

Venue of Arbitration

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Delhi HC: Venue of arbitration does not attach territorial jurisdiction to Courts for Sec. 9 application

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 *PCP International Limited v. LANCO Infratech Limited* 2015 SCC OnLine Del 10428 was regarding the territorial jurisdiction of the Court where the interim application under Section 9 should be filed before arbitration is commenced.

Facts of the case

Disputes arose between the parties in relation to a contract dated 03.11.2010 for the erection of Boiler Units at the Lanco Vidharbha Thermal Power Project in Maharashtra. The contract provided that the courts at New Delhi would have exclusive jurisdiction to deal with any issues under the contract (paras 55.6.0 and 55.7.0 of the general conditions of contract). Furthermore, the arbitration clause contained in the contract prescribed the venue of arbitration as Delhi. On this basis the Petitioner filed the application for interim measure in the Delhi High Court.

Decision of the Court

The court examined whether it had jurisdiction and held that:

1. With regard to the Petitioner's argument that the Delhi High Court had jurisdiction because the contract contained an exclusive jurisdiction clause, the argument was flawed. Parties by consent cannot confer jurisdiction on a court which does not have any. This has been clearly established by the Supreme Court in *Patel Roadways Limited, Bombay v. Prasad Trading Company* (1991) 4 SCC 270.
2. The Petitioner 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,*" to argue that the Delhi High Court had jurisdiction to entertain the petition since the venue of arbitration is Delhi. The Court rejected this argument since BALCO gives jurisdiction to the seat and not the venue, despite the fact that it uses the words "place".

3. The Court also examined whether it had jurisdiction under the Code of Civil Procedure, 1908, as elaborated in *A.B.C Laminart Pvt. Ltd. v. A.P Agencies, Salem*, AIR 1989 SC 1239, namely:

- where the contract is executed,
- where the contract is to be performed,
- where the payment under the contract has to be made, and
- where the defendant/respondent resides.

However, the court did not have jurisdiction under any of these provisions since, the Petitioner's office is at Chandigarh and respondent's office is at Gurgaon; the contract was performed in Maharashtra; the Work Order was issued at Chandigarh and no cause of action, either wholly or in part, arose in New Delhi.

Analysis

The judgement is a well-reasoned decision which clearly applies the law. It was interesting to note that the judgement did not examine what the seat of the arbitration was, it merely held that it lacked jurisdiction since Delhi was not the seat.

The judgement does, however, raise the question of what would be the seat of arbitration in a domestic matter if the venue is specified and the seat is not. The arbitration agreement was entered into before BALCO and therefore, the difference between seat and venue may not have been clear to parties at that point. Could it argued that the venue, in the present case, in fact meant seat especially since the contract contained an exclusive jurisdiction clause? In any case, this is an example of a poorly drafted arbitration agreement and it is better that the court did not examine where the seat would be, leaving that to the discretion of the arbitral Tribunal.

It is pertinent to mention herein that the Petitioner has filed a Review Petition dated 6th August 2015 based on BALCO's use of the work "place" in the judgement. However, the law is pretty clear on this issue especially in light of the Supreme Court's judgement in ***Enercon (India) Limited v. Enercon GMBH (2014) 5 SCC 1***.