

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

Civil Revision No. 2236 of 2020(O&M)

Date of decision: 19<sup>th</sup> January, 2023

Indian Oil Corporation Limited (IOCL)

Petitioner

Versus

Himalya Gas Company and another

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Ashish Kapoor, Advocate for the petitioner.  
Mr. Vipul Dharmani, Advocate for respondent No. 1.

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**AVNEESH JHINGAN, J (Oral):**

1. This revision petition is filed aggrieved of order dated 3.7.2015 returning the application filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act').

2. The respondent was allotted LPG distributorship and the terms and conditions provided for dispute resolution through arbitration. The dispute between the parties was referred to the arbitrator and award dated 15.6.2010 was passed. The decree holder on 20.8.2010 filed an execution application before District Judge, Shimla. On 14.9.2010, the petitioner filed application under Section 34 of the Act at Chandigarh. Relying upon Section 42 of the Act the application was returned, to be presented before competent court. The contention that Chandigarh court had jurisdiction as arbitration proceedings were conducted at Chandigarh was rejected considering that execution petition prior to application under Section 34 of the Act was filed at Shimla.

3. The only question that beseech answer is as to whether the court at Chandigarh lacks jurisdiction to entertain the petition under Section 34 of the Act only on the ground that prior to it the execution application

was filed in the State of Himachal Pradesh?

4. The jurisdiction for entertaining the application under Section 34 of the Act has to be determined on the basis of designated seat of the arbitration. Reference in this regard is made to the decision of the Supreme Court in Indus Mobile Distribution Private Ltd. v. Datawind Innovations Private Ltd. and others, (2017) 7 SCC 678. In para No. 19, it was held that:

*“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.”*

The Supreme Court in BGS SGS Soma JV v. NHPC Ltd. (2020) 4 SCC 234 held:

*“59. Equally incorrect is the finding in Antrix Corporation Ltd. (supra) that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one Court exclusively. This is why the section begins with a non-obstante*

*clause, and then goes on to state “...where with respect to an arbitration agreement any application under this Part has been made in a Court...” It is obvious that the application made under this part to a Court must be a Court which has jurisdiction to decide such application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the Courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no “seat” is designated by agreement, or the so-called “seat” is only a convenient “venue”, then there may be several Courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the “seat” of arbitration, and before such “seat” may have been determined, on the facts of a particular case, by the Arbitral Tribunal under **Section 20(2)** of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a Court in which a part of the cause of action arises would then be the exclusive Court under **Section 42**, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.”*

In **Sundaram Finance Limited v. Abdul Samad and another**, 2018 AIR (SC) 965, the Supreme Court held as under:

*“We are, thus, unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the*

*country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the court, which would have jurisdiction over the arbitral proceedings.”*

5. The application u/s 34 of the Act was returned without considering as to whether there was a designated seat or it was a case where no seat was designated. The petition was returned by placing reliance upon the provisions of Section 42 of the Act on the ground that the execution application was filed at Shimla prior to the petition under Section 34 of the Act,

6. In view of the case law cited above, without commenting on the merits of the case, the impugned order is set aside and the matter is remitted back to the court concerned to decide the petition under Section 34 of the Act afresh including the issue of jurisdiction.

7. The parties are directed to appear before the court concerned on 15.2.2023.

8. The petition stands disposed of.

9. Since the main petition has been disposed of, the pending application, if any, is rendered infructuous.

**[AVNEESH JHINGAN]**  
**JUDGE**

**19<sup>th</sup> January, 2023**

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|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable         | : | Yes / No |