

## Which Court Can Entertain S.9 Applications, Clarifies Delhi HC

The Arbitration and Conciliation Act, 1996, provides that a Party may approach the Court for interim measures at any stage of the arbitral process. However, Section 9 does not prescribe the territorial jurisdiction of the Court empowered to grant such interim injunctions.

The question that arose in the present case of **NHPC Limited v. Hindustan Construction Co. Ltd. 2015 SCC Online Del 9804** was the regarding the territorial jurisdiction of the Court where the interim application should be filed.

The Appellant and Respondent were involved in an arbitration matter, in which the final award was being challenged in the Delhi High Court, when the Respondent filed for an injunction under Section 9 of the Act asking for one week's advance notice if the Appellant decided to invoke the bank guarantees given by the Respondent, during the pendency of the challenge proceedings. The setting aside application under Section 34 of the Arbitration Act and the application for interim injunction were both filed by the Appellant in the Delhi High Court on the grounds that the seat of arbitration was Delhi and the arbitration took place in Delhi. The injunction was granted by the Court but was subsequently challenged by the Appellant in appeal on both jurisdiction and merits. The present discussion will focus on the former.

The Appellant argued in appeal, that the Delhi High Court did not have jurisdiction to hear the matter as no part of the cause of action arose in Delhi. The agreement was signed in Faridabad, executed in West Bengal and the registered office of the parties were in Faridabad and Mumbai.

In upholding the jurisdiction of the Delhi High Court, the Court relied on **Bharat Aluminium Co. v. Kaiser Aluminium Technical Service**, Inc. 2012 9 SCC 552 (hereinafter referred to as “BALCO”) wherein it was held that: “*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.*” The Respondent argued that this decision would not apply as BALCO only applies prospectively to arbitration agreements entered into after 06.09.2012 and the arbitration agreement in this case was entered into before the judgement was rendered by the Hon’ble Supreme Court in BALCO. The Court however, disregarded this argument since the prospectively application of BALCO was only limited to the non-applicability of Part I of the Act to Part II thereof.

Further reliance was placed by the Court on the judgment of the Division bench of the Delhi High Court in **Ion Exchange (India) Ltd. vs Panasonic Electric Works Co. Ltd. (2014) 208 DLT 597**, wherein it was held that “*that the Courts at the seat or place of arbitration would have territorial jurisdiction to entertain an application under the said Act subject to the provisions of Section 42 thereof, irrespective of the fact that the cause of action arose elsewhere and / or the respondent resides elsewhere.*”

Thus, it has been re-iterated by the Delhi High Court that the Courts at the seat of arbitration have the requisite jurisdiction to entertain a Section 9 application under the Arbitration Act even if they have no nexus with dispute per se, as the seat of the arbitration, in essence, is the legal jurisdiction to which the arbitration is tied. Recognition and understanding of this vital philosophy will bring Indian arbitration policy a step closer to the international best practices.

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