular court, it is that court and

that court alone which will entertain any challenge to an arbitral award. There is no difficulty thus far. The difficulty arises when we come to consider whether or not there is indeed a seat of arbitration fixed or agreed between the parties in the present case. It is important to note that a seat of arbitration, as observed by the Supreme Court in case of Indus Mobile, is a place chosen by or on behalf of the parties; it is designated either in the arbitration agreement or in the terms of the reference or reflected in the minutes of proceedings or in some other way as "place or seat of arbitration". As far as the agreement between the parties in the present case is concerned, there is indeed no place of arbitration chosen. If at all, the agreement points to a seat outside Mumbai inasmuch as the jurisdiction to arbitrate, under the agreement, is conferred on the Commissioner of Municipal Corporation for the cities of Kalyan & Dombivli, whose seat is indisputably beyond the city of Mumbai. Mr. Chinoy, learned Senior Counsel appearing for the Petitioner, however, submits that in the face of this agreement, when this Court was approached under Section 11 of the Act, an independent arbitrator was chosen. It is submitted that this Arbitrator held the proceedings of the reference in Mumbai, with the concurrence of the parties and also declared his award in Mumbai. Learned Counsel submits that there being nothing contrary either in the agreement or in the minutes of proceedings or otherwise, the very fact that the meetings in the arbitration reference were held, and the award was made, in Mumbai, fixes the seat of arbitration in Mumbai. I am afraid that is not a correct way of ascertaining the seat of arbitration. The seat of arbitration, in the context of fixation of jurisdiction of the curial Court, is not the same as the venue where the arbitral forum held its sittings or the place where it made its award. In fact, there is a well known distinction between the venue of arbitration and seat of arbitration. Even if the parties by their contract designate any place as the seat of arbitration, the arbitral forum is free to hold sittings at any place other than the seat of arbitration. For that matter, all sittings can be held and even an award can be made, at a location outside the place of seat of arbitration. In the face of this distinction, the simple fact of conduct of arbitration reference or making of an award at a particular place, in this case, Mumbai, is neither here nor there. In the present case, the seat of arbitration having not been designated either in the contract between the parties or in the terms of the reference or in the minutes of proceedings or otherwise, the city of Mumbai cannot be termed as the seat of arbitration, going by the

sheer conduct of meetings in the reference there. Even there, as a matter of fact, it is not disputed that some of the meetings in the arbitration references were actually held in Thane, within the jurisdiction of the District Court at Thane, though even that fact, on the reasoning discussed above, is hardly relevant.”

Again in the judgment rendered in '**Devas Multimedia Private Limited Vs Antrix Corporation Ltd. 2017 (162) DRJ 301**' while discussing the entire case law as settled, the Delhi High Court held that :

“43. The result is that in the absence of a jurisdiction clause in the arbitration agreement, the mere fact that a seat is mentioned would not automatically confer exclusivity on the seat Court as far as jurisdiction is concerned. In the present case, there is no exclusive jurisdiction clause. The parties specified the seat as New Delhi but by doing so, they did not intend to oust the jurisdiction of the Court at Bangalore. While some part of the cause of action, for e.g., the decision of the CCS, may have arisen within the jurisdiction of the Court at Delhi, a substantial part of the cause of action had arisen within the jurisdiction of the City Civil Court at Bangalore. In this context the submission of Antrix that the termination of the agreement was conveyed in Bangalore, the agreement was signed at Bangalore, both parties have their registered offices in Bangalore and therefore the substantial parts of the cause of action arose in Bangalore is well founded. The Court, therefore, rejects the plea of Devas that Delhi has exclusive jurisdiction only because the seat of arbitration was in Delhi, without anything more.”

9. Therefore in the instant case, where there is no exclusive jurisdiction conferred in the arbitration agreement which excludes the jurisdiction of all other Courts than the Court mentioned, neither as to seat nor as to venue, the inescapable conclusion this Court arrives at is that both Courts would have jurisdiction. The Additional District Judge has failed to take note of the fact that the Arbitrator had himself fixed the seat of arbitration at Bathinda where some proceedings were held and subsequently at Delhi, where the award was then passed at Delhi. The Court at Bathinda

would have the jurisdiction to entertain the objections filed.

10. With respect, this Court cannot follow the judgment as rendered in *Manjit Singh and others (supra)* as the facts are distinguishable.

11. Resultantly the impugned order dated 28.03.2018 is set aside as unsustainable and the parties are directed to appear before the District Judge, Bathinda on 15.03.2019.

12. The appeal stands allowed accordingly.

February 07, 2019

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes
Yes/No