

Dispute Resolution Hotline

October 01, 2015

SUPERVISORY AND TERRITORIAL JURISDICTION IN DOMESTIC ARBITRATIONS IN INDIA

This article was published on Kluwer Arbitration Blog dated September 24, 2015. The same can be accessed from the [link](#).

The Delhi High Court, in the case of *PCP International Limited ("Petitioner") v. Lanco Infratech Limited ("Respondent")*, OMP (I) No. 350/2015, recently had occasion to decide which Indian court would have territorial jurisdiction in a domestic arbitration. The court, distinguishing the *venue* of arbitration from the *seat*, held that an arbitration being conducted at a particular specified *venue* (*where the seat was not specified*), does not attach territorial jurisdiction of the courts of that venue in a domestic arbitration. The judgment further clarifies that the jurisdiction of courts in a domestic arbitration would be determined in accordance with the principles contained in the Code of Civil Procedure, 1908, i.e. (i) where the contract is executed; (ii) where the contract is to be performed; (iii) where the payment under the contract has to be made; or (iv) where the defendant/respondent resides.

Petitioner was seeking interim relief under the provisions of the Arbitration and Conciliation Act, 1996 ("Act") with respect to a contract entered into by the parties with respect to which no cause of action, either wholly or in part, arose in New Delhi. Furthermore, the Respondent was not a resident of New Delhi since their offices were in Gurgaon, Haryana and Hyderabad, Telangana. The Petitioner had filed for interim relief before the Delhi High Court as (a) the contract contained an exclusive jurisdiction clause conferring jurisdiction to the courts in New Delhi; and (b) the *venue* of the arbitration was in New Delhi.

Addressing the first issue, the Delhi High Court, citing the decision of the Supreme Court in *A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem*, AIR 1989 SC 1239, held that parties by consent cannot confer jurisdiction on a court which does not have jurisdiction. The choice of parties with respect to conferring exclusive jurisdiction on a particular court is limited to the courts that hold concurrent jurisdiction in accordance with the principles contained in Section 20 of the Code of Civil Procedure, 1908 ("CPC"). Addressing the second issue, the court held that it would be misconceived to argue that the Delhi High Court has territorial jurisdiction merely because the *venue* of arbitration is New Delhi and no *seat* of arbitration has been clearly identified in the contract. Elaborating upon the previous decisions of the Supreme Court of India ("SC") (2012 (9) SCC 552; (2014) 5 SCC 1) discussing the distinction between the *seat* and *venue* of arbitration, it was clarified that the former refers to the legal localization of the arbitration whereas the latter refers to the appropriate or convenient geographical locality for hearings of the arbitration. Stating thus, the Delhi High Court dismissed the petition for want of jurisdiction.

The pertinent question arising from this decision is which court would have preferential jurisdiction as the court of the seat of arbitration in domestic arbitrations when there is no seat of arbitration specified in the contract. The present decision of the Delhi High Court clearly distinguishes the seat of the arbitration from the venue of an arbitration and states that in the absence of the former being clearly defined, the venue will have no impact on the determination of jurisdiction. In fact, the provisions of the CPC conferring jurisdiction based on where the cause of action takes place would immediately come into effect.

However, Respondent filed a Review Petition dated 6th August 2015 based on the decision of the SC in *Bharat Aluminium v. Kaiser Aluminium*, 2012 (9) SCC 552, where the court in paragraph 96 stated that concurrent jurisdiction vests in the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. In other words, even the venue of arbitration confers territorial jurisdiction. The SC in *Balco*, interpreting Section 20 of the Act which discusses the "place of arbitration" vis a vis Section 2(1)(e) which defines "Court" for the purposes of the Act, stated that

"In our view, 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."

The review petition has therefore been admitted on grounds of semantics. The question that the Delhi High Court in Review, would be seeking to answer, therefore, would be whether the SC in saying that jurisdiction has been given to the court where the arbitration takes place was referring to the legal or actual localization of the arbitration.

The confusion fundamentally arises due to the use of the word "place" in reference to both seat and venue of arbitration in the Act. Although the review petition has been admitted, since the law in regards the distinction of seat from venue has been previously clarified in cases such as *Enercon v Enercon*, Civ Appeal 2087 of 2014, it would not be misplaced to expect the court to restrict supervisory jurisdiction to the courts of the seat of arbitration.

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