

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(S.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

A.C. No. 77/2017

Indian Steel Corporation Ltd.

Applicant

Vs.

Soma Canada Steel, INC

Non applicant

Shri B.A. Chitale learned counsel for the applicant.

Shri Aditya Krishnamurthy learned counsel for the respondent.

Whether approved for reporting :

ORDER

(Passed on 8th February 2018)

This arbitration case has been filed under Section 34(2) and (2A) of the Arbitration and Conciliation Act, 1996 read with M.P. Arbitration Rules, 1997 objecting to the International Commercial Arbitration award dated 10/7/2017 passed by the Arbitral Tribunal of the sole arbitrator.

The respondent has raised a preliminary objection that as per the Arbitration Clause, the neutral venue of arbitration was Mumbai. The arbitration was conducted in Mumbai and the learned Arbitrator had passed and published the award in Mumbai, therefore, this Court has no territorial jurisdiction.

Having heard the learned counsel for the parties on the preliminary objection and on perusal of the record, it is noticed that the arbitration agreement (sale contract) between the parties dated 15th April, 2015 contains the following arbitration clause:-

“5. ARBITRATION

All disputes and difference whatsoever arising between buyer and seller out of or relative to the construction meaning and operation of effect of this contract or any breach thereof, shall be settled amicably, failing which it shall be settled as per the Indian arbitration and reconciliation Act, 1996. The place of arbitration would be Mumbai, India. The decision made by arbitration organization shall be take as final and binding upon both parties. The arbitration expenses shall be borne by the loosing party unless otherwise awarded by the arbitration organization.”

As per aforesaid Clause, the parties had chosen Mumbai as the place or seat of arbitration.

It is not in dispute that the arbitration proceedings took place at Mumbai and the Arbitrator has also passed the award dated 10th July, 2017 at Mumbai. The claim of the applicant is that since the subject matter of the suit is situated at Indore, therefore, this Court has territorial jurisdiction.

Under Section 34 of the Act, the application for setting aside the award is to be made to a Court. Section 2 (e) (ii) of the Act defines the Court for the cases of international commercial arbitration as under:-

“(ii) in the case of international commercial arbitration, the High court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, and in other cases, a High court having jurisdiction to hear appeals from decrees of courts subordinate to that High court.”

In the present case, since parties have chosen Mumbai a neutral seat/place of arbitration, therefore, Section 20 of the Act providing for place of arbitration is relevant which reads as under:-

“20. Place of arbitration (1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.”

The issue is after having chosen Mumbai as seat/place of arbitration and after the arbitration was conducted at Mumbai and award passed therein, the applicant can approach this Court challenging the award under Section 34.

Supreme Court in the matter of **Bharat Aluminium Company Vs. Kaiser Aluminium Technical Services INC, reported in 2012 (9) SCC 552** while considering the similar controversy has held as under:-

“ 96.

We are of the opinion, the term “subject matter of the arbitration” cannot be confused with “subject matter of the suit”. The term “subject matter” in [Section 2\(1\)\(e\)](#) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in [Section 2\(1\)\(e\)](#) has to be construed keeping in view the provisions in [Section 20](#) which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render [Section 20](#) nugatory. 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. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under [Section 17](#) of the Arbitration Act, 1996, the appeal against such an interim order under [Section 37](#) must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., 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.”

Counsel for both the parties are placing reliance upon the aforesaid paragraph of the judgment in support of their respective submissions.

In the case of *Bharat Aluminum* (supra) after taking note of Section 20 of the Act the distinction between the place or seat as contained in Section 20 (1) and (2) and the venue of arbitration as contained in Section 20 (3) has been drawn.

While giving the example of the neutral place Delhi, it has been held that if the Tribunal sitting in Delhi passes an interim order under Section 17 of the Act, the appeal against such an interim order under Section 37 must lie to the Courts of Delhi

being the Court of supervisory jurisdiction over the arbitration proceedings and tribunal.

This aspect of the matter has further been clarified by the Hon'ble Supreme Court in the judgment dated 19th April, 2017 in Civil Appeal No. 5370-5371/2017 in the case of **Indus Mobile Distribution Private Ltd. Vs. Datawind Innovations Private Limited and others** wherein the parties in the arbitration clause had chosen the place of arbitration at Mumbai and the Supreme Court taking note of it and the judgment subsequent to the Bharat Aluminum Company (supra) and the recommendation of Law Commission to amend Section 20 has held as under:-

20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction- that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

In the aforesaid judgment, it has been clearly held that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. In the present case also the parties through the agreement have designated Mumbai as seat of arbitration,

therefore, in terms of the aforesaid judgment, the Mumbai Court will have the exclusive jurisdiction and the jurisdiction of this Court is excluded.

Hence, the preliminary objection of the respondent is allowed and the AC is dismissed for want of territorial jurisdiction.

C.C. as per rules.

(Prakash Shrivastava)
Judge

BDJ