

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **OMP(I) (COMM) No. 53/2019**

% 20th February, 2019

INDIA INFOLINE FINANCE LIMITED

..... Petitioner

Through: Mr. Aseem Chaturvedi and Mr.
Shivank Diddi, Advocates
(9958260000)

versus

HARSHAD HIRJI THAKKAR

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

I.A. No.2674/2019 (exemption)

1. Exemption allowed subject to just exceptions.

I.A. stands disposed of.

O.M.P.(I) (COMM) No.53/2019

2. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter* 'the Act'). The petition has been

filed by the petitioner India Infoline Finance Limited. The petitioner is the creditor and the respondent is the debtor on account of the respondent availing a credit of Rs. 10,00,00,000 under the Master Credit Facility Agreement dated 15.09.2018. It was pleaded that that the market value of the shares pledged by the respondent in the company M/s Ashapura Intimates Fashion Limited have drastically fallen down and the respondent has been found to be absconding since 02.10.2018, therefore, the subject petition has been filed under Section 9 of the Act seeking various interim reliefs till the disposal of the arbitration proceedings which are proposed to be invoked by the petitioner.

3. The address of the petitioner as stated in the memo of parties is at Mumbai and the address of the respondent is also at Mumbai, and the memo of parties in the present petition reads as under:-

“MEMO OF PARTIES

INDIA INFOLINE FINANCE LIMITED,
THROUGH ITS AUTHORISED REPRESENTATIVE
12A-10, 13TH FLOOR, PARINEE CRESCENZO,
C-38 AND C-39, G BLOCK BEHIND MCA,
BANDRA KURLA COMPLEX, BANDRA EAST,
MUMBAI-400 051

...PETITIONER

VERSUS

HARSHAD HIRJI THAKKAR,
A/2603-04, E-6, SARVODAYA HEIGHTS,
JAIN MANDIR ROAD, SARVODAYA NAGAR
MULUND WEST, MUMBAI-400 080

AS ALSO

ASHAPURA INTIMATES FASHION LIMITED
4TH FLOOR, PACIFIC PLAZA PLOT NO.570,
BHAVANI SHANKAR ROAD, OFF MATKAR MARG,
DADAR WEST, MUMBAI-400 028

...RESPONDENT”

4. I need not narrate the facts in detail or the reliefs claimed, inasmuch as the issue before this Court is as to whether this Court has territorial jurisdiction to entertain this petition.

5. The territorial jurisdiction of this Court is invoked by the petitioner by averring in para 44 of the petition that the place of arbitration is at New Delhi or as may be decided by the petitioner.

Para 44 of the petition reads as under:-

“44. This Hon’ble Court has the jurisdiction to entertain and adjudicate the instant Petition as according to the terms of the Master Credit Facility Agreement, the place and the arbitration shall be at New Delhi, or as may be decided by the Petitioner.”

6. The relevant arbitration clause between the parties in terms of the Master Credit Facility Agreement dated 15.09.2018 is para 16, and this para 16 reads as under:-

“16. GOVERNING LAW AND ARBITRATION

16.1 Governing Law

This Agreement, and all non-contractual obligation arising from or in connection with this Agreement, is governed by laws of India.

16.2 Arbitration

In the event of any dispute or difference arising by and between the Parties to this Agreement regarding the interpretation of this Agreement or relating thereto or arising therefrom, the Parties shall conduct negotiations in good faith or resolve such dispute. In the event of failure of negotiations between the Parties, such dispute or difference shall be referred to Arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996. All arbitration proceedings shall take place in Delhi or such a place as may be decided by the Lender, in its sole discretion. The language used in the arbitral proceedings shall be in English. The arbitral tribunal shall be comprised of sole arbitrator appointed by the Lender. The parties agree that the award of such sole arbitrator shall be final and binding upon the Parties, and that none of the Parties shall be entitled to commence or maintain any action in a court of law upon any matter in dispute arising from or in relation to this Agreement, except for the enforcement of an arbitral award granted pursuant to this Section.”

(Underlining added)

7(i). The issue is that whether on account of the aforesaid arbitration clause which states that arbitration proceedings shall take place at Delhi or at such place as may be decided by the lender as per

its own discretion and whether the courts at Delhi would have the territorial jurisdiction.

7(ii). This issue in question is answered by the recent judgment of the Hon'ble Supreme Court in the case of ***Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited & Others***, (2017) 7 SCC 678. The judgment in the case of ***Indus Mobile Distribution Private Limited (supra)*** has interpreted the ratio of the Constitution Bench Judgment of the Hon'ble Supreme Court in the case ***BALCO (Bharat Aluminium Co.) v. Kaiser Aluminium Technical Services Inc.*** (2012) 9 SCC 552. In the facts of the case of ***Indus Mobile Distribution Private Limited (supra)***, it was found that the parties had agreed as per the arbitration clause that the seat of the arbitration would be at Mumbai. The parties had also agreed that courts at Mumbai would have exclusive jurisdiction to decide any disputes between the parties. The respondent no.1 in the case before the Hon'ble Supreme Court in ***Indus Mobile Distribution Private Limited (supra)*** was engaged in manufacturing, marketing and distribution of mobile phones, tablets and their accessories, and this respondent no.1 had its registered office at Amritsar in Punjab. The

respondent no.1 was supplying the goods to the contracting party being the appellant at Chennai from New Delhi. As per the arbitration clause in the case of ***Indus Mobile Distribution Private Limited (supra)*** the arbitration was to be at Mumbai, and as already stated above, the exclusive jurisdiction was of the courts at Mumbai. The Hon'ble Supreme Court in the case of ***Indus Mobile Distribution Private Limited (supra)*** by referring to the ratio of the judgment in ***BALCO (supra)***, and the relevant arbitration clause which was in question in the facts in ***Indus Mobile Distribution Private Limited (supra)***, held that Mumbai was indeed the seat of the arbitration, and therefore only the courts at Mumbai would have jurisdiction with regard to the arbitration proceedings. It was also held by the Hon'ble Supreme Court in the case of ***Indus Mobile Distribution Private Limited (supra)*** that the very fact that exclusive jurisdiction was conferred on the courts at Mumbai would mean that parties had agreed that the seat of arbitration would be at Mumbai.

7(iii). In the case of ***Indus Mobile Distribution Private Limited (supra)***, the Hon'ble Supreme Court has elaborated, clarified and removed any confusion with respect to the difference between 'venue'

of the arbitration proceedings and 'seat' of the arbitration proceedings. It has been held that, merely because the Arbitrators may choose to hold the arbitration proceedings at a place, the same would not mean that that place would become the 'seat' and that the courts at that meeting place would have jurisdiction, because, a venue of arbitration proceedings does not confer jurisdiction of the courts at the place of the venue of the arbitration proceedings. In the case of **BALCO** (*supra*) and which is relied upon in the case of **Indus Mobile Distribution Private Limited** (*supra*) it has been clearly observed that the word 'place' used in Section 20 of the Act has been used interchangeably and place means either the meeting place of the Arbitrators i.e. the venue or the seat of the arbitration proceedings. A meeting 'place' or 'venue' would not confer jurisdiction on the court where meeting 'place' or 'venue' of the arbitration proceedings is located. It is further held in **Indus Mobile Distribution Private Limited** (*supra*) case that the 'seat', as differentiated from 'venue', of the arbitration proceedings would only be the place whose courts would have territorial jurisdiction and as to what is the 'seat' of the arbitration becomes clear if the parties confer jurisdiction on a specific

court, and in cases where parties had agreed to jurisdiction of a specific court, the 'seat' of the arbitration will be the place where the parties agree that jurisdiction of the court is.

7(iv). The relevant paras of the judgment in the case of ***Indus Mobile Distribution Private Limited (supra)*** are paras 8 to 13, 16 to 19 and these paras read as under:-

8. The relevant provisions of the Arbitration and Conciliation Act, 1996 are set out hereinbelow:

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

(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;

(2) **Scope.**—This Part shall apply where the place of arbitration is in India.

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) * * *

(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.”

9. The concept of juridical seat has been evolved by the courts in England and has now been firmly embedded in our jurisprudence. Thus, the Constitution Bench in *BALCO v. Kaiser Aluminium Technical Services Inc.* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] has adverted to “seat” in some detail. Para 96 is instructive and states as under: (SCC pp. 605-06)

“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.”

(emphasis in original)

10. Paras 98 to 100 have laid down the law as to “seat” thus: (*Bharat Aluminium case [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.

(emphasis in original)

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11. In an instructive passage, this Court stated that an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause as follows: (*Bharat Aluminium case [BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , SCC p. 621, para 123)

“123. Thus, it is clear that the regulation of *conduct* of arbitration and *challenge* to an award would have to be done by the courts of the country in which the arbitration is being conducted. Such a court is then the supervisory court possessed of the power to annul the award. This is in keeping with the scheme of the international instruments, such as the Geneva Convention and the New York Convention as well as the UNCITRAL Model Law. It also recognises the territorial principle which gives effect to the sovereign right of a country to regulate, through its national courts, an adjudicatory duty being performed in its own country. By way of a comparative example, we may reiterate the observations made by the Court of Appeal, England in *C v. D* [*C v. D*, 2008 Bus LR 843 : 2007 EWCA Civ 1282] wherein it is observed that: (Bus LR p. 851G, para 17)

‘17. It follows from this that a choice of seat for the arbitration must be a choice of forum for remedies seeking to attack the award.’

In the aforesaid case, the Court of Appeal had approved the observations made in *A v. B* [*A v. B*, (2007) 1 All ER (Comm) 591 : (2007) 1 Lloyd's Rep 237] wherein it is observed that:

‘... an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause. Any claim for a remedy ... as to the validity of an existing interim or final award is agreed to be made only in the courts of the place designated as the seat of arbitration.’”

(emphasis in original)

12. The Constitution Bench's statement of the law was further expanded in *Enercon (India) Ltd. v. Enercon GmbH* [*Enercon (India) Ltd. v. Enercon*

GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] . After referring to various English authorities in great detail, this Court held, following the Constitution Bench, as follows: (SCC p. 58, para 134)

“134. It is accepted by most of the experts in the law relating to international arbitration that in almost all the national laws, arbitrations are anchored to the *seat/place/situs* of arbitration. *Redfern and Hunter on International Arbitration* (5th Edn., Oxford University Press, Oxford/New York 2009), in Para 3.54 concludes that “the *seat* of the arbitration is thus intended to be its centre of gravity”. In *BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] (*BALCO v. Kaiser Aluminium Technical Services Inc.*) it is further noticed that this does not mean that all proceedings of the arbitration are to be held at the *seat* of arbitration. The arbitrators are at liberty to hold meetings at a place which is of convenience to all concerned. This may become necessary as arbitrators often come from different countries. Therefore, it may be convenient to hold all or some of the meetings of the arbitration in a location other than where the *seat* of arbitration is located. In *BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , the relevant passage from *Redfern and Hunter* has been quoted which is as under: (SCC p. 598, para 75)

‘75. ... “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 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 arbitration remains the place initially agreed by or on behalf of the parties.” [*Naviera case* [*Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru*, (1988) 1 Lloyd's Rep 116 (CA)] (*Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru*), Lloyd's Rep p. 121]’

These observations have also been noticed in *Union of India v. McDonnell Douglas Corpn.* [*Union of India v. McDonnell Douglas Corpn.*, (1993) 2 Lloyd's Rep 48] ”

(emphasis in original)

13. This Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration. (See para 138.)

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16. It may be mentioned, in passing, that the Arbitration and Conciliation Act, 1996 has been amended in 2015 pursuant to a detailed Law Commission Report. The Law Commission specifically adverted to the difference between “seat” and “venue” as follows:

“40. The Supreme Court in *BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]* decided that Parts I and II of the Act are mutually exclusive of each other. The intention of Parliament that the Act is territorial in nature and Sections 9 and 34 will apply only when the seat of arbitration is in India. The seat is the “centre of gravity” of arbitration, and even where two foreign parties arbitrate in India, Part I would apply and, by virtue of Section 2(7), the award would be a “domestic award”. The Supreme Court recognised the “seat” of arbitration to be the juridical seat; however, in line with international practice, it was observed that the arbitral hearings may take place at a location other than the seat of arbitration. The distinction between “seat” and “venue” was, therefore, recognised. In such a scenario, only if the seat is determined to be India, Part I would be applicable. If the seat was foreign, Part I would be inapplicable. Even if Part I was expressly included ‘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 [foreign] Procedural law/Curial law.’ The same cannot be used to confer jurisdiction on an Indian Court. However, the decision in *BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]* was expressly given prospective effect and applied to arbitration agreements executed after the date of the judgment.

41. While the decision in *BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]* is a

step in the right direction and would drastically reduce judicial intervention in foreign arbitrations, the Commission feels that there are still a few areas that are likely to be problematic.

(i) Where the assets of a party are located in India, and there is a likelihood that that party will dissipate its assets in the near future, the other party will lack an efficacious remedy if the seat of the arbitration is abroad. The latter party will have two possible remedies, but neither will be efficacious. First, the latter party can obtain an interim order from a foreign court or the Arbitral Tribunal itself and file a civil suit to enforce the right created by the interim order. The interim order would not be enforceable directly by filing an execution petition as it would not qualify as a “judgment” or “decree” for the purposes of Sections 13 and 44-A of the Code of Civil Procedure (which provide a mechanism for enforcing foreign judgments). Secondly, in the event that the former party does not adhere to the terms of the foreign order, the latter party can initiate proceedings for contempt in the foreign Court and enforce the judgment of the foreign Court under Sections 13 and 44-A of the Code of Civil Procedure. Neither of these remedies is likely to provide a practical remedy to the party seeking to enforce the interim relief obtained by it.

That being the case, it is a distinct possibility that a foreign party would obtain an arbitral award in its favour only to realise that the entity against which it has to enforce the award has been stripped of its assets and has been converted into a shell company.

(ii) While the decision in *BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] was made prospective to ensure that hotly negotiated bargains are not overturned overnight, it results in a situation where courts, despite knowing that the decision in *Bhatia International* [*Bhatia International v. Bulk Trading S.A.*, (2002) 4 SCC 105] is no longer good law, are forced to apply it whenever they are faced with a case arising from an arbitration agreement executed pre-*BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] .

42. The above issues have been addressed by way of proposed amendments to Sections 2(2), 2(2-A), 20, 28 and 31.”

17. In amendments to be made to the Act, the Law Commission recommended the following:

“Amendment of Section 20

12. In Section 20, delete the word “Place” and add the words “Seat and Venue” before the words “of arbitration”.

(i) In sub-section (1), after the words “agree on the” delete the word “place” and add words “seat and venue”.

(ii) In sub-section (3), after the words “meet at any” delete the word “place” and add word “venue”.

[Note.—The departure from the existing phrase “place” of arbitration is proposed to make the wording of the Act consistent with the international usage of the concept of a “seat” of arbitration, to denote the legal home of the arbitration. The amendment further legislatively distinguishes between the “[legal] seat” from a “[mere] venue” of arbitration.]

Amendment of Section 31

17. In Section 31

(i) In sub-section (4), after the words “its date and the” delete the word “place” and add the word “seat”.

18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the *BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]* judgment in no uncertain terms has referred to “place” as “juridical seat” for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word “place” is used, refers to “juridical seat”, whereas in Section 20(3), the word “place” is equivalent to “venue”. This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

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.

(Underlining added)

8. That the expressions 'seat' and 'place' as used in Section 20 of the Act are used interchangeably and the same becomes clear from paras 76, 93 and 98 of **BALCO** (*supra*) and these paras read as under:

"76. It must be pointed out that the law of the seat or place where the arbitration is held, is normally the law to govern that arbitration. The territorial link between the place of arbitration and the law governing that arbitration is well established in the international instruments, namely, the New York Convention of 1958 and the Uncitral Model Law of 1985. It is true that the terms "seat" and "place" are often used interchangeably. In Redfern and Hunter on International Arbitration [Blackaby, Partasides, Redfern and Hunter (Eds.), Redfern and Hunter on International Arbitration (5th Edn., Oxford University Press, Oxford/New York 2009).] (Para 3.51), the seat theory is defined thus: "The concept that an arbitration is governed by the law of the place in which it is held, which is the 'seat' (or 'forum' or locus arbitri) of the arbitration, is well established in both the theory and practice of international arbitration.

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93. We are, therefore, of the opinion that Section 2(7) does not alter the proposition that Part I applies only where the "seat" or "place" of the arbitration is in India.

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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, 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.

(Emphasis supplied)

9. It is therefore clear that there is a clear distinction between the 'seat' or a juridical seat and a meeting 'place' or 'venue' of the arbitration proceedings. There is a tendency to interchangeably use 'place' and 'venue', and the expression 'place' is actually even used to denote both the 'seat'/juridical seat and also the 'venue'. In law, however, it is the place where the seat of arbitration is, or where there is the juridical seat of the arbitration, it is the courts at such place which would have territorial jurisdiction, and the courts where there is only the meeting place of the Arbitrators which is not the 'seat' of arbitration i.e. solely the venue of the place of the arbitration proceedings merely would not confer jurisdiction on courts which are

not the courts of the 'seat' of arbitration. Incase parties have specifically conferred jurisdiction on a particular court, the 'seat' of arbitration becomes at that place where courts have exclusive jurisdiction.

10. In the facts of the present case, it is found that in the arbitration clause it is not provided that courts at Delhi would have jurisdiction or exclusive jurisdiction. It is also not provided in the arbitration clause that the 'seat' of arbitration will be Delhi. All that is stated in the relevant Clause 16.2 is that the arbitration proceedings shall take place at Delhi or such place as may be decided by the petitioner/lender. Use of the word 'place' in Clause 16.2 in the facts of the present case necessarily therefore will only have to be taken as a reference to the 'venue' only, more so because it is neither mentioned in this Clause 16.2 that the seat of arbitration proceedings will be at Delhi, nor is it mentioned that courts at Delhi would have jurisdiction or exclusive jurisdiction. Thus, the words 'arbitration proceedings shall take place' in the clause in question will necessarily have to be read as reference to mean only the 'venue' and not the 'seat' of arbitration.

11. I may note that the ratio of the judgment of the Hon'ble Supreme Court in the case of *Indus Mobile Distribution Private Limited (supra)* has been followed thereafter by the Hon'ble Supreme Court in the case of *Emkay Global Financial Services Ltd. v. Girdhar Sondhi, (2018) 9 SCC 49* and the Hon'ble Supreme Court has again reiterated in the case of *Emkay Global Financial Services Ltd. (supra)* that it is only at the seat of arbitration where the courts will have territorial jurisdiction and if the arbitration clause provides that courts at a particular place would have territorial jurisdiction, such courts would have territorial jurisdiction to decide the matters between the parties under the Act.

12. In view of the above facts, and applying the ratio in the cases of *BALCO (supra)* and *Indus Mobile Distribution Private Limited (supra)*, it has to be held that Delhi is only the 'venue' of the arbitration proceedings and not the 'seat' or the juridical seat of arbitration, and therefore, courts at Delhi would not have territorial jurisdiction.

13. Ld. counsel for the petitioner finally argued that the courts at Delhi would have territorial jurisdiction because Master

Credit Facility Agreement dated 15.09.2018 has been entered into at New Delhi, however, when asked to point out that where it is written in this Agreement that the said Agreement is executed at Delhi and more so because both the parties to this petition are situated at Mumbai, nothing whatsoever could be pointed out in the Agreement showing that the parties have executed the Agreement at Delhi. It is pertinent to note that merely because the stamp paper which is found to be independently put at the beginning of the Agreement has been purchased at Delhi would not mean that the Agreement has been executed at Delhi, once the Agreement itself does not show its execution at New Delhi. In fact para 44 of the petition, already reproduced above, does not invoke jurisdiction of this court on the ground that agreement between the parties is executed at Delhi, and thus further showing that the Master Credit Facility Agreement was not executed at Delhi.

14. In view of the aforesaid discussion, it is held that this Court has no territorial jurisdiction to entertain this petition under Section 9 of the Act. The petitioner is at liberty to take back this petition or file a fresh petition under Section 9 of the Act in the concerned court having territorial jurisdiction.

15. This petition is disposed of accordingly.

FEBRUARY 20, 2019
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VALMIKI J. MEHTA, J

