Venue of International Arbitration can be the Seat Also – Supreme Court of India

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It is well settled in law that if parties choose a seat in an international Arbitration clause it will amount to choosing the procedural law applicable to the arbitration proceedings. In the same way, if the procedural law is specified in the Arbitration clause then the country to which the procedural law belongs to will be the seat of Arbitration. When parties specified a place or a country as the venue of Arbitration and expressly state a procedural law, the seat will be the country to which the procedural law belongs to and the place mentioned will be just the venue of arbitration and will not get the status of juridical seat of Arbitration. Venue is a place chosen by the parties for the convenience of having the arbitration. But seat is place which comes with procedural law as well as supervising courts. For example, if seat is Singapore and London is the venue, the supervising courts will be Singapore court and the procedural will be International Arbitration Act of Singapore. There can be many venues in an arbitration but there can be only one seat for an arbitration.

In a recent judgment (Roger Shahousa Vs Mukesh Sharma & others 2017 SCC Online SC 697), which was pronounced by the Supreme Court of India on 4th July 2017, dealt with a different situation in which the arbitration clause specified the venue of arbitration as London and specified "that agreement shall be governed and construed in accordance with the laws of India". The Courts in UK interpreted the venue as the seat, based on the intention of the parties. Parties participated the arbitration in London, which was administered under ICC International Arbitration Rules. The party which was aggrieved by the final Arbitration award, challenged the arbitration award in India, under S.34 of the Arbitration and Conciliation Act,1996, the arbitration law of India. The High Court accepted the challenge stating that the Arbitration is not a foreign seated arbitration and hence Part-I of the said Act will be applicable and hence an application under S.34 is maintainable.

Hence the aggrieved party took the matter to Supreme Court of India by way of a Special Leave petition. The appellant argued that the laws chosen by the parties are laws of India, which includes Procedural law of India and hence Procedural law is Arbitration and Conciliation Act,1996. Hence it was further contended that when Procedural law is Indian law, as decided in Enercon case, the seat can be Indian seat only and hence application under S.34 of the Act is sustainable. But the other side contended that the issue was already decided in UK courts and intention of the parties was to have the seat in London and not in India. The Supreme Court of India accepted the view of the UK courts relating to the seat and held that the seat is not an Indian seat, hence courts in India do not have jurisdiction to entertain the application under S.34 and set aside the Judgment of the High Court.

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