



SUPREME COURT SETTLES SEAT & VENUE OF ARBITRATION

The regular understanding of the words venue and seat in arbitration is that the venue does not have a juridical relevance, venue of arbitration can be changed as per the convenience of parties and the seat of arbitration determines various aspects of procedure including supervising courts, procedural law etc., But in some clauses, the word seat is not mentioned and venue is only mentioned. In some cases, the intention of the parties was to specify a “seat” but because of the ignorance they use “venue” in the arbitration clause and the objective of the present article is to deal with such issues. The Supreme Court of India in a recent judgment in the case of BGS SGS Soma JV case¹ has held that “Venue of arbitration” should be interpreted as seat of arbitration in cases where the intention of the parties indicates the interest of parties to have their arbitration in a place, even though they used the word “venue” in the arbitration clause. This judgment is very important since it has held that the Judgment of Supreme Court in the case of Hardy exploration² is not a good law since it has not followed Shashoua principle³ of English Courts, which was followed by the Supreme Court of India in the larger bench (five judges) of Supreme Court of India in BALCO case⁴, and the judgment in Enercon GmbH case⁵ etc., The other importance of the said Judgment is about Para 96 of the above said BALCO Judgment. The Court held that the findings given by the Supreme Court in Para 96 of the BALCO Judgment speaking about concurrent Jurisdiction of Courts are and declared that the said paragraph is conflicting with the other paragraphs of the Judgment. Hence, the Court Concluded that the seat alone decides the jurisdiction of supervising Courts.

After BALCO in various Judgments Supreme Court of India took a consistent view that once seat of Arbitration is Chosen, it amounts to an exclusive Jurisdiction clause, insofar as the courts at that seat are concerned. In Enercon case (Supra) the Supreme Court approved the dictum in Roger Shashoua (Supra) as follows:

“The basis of this court’s grant of an anti-suit injunction of the kind sought depended upon the seat of the arbitration. An agreement as to the seat of an arbitration brought in the law of that country as the crucial law and was analogous to an exclusive jurisdiction clause. Not only was there agreement to the crucial law of the seat, but also courts of the seat having supervisory jurisdiction over arbitration, so that by agreeing to the seat, the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of arbitration.”

The English Courts also examined the concept of the “juridical seat” of the arbitration proceedings, and have laid down several important tests in order to determine whether the “seat” of the arbitration proceedings has, in fact, been indicated in the agreement between the parties. The English Court in Shashoua case (supra) found that whenever there is an express designation of a “venue” and no designation of any alternative place as the seat combined with a supranational body of rules governing

¹ BGS SGS Soma JV Vs NHPC Limited (2019) SCC Online SC 1585

² Union of India Vs Hardy exploration and Production (India) Inc (2018) SCC Online SC 1640

³ Shashoua Vs Sharma (2009)EWHC 957 (Comm)

⁴ BALCO Vs Kaiser Aluminium Technical Service Inc, (2012)9 SCC 552

⁵ Enercon (India) Limited Vs Enercon GmbH (2014) 5 SCC1

the arbitration and no other significant contrary indica, the inexorable conclusion is that the seated venue is actually the juridical seat of the arbitration proceeding.

In various cases, including Harmony innovation⁶, Bhramani River Pillets case⁷, Indus Mobile Distribution case⁸ Supreme Court of India has been following a consistent view that even in contracts where the venue of arbitration is only provided, it amounts to exclusion of all other courts from having the supervisory jurisdiction and hence the said venue is the seat as well. The above proposition of excluding jurisdiction of other courts is well settled in various Judgments of Supreme Court of India including Swastik Gases Private Limited case⁹, B.E.Simoese Von Staraburg¹⁰ Niedenthal Vs Chhattisgarh Investment Limited (2015) 12 SCC 225 etc., Hence, it can be understood that by specifying a seat in an arbitration clause, parties can exclude the jurisdiction other courts.

In the case of Roger Shashoua¹¹ after taking into consideration of Shashoua principle and after rejecting the contention that the said principle was not endorsed by BALCO, it said but still after all the legal principles, the arbitration clause and its recitals have to be examined for the determination of intention of the parties. Hence it can be understood that even though the words “venue” & “seat” different meanings in normal situations, in the absence of a seated being expressly stated in the arbitration clause, the word “venue” can be treated as “seat” if the recitals of the arbitration clause also the intention of parties on that point.

After taking into all these points and recital of the arbitration agreement into consideration, Supreme Court in the present held that the recitals of the arbitration agreement even though provides only “venue” it should be taken as seat since from the recitals of the clause, it is clear that the parties wanted to keep the seat in New Delhi. Hence, the court finally came to the conclusion that once the seat of arbitration has been chosen by the parties in a contract, the part cause of action arising in some other place does not have any impact on the seat or the corresponding supervising courts having jurisdiction over the seat. Hence, the Supreme Court of India has effectively settled the law relating to seat of arbitration and venue.

⁶ Harmony Innovation and Shipping Ltd Vs Gupta Coal India Ltd., (2015) 9 SCC172

⁷ Brahmani River Pellets Ltd., Vs Kamachi Industries Ltd (2019) SCC Online SC929

⁸ Indus Mobile Distribution Private Limited Vs Datawind Innovations Private Limited (2017) 7 SCC 678.

⁹ Swastik Gases Private Limited Vs Indian Oil Corporation Limited (2013) 12 SCC 225

¹⁰ .E.Simoese Von Staraburg Niedenthal Vs Chhattisgarh Investment Limited (2015) 12 SCC 225

¹¹ Roger Shashoua Vs Mukesh Sharma (2017) 14 SCC 722