



---

## **Seat- Venue of Arbitration & Place of subject matter**

### **S Ravi Shankar<sup>1</sup>**

In a recent judgement dated 11.07.2018, Delhi High Court in the matter of **HII Life care limited Versus Happy Lectricals (2018 SCC Online DL 9814)** held that in case of not specifying the seat of arbitration in the arbitration agreement by parties and also seat is not determined by the arbitrator in its award, the court in which the application was filed first, either the place where Arbitration was held or the place where cause of action arose/ subject matter is situated, shall be the court having jurisdiction to entertain an application under section 34 of Arbitration and Conciliation Act, 1996 to challenge the arbitration award.

It is important to select and specify a seat of arbitration in an arbitration clause so that parties can be clear about the courts having supervisory jurisdiction over the arbitration proceedings. In case of failure of the parties to choose and specify a seat of arbitration in the arbitration clause, it is the duty of the arbitrator to determine the seat of arbitration while pronouncing the award or before. In case, if the arbitrator also fails to determine the seat of arbitration, the parties will have no clarity about the court having jurisdiction to entertain an application under section 34 of the act, challenging the arbitration award. In the case of **HII Life care limited Versus Happy Lectricals (2018 SCC Online DL 9814)** the arbitrator failed to determine the seat of arbitration, the parties filed applications under section 34 in Patna and Delhi and hence Delhi High Court had to decide the maintainability of the application filed before Delhi High Court.

### **Contentions of the Parties**

The Petitioner contented that most of the arbitration hearings happened in Delhi and hence even though the arbitrator did not determine the seat of arbitration, the courts in Delhi alone will have jurisdiction to entertain applications under section 34. The Respondent submitted that the contract was signed by the parties in Patna and the performance of the contract took place in Patna even though LOA dated 15.01.2010 was served on the Respondent at its office in Delhi. The Respondent for the above said reasons contented that only the courts in Patna will have the jurisdiction to entertain an application under section 34. It is important to note that the Petition in the Patna High Court was filed on 02.01.2018 and the Petition in the Delhi High Court was filed on 27.01.2018.

### **Decision of the Court**

In **Bharat Aluminium Co Versus Kaiser Aluminium Technical Services Inc., (2012 9 SCC 552)**, the constitution bench of the Supreme Court held that in an arbitration matter legislature has given jurisdiction to two courts i.e., the court which would have jurisdiction where the cause of action (subject matter of the suit) is located and the courts where arbitration takes place. Delhi High Court held that in view of the above judgment there can be two courts having

---

<sup>1</sup> The author is Arbitration lawyer and Senior partner of Law Senate law firm

jurisdiction i.e., Patna & Delhi. But since Delhi cannot be said to be the determined seat of arbitration, the courts in Patna have jurisdiction being the place of subject matter. More over, in view of section 42 of the act that provides that the court in which an application relating to arbitration was first moved shall have the jurisdiction when two courts have jurisdiction. Here in the present case, the application was first filed in Patna and Patna is the place where the subject matter of the suit is situated and hence Patna Court alone has the jurisdiction. Hence, the High Court of Delhi sustained the objection of the Respondent and held that Patna alone will have the jurisdiction.

