

Two Supervisory Jurisdictions Available to Parties to an Arbitration – Delhi High Court

www.lawsenate.com

B3/73, Safdarjung Enclave, Lower Ground Floor, New Delhi - 110029 India.

+91-11-26102873, +91-11-26104773

contactus@lawsenate.com, info@lawsenate.com

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Delhi High Court decides the Courts having jurisdiction over the arbitral proceedings including granting of interim orders under S.9 and set aside proceedings under S.34 of the Arbitration and Conciliation Act, 1996. It was held that two Courts will have jurisdiction over an arbitration proceedings which are the court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e., arbitration is located. But once the first petition is filed in a court, in view of S.42 of the Act, there after the same court will have jurisdiction for all the matters, while disposing the case reported as 2015 SCC Online Delhi 9804 by a well-reasoned judgment dated 28th May 2015 in ***NHPC Limited Vs Hindustan Construction Company Limited.***

Brief Facts and Contentions of the Case:

The Learned Single Judge of the High Court of Delhi while disposing of an application under S.34 of the Act, seeking to set aside the arbitral award held that the seat of Arbitration has the jurisdiction to entertain applications relating to an arbitration and also S.42 will not apply in this case because the application filed in the Court of Faridabad is for a distinctively separate issue. Hence the appellant NHPCCL file the appeal before the Division bench. The basis for the main contentions in the present appeal are as follows:

The contention of the appellants in this case was that the agreement between the parties were signed in Faridabad and the registered office of the Respondent is at Faridabad and project was executed in Kolkata and

no part of the cause of action arose in Delhi. Hence it was contended that the High Court of Delhi does not have the jurisdiction to deal with either an application under S.9 and S.34 of the said Act, even though the seat of arbitration is New Delhi as per the contract.

Moreover S.42 of the Arbitration and Conciliation Act,1996 specifically provides that notwithstanding anything contained elsewhere in this part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this part has been made in a court, that court alone shall have the jurisdiction over the arbitration proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in the same court and in no other court. In this case NHPCL filed an application under S.14(2) of the said Act in the court of Civil Judge, Faridabad. The 2nd contention was, even though the application under S.14(2) was dismissed, in view of S.42 all other applications have to be filed in Faridabad Court only.

Decision of the Division Bench of the High Court:

The Division bench of the High Court relying on the Judgment of the Supreme Court of India in [BALCO case \(Bharat Aluminium Co Vs Kaiser Aluminium and Technical services Inc. \(2012\)9 SCC 552](#) and held that as per the Arbitration and conciliation Act, 1996 two Courts will have jurisdiction over an arbitration proceedings which are the court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e., arbitration is located. But once the first petition is filed in a court, in view

of S.42 of the Act, there after the same court will have jurisdiction for all the matters.

The Court also relied on the Judgment of the Supreme Court of India in **Sundaram Finance Limited Vs NEPC India Ltd.**, to differentiate the judgements under the arbitration Act, 1940 from the Arbitration and Conciliation Act, 1996.

Hence the Court held among the above said two jurisdictions available to the parties, where or in which court the first proceeding with regard to that arbitral proceeding was initiated shall determine the Courts having jurisdiction over the matter.

Author: S. Ravi Shankar, *International and Domestic Arbitration lawyer, Advocate on Record Supreme Court of India and Senior Partner – Law Senate law firm, B3/73, Safdarjung Enclave, New Delhi -1100029, India, Mob : +919810213164 Email: ravi@lawsenate.com*

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