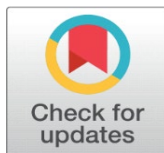
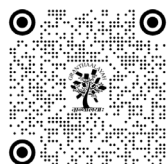


SEAT AND VENUE AN ENDLESS CONTROVERSY

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ABSTRACT

Alternative dispute resolution (ADR) mechanism gives deductively created procedures to Indian legal executive which helps in decreasing the weight on the courts. ADR offers to determine all kind of issues including common, business and so on, where individuals are not having the option to begin any kind of discussion and arrive at the settlement. One of the significant part in adr is arbitration both the national and international. In domestic arbitration the both the parties are only from India and Indian law is applied according to part I of the 1996act whereas in international commercial (ICA) refers to arbitration emerging out of questions between parties that are occupants or bodies consolidated in a country other than India. In such cases, the likelihood of disputes increments when parties are of various nations, making the seat versus venue question a subject of conversation. At the point when parties select the seat, it adopts the laws and regulation of the seated seat over the arbitration process.

Keywords: ADR, International Commercial Arbitration, Seat, Venue, Place, change of seat, cause of action, jurisdiction, Arbitration Clause etc.

1. INTRODUCTION

Understanding the contrast between the term venue and seat as concurred under the agreement between parties is significant. The difference among venue and situate might be perused as that the seat of mediation decides the court having locale over the case of an award, while the venue is the actual place where the discretion hearings or thoughts are held.

In this paper we attempted to stand out for readers on how the seat of arbitration is essentially different from venue (sittings) of arbitration, in like manner, whether both can be used interchangeably or not.

2. OBJECTIVES

The first objective of this paper is to research and develop better understanding relating to seat and venue in arbitration.

The second objective of the research paper is to find whether jurisdiction can be decided on the basis of cause of action in arbitration.

The third objective of the research paper is to find whether the phrases seat and venue can be used interchangeably against one and another.

3. SCOPE AND METHODOLOGY

This study adopts a doctrinal approach to investigate the role and importance of seat and venue in domestic as well as international arbitration and last the essential things that should be considered before drafting arbitration agreement.

4. LITERATURE REVIEW

A comprehensive review of existing literature on Arbitration, the legal consequence of selecting the seat and venue in the arbitration process, the importance of seat and venue, the difference between seat and venue, the scope of seat and venue, courts view regarding seat and venue. The review will encompass academic articles, government reports, policy documents, expert committee views and legal analyses to provide a comprehensive understanding of the subject matter.

5. DISCUSSION AND FINDINGS

5.1 THE LEGAL CONSEQUENCE OF SEAT IN ARBITRATION

The assurance of the seat of arbitration is of foremost significant as it directs and holds the lawful structure overseeing the arbitration interaction. The decision of seat influences different perspectives, for example, the procedural guidelines material to the arbitration, the supervisory jurisdiction of legislative courts and the enforceability of arbitral awards. In global arbitration, the seat frequently accepts importance in deciding the procedural regulation administering the arbitration, which might contrast from the meaningful regulation overseeing the fundamental question.

5.2 THE LEGAL CONSEQUENCE VENUE IN ARBITRATION

While the venue of arbitration means the actual area of hearings, its legitimate importance is frequently overshadowed by the seat. Nonetheless, the venue assumes a urgent part in working with the down to earth direct of arbitration procedures, including the comfort of parties and witnesses, openness and cost-viability. In addition, the venue might impact procedural angles like the language of procedures and the accessibility of hearing offices.

5.3 SIGNIFICANT FOCUSES TO BE CONSIDERED WHILE DRAFTING ARBITRATION CLAUSE

- The Seat of Discretion it is of essential significance, for the courts of the Seat have the administrative jurisdiction over the arbitral cycle.
- Choice of seat of discretion, inferred choosing the law appropriate on arbitration for example arrangement of judge, procedural process, grants and so forth.
- It isn't required that the seat of arbitration and venue of mediation ought to be same, the seat and venue might be different, seat selected will remain uninfluenced from venue procedural process.
- Contract will unambiguously characterize the structure of the arbitral court, time for arrangement and the language of the procedures.
- Parties should settle on regulation administering the arbitration understanding and furthermore the procedural guidelines if any for leading discretion which, in addition to the intervention law of the seat of the arbitration, will oversee the arbitration methodology;
- In the occasion, assuming the seat of arbitration and venue are different, the agreement ought to obviously give that the seat of arbitration would be the administering law and a similar will stay impenetrable regardless of whether the hearings occur at different spots/areas.
- Parties ought to determine the language of the arbitration, especially assuming the parties and their separate witnesses communicate in various languages.

5.4 ROLE OF ARBITRATION AGREEMENT IN INTERNATIONAL COMMERCIAL ARBITRATION

Three types of laws govern arbitration proceedings: (i) the law of arbitration agreement, which governs the obligation to submit disputes to arbitration; (ii) the proper law of contract, which governs the substance of the dispute; and (iii) Lex Arbitri, also known as the curial law, which is the procedural law governing the conduct of arbitration.

According to the Arbitration and Conciliation Act, 1996 (the Act), Section 2(1)(f) defines international commercial arbitration (ICA) as a situation in which at least one of the parties is a citizen or long-term resident of a foreign nation. Any arbitration that is not ICA is regarded as taking place domestically. All three of the aforementioned categories are governed by Indian law of arbitrations.

The SC recently given a new sub category in PASL Wind Solutions (P) Ltd. v. GE Power Conversion India (P) Ltd., the apex court allowed the two Indian parties to choose a foreign seat of arbitration. Such type awards are considered as foreign awards enforceable under Section 48 of the Act. (these awards are foreign as Indian law not applies, but not international, as both the parties are of India only) As mentioned above, the seat establishes the lex arbitri, which grants the courts there exclusive jurisdiction. However, in ICA, it becomes evident that the parties chose to have a neutral seat—that is, a location where no cause of action arose in order to allay any concerns about the arbitrator's or judges' impartiality.

5.5 ROLE OF SEAT IN ICA

The English Courts in *Roger Shashoua v. Mukesh Sharma* 2009, formulated a test to decide the seat. By and large alluded to the Shashoua test, it gives that any place there is an express assignment of a "venue", and no assignment of any elective spot as the "seat", and no other significant contrary indicia (opposite view shown from agreement), the unyielding end is that the venue is the juridical seat of the arbitral procedure.

From that point, the High Court in *BALCO v. Kaiser Aluminum Specialized Administrations Inc.* 2012 depended on Shashoua test. seat decides the curial regulation and the Court which would practice administrative purview over the arbitral procedures. oppositely, "venue" just addresses the topographical spot where arbitration procedures are led. At the point when an agreement explicitly assigns a "venue" and doesn't refer to a "seat", then, at that point, without any a critical opposite indicia, the "venue" would be viewed as the actual "seat" of intervention. Further, both the court concurrent jurisdiction where seat is there and where cause of action starts.

In *Enercon (India) Ltd. v. Enercon Gmb* 2014, the intervention proviso referenced London as the venue of arbitration. Nonetheless, every one of the three regulations pertinent to the discretion procedures were expressed to be Indian regulations. This inferred that the seat of intervention should be India. The mumbai High Court held that both Indian and English courts would have simultaneous locale. Nonetheless, the SC Court set aside the judgment of the HC and held that main Indian courts will have purview over the arbitration. An agreement concerning the seat is similar to a selective jurisdiction clause

In *reliance industries Ltd. v. UOI* 2014 albeit the understanding explicitly given that London would be the seat of mediation, the Delhi High Court engaged section 34 application on the ground that the appropriate law of agreement was law of India. The SC, while saving the setting aside, repeated that seat is similar to a select locale proviso. When the gatherings had deliberately concurred that the juridical seat of discretion would be London and that the understanding would be represented by the laws of Britain, it was presently not open to them to contend that Part I of the act would likewise be applicable. (rules of India, yet seat is specified, then seat follow the rules)

5.6 ROLE OF SEAT IN DOMESTIC ARBITRATIONS

The idea of "seat" and "venue" was imported to domestic arbitration by a two-Judge Seat of the High Court in *Indus mobile case* 2017. For this situation, the enlisted office of the respondent was in Amritsar and products were supplied from Delhi to Chennai. Notwithstanding, the arbitration clause that the arbitration will be led at Mumbai.(Mumbai locale, area 9 additionally in Mumbai court), so mumbai courts have jurisdiction. This further changed in case explained On account of *Devyani Int. Ltd. v. Siddhivinayak builders*, the Hon'ble Delhi High Court experienced a legitimate issue wherein statement clause 11 of the agreement indicated the seat of arbitration as Delhi. In any case, statement clause 12

of a similar understanding presented exclusive jurisdiction upon the courts at Mumbai to engage questions emerging out of the Understanding.

The High Court held that when the seat is assigned, it is similar to a select exclusive provision. Thusly, the courts at Delhi would have exclusive jurisdiction over arbitration between the parties.

This was again emphasized and repeated in *Brahmani Stream Pellets Ltd. v. Kamachi Ltd.* 2020, wherein, the venue of arbitration was Bhubaneswar and cause of action emerged in Bhubaneswar and Chennai both. Madras High Court maintained its locale on the ground that simple assignment of "seat" by parties wouldn't oust the purview of different courts. Further, without even a trace of express condition barring purview of different courts, both Madras and Orissa High Court would have jurisdiction. Nonetheless, the SC relied on its earlier finding of *Indus mobile case* 2017 and held that since parties consented to having Bhubaneswar as the venue of the discretion, the intension of the parties was to bar any remaining courts except Bhubaneswar, so Bhubaneswar is the seat of arbitration.

This position was repeated in *Hindustan Development Co. Ltd. v. NHPC Ltd.* 2020, wherein the seat of arbitration according to the agreement was New Delhi however the agreement was executed in Faridabad and part cause of action emerged there. Further, the primary application relating to the arbitration procedures was filed at Faridabad. The issue was whether section 42 would be drawn in and courts at Faridabad or Delhi would have selective purview (jurisdiction) over further process /applications. The SC held that once the seat of discretion is assigned, such statement turns into the selective exclusion provision of any remaining courts. Subsequently, regardless of whether an application was first made to the Faridabad Court, that application was made to a court without jurisdiction and Delhi court have jurisdiction only as per Arb.A.

5.7 SECOND VIEW TAKEN BY THE HON'BLE COURT

Mankastu Impex (P) Ltd. v. Airvisual Ltd. 2020 (new than BGS Soma) a Division Seat of the SC returned to the situation in *BGS Soma case* 2020. For this situation, the agreement was to be represented by the laws of India, the courts at New Delhi had jurisdiction, however the question was to be referred to lastly settled by arbitration directed in Hong Kong; the place of arbitration will be Hong Kong. The Court while concluding whether the seat was New Delhi or Hong Kong maintained the guideline of select jurisdiction of the courts while overseeing the seat. The intension of the parties entirely settled from their intension and different provisos of the agreement. In this manner, Hong Kong was held to be the seat of arbitration as per intension of the parties.

5.8 COMPLETE CHANGE IN POSITION

But, recently now on 24-03-2022, a two-Judge Bench of the Apex Court *Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee* revised the entire position again.

For this situation, the agreement was executed and performed at Muzaffarpur. It specified that the sitting of the Arbitral Court will be at Kolkata. There was no reference to some other spot in some other clause. The Court held that since no cause of action emerged in Kolkata, it can't be supposed to be the "seat". Parties can't give locale on a court which intrinsically lacked jurisdiction. Consequently, Kolkata was held to be simple "venue" for holding the sittings of Arbitral Council.

Albeit, the Court didn't explicitly overrule any of these previously mentioned decisions, it showed up at considerably more commonsense discoveries in regards to domestic arbitrations.

The judgment in *Ravi Ranjan Engineers case* has since been distinguished by the Delhi High Court in different cases in similar subject cases.

5.9 THE 246 LAW COMMISSION REPORT PROPOSED

Correction of section 2

1. In sub-section (2), add "in particular" after the words "shall apply" and erase "place" and supplement "seat" in its place.
Correction of section 20

In section 20, erase "place" and instead add the phrase "Seat and venue" before the words "of arbitration".

1. In sub-section (1), after the words agree on the" erase "place" and instead add words "seat and venue"

2. In sub-segment (3), after the words "meet at any" erase "place" and add word "venue".

However these changes not adopted by legislature.

5.10 THE EXPERT COMMITTEE BY DR. T.K VISWANATHAN PROPOSED

As of late, a expert committee headed by Dr T.K. Viswanathan has given changes in the act vide its report dated 07-02-2024. Two of these proposals relate to the current discussion. The first is to replace "place" of arbitration by the expression "seat", wherever in the act mentioned with the exception of section 20(3) which would be supplanted by the expression "venue". Further, it likewise made a change to the meaning of the expression "court" in the 1996 act to explicitly permit parties in domestic to pick inherited lacked to pass award in case it is chosen. This might actually make a few practical issues in the implementation of the award. In addition, it proposes that in cases where seat isn't defined in that frame of mind for domestic arbitration, then the court having subject matter jurisdiction, will have jurisdiction. In order to eliminate any doubt regarding the location and seat of the arbitration, the Law Commission made several recommendations for changes to the 1996 Arbitration and Conciliation Act in its 246th report.

5.11 CAN PARTIES CLAIM JURISDICTION AS THE BASIS OF CAUSE OF ACTION

There are different views of different Hon'Ble courts on this aspect. Some examples. In Delhi Tourism & Transportation Development Corpn. v. Satinder Mahajan, 2024 SCC OnLine Del 3206 the guidance for the candidate presented that since the cause of action emerged in Delhi, the seat of arbitration will likewise be Delhi, anyway the Delhi HC dismissed the dispute of the solicitor and held that the seat of arbitration not entirely settled by the cause for action. (Para 19)

On account of BBR (India) Pvt. Ltd. versus S.P. Singla (2023) 1 SCC 693, the Hon'ble Apex Court held that in absence of a trace of an A.A 'venue' or 'seat' of arbitration in the agreement, the deciding element will be the cause of action. Thus, the court inside whose jurisdiction the cause of action emerged will have command over the arbitral proceedings. (Para 31)

5.12 Can Parties change seat of arbitration which is fixed by arbitration agreement?

On account of Inox Renewables Ltd. v. Jayesh Electricals Ltd., (2023) 3 SCC 733, the Apex Court resolved the legitimate issue of whether the seat of arbitration can be moved. That's what the Court held, compliant with section 20(1) of the 1996 Act, the seat or venue of arbitration can be moved assuming the two parties commonly consent to the shift. Which court will have administrative still up and governed by the seat of arbitration given in arbitration clause.

6. CONCLUSION

While finishing up this paper, all that author needs to say regarding the current point is that the everlasting confusion between the seat, and venue of the arbitration procedures actually stays at large. One of the conspicuous explanations behind the equivalent, as can be obviously seen from the previously mentioned cases is the absence of appropriate drafting of arbitration agreements.

The developing law encompassing seat and venue, have the significance of clarity, consistency and adherence to best practices in arbitration agreements. By getting it and exploring the nuances of seat and venue, parties can improve the viability and effectiveness of arbitration as a favored component for settling disputes in a globalized world. And after writing this paper I can conclude by say that seat and venue cannot be used interchangeably.

CONFLICT OF INTERESTS

None.

ACKNOWLEDGMENTS

None.

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