
Indian Party by consent can choose a Foreign Court for resolving the dispute with a foreign party

S Ravi Shankar¹

Choosing a neutral seat of Arbitration, is an established and well recognized practice in the field of International arbitration. But normally parties cannot vest jurisdiction to a court, by consent when the said court does not have a jurisdiction by law. The jurisdiction of a court is generally decided by the cause of action which give rise to the case between the parties. In a recent Judgment of Delhi High Court has upheld a dispute resolution clause conferring jurisdiction on the commercial Court in London, in the case of Bharat Heavy Electricals Limited (India) Vs Electricity Generation Incorporation (Turkey).

Facts of the Case: A State-owned Company incorporated under the laws of Turkey, Electricity Generation Incorporation (EGI), entered into a contract for the rehabilitation of a hydraulic power Plant in Turkey, with Bharat Heavy Electricals Limited (BHEL). The Jurisdiction for resolving disputes arising out of the contract was the Courts at Ankara, Turkey. BHEL procured a counter Bank Guarantee from Bank of Baroda in favour of AK Bank TAS, a Private Bank in Turkey. Based on the said counter Bank guarantee, AK Bank issued a Performance Bank Guarantee to EGI. The counter Bank Guarantee was Governed by English Law and the jurisdiction was conferred upon the Commercial Court at London. EGI terminated the contract and invoked the Performance Bank Guarantee. Hence BHEL filed a suit in the High Court of Delhi seeking various declaratory relives and permanent injunction against invocation of the Bank Guarantee.

Contentions of the Parties: BHEL contended that a suit against Bank of Baroda will not be possible since both are from India. Moreover, the counter Guarantee was partially executed in India. In addition to that the dispute resolution clause did not have the word “ONLY” and hence courts in India also have the jurisdiction.

¹ The author is an International Arbitration lawyer and Senior Partner of Law Senate Law firm having offices in New Delhi and Mumbai

But EGI contended that the dispute resolution clause is an exclusive clause, conferring jurisdiction to the Commercial Courts in London, the authority to deal with any of the disputes arising out of or relating to the counter guarantee in question.

Decision of the Court: The court upheld the dispute resolution clause and dismissed the suit on the following points:

- a. The issuance of counter guarantee by Bank of Baroda in Delhi does not confer jurisdiction to the Delhi Court, since parties have exclusively granted the jurisdiction to the Commercial courts in London. Hence Commercial Court in London alone has the jurisdiction.
- b. The absence of the word “ONLY” in the dispute resolution clause does not affect the exclusivity of the mechanism provided in the dispute resolution clause.
- c. Paucity of time cannot grant jurisdiction to Delhi Court, since the parties have consciously chosen a neutral mechanism to resolve their disputes. The Court has powers to extend the time and allow the parties to seek the remedy in the appropriate forum.

Comments of the Author: Public Sector undertakings should avoid taking such conflicting stands and spoil the image of India among the foreign investors. Mostly Indian parties do not give any respect to the dispute resolution clauses while signing the contracts, later when disputes arise they try to drag the matters to irrelevant forums and mostly on wrong legal advice. This Judgment will give confidence to Indian Parties, to have Foreign Court jurisdiction in their International Contracts.