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Jurisdiction of Courts in case of challenging an Award

Date: 14th May, 2019

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List of Judgments					
S. No.	**Date of Judgment**	**Cause Title and Citation**	**Notes**	**Relevant Para No.**	**Page Nos. of Judgments**
1.	03.07.2013	Swastik Gas vs. Indian Oil Corporation Limited (2013) 9 SCC 32	▪ Where two or more courts have jurisdiction, if the parties by agreement have chosen one court, to the exclusion of others, only the Court chosen in the agreement will have jurisdiction. ▪ Usage of words "alone", "only", "exclusive" are not mandatory in a clause to ouster jurisdiction. If not used, the intention of parties and connecting factors as to situs of agreement and cause of action needs to be looked into.	28 to 32, 37 and 57	5 – 26
2.	19.04.2017	Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and Ors. (2017) 7 SCC 678	▪ The Court referred to its earlier judgments in [Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc (2012) 9 SCC 552, Enercon (India) Ltd. v. Enercon Gmbh, (2014) 5 SCC 1 and Reliance Industries Ltd. v. Unionof India, (2014) 7 SCC, 603] ▪ Court has time and again reiterated that once a seat of Arbitration has been decided upon and fixed it is akin to a clause of exclusive jurisdiction. Thereafter the court (which has territorial jurisdiction) over the seat would exercise supervisory powers over the arbitration. ▪ The 'juridical seat' is equivalent to the 'legal place' of arbitration.	18 to 20	27 – 42

List of Judgments					
S. No.	**Date of Judgment**	**Cause Title and Citation**	**Notes**	**Relevant Para No.**	**Page Nos. of Judgments**
			▪ Under the law of Arbitration, the concept of 'seat' has been developed to facilitate the exercise of the option by the parties, of choosing a neutral venue for Arbitration. It is neither necessary for any cause of action to have arisen at the neutral venue, nor would any of the provisions of Section 16 to 21 of the Code of Civil Procedure, 1908 be attracted. ▪ It was thus held that in the present case, the minute the seat of arbitration was chosen as Mumbai, the Courts of Mumbai alone would have jurisdiction over all proceedings in the Arbitration to the exclusion of all other courts in the country.		
3.	20.08.2018	Emkay Global Financial Services Ltd vs. Girdhar Sondhi. (2018) 9 SCC 49	▪ Proceedings under Section 34 of Arbitration Act are summary in nature. ▪ Courts should not look beyond the record of arbitral tribunal to set aside arbitral awards. ▪ Leading evidence in Section 34 proceedings should not be allowed unless absolutely necessary.	7 to 10	43 – 57

List of Judgments					
S. No.	**Date of Judgment**	**Cause Title and Citation**	**Notes**	**Relevant Para No.**	**Page Nos. of Judgments**
			▪ "Seat" in the context of arbitration proceedings is akin to an exclusive jurisdiction clause and would vest the seat courts with exclusive jurisdiction over the arbitration proceedings.		

(2013) 9 Supreme Court Cases 32

(BEFORE R.M. LODHA, MADAN B. LOKUR AND KURIAN JOSEPH, JJ.)

SWASTIK GASES PRIVATE LIMITED .. Appellant;

Versus

INDIAN OIL CORPORATION LIMITED .. Respondent.

Civil Appeal No. 5086 of 2013†, decided on July 3, 2013

A. **Contract and Specific Relief — Contractual Obligations and Rights — Exemption/Exclusion/Restriction Clauses/Negative Covenants — Exclusion/Restriction of jurisdiction — Held (*per curiam*), use of words like "alone", "only", "exclusive" or "exclusive jurisdiction", is not necessary in exclusion clause to exclude jurisdiction of court — What is essential is intention of parties to the agreement — Such exclusion clause, held, neither hit by S. 23 nor offends S. 28 of Contract Act, 1872**

— Appointment of arbitrator by Chief Justice/designate — Jurisdiction of Chief Justice/designate of High Court not within territorial jurisdiction specified in arbitration clause — Absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" — Did not render territorial exclusion clause ineffective

— Application for appointment of arbitrator before High Court of Rajasthan dismissed on ground of lack of territorial jurisdiction since Cl. 18 of the agreement made the contract subject to jurisdiction of courts at Kolkata but without use of words like "alone", "only", "exclusive" or "exclusive jurisdiction" — Plea that though Cl. 18 confers jurisdiction to courts at Kolkata, said clause did not specifically bar jurisdiction of courts at Rajasthan, where part of cause of action arose — Tenability

— Held (per curiam), when contract specifies jurisdiction of courts at a particular place and such courts have jurisdiction to deal with said matter, inference is that parties intended to exclude all other courts — In instant case, by inserting a clause that courts at Kolkata shall have jurisdiction, courts at Kolkata alone shall have jurisdiction to the exclusion of other courts — Maxim *expressio unius est exclusio alterius* (expression of one is the exclusion of another), applied — Held [*per Lokur, J.* (*concurring*)], exclusion of jurisdiction clause in agreement should be given its natural and plain meaning, lest very existence of said clause would be rendered meaningless — Hence, use of words like "only", "exclusively", "alone" in exclusion of jurisdiction clause of agreement are not necessary to convey intention of parties — Civil Procedure Code, 1908 — S. 20(c) — Territorial jurisdiction of court — Exclusion by agreement — Arbitration and Conciliation Act, 1996 — Ss. 2(1)(e), 7, 42, 20 and 11 — Contract Act, 1872 — Ss. 28 and 23 — Deeds and Documents — Construction/Interpretation of — Subsidiary rules — *Expressio unius est exclusio alterius*

(Paras 28 to 32, 37 and 57)

† Arising out of SLP (C) No. 5595 of 2012. From the Judgment and Order dated 13-10-2011 of the High Court of Judicature of Rajasthan at Jaipur Bench, Jaipur in SB Civil Misc. Arbitration Application No. 49 of 2008

B. **Arbitration and Conciliation Act, 1996 — Ss. 2(1)(e), 7, 42 and 11 — Jurisdiction of court — Appointment of arbitrator by court — With reference to territorial jurisdiction of court, held, S. 20 CPC is relevant — Civil Procedure Code, 1908 — S. 20 — Institution of arbitration application (Paras 28 and 29)**

C. **Contract and Specific Relief — Contractual Obligations and Rights — Exemption/Exclusion/Restriction Clauses/Negative Covenants — Exclusion/Restriction of jurisdiction — Various exclusion clauses and their consideration in Supreme Court judgments, surveyed — Contract Act, 1872, Ss. 28 and 23 (Paras 40 to 56)**

The respondent Company was engaged in the business of storage, distribution of petroleum products and also manufacturing and marketing of various types of lubricating oils, grease, fluid and coolants and appointed the appellant, M/s Swastik Gases (P) Ltd., situated at Jaipur in Rajasthan as the consignment agent. An agreement was entered into between the appellant and the respondent whereby the appellant was appointed the Company's consignment agent for marketing lubricants at Jaipur (Rajasthan). There were divergent stands of the parties in respect of the place of signing the agreement. The respondent Company's case was that the agreement had been signed at Kolkata while the appellant's stand was that it was signed at Jaipur.

Disputes arose between the parties as huge quantity of stock of lubricants could not be sold by the appellant and they could not be resolved amicably. Hence, the appellant sent a notice to the respondent claiming a sum of Rs 18,72,332 under diverse heads. As there was no response, another notice was sent by the appellant to the respondent invoking arbitration clause wherein name of a retired Judge of the High Court was proposed as the appellant's arbitrator. The respondent was requested to name their arbitrator within thirty days failing which it was stated that the appellant would have no option but to proceed under Section 11 of the 1996 Act. The respondent did not nominate its arbitrator within thirty days of receipt of the notice which led to the appellant making an application under Section 11 of the 1996 Act in the Rajasthan High Court for the appointment of the arbitrator in respect of the disputes arising out of the above agreement. The respondent contested the application made by the appellant, inter alia, by raising a plea of lack of territorial jurisdiction of the Rajasthan High Court in the matter. The plea of the respondent was that the agreement has been made subject to jurisdiction of the courts at Kolkata and, therefore, the Rajasthan High Court lacks the territorial jurisdiction in dealing with the application under Section 11. The designated Judge held that the Rajasthan High Court did not have any territorial jurisdiction to entertain the application under Section 11 and dismissed the same while giving liberty to the appellant to file the arbitration application in the Calcutta High Court. It is from this order that the present appeal by special leave had been filed.

The short question that arose for consideration of the Supreme Court in the present appeal was, whether, in view of Clause 18 of the consignment agency agreement, the Calcutta High Court has exclusive jurisdiction in respect of the application made by the appellant under Section 11 of the Arbitration and Conciliation Act, 1996?

Holding in affirmative, the Supreme Court

Held :

Per curiam

The effect of the jurisdiction clause in the agreement has to be seen, which provides that "the agreement shall be subject to jurisdiction of the courts at Kolkata." It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement—is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner. (Para 32)

Per Lokur, J. (concurring)

The very existence of the exclusion of jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like "only", "exclusively", "alone" and so on are not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement. Therefore, I agree with the conclusion that jurisdiction in the subject-matter of the proceedings vested, by agreement, only in the courts in Kolkata. (Para 37)

In the jurisdiction clause of an agreement, the absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute. In the present case, only the courts in Kolkata had jurisdiction to entertain the disputes between the parties. (Para 57)

Hakam Singh v. *Gammon (India) Ltd.*, (1971) 1 SCC 286; *Globe Transport Corpn.* v. *Triveni Engg. Works*, (1983) 4 SCC 707; *Angile Insulations* v. *Davy Ashmore India Ltd.*, (1995) 4 SCC 153; *New Moga Transport Co.* v. *United India Insurance Co. Ltd.*, (2004) 4 SCC 677; *Shree Subhlaxmi Fabrics (P) Ltd.* v. *Chand Mal Baradia*, (2005) 10 SCC 704; *Rajasthan SEB* v. *Universal Petrol Chemicals Ltd.*, (2009) 3 SCC 107 : (2009) 1 SCC (Civ) 770; *A.V.M. Sales Corpn.* v. *Anuradha Chemicals (P) Ltd.*, (2012) 2 SCC 315 : (2012) 1 SCC (Civ) 809, *applied*

Swastik Gases (P) Ltd. v. *Indian Oil Corpn. Ltd.*, Civil Arbitration Application No. 49 of 2008, order dated 13-10-2011 (Raj), *affirmed*

Harshad Chiman Lal Modi v. *DLF Universal Ltd.*, (2005) 7 SCC 791; *InterGlobe Aviation Ltd.* v. *N. Satchidanand*, (2011) 7 SCC 463 : (2011) 3 SCC (Civ) 747, *considered*

A.B.C. Laminart (P) Ltd. v. *A.P. Agencies*, (1989) 2 SCC 163; *R.S.D.V. Finance Co. (P) Ltd.* v. *Shree Vallabh Glass Works Ltd.*, (1993) 2 SCC 130; *Hanil Era Textiles Ltd.* v. *Puromatic Filters (P) Ltd.*, (2004) 4 SCC 671; *Balaji Coke Industry (P) Ltd.* v. *Maa*

Bhagwati Coke Gujarat (P) Ltd., (2009) 9 SCC 403 : (2009) 3 SCC (Civ) 770; *Shriram City Union Finance Corpn. Ltd.* v. *Rama Mishra*, (2002) 9 SCC 613, *explained* and *applied*

N-D/52088/CV

Advocates who appeared in this case :

Uday Gupta, Ms Shivani M. Lal, Hiren Sadan, M.K. Tripathi and Mohan Pandey, Advocates, for the Appellant;

Sidharth Luthra, Additional Solicitor General (Ms Priya Puri and Sagar Singhal, Advocates) for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2012) 2 SCC 315 : (2012) 1 SCC (Civ) 809, *A.V.M. Sales Corpn.* v. *Anuradha Chemicals (P) Ltd.* 46*c*, 50*c*
2. (2011) 7 SCC 463 : (2011) 3 SCC (Civ) 747, *InterGlobe Aviation Ltd.* v. *N. Satchidanand* 45*e-f*, 53*e*
3. Civil Arbitration Application No. 49 of 2008, order dated 13-10-2011 (Raj), *Swastik Gases (P) Ltd.* v. *Indian Oil Corpn. Ltd.* 37*a*, 48*b-c*
4. (2009) 9 SCC 403 : (2009) 3 SCC (Civ) 770, *Balaji Coke Industry (P) Ltd.* v. *Maa Bhagwati Coke Gujarat (P) Ltd.* 45*a*, 45*b*, 45*d*, 48*b*, 52*a*, 52*c-d*
5. (2009) 3 SCC 107 : (2009) 1 SCC (Civ) 770, *Rajasthan SEB* v. *Universal Petrol Chemicals Ltd.* 36*h*, 43*e-f*, 44*a*, 44*f*, 50*b*
6. (2005) 10 SCC 704, *Shree Subhlaxmi Fabrics (P) Ltd.* v. *Chand Mal Baradia* 42*f-g*, 43*a*, 50*a*
7. (2005) 7 SCC 791, *Harshad Chiman Lal Modi* v. *DLF Universal Ltd.* 43*c-d*, 53*d-e*
8. (2004) 4 SCC 677, *New Moga Transport Co.* v. *United India Insurance Co. Ltd.* 42*b-c*, 42*d*, 49*f-g*
9. (2004) 4 SCC 671, *Hanil Era Textiles Ltd.* v. *Puromatic Filters (P) Ltd.* 41*f*, 41*g*, 44*a*, 48*b*, 51*e-f*, 51*f-g*
10. (2002) 9 SCC 613, *Shriram City Union Finance Corpn. Ltd.* v. *Rama Mishra* 41*a*, 41*c*, 42*d*, 48*b*, 52*d-e*, 52*f*, 52*g-h*
11. (1995) 4 SCC 153, *Angile Insulations* v. *Davy Ashmore India Ltd.* 40*f*, 41*f-g*, 43*a*, 48*b*, 49*e*
12. (1993) 2 SCC 130, *R.S.D.V. Finance Co. (P) Ltd.* v. *Shree Vallabh Glass Works Ltd.* 40*b*, 40*b-c*, 48*b*, 51*c*, 51*c-d*
13. (1989) 2 SCC 163, *A.B.C. Laminart (P) Ltd.* v. *A.P. Agencies* 36*h*, 37*a*, 38*g*, 39*b-c*, 39*e*, 40*b-c*, 40*f*, 40*g*, 41*f-g*, 42*g-h*, 43*g*, 45*g-h*, 46*b-c*, 48*a-b*, 50*e-f*, 50*f-g*, 51*a*, 51*g*, 52*d*, 53*b*, 53*b-c*
14. (1983) 4 SCC 707, *Globe Transport Corpn.* v. *Triveni Engg. Works* 38*e-f*, 49*c-d*
15. (1971) 1 SCC 286, *Hakam Singh* v. *Gammon (India) Ltd.* 38*e*, 39*b-c*, 41*a*, 41*f-g*, 42*d*, 42*g-h*, 43*g*, 48*a-b*, 49*b*

The Judgments* of the Court were delivered by

R.M. LODHA, J. (*for himself and Kurian, J.; Lokur, J., concurring*)— Leave granted. The short question that arises for consideration in this appeal by special leave is, whether, in view of Clause 18 of the consignment agency agreement (for short "the agreement") dated 13-10-2002, the Calcutta High Court has exclusive jurisdiction in respect of the application made by the appellant under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act")?

* **Ed.**: Lokur, J. delivered a concurring judgment.

2. The above question arises in this way: IBP Company Limited, which has now merged with the respondent Indian Oil Corporation Limited (hereinafter referred to as "the Company") was engaged in the business of storage, distribution of petroleum products and also manufacturing and marketing of various types of lubricating oils, grease, fluid and coolants. The Company was interested to promote and augment its sales of lubricants and other products and was desirous of appointing consignment agents. The appellant, M/s Swastik Gases (P) Ltd., mainly deals in storage, distribution of petroleum products including lubricating oils in Rajasthan and its registered office is situated at Jaipur. An agreement was entered into between the appellant and the Company on 13-10-2002 whereby the appellant was appointed the Company's consignment agent for marketing lubricants at Jaipur (Rajasthan). There is divergent stand of the parties in respect of the place of signing the agreement. The Company's case is that the agreement has been signed at Kolkata while the appellant's stand is that it was signed at Jaipur.

3. In or about November 2003, disputes arose between the parties as huge quantity of stock of lubricants could not be sold by the appellant. The appellant requested the Company to either liquidate the stock or take back the stock and make payment thereof to the appellant. The parties met several times but the disputes could not be resolved amicably. On 16-7-2007, the appellant sent a notice to the Company claiming a sum of Rs 18,72,332 under diverse heads with a request to the Company to make payment of the above amount failing which it was stated that the appellant would pursue appropriate legal action against the Company.

4. Thereafter, on 25-8-2008 another notice was sent by the appellant to the Company invoking arbitration clause wherein name of a retired Judge of the High Court was proposed as the appellant's arbitrator. The Company was requested to name their arbitrator within thirty days failing which it was stated that the appellant would have no option but to proceed under Section 11 of the 1996 Act. The Company did not nominate its arbitrator within thirty days of receipt of the notice dated 25-8-2008 which led to the appellant making an application under Section 11 of the 1996 Act in the Rajasthan High Court for the appointment of the arbitrator in respect of the disputes arising out of the above agreement.

5. The Company contested the application made by the appellant, inter alia, by raising a plea of lack of territorial jurisdiction of the Rajasthan High Court in the matter. The plea of the Company was that the agreement has been made subject to jurisdiction of the courts at Kolkata and, therefore, the Rajasthan High Court lacks the territorial jurisdiction in dealing with the application under Section 11.

6. In the course of hearing before the designate Judge, two judgments of this Court, one *A.B.C. Laminart*[1] and the other *Rajasthan SEB*[2] were cited.

1 *A.B.C. Laminart (P) Ltd.* v. *A.P. Agencies*, (1989) 2 SCC 163

2 *Rajasthan SEB* v. *Universal Petrol Chemicals Ltd.*, (2009) 3 SCC 107 : (2009) 1 SCC (Civ) 770

The designated Judge applied *A.B.C. Laminart*[1] and held[3] that the Rajasthan High Court did not have any territorial jurisdiction to entertain the application under Section 11 and dismissed the same while giving liberty to the appellant to file the arbitration application in the Calcutta High Court. It is from this order that the present appeal by special leave has arisen.

7. We have heard Mr Uday Gupta, learned counsel for the appellant and Mr Sidharth Luthra, learned Additional Solicitor General for the Company. The learned Additional Solicitor General and the learned counsel for the appellant have cited many decisions of this Court in support of their respective arguments. Before we refer to these decisions, it is apposite that we refer to the two clauses of the agreement which deal with arbitration and jurisdiction. Clause 17 of the agreement is an arbitration clause which reads as under:

17. *Arbitration*

If any dispute or difference(s) of any kind whatsoever shall arise between the parties hereto in connection with or arising out of this agreement, the parties hereto shall in good faith negotiate with a view to arriving at an amicable resolution and settlement. In the event no settlement is reached within a period of 30 days from the date of arising of the dispute(s)/difference(s), such dispute(s)/difference(s) shall be referred to 2 (two) arbitrators, appointed one each by the parties and the arbitrators, so appointed shall be entitled to appoint a third arbitrator who shall act as a presiding arbitrator and the proceedings thereof shall be in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof in force. The existence of any dispute(s)/difference(s) or initiation/continuation of arbitration proceedings shall not permit the parties to postpone or delay the performance of or to abstain from performing their obligations pursuant to this agreement.

8. The jurisdiction Clause 18 in the agreement is as follows:

18. *Jurisdiction*

The agreement shall be subject to jurisdiction of the courts at Kolkata.

9. The contention of the learned counsel for the appellant is that even though Clause 18 confers jurisdiction to entertain disputes inter se parties at Kolkata, it does not specifically bar jurisdiction of courts at Jaipur where also part of the cause of action has arisen. It is the submission of the learned counsel that except execution of the agreement, which was done at Kolkata, though it was signed at Jaipur, all other necessary bundle of facts forming "cause of action" have arisen at Jaipur. This is for the reason that:

(*i*) the regional office of the respondent Company is situate at Jaipur;

1 *A.B.C. Laminart (P) Ltd.* v. *A.P Agencies*, (1989) 2 SCC 163

3 *Swastik Gases (P) Ltd.* v. *Indian Oil Corpn. Ltd.*, Civil Arbitration Application No. 49 of 2008, order dated 13-10-2011 (Raj)

(*ii*) the agreement was signed at Jaipur;

(*iii*) the consignment agency functioned from Jaipur;

(*iv*) all stock of lubricants was delivered by the Company to the appellant at Jaipur;

(*v*) all sales transactions took place at Jaipur;

(*vi*) the godown, showroom and office of the appellant were all situated in Jaipur;

(*vii*) various meetings were held between the parties at Jaipur;

(*viii*) the Company agreed to lift the stock and make payment in lieu thereof at a meeting held at Jaipur, and

(*ix*) the disputes arose at Jaipur.

The learned counsel for the appellant would submit that since part of the cause of action has arisen within the jurisdiction of the courts at Jaipur and Clause 18 does not expressly oust the jurisdiction of other courts, the Rajasthan High Court had territorial jurisdiction to try and entertain the petition under Section 11 of the 1996 Act. He vehemently contended that Clause 18 of the agreement cannot be construed as an ouster clause because the words like "alone", "only", "exclusive" and "exclusive jurisdiction" have not been used in the clause.

10. On the other hand, the learned Additional Solicitor General for the Company stoutly defended the view of the designate Judge that from Clause 18 of the agreement, it was apparent that the parties intended to exclude jurisdiction of all courts other than the courts at Kolkata.

11. *Hakam Singh*[4] is one of the earlier cases of this Court wherein this Court highlighted that where two courts have territorial jurisdiction to try the dispute between the parties and the parties have agreed that dispute should be tried by only one of them, the court mentioned in the agreement shall have jurisdiction. This principle has been followed in many subsequent decisions.

12. In *Globe Transport*[5] while dealing with the jurisdiction clause which read, "the court in Jaipur City alone shall have jurisdiction in respect of all claims and matters arising (sic) under the consignment or of the goods entrusted for transportation", this Court held that the jurisdiction clause in the agreement was valid and effective and the courts at Jaipur only had jurisdiction and not the courts at Allahabad which had jurisdiction over Naini where goods were to be delivered and were in fact delivered.

13. In *A.B.C. Laminart*[1], this Court was concerned with Clause 11 in the agreement which read, "any dispute arising out of this sale shall be subject to Kaira jurisdiction". The disputes having arisen out of the contract between the parties, the respondents therein filed a suit for recovery of amount against the appellants therein and also claimed damages in the Court of the Subordinate Judge at Salem. The appellants, inter alia, raised the preliminary

4 *Hakam Singh* v. *Gammon (India) Ltd.*, (1971) 1 SCC 286

5 *Globe Transport Corpn.* v. *Triveni Engg. Works*, (1983) 4 SCC 707

1 *A.B.C. Laminart (P) Ltd.* v. *A.P. Agencies*, (1989) 2 SCC 163

objection that the Subordinate Judge at Salem had no jurisdiction to entertain the suit as parties by express contract had agreed to confer exclusive jurisdiction in regard to all disputes arising out of the contract on the Civil Court at Kaira. When the matter reached this Court, one of the questions for consideration was whether the Court at Salem had jurisdiction to entertain or try the suit. While dealing with this question, it was stated by this Court that the jurisdiction of the court in the matter of contract would depend on the situs of the contract and the cause of action arising through connecting factors. The Court referred to Sections 23 and 28 of the Contract Act, 1872 (for short "the Contract Act") and Section 20(*c*) of the Civil Procedure Code (for short "the Code") and also referred to *Hakam Singh*[4] and in para 21 of the Report held as under: (*A.B.C. Laminart case*[1], SCC pp. 175-76)

> "*21.* … When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like 'alone', 'only', 'exclusive' and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim *expressio unius est exclusio alterius*—expression of one is the exclusion of another—may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed."

14. Then, in para 22 of the Report, this Court held as under: (*A.B.C. Laminart case*[1], SCC p. 176)

> "*22.* … We have already seen that making of the contract was a part of the cause of action and a suit on a contract therefore could be filed at the place where it was made. Thus, Kaira Court would even otherwise have had jurisdiction. The bobbins of metallic yarn were delivered at the address of the respondent at Salem which, therefore, would provide the connecting factor for Court at Salem to have jurisdiction. If out of the two jurisdictions one was excluded by Clause 11 it would not absolutely oust the jurisdiction of the court and, therefore, would not be void against public policy and would not violate Sections 23 and 28 of the Contract Act. The question then is whether it can be construed to have excluded the jurisdiction of the Court at Salem. In the clause 'any dispute arising out of this sale shall be subject to Kaira jurisdiction' ex facie we do not find exclusionary words like 'exclusive', 'alone', 'only' and the like. Can the maxim *expressio unius est exclusio alterius* be applied under the facts and circumstances of the case? The order of confirmation is of no assistance. The other general terms and conditions are also not indicative of exclusion of other jurisdictions. Under the facts and circumstances of

4 *Hakam Singh* v. *Gammon (India) Ltd.*, (1971) 1 SCC 286
1 *A.B.C. Laminart (P.) Ltd.* v. *A.P. Agencies*, (1989) 2 SCC 163

the case we hold that while connecting factor with Kaira jurisdiction was ensured by fixing the situs of the contract within Kaira, other jurisdictions having connecting factors were not clearly, unambiguously and explicitly excluded. That being the position it could not be said that the jurisdiction of the Court at Salem which court otherwise had jurisdiction under law through connecting factor of delivery of goods thereat was expressly excluded."

15. In *R.S.D.V. Finance*[6] the question that fell for consideration in the appeal was that, in light of the endorsement on the deposit receipt "subject to Anand jurisdiction", whether the Bombay High Court had jurisdiction to entertain the suit filed by the appellant therein. Following *A.B.C. Laminart*[1], this Court in para 9 of the Report held as under: (*R.S.D.V. Finance case*[6], SCC pp. 136-37)

"*9.* We may also consider the effect of the endorsement 'Subject to Anand jurisdiction' made on the deposit receipt issued by the defendant. In the facts and circumstances of this case it cannot be disputed that the cause of action had arisen at Bombay as the amount of Rs 10,00,000 itself was paid through a cheque of the bank at Bombay and the same was deposited in the bank account of the defendant in Bank of Baroda at Nariman Point, Bombay. The five post-dated cheques were also issued by the defendant being payable to the plaintiff at Bombay. The endorsement 'Subject to Anand jurisdiction' has been made unilaterally by the defendant while issuing the deposit receipt. The endorsement 'Subject to Anand jurisdiction' does not contain the ouster clause using the words like 'alone', 'only', 'exclusive' and the like. Thus the maxim *expressio unius est exclusio alterius* cannot be applied under the facts and circumstances of the case and it cannot be held that merely because the deposit receipt contained the endorsement 'Subject to Anand jurisdiction' it excluded the jurisdiction of all other courts who were otherwise competent to entertain the suit. The view taken by us finds support from a decision of this Court in *A.B.C. Laminart (P) Ltd.* v. *A.P. Agencies*[1]."

16. The question under consideration in *Angile Insulations*[7] was whether the Court of Subordinate Judge, Dhanbad possessed the jurisdiction to entertain and hear the suit filed by the appellant for recovery of certain amounts due from the first respondent. Clause 21 of the agreement therein read, "this work order is issued subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka". This Court relied upon *A.B.C. Laminart*[1] and held that having regard to Clause 21 of the work order which was legal and valid, the parties had agreed to vest the jurisdiction of the court situated within the territorial limit of the High Court of Karnataka and, therefore, the Court of Subordinate Judge, Dhanbad in Bihar did not have the jurisdiction to entertain the suit filed by the appellant therein.

6 *R.S.D.V. Finance Co. (P) Ltd.* v. *Shree Vallabh Glass Works Ltd.*, (1993) 2 SCC 130
1 *A.B.C. Laminart (P) Ltd.* v. *A.P. Agencies*, (1989) 2 SCC 163
7 *Angile Insulations* v. *Davy Ashmore India Ltd.*, (1995) 4 SCC 153

17. Likewise, in *Shriram City*[8], the legal position stated in *Hakam Singh*[4] was reiterated. In that case, Clause 34 of the lease agreement read, "subject to the provisions of Clause 32 above it is expressly agreed by and between the parties hereinabove that any suit, application and/or any other legal proceedings with regard to any matter, claims, differences and for disputes arising out of this agreement shall be filed and referred to the courts in Calcutta for the purpose of jurisdiction". This Court held that Clause 34 left no room for doubt that the parties had expressly agreed between themselves that any suit, application or any other legal proceedings with regard to any matter, claim, differences and disputes arising out of this claim shall only be filed in the courts in Calcutta. Whilst drawing difference between inherent lack of jurisdiction of a court on account of some statute and the other where parties through agreement bind themselves to have their dispute decided by any one of the courts having jurisdiction, the Court said: (*Shriram City case*[8], SCC pp. 616-17, para 9)

> "*9.* … It is open for a party for his convenience to fix the jurisdiction of any competent court to have their dispute adjudicated by that court alone. In other words, if one or more courts have the jurisdiction to try any suit, it is open for the parties to choose any one of the two competent courts to decide their disputes. In case parties under their own agreement expressly agree that their dispute shall be tried by only one of them then the parties can only file the suit in that court alone to which they have so agreed. In the present case, as we have said, through Clause 34 of the agreement, the parties have bound themselves that in any matter arising between them under the said contract, it is the courts in Calcutta alone which will have jurisdiction. Once parties bound themselves as such it is not open for them to choose a different jurisdiction as in the present case by filing the suit at Bhubaneshwar. Such a suit would be in violation of the said agreement."

18. In *Hanil Era Textiles*[9], this Court was concerned with the question of jurisdiction of the Court of District Judge, Delhi. Condition 17 in the purchase order in respect of jurisdiction read, "… legal proceeding arising out of the order shall be subject to the jurisdiction of the courts in Mumbai". Following *Hakam Singh*[4], *A.B.C. Laminart*[1] and *Angile Insulations*[7], it was held in para 9 of the Report as under: (*Hanil Era Textiles case*[9], SCC p. 676)

> "*9.* Clause 17 says—any legal proceedings arising out of the order shall be subject to the jurisdiction of the courts in Mumbai. This clause is no doubt not qualified by the words like 'alone', 'only' or 'exclusively'.

8 *Shriram City Union Finance Corpn. Ltd.* v. *Rama Mishra*, (2002) 9 SCC 613
4 *Hakam Singh* v. *Gammon (India) Ltd.*, (1971) 1 SCC 286
9 *Hanil Era Textiles Ltd.* v. *Puromatic Filters (P) Ltd.*, (2004) 4 SCC 671
1 *A.B.C. Laminart (P) Ltd.* v. *A.P Agencies*, (1989) 2 SCC 163
7 *Angile Insulations* v. *Davy Ashmore India Ltd.*, (1995) 4 SCC 153

Therefore, what is to be seen is whether in the facts and circumstances of the present case, it can be inferred that the jurisdiction of all other courts except courts in Mumbai is excluded. Having regard to the fact that the order was placed by the defendant at Bombay, the said order was accepted by the branch office of the plaintiff at Bombay, the advance payment was made by the defendant at Bombay, and as per the plaintiff's case the final payment was to be made at Bombay, there was a clear intention to confine the jurisdiction of the courts in Bombay to the exclusion of all other courts. The Court of Additional District Judge, Delhi had, therefore, no territorial jurisdiction to try the suit."

19. In *New Moga Transport*[10], the question that fell for consideration before this Court was whether the High Court's conclusion that the Civil Court at Barnala had jurisdiction to try the suit was correct or not? The clause in the consignment note read, "the court at head office city shall only have the jurisdiction in respect of all claims and matters arising under the consignment at the goods entrusted for transport". Additionally, at the top of the consignment note, the jurisdiction has been specified to be with Udaipur Court. This Court considered Section 20 of the Code and following *Hakam Singh*[4] and *Shriram City*[8], in para 19 of the Report held as under: (*New Moga Transport case*[10], SCC p. 683)

"*19.* The intention of the parties can be culled out from use of the expressions 'only', 'alone', 'exclusive' and the like with reference to a particular court. But the intention to exclude a court's jurisdiction should be reflected in clear, unambiguous, explicit and specific terms. In such case only the accepted notions of contract would bind the parties. The first appellate court was justified in holding that it is only the court at Udaipur which had jurisdiction to try the suit. The High Court did not keep the relevant aspects in view while reversing the judgment of the trial court. Accordingly, we set aside the judgment of the High Court and restore that of the first appellate court. The court at Barnala shall return the plaint to Plaintiff 1 (Respondent 1) with appropriate endorsement under its seal which shall present it within a period of four weeks from the date of such endorsement of return before the proper court at Udaipur."

20. The question for consideration in *Shree Subhlaxmi Fabrics*[11], was whether City Civil Court at Calcutta had territorial jurisdiction to deal with the dispute though Condition 6 of the contract provided that the dispute under the contract would be decided by the Court of Bombay and no other courts. This Court referred to *Hakam Singh*[4], *A.B.C. Laminart*[1] and

10 *New Moga Transport Co.* v. *United India Insurance Co. Ltd.*, (2004) 4 SCC 677
4 *Hakam Singh* v. *Gammon (India) Ltd.*, (1971) 1 SCC 286
8 *Shriram City Union Finance Corpn. Ltd.* v. *Rama Mishra*, (2002) 9 SCC 613
11 *Shree Subhlaxmi Fabrics (P) Ltd.* v. *Chand Mal Baradia*, (2005) 10 SCC 704
1 *A.B.C. Laminart (P) Ltd.* v. *A.P Agencies*, (1989) 2 SCC 163

Angile Insulations[7] and then in paras 18 and 20 of the Report held as under: (*Shree Subhlaxmi Fabrics case*[11], SCC pp. 713-14)

> "*18.* In the case on hand the clause in the indent is very clear viz. 'court of Bombay and no other court'. The trial court on consideration of material on record held that the court at Calcutta had no jurisdiction to try the suit.
>
> * * *
>
> *20.* In our opinion the approach of the High Court is not correct. The plea of the jurisdiction goes to the very root of the matter. The trial court having held that it had no territorial jurisdiction to try the suit, the High Court should have gone deeper into the matter and until a clear finding was recorded that the court had territorial jurisdiction to try the suit, no injunction could have been granted in favour of the plaintiff by making rather a general remark that the plaintiff has an arguable case that he did not consciously agree to the exclusion of the jurisdiction of the court."

21. In *Harshad Chiman Lal Modi*[12], the clause of the plot buyer agreement read, "Delhi High Court or courts subordinate to it, alone shall have jurisdiction in all matters arising out of, touching and/or concerning this transaction." This Court held that the suit related to specific performance of the contract and possession of immovable property and the only competent court to try such suit was the court where the property was situate and no other court. Since the property was not situated in Delhi, the Delhi Court had no jurisdiction though the agreement provided for jurisdiction of the court at Delhi. This Court found that the agreement conferring jurisdiction on a court not having jurisdiction was not legal, valid and enforceable.

22. In *Rajasthan SEB*[2], two clauses under consideration were Clause 30 of the general conditions of the contract and Clause 7 of the bank guarantee. Clause 30 of the general conditions of the contract stipulated, "the contract shall for all purposes be construed according to the laws of India and subject to jurisdiction only at Jaipur in Rajasthan courts only…" and Clause 7 of the bank guarantee read, "all disputes arising in the said bank guarantee between the Bank and the Board or between the supplier or the Board pertaining to this guarantee shall be subject to the courts only at Jaipur in Rajasthan". In the light of the above clauses, the question under consideration before this Court was whether Calcutta High Court where an application under Section 20 of the Arbitration Act, 1940 was made had territorial jurisdiction to entertain the petition or not. Following *Hakam Singh*[4], *A.B.C. Laminart*[1] and

7 *Angile Insulations* v. *Davy Ashmore India Ltd.*, (1995) 4 SCC 153
11 *Shree Subhlaxmi Fabrics (P) Ltd.* v. *Chand Mal Baradia*, (2005) 10 SCC 704
12 *Harshad Chiman Lal Modi* v. *DLF Universal Ltd.*, (2005) 7 SCC 791
2 *Rajasthan SEB* v. *Universal Petrol Chemicals Ltd.*, (2009) 3 SCC 107 : (2009) 1 SCC (Civ) 770
4 *Hakam Singh* v. *Gammon (India) Ltd.*, (1971) 1 SCC 286
1 *A.B.C. Laminart (P) Ltd.* v. *A.P Agencies*, (1989) 2 SCC 163

Hanil Era Textiles[9], this Court in paras 27 and 28 of the Report held as under: (*Rajasthan SEB case*[2], SCC pp. 114-15)

"*27.* The aforesaid legal proposition settled by this Court in respect of territorial jurisdiction and applicability of Section 20 of the Code to the Arbitration Act is clear, unambiguous and explicit. The said position is binding on both the parties who were contesting the present proceeding. Both the parties with their open eyes entered into the aforesaid purchase order and agreements thereon which categorically provide that all disputes arising between the parties out of the agreements would be adjudicated upon and decided through the process of arbitration and that no court other than the court at Jaipur shall have jurisdiction to entertain or try the same. In both the agreements in Clause 30 of the general conditions of the contract it was specifically mentioned that the contract shall for all purposes be construed according to the laws of India and subject to jurisdiction only at Jaipur in Rajasthan courts only and in addition in one of the purchase order the expression used was that the court at Jaipur only would have jurisdiction to entertain or try the same.

28. In the light of the aforesaid facts of the present case, the ratio of all the aforesaid decisions which are referred to hereinbefore would squarely govern and apply to the present case also. There is indeed an ouster clause used in the aforesaid stipulations stating that the courts at Jaipur alone would have jurisdiction to try and decide the said proceedings which could be initiated for adjudication and deciding the disputes arising between the parties with or in relation to the aforesaid agreements through the process of arbitration. In other words, even though otherwise the courts at Calcutta would have territorial jurisdiction to try and decide such disputes, but in view of the ouster clause it is only the courts at Jaipur which would have jurisdiction to entertain such proceeding."

23. Then, in para 35 of the Report, the Court held as under: (*Rajasthan SEB case*[2], SCC p. 116)

"*35.* The parties have clearly stipulated and agreed that no other court, but only the court at Jaipur will have jurisdiction to try and decide the proceedings arising out of the said agreements, and therefore, it is the civil court at Jaipur which would alone have jurisdiction to try and decide such issue and that is the court which is competent to entertain such proceedings. The said court being competent to entertain such proceedings, the said court at Jaipur alone would have jurisdiction over the arbitration proceedings and all subsequent applications arising out of the reference. The arbitration proceedings have to be made at Jaipur Court and in no other court."

9 *Hanil Era Textiles Ltd.* v. *Puromatic Filters (P) Ltd.*, (2004) 4 SCC 671

2 *Rajasthan SEB* v. *Universal Petrol Chemicals Ltd.*, (2009) 3 SCC 107 : (2009) 1 SCC (Civ) 770

24. In *Balaji Coke*[13] the question was, notwithstanding the mutual agreement to make the high-seas sale agreement subject to Kolkata jurisdiction, whether it would be open to the respondent Company to contend that since a part of cause of action purportedly arose within the jurisdiction of Bhavnagar (Gujarat) Court, the application filed under Section 9 of the 1996 Act before the Principal Civil Judge (Senior Division), Bhavnagar (Gujarat) could still be maintainable. This question arose in the light of Clause 11 of the agreement which contained an arbitration clause and read as under: (*Balaji Coke case*[13], SCC p. 404, para 4)

> "*4.* … 'In case of any dispute or difference arising between the parties hereto or any claim or thing herein contained or the construction thereof or as to any matter in any way connected with or arising out of these presents or the operation thereof or the rights, duties or liabilities of either party thereof, then and in every such case the matter, differences or disputes shall be referred to an arbitrator in Kolkata, West Bengal, India in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996, or any other enactment or statutory modifications thereof for the time being in force. *The place of arbitration shall be Kolkata*.' " (emphasis in original)

25. This Court held in para 30 of the Report that: (*Balaji Coke case*[13], SCC p. 409)

> "*30.* … the parties had knowingly and voluntarily agreed that the contract arising out of the high-seas sale agreement would be subject to Kolkata jurisdiction and even if the courts in Gujarat also had the jurisdiction to entertain any action arising out of the agreement, it has to be held that the agreement to have the disputes decided in Kolkata by an arbitrator in Kolkata … was valid and the respondent … had wrongly chosen to file its application under Section 9 of the 1996 Act before the Bhavnagar Court (Gujarat)…."

26. The question in *InterGlobe Aviation*[14], inter alia, was whether the Permanent Lok Adalat at Hyderabad had territorial jurisdiction to deal with the matter. The standard terms which governed the contract between the parties provided, "all disputes shall be subject to the jurisdiction of the courts of Delhi only". The contention on behalf of the appellant before this Court was that the ticket related to travel from Delhi to Hyderabad. The complaint was in regard to delay at Delhi and, therefore, the cause of action arose at Delhi and that as the contract provided that the courts at Delhi only will have the jurisdiction, the jurisdiction of other courts was ousted. This Court in para 22 of the Report held as under: (SCC pp. 476-77)

> "*22.* As per the principle laid down in *A.B.C. Laminart*[1], any clause which ousts the jurisdiction of all courts having jurisdiction and

13 *Balaji Coke Industry (P) Ltd.* v. *Maa Bhagwati Coke Gujarat (P) Ltd.*, (2009) 9 SCC 403 : (2009) 3 SCC (Civ) 770

14 *InterGlobe Aviation Ltd.* v. *N. Satchidanand*, (2011) 7 SCC 463 : (2011) 3 SCC (Civ) 747

1 *A.B.C. Laminart (P) Ltd.* v. *A.P Agencies*, (1989) 2 SCC 163

conferring jurisdiction on a court not otherwise having jurisdiction would be invalid. It is now well settled that the parties cannot by agreement confer jurisdiction on a court which does not have jurisdiction; and that only where two or more courts have the jurisdiction to try a suit or proceeding, an agreement that the disputes shall be tried in one of such courts is not contrary to public policy. The ouster of jurisdiction of some courts is permissible so long as the court on which exclusive jurisdiction is conferred, had jurisdiction. If the clause had been made to apply only where a part of cause of action accrued in Delhi, it would have been valid. But as the clause provides that irrespective of the place of cause of action, only courts at Delhi would have jurisdiction, the said clause is invalid in law, having regard to the principle laid down in *A.B.C. Laminart*[1]. The fact that in this case, the place of embarkation happened to be Delhi, would not validate a clause, which is invalid."

27. In a comparatively recent decision in *A.V.M. Sales*[15], the terms of the agreement contained the clause, "any dispute arising out of this agreement will be subject to Calcutta jurisdiction only". The respondent before this Court had filed a suit at Vijayawada for recovery of dues from the petitioner while the petitioner had filed a suit for recovery of its alleged dues from the respondent in Calcutta High Court. One of the questions under consideration before this Court was whether the court at Vijayawada had no jurisdiction to entertain the suit on account of exclusion clause in the agreement. Having regard to the facts obtaining in the case, this Court first held that both the courts within the jurisdiction of Calcutta and Vijayawada had jurisdiction to try the suit. Then it was held that in view of the exclusion clause in the agreement, the jurisdiction of courts at Vijayawada would stand ousted.

28. Section 11(12)(*b*) of the 1996 Act provides that where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an arbitration other than the international commercial arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the Principal Civil Court referred to in Section 2(1)(*e*) is situate, and where the High Court itself is the court referred to in clause (*e*) of sub-section (1) of Section 2, to the Chief Justice of that High Court. Clause (*e*) of sub-section (1) of Section 2 defines "court" which means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary 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, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes.

29. When it comes to the question of territorial jurisdiction relating to the application under Section 11, besides the above legislative provisions, Section 20 of the Code is relevant. Section 20 of the Code states that subject

1 *A.B.C. Laminart (P) Ltd.* v. *A.P Agencies*, (1989) 2 SCC 163

15 *A.V.M. Sales Corpn.* v. *Anuradha Chemicals (P) Ltd.*, (2012) 2 SCC 315 : (2012) 1 SCC (Civ) 809

to the limitations provided in Sections 15 to 19, every suit shall be instituted in a court within the local limits of whose jurisdiction:

(*a*) the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(*b*) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(*c*) the cause of action, wholly or in part arises.

30. The Explanation appended to Section 20 clarifies that a corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, the Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(*b*) and Section 2(*e*) of the 1996 Act read with Section 20(*c*) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of Clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of Clause 18 of the agreement, the jurisdiction of the Chief Justice of the Rajasthan High Court has been excluded?

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement—is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts

have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.

33. The above view finds support from the decisions of this Court in *Hakam Singh*[4], *A.B.C. Laminart*[1], *R.S.D.V. Finance*[6], *Angile Insulations*[7], *Shriram City*[8], *Hanil Era Textiles*[9] and *Balaji Coke*[13].

34. In view of the above, we answer the question in the affirmative and hold that the impugned order[3] does not suffer from any error of law. The civil appeal is, accordingly, dismissed with no order as to costs. The appellant shall be at liberty to pursue its remedy under Section 11 of the 1996 Act in the Calcutta High Court.

MADAN B. LOKUR, J. (*concurring*)— Leave granted. While I agree with the conclusion arrived at by my learned Brother Lodha, J. this judgment has been penned down to raise the question — Is it really necessary for this Court to repeatedly affirm the legal position *ad nauseam*? I believe the law on the subject is well settled and it is to nobody's advantage if the same law is affirmed many times over.

36. The clause in the agreement that is sought to be interpreted reads as follows:

> "The agreement shall be subject to jurisdiction of the Courts at Kolkata."

37. In my opinion, the very existence of the exclusion of jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like "only", "exclusively", "alone" and so on are not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement. Therefore, I agree with the conclusion that jurisdiction in the subject-matter of the proceedings vested, by agreement, only in the courts in Kolkata.

38. The facts of the case have been detailed by my learned Brother and it is not necessary to repeat them.

39. Reference has been made to several decisions rendered by this Court and I propose to briefly advert to them.

4 *Hakam Singh* v. *Gammon (India) Ltd.*, (1971) 1 SCC 286
1 *A.B.C. Laminart (P) Ltd.* v. *A.P Agencies*, (1989) 2 SCC 163
6 *R.S.D.V. Finance Co. (P) Ltd.* v. *Shree Vallabh Glass Works Ltd.*, (1993) 2 SCC 130
7 *Angile Insulations* v. *Davy Ashmore India Ltd.*, (1995) 4 SCC 153
8 *Shriram City Union Finance Corpn. Ltd.* v. *Rama Mishra*, (2002) 9 SCC 613
9 *Hanil Era Textiles Ltd.* v. *Puromatic Filters (P) Ltd.*, (2004) 4 SCC 671
13 *Balaji Coke Industry (P) Ltd.* v. *Maa Bhagwati Coke Gujarat (P) Ltd.*, (2009) 9 SCC 403 : (2009) 3 SCC (Civ) 770
3 *Swastik Gases (P) Ltd.* v. *Indian Oil Corpn. Ltd.*, Civil Arbitration Application No. 49 of 2008, order dated 13-10-2011 (Raj)

One set of decisions

40. There is really no difficulty in interpreting the exclusion clause in the first set of decisions. The clause in these decisions generally uses the word "alone" and, therefore, it is quite obvious that the parties have, by agreement, excluded the jurisdiction of courts other than those mentioned in the agreement. These decisions, along with the relevant clause, are as follows:

40.1. *Hakam Singh* v. *Gammon (India) Ltd.*[4]: (SCC p. 287, para 1)

> "*1.* … '13. Notwithstanding the place where the work under this contract is to be executed, it is mutually understood and agreed by and between the parties hereto that this contract shall be deemed to have been entered into by the parties concerned in the city of Bombay and the court of law in the city of Bombay *alone* shall have jurisdiction to adjudicate thereon.' " (emphasis supplied)

It was held that only the courts in Bombay and not Varanasi had jurisdiction over the subject-matter of dispute.

40.2. *Globe Transport Corpn.* v. *Triveni Engg. Works*[5]: (SCC p. 708, para 2)

> "*2.* … 'the Court in Jaipur City *alone* shall have jurisdiction in respect of all claims and matters arising (sic) under the consignment or of the goods entrusted for transportation'. " (emphasis supplied)

It was held that only the courts in Jaipur and not Allahabad had jurisdiction over the subject-matter of dispute.

40.3. *Angile Insulations* v. *Davy Ashmore India Ltd.*[7]: (SCC pp. 154-55, para 5)

> "*5.* … 'This work order is issued subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka. Any legal proceeding will, therefore, fall within the jurisdiction of the above court *only*.' " (emphasis supplied)

It was held that only the courts in Karnataka and not Dhanbad had jurisdiction over the subject-matter of dispute.

40.4. *New Moga Transport Co.* v. *United India Insurance Co. Ltd.*[10]: (SCC p. 680, para 5)

> "*5.* … 'The court at head office city [Udaipur] shall *only* be the jurisdiction in respect of all claims and matters arising under the consignment at the goods entrusted for transport.' " (emphasis supplied)

It was held that only the courts in Udaipur and not Barnala had the jurisdiction over the subject-matter of dispute.

4 (1971) 1 SCC 286
5 (1983) 4 SCC 707
7 (1995) 4 SCC 153
10 (2004) 4 SCC 677

40.5. *Shree Subhlaxmi Fabrics (P) Ltd.* v. *Chand Mal Baradia*[11]: (SCC p. 707, para 3)

"*3.* … '6. Dispute under this contract shall be decided by the court of Bombay and *no other courts*.' " (emphasis supplied)

It was held that only the courts in Bombay and not Calcutta had jurisdiction over the subject-matter of dispute.

40.6. *Rajasthan SEB* v. *Universal Petrol Chemicals Ltd.*[2]: (SCC p. 109, para 5)

"*5.* … '*30.* … The contract shall for all purposes be construed according to the laws of India and subject to jurisdiction only at Jaipur in Rajasthan courts *only*….' " (emphasis supplied)

It was held that only the courts in Jaipur and not Calcutta had jurisdiction over the subject-matter of dispute.

40.7. *A.V.M. Sales Corpn.* v. *Anuradha Chemicals (P) Ltd.*[15]: (SCC p. 316, para 2)

"*2.* … '*Any dispute arising out of this agreement will be subject to Calcutta jurisdiction* ***only****.' " (emphasis in original)

It was held that only the courts in Calcutta and not Vijaywada had jurisdiction over the subject-matter of dispute.

41. The exclusion clause in the above cases is explicit and presents no difficulty in understanding or appreciation.

Another set of decisions

42. In the second set of decisions, the exclusion clause is not specific or explicit inasmuch as the words like "only", "alone" or "exclusively" and so on have not been used. This has apparently presented some difficulty in appreciation.

43. In *A.B.C. Laminart* v. *A.P Agencies*[1] the relevant clause reads as follows: (SCC p. 167, para 3)

"*3.* … 'Any dispute arising out of this sale shall be subject to Kaira jurisdiction.' "

44. Despite the aforesaid clause, proceedings were initiated by the respondent in *A.B.C. Laminart*[1] in Salem (Tamil Nadu). The appellant challenged the jurisdiction of the Court at Salem to entertain the proceedings since the parties had agreed that all disputes shall be subject to the jurisdiction of the courts in Kaira (Gujarat). The trial court upheld the objection but that was set aside in appeal by the Madras High Court which held that the courts in Salem had the jurisdiction to entertain the proceedings.

11 (2005) 10 SCC 704
2 (2009) 3 SCC 107 : (2009) 1 SCC (Civ) 770
15 (2012) 2 SCC 315 : (2012) 1 SCC (Civ) 809
* **Ed.**: The word "only" has been re-emphasised herein.
1 (1989) 2 SCC 163

45. The civil appeal filed by the appellant in *A.B.C. Laminart case*[1] challenging the decision of the Madras High Court was dismissed by this Court thereby affirming the jurisdiction of the Court in Salem notwithstanding the exclusion clause. While doing so, this Court held that when a certain jurisdiction is specified in a contract, an intention to exclude all others from its operation may be inferred; the exclusion clause has to be properly construed and the maxim *expressio unius est exclusio alterius* (expression of one is the exclusion of another) may be applied. Looking then to the facts and circumstances of the case, this Court held that the jurisdiction of courts other than in Kaira were not clearly, unambiguously and explicitly excluded and therefore, the Court at Salem had jurisdiction to entertain the proceedings.

46. In *R.S.D.V. Finance Co. (P) Ltd.* v. *Shree Vallabh Glass Works Ltd.*[6], the exclusion clause reads as follows:

"Subject to Anand jurisdiction."

47. Proceedings were initiated by the appellant in *R.S.D.V. Finance*[6] in the ordinary original civil jurisdiction of the Bombay High Court. The respondent questioned the jurisdiction of the Bombay High Court in view of the exclusion clause. The learned Single Judge held that the Bombay High Court had jurisdiction to entertain the proceedings. However, the Division Bench of the High Court took the view that the Bombay High Court had no jurisdiction in the matter and accordingly dismissed the proceedings. In appeal, this Court noted in para 9 of the Report that the endorsement "Subject to Anand jurisdiction" had been made unilaterally by the respondent. Accordingly, there was no agreement between the parties to exclude the jurisdiction of the Bombay High Court. Clearly, this decision turned on its own special facts.

48. In *Hanil Era Textiles Ltd.* v. *Puromatic Filters (P) Ltd.*[9] the exclusion clause reads as follows: (SCC p. 673, para 3)

> "*3.1.* … '… Any legal proceeding arising out of the order shall be subject to the jurisdiction of the courts in Mumbai.' "

49. On a dispute having arisen, proceedings were instituted by the respondent in *Hanil Era Textiles*[9] in the courts in Delhi. This was objected to by the appellant but neither the Additional District Judge, Delhi nor the Delhi High Court accepted the contention of the appellant that the courts in Delhi had no territorial jurisdiction in the matter. In appeal, this Court referred to *A.B.C. Laminart*[1] and after considering the facts and circumstances of the case inferred that the jurisdiction of all other courts except the courts in Mumbai was excluded. This inference was drawn from the fact that the purchase order was placed by the appellant at Mumbai and was accepted by the respondent at Mumbai. The advance payment was made by the

1 *A.B.C. Laminart (P) Ltd.* v. *A.P. Agencies*, (1989) 2 SCC 163
6 (1993) 2 SCC 130
9 (2004) 4 SCC 671

respondent at Mumbai and as per the case of the respondent itself the final payment was to be made at Mumbai.

50. In *Balaji Coke Industry (P) Ltd.* v. *Maa Bhagwati Coke Gujarat (P) Ltd.*[13], the exclusion clause reads as follows: (SCC p. 404, para 4)

> "*4.* … 'In case of any dispute or difference arising between the parties hereto or any claim or thing herein contained or the construction thereof or as to any matter in any way connected with or arising out of these presents or the operation thereof or the rights, duties or liabilities of either party thereof, then and in every such case the matter, differences or disputes shall be referred to an arbitrator in Kolkata, West Bengal, India in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996, or any other enactment or statutory modifications thereof for the time being in force. *The place of arbitration shall be Kolkata.*' " (emphasis in original)

51. Notwithstanding the aforesaid clause, proceedings were instituted by the respondent in *Balaji*[13] against the appellant in Bhavnagar (Gujarat). The petitioner in this Court then moved a transfer petition under Article 139-A(2) of the Constitution of India for transfer of the proceedings to Kolkata. While allowing the transfer petition, this Court drew an inference, as postulated in *A.B.C. Laminart*[1] that the intention of the parties was to exclude the jurisdiction of courts other than those in Kolkata.

52. Finally, in *Shriram City Union Finance Corpn. Ltd.* v. *Rama Mishra*[8], the exclusion clause read as follows: (SCC p. 616, para 7)

> "*7.* … '34. Subject to the provisions of Clause 32 above it is expressly agreed by and between the parties hereinabove that any suit, application and/or any other legal proceedings with regard to any matter, claims, differences and for disputes arising out of this agreement shall be filed and referred to the courts in Calcutta for the purpose of jurisdiction.' "

53. Proceedings were initiated by the respondent in *Shriram City Union Finance*[8] in Bhubaneswar (Odisha). An objection was taken by the appellant that the Court in Bhubaneswar had no jurisdiction to entertain the proceedings. However, the objection was not accepted by the trial Judge, Bhubaneswar. In appeal, the District Judge accepted the contention of the appellant that only the courts in Kolkata had jurisdiction in the matter. In a civil revision petition filed before the Orissa High Court by the respondent, the order passed by the trial court was affirmed with the result that it was held that notwithstanding the exclusion clause, the Civil Judge, Bhubaneswar (Odisha) had jurisdiction to entertain the proceedings.

54. In the civil appeal filed by the appellant in *Shriram City Union Finance*[8] in this Court, it was held that the exclusion clause left no room for

13 (2009) 9 SCC 403 : (2009) 3 SCC (Civ) 770
1 *A.B.C. Laminart (P.) Ltd.* v. *A.P. Agencies*, (1989) 2 SCC 163
8 (2002) 9 SCC 613

doubt that the parties expressly agreed that legal proceedings shall be instituted only in the courts in Kolkata. It was also held that the parties had agreed that the courts in Kolkata "alone" would have jurisdiction in the matter and therefore, the Civil Court, Bhubaneswar ought not to have entertained the proceedings. A reading of the exclusion clause shows that it does not use the word "alone" but it was read into the clause by this Court as an inference drawn on the facts of the case, in line with the decision rendered in *A.B.C. Laminart*[1] and the relief declined in *A.B.C. Laminart*[1] was granted in this case.

55. It will be seen from the above decisions that except in *A.B.C. Laminart*[1] where this Court declined to exclude the jurisdiction of the courts in Salem, in all other similar cases an inference was drawn (explicitly or implicitly) that the parties intended the implementation of the exclusion clause as it reads notwithstanding the absence of the words "only", "alone" or "exclusively" and the like. The reason for this is quite obvious. The parties would not have included the ouster clause in their agreement were it not to carry any meaning at all. The very fact that the ouster clause is included in the agreement between the parties conveys their clear intention to exclude the jurisdiction of courts other than those mentioned in the clause concerned. Conversely, if the parties had intended that all courts where the cause of action or a part thereof had arisen would continue to have jurisdiction over the dispute, the exclusion clause would not have found a place in the agreement between the parties.

56. It is not necessary to refer to the decisions rendered by this Court in *Harshad Chiman Lal Modi* v. *DLF Universal Ltd.*[12] and *InterGlobe Aviation Ltd.* v. *N. Satchidanand*[14] since they deal with an issue that does not at all arise in this case. In this context it may only be mentioned that the appellant in the present case did not dispute that a part of the cause of action arose in Kolkata, as observed by my learned Brother Lodha, J.

Conclusion

57. For the reasons mentioned above, I agree with my learned Brother that in the jurisdiction clause of an agreement, the absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute. In the present case, only the courts in Kolkata had jurisdiction to entertain the disputes between the parties.

58. The civil appeal is dismissed, as proposed, leaving the appellant to pursue its remedy in Kolkata.

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1 *A.B.C. Laminart (P.) Ltd.* v. *A.P. Agencies*, (1989) 2 SCC 163
12 (2005) 7 SCC 791
14 (2011) 7 SCC 463 : (2011) 3 SCC (Civ) 747

(2017) 7 Supreme Court Cases 678

(BEFORE PINAKI CHANDRA GHOSE AND ROHINTON FALI NARIMAN, JJ.)

INDUS MOBILE DISTRIBUTION PRIVATE LIMITED .. Appellant;

Versus

DATAWIND INNOVATIONS PRIVATE LIMITED AND OTHERS .. Respondents.

Civil Appeals Nos. 5370-71 of 2017†, decided on April 19, 2017

A. **Arbitration and Conciliation Act, 1996 — Ss. 2(1)(e), 42, 20, 9 and 11 — Appointment of arbitrators — Juridical seat of arbitration chosen by parties in terms of arbitration agreement — Effect of, on jurisdiction of court — Ss. 16 to 21 CPC, 1908 — Non-applicability of, for determination of jurisdiction of supervisory court in respect of the arbitration**

— Designation of seat of arbitration, held, is itself akin to an exclusive jurisdiction clause as to the courts exercising supervisory powers over the arbitration

— As per the arbitration agreement between the parties, the seat of arbitration was at Mumbai and the jurisdiction was to exclusively vest in the Mumbai courts — Rejecting the contention of the respondent that jurisdiction could not vest in courts of Mumbai as no cause of action arose there, held, under the Law of Arbitration, unlike the Code of Civil Procedure, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause — Further, the moment the "seat" was determined at Mumbai, it vested the Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties — Civil Procedure Code, 1908 — Ss. 16 to 21 — Words and Phrases — "Seat", "juridical seat"

B. **Arbitration and Conciliation Act, 1996 — Ss. 9, 2(1)(e) and 42 — Interim relief — Grant of, by a court not having jurisdiction — An interim injunction was granted by the court at Delhi, in favour of the petitioner — Whilst holding that the court at Mumbai alone and not Delhi had jurisdiction, the injunction confirmed by Delhi Court, allowed to continue for a period of four weeks only to enable the applicants to take necessary steps under S. 9 of the A&C Act, 1996 in the Mumbai Court**

C. **Arbitration and Conciliation Act, 1996 — Ss. 11, 2(1)(e), 20 and 42 — Appointment of arbitrators — Exclusive jurisdiction clause — Effect of — Cl. 19 of the agreement between the parties provided that jurisdiction was to exclusively vest in the Mumbai courts — In the present case, held, Mumbai courts alone had jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai as per the arbitration agreement**

† Arising out of SLPs (C) Nos. 27311-12 of 2016. From the Judgment and Order dated 3-6-2016 of the High Court of Delhi at New Delhi in Arbitration Petition No. 592 of 2015 and OMP (I) No. 531 of 2015 : *Datawind Innovations (P) Ltd.* v. *Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744

Respondent 1 was supplying goods to the appellant at Chennai from New Delhi. The appellant approached Respondent 1 and expressed an earnest desire to do business with Respondent 1 as its retail chain partner. This being the case, an agreement dated 25-10-2014 was entered into between the parties.

Clauses 18 and 19 of the agreement are set out hereinbelow:

"*Dispute resolution mechanism:*

Arbitration:

* * *

If the dispute cannot be amicably resolved … such dispute shall be finally settled by arbitration conducted under the provisions of the Arbitration and Conciliation Act, 1996 by reference to a sole arbitrator which shall be mutually agreed by the parties. Such arbitration *shall be conducted at Mumbai*, in English language….

19. All disputes and differences of any kind whatever arising out of or in connection with this agreement shall be subject to the *exclusive jurisdiction of courts of Mumbai only*."

Disputes arose between the parties and a notice dated 25-9-2015 was sent by Respondent 1 to the appellant. Clause 18 of the agreement was invoked by Respondent 1.

Two petitions were then filed by Respondent 1 — the first dated September 2015, under Section 9 of the Arbitration and Conciliation Act, 1996 asking for various interim reliefs in the matter. By an application dated 28-10-2015, Respondent 1 filed a Section 11 petition to appoint an arbitrator.

Both the applications were disposed of by the impugned judgment. First and foremost, it was held by the impugned judgment that as no part of the cause of action arose in Mumbai, only the courts of three territories could have jurisdiction in the matter, namely, Delhi and Chennai (from and to where goods were supplied), and Amritsar (which is the registered office of the appellant company). The court therefore held that the exclusive jurisdiction clause would not apply on facts, as the courts in Mumbai would have no jurisdiction at all. It, therefore, determined that Delhi being the first Court that was approached would have jurisdiction in the matter and proceeded to confirm interim order dated 22-9-2015 and also proceeded to dispose of the Section 11 petition by appointing Justice *V*, retired Supreme Court Judge, as the sole arbitrator in the proceedings.

The issue involved in this appeal was whether, when the seat of arbitration is Mumbai, an exclusive jurisdiction clause stating that the courts at Mumbai alone would have jurisdiction in respect of disputes arising under the agreement would oust all other courts including the High Court of Delhi?

Answering in the affirmative, the Supreme Court

Held :

The concept of juridical seat has been evolved by the courts in England and has now been firmly embedded in our jurisprudence. 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. … (Para 9)

Balco v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810, *followed*

An agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause. Any claim for a remedy as to the validity of an existing interim or final award is agreed to be made only in the courts of the place designated as the seat of arbitration. (Para 11)

Balco v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810, *followed*

C v. *D*, 2008 Bus LR 843 : 2007 EWCA Civ 1282; *A* v. *B*, (2007) 1 All ER (Comm) 591 : (2007) 1 Lloyd's Rep 237, *cited*

The *seat* of the arbitration is thus intended to be its centre of gravity. This does not mean that all proceedings of the arbitration are to be held at the *seat* of arbitration. The arbitrators are at liberty to hold meetings at a place which is of convenience to all concerned. Each move of the Arbitral Tribunal does not of itself mean that the seat of arbitration changes. The seat of arbitration remains the place initially agreed by or on behalf of the parties. (Para 12)

Enercon (India) Ltd. v. *Enercon GmbH*, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59, *followed*

Naviera Amazonica Peruana S.A. v. *Compania Internacional De Seguros Del Peru*, (1988) 1 Lloyd's Rep 116 (CA); *Union of India* v. *McDonnell Douglas Corpn.*, (1993) 2 Lloyd's Rep 48, *cited*

Once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration. (Para 13)

Enercon (India) Ltd. v. *Enercon GmbH*, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59, *followed*

"Juridical seat" is nothing but the "legal place" of arbitration. (Para 14)

Reliance Industries Ltd. v. *Union of India*, (2014) 7 SCC 603 : (2014) 3 SCC (Civ) 737; *Harmony Innovation Shipping Ltd.* v. *Gupta Coal India Ltd.*, (2015) 9 SCC 172 : (2015) 4 SCC (Civ) 341; *Union of India* v. *Reliance Industries Ltd.*, (2015) 10 SCC 213 : (2016) 1 SCC (Civ) 102, *relied on*

The mere choosing of the juridical seat of arbitration attracts the law applicable to such location. In other words, it would not be necessary to specify which law would apply to the arbitration proceedings, since the law of the particular country would apply ipso jure. (Para 15)

Eitzen Bulk A/S v. *Ashapura Minechem Ltd.*, (2016) 11 SCC 508 : (2016) 4 SCC (Civ) 251, *relied on*

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 Sections 16 to 21 of 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. (Para 19)

It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. (Para 20)

Swastik Gases (P) Ltd. v. *Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157; *B.E. Simoese Von Staraburg Niedenthal* v. *Chhattisgarh Investment Ltd.*, (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427, *relied on*

Datawind Innovations (P) Ltd. v. *Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744, *reversed*

Datawind Innovations (P) Ltd. v. *Indus Mobile Distribution (P) Ltd.*, OMP (I) No. 531 of 2015, order dated 22-9-2015 (Del), *referred to*

Bhatia International v. *Bulk Trading S.A.*, (2002) 4 SCC 105, *cited*

VN-D/58580/CV

Advocates who appeared in this case :

K.S. Mahadevan, Krishna Kumar R.S. and Rajesh Kumar, Advocates, for the Appellant; Mohit Chaudhary, Ms Puja Sharma, Kunal Sachdeva and Imran Ali, Advocates, for the Respondents.

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13. (2002) 4 SCC 105, *Bhatia International* v. *Bulk Trading S.A.* 691*f-g*

14. (1993) 2 Lloyd's Rep 48, *Union of India* v. *McDonnell Douglas Corpn.* 689*b-c*
15. (1988) 1 Lloyd's Rep 116 (CA), *Naviera Amazonica Peruana S.A.* v. *Compania Internacional De Seguros Del Peru* 689*b*

The Judgment of the Court was delivered by

ROHINTON FALI NARIMAN, J.— Leave granted. The present appeals raise an interesting question as to whether, when the seat of arbitration is Mumbai, an exclusive jurisdiction clause stating that the courts at Mumbai alone would have jurisdiction in respect of disputes arising under the agreement would oust all other courts including the High Court of Delhi, whose judgment[1] is appealed against.

2. The brief facts necessary to appreciate the controversy are that Respondent 1 is engaged in the manufacture, marketing and distribution of mobile phones, tablets and their accessories. Respondent 1 has its registered office at Amritsar, Punjab. Respondent 1 was supplying goods to the appellant at Chennai from New Delhi. The appellant approached Respondent 1 and expressed an earnest desire to do business with Respondent 1 as its retail chain partner. This being the case, an agreement dated 25-10-2014 was entered into between the parties. Clauses 18 and 19 are relevant for our purpose, and are set out hereinbelow:

> "*Dispute resolution mechanism*:
>
> *Arbitration*: In case of any dispute or differences arising between parties out of or in relation to the construction, meaning, scope, operation or effect of this agreement or breach of this agreement, parties shall make efforts in good faith to amicably resolve such dispute.
>
> If such dispute or difference cannot be amicably resolved by the parties (dispute) within thirty days of its occurrence, or such longer time as mutually agreed, either party may refer the dispute to the designated senior officers of the parties.
>
> If the dispute cannot be amicably resolved by such officers within thirty (30) days from the date of referral, or within such longer time as mutually agreed, such dispute shall be finally settled by arbitration conducted under the provisions of the Arbitration and Conciliation Act, 1996 by reference to a sole arbitrator which shall be mutually agreed by the parties. Such arbitration shall be conducted at Mumbai, in English language.
>
> The arbitration award shall be final and the judgment thereupon may be entered in any court having jurisdiction over the parties hereto or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. The arbitrator shall have the power to order specific performance of the agreement. Each party shall bear its own costs of the arbitration.
>
> It is hereby agreed between the parties that they will continue to perform their respective obligations under this agreement during the pendency of the dispute.

1 *Datawind Innovations (P) Ltd.* v. *Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744

19. All disputes and differences of any kind whatever arising out of or in connection with this agreement shall be subject to the exclusive jurisdiction of courts of Mumbai only."

3. Disputes arose between the parties and a notice dated 25-9-2015 was sent by Respondent 1 to the appellant. The notice stated that the appellant had been in default of outstanding dues of Rs 5 crores with interest thereon and was called upon to pay the outstanding dues within 7 days. Clause 18 of the agreement was invoked by Respondent 1, and one Justice H.R. Malhotra was appointed as the sole arbitrator between the parties. By a reply dated 15-10-2015, the appellant objected to the appointment of Justice Malhotra and asked Respondent 1 to withdraw its notice. By a further reply dated 16-10-2015, the averments made in the notice were denied in toto.

4. Two petitions were then filed by Respondent 1—the first dated September 2015, under Section 9 of the Arbitration and Conciliation Act, 1996 asking for various interim reliefs in the matter. By an order dated 22-9-2015[2], the Delhi High Court issued notice in the interim application and restrained the appellant from transferring, alienating or creating any third-party interests in respect of the property bearing No. 281, TK Road, Alwarpet, Chennai-600018 till the next date of hearing. By an application dated 28-10-2015, Respondent 1 filed a Section 11 petition to appoint an arbitrator.

5. Both the applications were disposed of by the impugned judgment[1]. First and foremost, it was held by the impugned judgment that as no part of the cause of action arose in Mumbai, only the courts of three territories could have jurisdiction in the matter, namely, Delhi and Chennai (from and to where goods were supplied), and Amritsar (which is the registered office of the appellant company). The court therefore held that the exclusive jurisdiction clause would not apply on facts, as the courts in Mumbai would have no jurisdiction at all. It, therefore, determined that Delhi being the first Court that was approached would have jurisdiction in the matter and proceeded to confirm interim order dated 22-9-2015[2] and also proceeded to dispose of the Section 11 petition by appointing Justice S.N. Variava, retired Supreme Court Judge, as the sole arbitrator in the proceedings. The judgment recorded that the conduct of the arbitration would be in Mumbai.

6. The learned counsel on behalf of the appellant has assailed the judgment of the Delhi High Court, stating that even if it were to be conceded that no part of the cause of action arose at Mumbai, yet the seat of the arbitration being at Mumbai, courts in Mumbai would have exclusive jurisdiction in all proceedings over the same. According to him, therefore, the impugned judgment was erroneous and needs to be set aside.

2 *Datawind Innovations (P) Ltd.* v. *Indus Mobile Distribution (P) Ltd.*, OMP (I) No. 531 of 2015, order dated 22-9-2015 (Del)

1 *Datawind Innovations (P) Ltd.* v. *Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744

7. In opposition to these arguments, the learned counsel for Respondent 1 sought to support the judgment by stating that no part of the cause of action arose in Mumbai. This being the case, even if the seat were at Mumbai, it makes no difference as one of the tests prescribed by the Civil Procedure Code, 1908, to give a court jurisdiction must at least be fulfilled. None of these tests being fulfilled on the facts of the present case, the impugned judgment is correct and requires no interference.

8. The relevant provisions of the Arbitration and Conciliation Act, 1996 are set out hereinbelow:

> "**2.** ***Definitions***.—(1) In this Part, unless the context otherwise requires—
>
> * * *
>
> (*e*) "**Court**" means the Principal Civil Court of Original Jurisdiction in a district, and includes 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, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;
>
> * * *
>
> (2) ***Scope***.—This Part shall apply where the place of arbitration is in India.
>
> * * *
>
> **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.
>
> * * *
>
> **31.** ***Form and contents of arbitral award***.—(1)-(3) * * *
>
> (4) The arbitral award shall state its date and the place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place."

9. The concept of juridical seat has been evolved by the courts in England and has now been firmly embedded in our jurisprudence. Thus, the Constitution Bench in *BALCO* v. *Kaiser Aluminium Technical Services Inc.*[3] has adverted to "seat" in some detail. Para 96 is instructive and states as under: (SCC pp. 605-06)

> "*96*. Section 2(1)(*e*) of the Arbitration Act, 1996 reads as under:

3 (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810

'**2.** ***Definitions***.—(1) In this Part, unless the context otherwise requires —

(*a*)-(*d*) * * *

(*e*) "**Court**" means the Principal Civil Court of Original Jurisdiction in a district, and includes 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, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;'

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." (emphasis in original)

10. Paras 98 to 100 have laid down the law as to "seat" thus: (*Bharat Aluminium case*[3], SCC pp. 606-08)

> "*98.* We now come to Section 20, which is 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.'
>
> A plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any "place" or "seat" within India, be it Delhi, Mumbai, etc. In the absence of the parties' agreement thereto, Section 20(2) authorises the tribunal to determine the place/seat of such arbitration. Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.
>
> *99.* The fixation of the most convenient "venue" is taken care of by Section 20(3). Section 20 has to be read in the context of Section 2(2) which places a threshold limitation on the applicability of Part I, where the place of arbitration is in India. Therefore, Section 20 would also not support the submission of the extra-territorial applicability of Part I, as canvassed by the learned counsel for the appellants, so far as purely domestic arbitration is concerned.
>
> *100.* True, that in an international commercial arbitration, having a seat in India, hearings may be necessitated outside India. In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but it would not have the effect of changing the seat of arbitration which would remain in India. The legal position in this regard is summed up by Redfern and Hunter, *The Law and Practice of International Commercial Arbitration* (1986) at p. 69 in the following passage under the heading "The Place of Arbitration":
>
> > 'The preceding discussion has been on the basis that there is only one "place" of arbitration. This will be the place chosen by or on behalf of the parties; and it will be designated in the arbitration agreement or the terms of the reference or the minutes of proceedings or in some other way as the place or "seat" of the arbitration. This does not mean, however, that the Arbitral Tribunal must hold all its meetings or hearings at the place of arbitration. International commercial

3 *BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810

arbitration often involves people of many different nationalities, from many different countries. In these circumstances, it is by no means unusual for an Arbitral Tribunal to hold meetings—or even hearings —in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses.... It may be more convenient for an Arbitral Tribunal sitting in one country to conduct a hearing in another country—for instance, for the purpose of taking evidence.... In such circumstances, each move of the Arbitral Tribunal does not of itself mean that the seat of arbitration changes. The seat of the arbitration remains the place initially agreed by or on behalf of the parties.'

This, in our view, is the correct depiction of the practical considerations and the distinction between "seat" [Sections 20(1) and 20(2)] and "venue" [Section 20(3)]. We may point out here that the distinction between "seat" and "venue" would be quite crucial in the event, the arbitration agreement designates a foreign country as the "seat"/"place" of the arbitration and also selects the Arbitration Act, 1996 as the curial law/law governing the arbitration proceedings. It would be a matter of construction of the individual agreement to decide whether:

(*i*) the designated foreign "seat" would be read as in fact only providing for a "venue"/"place" where the hearings would be held, in view of the choice of the Arbitration Act, 1996 as being the *curial law*, OR

(*ii*) the specific designation of a foreign seat, necessarily carrying with it the choice of that country's arbitration/*curial law*, would prevail over and subsume the conflicting selection choice by the parties of the Arbitration Act, 1996." (emphasis in original)

11. In an instructive passage, this Court stated that an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause as follows: (*Bharat Aluminium case*[3], SCC p. 621, para 123)

"*123*. Thus, it is clear that the regulation of *conduct* of arbitration and *challenge* to an award would have to be done by the courts of the country in which the arbitration is being conducted. Such a court is then the supervisory court possessed of the power to annul the award. This is in keeping with the scheme of the international instruments, such as the Geneva Convention and the New York Convention as well as the UNCITRAL Model Law. It also recognises the territorial principle which gives effect to the sovereign right of a country to regulate, through its national courts, an adjudicatory duty being performed in its own country. By way of a comparative example, we may reiterate the observations made by the Court

3 *BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810

of Appeal, England in *C* v. *D*[4] wherein it is observed that: (Bus LR p. 851G, para 17)

> '*17. It follows from this that a choice of seat for the arbitration must be a choice of forum for remedies seeking to attack the award.*'

In the aforesaid case, the Court of Appeal had approved the observations made in *A* v. *B*[5] wherein it is observed that:

> '*... an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause. Any claim for a remedy ... as to the validity of an existing interim or final award is agreed to be made only in the courts of the place designated as the seat of arbitration.*' " (emphasis in original)

12. The Constitution Bench's statement of the law was further expanded in *Enercon (India) Ltd.* v. *Enercon GmbH*[6]. After referring to various English authorities in great detail, this Court held, following the Constitution Bench, as follows: (SCC p. 58, para 134)

> "*134.* It is accepted by most of the experts in the law relating to international arbitration that in almost all the national laws, arbitrations are anchored to the *seat*/place/situs of arbitration. *Redfern and Hunter on International Arbitration* (5th Edn., Oxford University Press, Oxford/New York 2009), in Para 3.54 concludes that "the *seat* of the arbitration is thus intended to be its centre of gravity". In *BALCO*[3] (*BALCO* v. *Kaiser Aluminium Technical Services Inc.*) it is further noticed that this does not mean that all proceedings of the arbitration are to be held at the *seat* of arbitration. The arbitrators are at liberty to hold meetings at a place which is of convenience to all concerned. This may become necessary as arbitrators often come from different countries. Therefore, it may be convenient to hold all or some of the meetings of the arbitration in a location other than where the *seat* of arbitration is located. In *BALCO*[3], the relevant passage from Redfern and Hunter has been quoted which is as under: (SCC p. 598, para 75)
>
> > '*75.* ... "The preceding discussion has been on the basis that there is only one "place" of arbitration. This will be the place chosen by or on behalf of the parties; and it will be designated in the arbitration agreement or the terms of reference or the minutes of proceedings or in some other way as the place or "seat" of the arbitration. This does not mean, however, that the Arbitral Tribunal *must* hold all its meetings or hearings at the place of arbitration. International commercial arbitration often involves people of many different nationalities, from many different countries. In these circumstances, it is by no means unusual for an Arbitral Tribunal to hold meetings—or even hearings

4 2008 Bus LR 843 : 2007 EWCA Civ 1282
5 (2007) 1 All ER (Comm) 591 : (2007) 1 Lloyd's Rep 237
6 (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59
3 *BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810

> —in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses.... It may be more convenient for an Arbitral Tribunal sitting in one country to conduct a hearing in another country — for instance, for the purpose of taking evidence.... In such circumstances each move of the Arbitral Tribunal does not of itself mean that the seat of arbitration changes. The seat of arbitration remains the place initially agreed by or on behalf of the parties." [*Naviera case*[7] (*Naviera Amazonica Peruana S.A.* v. *Compania Internacional De Seguros Del Peru*), Lloyd's Rep p. 121]'
>
> These observations have also been noticed in *Union of India* v. *McDonnell Douglas Corpn.*[8]" (emphasis in original)

13. This Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration. (*See* para 138.)

14. In *Reliance Industries Ltd.* v. *Union of India*[9], this statement of the law was echoed in several paragraphs. This judgment makes it clear that "juridical seat" is nothing but the "legal place" of arbitration. It was held that since the juridical seat or legal place of arbitration was London, English courts alone would have jurisdiction over the arbitration thus excluding Part I of the Indian Act. (*See* paras 36, 41, 45 to 60 and 76.1 and 76.2.) This judgment was relied upon and followed by *Harmony Innovation Shipping Ltd.* v. *Gupta Coal India Ltd.*[10] (*See* paras 45 and 48.) In *Union of India* v. *Reliance Industries Ltd.*[11], this Court referred to all the earlier judgments and held that in cases where the seat of arbitration is London, by necessary implication Part I of the Arbitration and Conciliation Act, 1996 is excluded as the supervisory jurisdiction of courts over the arbitration goes along with "seat".

15. In a recent judgment in *Eitzen Bulk A/S* v. *Ashapura Minechem Ltd.*[12], all the aforesaid authorities were referred to and followed. Para 34 of the said judgment reads as follows: (SCC pp. 520-21)

> "*34*. As a matter of fact the mere choosing of the juridical seat of arbitration attracts the law applicable to such location. In other words, it would not be necessary to specify which law would apply to the arbitration proceedings, since the law of the particular country would apply ipso jure. The following passage from *Redfern and Hunter on International Arbitration* contains the following explication of the issue:

7 *Naviera Amazonica Peruana S.A.* v. *Compania Internacional De Seguros Del Peru*, (1988) 1 Lloyd's Rep 116 (CA)
8 (1993) 2 Lloyd's Rep 48
9 (2014) 7 SCC 603 : (2014) 3 SCC (Civ) 737
10 (2015) 9 SCC 172 : (2015) 4 SCC (Civ) 341
11 (2015) 10 SCC 213 : (2016) 1 SCC (Civ) 102
12 (2016) 11 SCC 508 : (2016) 4 SCC (Civ) 251

'It is also sometimes said that parties have selected the procedural law that will govern their arbitration, by providing for arbitration in a particular country. This is too elliptical and, as an English court itself held more recently in Breas of Doune Wind Farm it does not always hold true. What the parties have done is to choose a place of arbitration in a particular country. That choice brings with it submission to the laws of that country, including any mandatory provisions of its law on arbitration. To say that the parties have "chosen" that particular law to govern the arbitration is rather like saying that an English woman who takes her car to France has "chosen" French traffic law, which will oblige her to drive on the right-hand side of the road, to give priority to vehicles approaching from the right, and generally to obey traffic laws to which she may not be accustomed. But it would be an odd use of language to say this notional motorist had opted for "French traffic law". What she has done is to choose to go to France. The applicability of French law then follows automatically. It is not a matter of choice.

Parties may well choose a particular place of arbitration precisely because its lex arbitri is one which they find attractive. Nevertheless, once a place of arbitration has been chosen, it brings with it its own law. If that law contains provisions that are mandatory so far as arbitration is concerned, those provisions must be obeyed. It is not a matter of choice any more than the notional motorist is free to choose which local traffic laws to obey and which to disregard.' "

16. It may be mentioned, in passing, that the Arbitration and Conciliation Act, 1996 has been amended in 2015 pursuant to a detailed Law Commission Report. The Law Commission specifically adverted to the difference between "seat" and "venue" as follows:

"40. The Supreme Court in *BALCO*[3] decided that Parts I and II of the Act are mutually exclusive of each other. The intention of Parliament that the Act is territorial in nature and Sections 9 and 34 will apply only when the seat of arbitration is in India. The seat is the "centre of gravity" of arbitration, and even where two foreign parties arbitrate in India, Part I would apply and, by virtue of Section 2(7), the award would be a "domestic award". The Supreme Court recognised the "seat" of arbitration to be the juridical seat; however, in line with international practice, it was observed that the arbitral hearings may take place at a location other than the seat of arbitration. The distinction between "seat" and "venue" was, therefore, recognised. In such a scenario, only if the seat is determined to be India, Part I would be applicable. If the seat was foreign, Part I would be inapplicable. Even if Part I was expressly included 'it would only mean that the parties have contractually imported from the Arbitration Act, 1996, those provisions which are concerned with the internal conduct of their

3 *BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810

arbitration and which are not inconsistent with the mandatory provisions of the [foreign] Procedural law/Curial law.' The same cannot be used to confer jurisdiction on an Indian Court. However, the decision in *BALCO*[3] was expressly given prospective effect and applied to arbitration agreements executed after the date of the judgment.

41. While the decision in *BALCO*[3] is a step in the right direction and would drastically reduce judicial intervention in foreign arbitrations, the Commission feels that there are still a few areas that are likely to be problematic.

(*i*) Where the assets of a party are located in India, and there is a likelihood that that party will dissipate its assets in the near future, the other party will lack an efficacious remedy if the seat of the arbitration is abroad. The latter party will have two possible remedies, but neither will be efficacious. First, the latter party can obtain an interim order from a foreign court or the Arbitral Tribunal itself and file a civil suit to enforce the right created by the interim order. The interim order would not be enforceable directly by filing an execution petition as it would not qualify as a "judgment" or "decree" for the purposes of Sections 13 and 44-A of the Code of Civil Procedure (which provide a mechanism for enforcing foreign judgments). Secondly, in the event that the former party does not adhere to the terms of the foreign order, the latter party can initiate proceedings for contempt in the foreign Court and enforce the judgment of the foreign Court under Sections 13 and 44-A of the Code of Civil Procedure. Neither of these remedies is likely to provide a practical remedy to the party seeking to enforce the interim relief obtained by it.

That being the case, it is a distinct possibility that a foreign party would obtain an arbitral award in its favour only to realise that the entity against which it has to enforce the award has been stripped of its assets and has been converted into a shell company.

(*ii*) While the decision in *BALCO*[3] was made prospective to ensure that hotly negotiated bargains are not overturned overnight, it results in a situation where courts, despite knowing that the decision in *Bhatia International*[13] is no longer good law, are forced to apply it whenever they are faced with a case arising from an arbitration agreement executed pre-*BALCO*[3].

42. The above issues have been addressed by way of proposed amendments to Sections 2(2), 2(2-A), 20, 28 and 31."

3 *BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810
13 *Bhatia International* v. *Bulk Trading S.A.*, (2002) 4 SCC 105

17. In amendments to be made to the Act, the Law Commission recommended the following:

"*Amendment of Section 20*

12. In Section 20, delete the word "Place" and add the words "Seat and Venue" before the words "of arbitration".

(*i*) In sub-section (1), after the words "agree on the" delete the word "place" and add words "seat and venue".

(*ii*) In sub-section (3), after the words "meet at any" delete the word "place" and add word "venue".

[*Note*.—The departure from the existing phrase "place" of arbitration is proposed to make the wording of the Act consistent with the international usage of the concept of a "seat" of arbitration, to denote the legal home of the arbitration. The amendment further legislatively distinguishes between the "[legal] seat" from a "[mere] venue" of arbitration.]

Amendment of Section 31

17. In Section 31

(*i*) In sub-section (4), after the words "its date and the" delete the word "place" and add the word "seat"."

18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the *BALCO*[3] judgment in no uncertain terms has referred to "place" as "juridical seat" for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word "place" is used, refers to "juridical seat", whereas in Section 20(3), the word "place" is equivalent to "venue". This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

19. 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 Sections 16 to 21 of 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.

3 *BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases (P) Ltd.* v. *Indian Oil Corpn. Ltd.*[14] This was followed in a recent judgment in *B.E. Simoese Von Staraburg Niedenthal* v. *Chhattisgarh Investment Ltd.*[15] Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment[1] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly.

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14 (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157
15 (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427
1 *Datawind Innovations (P) Ltd.* v. *Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744

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(BEFORE ROHINTON FALI NARIMAN AND INDU MALHOTRA, JJ.)

EMKAY GLOBAL FINANCIAL SERVICES LIMITED .. Appellant;

Versus

GIRDHAR SONDHI .. Respondent.

Civil Appeal No. 8367 of 2018†, decided on August 20, 2018

A. **Arbitration and Conciliation Act, 1996 — Ss. 42 and 34 — Jurisdiction of Court to entertain application for setting aside arbitral award — Exclusive jurisdiction clause — Effect of — Venue of arbitration — Non-relevance of, in view of the exclusive jurisdiction clause — [Ed.: *Venue* of arbitration is to be distinguished from *seat* of arbitration—designation of seat of arbitration is akin to or equivalent to an exclusive jurisdiction clause, as held in *Indus Mobile case*]**

— Arbitration proceedings between the parties were conducted, in terms of the agreement between them and under the National Stock Exchange Bye-laws, which provided that parties were to submit to the exclusive jurisdiction of the courts in Mumbai in Maharashtra (India) — Held, once the courts in Mumbai had exclusive jurisdiction as per agreement, r/w the National Stock Exchange Bye-laws, it was the Mumbai courts and the Mumbai courts alone, before which a S. 34 application could be filed — Therefore, the courts at Delhi, in which city the sittings of arbitration proceedings were held, did not have the territorial jurisdiction to entertain the S. 34 application (Paras 8 and 9)

B. **Arbitration and Conciliation Act, 1996 — S. 34 and S. 13(6) — Practice and procedure qua applications made for setting aside an award under S. 34 — Summary nature of proceedings under S. 34, and Need for expeditious disposal thereof — Need for disposal of S. 34 applications within time-limit specified — Framing of issues and taking of oral evidence — Requirement of, if any — Use of the expression "furnishes proof that" in S. 34 — Meaning and scope of — Matters not contained in record before arbitrator — When may be called for and manner in which to be adduced and proved**

— Srikrishna Committee's recommendation and Arbitration and Conciliation (Amendment) Bill, 2018, providing for substitution of the words "furnishes proof that" with the words "establishes on the basis of the Arbitral Tribunal's record that" — Relevance of

— In the present case, held, if issues are to be framed and oral evidence taken in a summary proceeding under S. 34, the object of speedy resolution of arbitral disputes will be defeated — Thus, held, an application for setting aside an arbitral award will not ordinarily require anything beyond the record

† Arising out of SLP (C) No. 33248 of 2017. Arising from the Judgment and Order in *Girdhar Sondhi* v. *Emkay Global Financial Services Ltd.*, 2017 SCC OnLine Del 12758 (Delhi High Court, FAO No. 222 of 2017, dt. 11-10-2017)

that was before the arbitrator — However, if there are matters not contained in such record, and are relevant to the determination of issues arising under S. 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both parties — Further, cross-examination of persons swearing to the affidavits should not be allowed unless absolutely necessary — Civil Procedure Code, 1908 — Or. 14 R. 1 — Practice and Procedure — Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, S. 14 (Paras 11 to 21)

The respondent (client) had initiated an arbitration proceeding against the appellant (a registered broker with the National Stock Exchange), claiming an amount of Rs 7,36,620.

The agreement dated 3-7-2008, contained the following clauses:

> 1. The parties hereto agree to abide by the provisions of the Depositories Act, 1996, SEBI (Depositories and Participants) Regulations, 1996 Bye-Laws and Operating Instructions issued by CDSL from time to time in the same manner and to the same extent as if the same were set out herein and formed part of this Agreement.
>
> * * *
>
> *Arbitration*
>
> 11. The parties hereto shall, in respect of all disputes and differences that may arise between them, abide by the provisions relating to arbitration and conciliation specified under the Bye-laws.
>
> * * *
>
> *Jurisdiction*
>
> 12. The parties hereto agree to submit to the exclusive jurisdiction of the courts in Mumbai in Maharashtra (India)."

Though the bye-laws referred to in the agreement were under the provisions of the Depositories Act, 1996, it was a common ground that the arbitration proceeding took place under the National Stock Exchange Bye-laws. Under these Bye-laws, Chapter VII spoke of dealings by trading members and granted exclusive jurisdiction to the civil courts in Mumbai in relation to disputes that arose under the Bye-laws.

National Stock Exchange referred the dispute to one *M*, who held sittings in Delhi, and delivered an award dated 8-12-2009, whereby the respondent's claim was rejected. The respondent then filed a Section 34 application under the Arbitration and Conciliation Act, 1996 on 17-3-2010 before the District Court, Karkardooma, Delhi. By a judgment dated 22-9-2016, the learned Additional District Judge referred to the exclusive jurisdiction clause contained in the agreement, and stated that he would have no jurisdiction to proceed further in the matter and, therefore, rejected the Section 34 application filed in Delhi.

The High Court, in appeal, inter alia held:

> "... since the impugned judgment decides the disputed question of fact without allowing parties to lead evidence i.e. depositions supported by

documentary evidence, and without opportunity to the other side to cross-examine the witnesses who give depositions, it is necessary that the disputed questions of fact as regards existence of territorial jurisdiction of the courts at Delhi be decided by the court below after framing an issue to this effect and permitting the parties thereafter to lead evidence on the same...."

The issues involved in this appeal were:

1. Whether, in view of the exclusive jurisdiction clause, the Courts at Delhi did not have the jurisdiction to proceed in the matter?

2. Whether the Court while dealing with the objections under Section 34 of the Act was bound to grant opportunities to the parties to lead evidence as in the regular civil suit?

Allowing the appeal, the Supreme Court

Held :

Once courts in Mumbai have exclusive jurisdiction thanks to the agreement dated 3-7-2008, read with the National Stock Exchange Bye-laws, it is clear that it is the Mumbai courts and the Mumbai courts alone, before which a Section 34 application can be filed. The arbitration that was conducted at Delhi was only at a convenient venue earmarked by the National Stock Exchange, which is evident on a reading of Bye-law 4(a)(iv) read with sub-clause (xiv) contained in Chapter XI. (Paras 8 and 9)

Indus Mobile Distribution (P) Ltd. v. *Datawind Innovations (P) Ltd.*, (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760, *followed*

BALCO v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810, *referred to*

Swastik Gases (P) Ltd. v. *Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157; *B.E. Simoese Von Staraburg Niedenthal* v. *Chhattisgarh Investment Ltd.*, (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427; *Datawind Innovations (P) Ltd.* v. *Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744 : (2016) 158 DRJ 391, *cited*

There is no requirement under the provisions of Section 34 for parties to lead evidence. The record of the arbitrator was held to be sufficient in order to furnish proof of whether the grounds under Section 34 had been made out. (Para 11)

Sandeep Kumar v. *Ashok Hans*, 2004 SCC OnLine Del 106 : (2004) 3 Arb LR 306, *approved*

The whole purpose of the 1996 Act would be completely defeated by granting permission to the applicant JD to lead oral evidence at the stage of objections raised against an arbitral award. The 1996 Act requires expeditious disposal of the objections and the minimal interference by the court as is evident from the Statement of Objects and Reasons of the Act. (Para 12)

Sial Bioenergie v. *SBEC Systems*, 2004 SCC OnLine Del 863 : AIR 2005 Del 95, *approved*

Food Corpn. of India v. *Indian Council of Arbitration*, (2003) 6 SCC 564, *cited*

Applications under Section 34 of the Act are summary proceedings with provision for objections by the respondent-defendant, followed by an opportunity to the applicant to "prove" the existence of any ground under Section 34(2). The applicant is permitted to file affidavits of his witnesses in proof. A corresponding

opportunity is given to the respondent-defendant to place his evidence by affidavit. Where the case so warrants, the court permits cross-examination of the persons swearing to the affidavit. Thereafter, the court hears arguments and/or receives written submissions and decides the matter. This is of course the routine procedure. The court may vary the said procedure, depending upon the facts of any particular case or the local rules. What is however clear is that framing of issues as contemplated under Rule 1 of Order 14 of the Code is not an integral part of the process of a proceedings under Section 34 of the Act. (Para 13)

Fiza Developers & Inter-Trade (P) Ltd. v. *AMCI (India) (P) Ltd.*, (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637, *relied on*

Oral evidence is not required under a Section 34 application when the record before the arbitrator would show whether the petitioners had received notice relating to his appointment. (Para 15)

WEB Techniques & Net Solutions (P) Ltd. v. *Gati Ltd.*, 2012 SCC OnLine Cal 4271, *approved*

Punjab SIDC Ltd. v. *Sunil K. Kansal*, 2012 SCC OnLine P&H 19641, *overruled*

Cochin Shipyard Ltd. v. *Apeejay Shipping Ltd.*, (2015) 15 SCC 522 : (2016) 3 SCC (Civ) 398, *referred to*

A recent report of the Srikrishna Committee to review the institutionalisation of the arbitration mechanism in India has found:

> "...the Committee is of the view that a suitable amendment may be made to Section 34(2)(*a*) to ensure that proceedings under Section 34 are conducted expeditiously.
>
> *Recommendation*: An amendment may be made to Section 34(2)(*a*) of the Arbitration and Conciliation Act, 1996, substituting the words 'furnishes proof that' with the words 'establishes on the basis of the Arbitral Tribunal's record that'." (Para 17)

The Arbitration and Conciliation (Amendment) Bill, 2018, being Bill No. 100 of 2018, contains an amendment to Section 34(2)(*a*) of the principal Act, which reads as follows:

> "7. *Amendment of Section 34.*—In Section 34 of the principal Act, in sub-section (2), in clause (*a*), for the words "furnishes proof that", the words "establishes on the basis of the record of the Arbitral Tribunal that" shall be substituted." (Para 18)

It shall be the endeavour of every Court in which a Section 34 application is filed, to stick to the time-limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues notice after the period mentioned in Section 34(3) has elapsed, every Court shall endeavour to dispose of the Section 34 application within a period of one year from the date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act. (Para 20)

State of Bihar v. *Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472, *referred to*

Global Aviation Services (P) Ltd. v. *Airport Authority of India*, 2018 SCC OnLine Bom 233; *Srei Infrastructure Finance Ltd.* v. *Candor Gurgaon Two Developers and Projects (P) Ltd.*, 2018 SCC OnLine Cal 5606, *cited*

Speedy resolution of arbitral disputes has been the reason for enacting the 1996 Act, and continues to be the reason for adding amendments to the said Act to strengthen the aforesaid object. Quite obviously, if issues are to be framed and oral evidence taken in a summary proceeding under Section 34, this object will be defeated. It is also on the cards that if Bill No. 100 of 2018 is passed, then evidence at the stage of a Section 34 application will be dispensed with altogether. An application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator. However, if there are matters not contained in such record, and are relevant to the determination of issues arising under Section 34(2)(*a*), they may be brought to the notice of the Court by way of affidavits filed by both parties. Cross-examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, as the truth will emerge on a reading of the affidavits filed by both parties. (Para 21)

Girdhar Sondhi v. *Emkay Global Financial Services Ltd.*, 2017 SCC OnLine Del 12758, *reversed*

Fiza Developers & Inter-Trade (P) Ltd. v. *AMCI (India) (P) Ltd.*, (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637, *held, to be read in light of amendments made to Ss. 34(5) & 34(6) of A&C Act, 1996*

VN-D/60914/CV

Advocates who appeared in this case :
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11.	2012 SCC OnLine P&H 19641, *Punjab SIDC Ltd.* v. *Sunil K. Kansal* **(overruled)**	60*g*, 63*d*
12.	2012 SCC OnLine Cal 4271, *WEB Techniques & Net Solutions (P) Ltd.* v. *Gati Ltd.*	61*c-d*, 63*c-d*
13.	(2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637, *Fiza Developers & Inter-Trade (P) Ltd.* v. *AMCI (India) (P) Ltd.*	59*e*, 60*g*, 61*c-d*, 61*d-e*, 61*f-g*, 62*c*, 63*d-e*
14.	2004 SCC OnLine Del 863 : AIR 2005 Del 95, *Sial Bioenergie* v. *SBEC Systems*	58*f-g*, 63*c-d*
15.	2004 SCC OnLine Del 106 : (2004) 3 Arb LR 306, *Sandeep Kumar* v. *Ashok Hans*	58*e-f*, 63*c-d*
16.	(2003) 6 SCC 564, *Food Corpn. of India* v. *Indian Council of Arbitration*	59*c-d*

The Judgment of the Court was delivered by

ROHINTON FALI NARIMAN, J.— Leave granted. The present appeal arises out of a dispute between the appellant, who is a registered broker with the National Stock Exchange, and the respondent, its client, regarding certain transactions in securities and shares. The respondent had initiated an arbitration proceeding against the appellant, claiming an amount of Rs 7,36,620, which was rejected by the sole arbitrator vide an arbitration award dated 8-12-2009.

2. The appeal arises out of an agreement dated 3-7-2008, which contains the following clauses:

"*General clause*

1. The parties hereto agree to abide by the provisions of the Depositories Act, 1996, SEBI (Depositories and Participants) Regulations, 1996 Bye-Laws and Operating Instructions issued by CDSL from time to time in the same manner and to the same extent as if the same were set out herein and formed part of this Agreement.

* * *

Arbitration

11. The parties hereto shall, in respect of all disputes and differences that may arise between them, abide by the provisions relating to arbitration and conciliation specified under the Bye-laws.

* * *

Jurisdiction

12. The parties hereto agree to submit to the exclusive jurisdiction of the courts in Mumbai in Maharashtra (India)."

3. Though the bye-laws referred to in the agreement are under the provisions of the Depositories Act, 1996, it is common ground that the arbitration proceeding took place under the National Stock Exchange Bye-laws. Under these Bye-laws, Chapter VII speaks of dealings by trading members and grants exclusive jurisdiction to the civil courts in Mumbai in relation to disputes that arise under the Bye-laws as follows:

"CHAPTER VII

DEALINGS BY TRADING MEMBERS

Jurisdiction

(1)(*a*) Any deal entered into through automated trading system of the Exchange or any proposal for buying or selling or any acceptance of any such proposal for buying and selling shall be deemed to have been entered at the computerised processing unit of the Exchange at Mumbai and the place of contracting as between the trading members shall be at Mumbai. The trading members of the Exchange shall expressly record on their contract note that they have excluded the jurisdiction of all other courts save and except, civil courts in Mumbai in relation to any dispute arising out of or in connection with or in relation to the contract notes, and that only the civil courts at Mumbai have exclusive jurisdiction in claims arising out of such dispute. The provisions of this Bye-law shall not object the jurisdiction of any court deciding any dispute as between trading members and their constituents to which the Exchange is not a party."

4. The Bye-laws go on to describe the relevant authority prescribing regulations for creation of seats of arbitration for different regions, or prescribing geographical locations for conducting arbitrations, and prescribing the courts which shall have jurisdiction for the purpose of the Act — *see* Chapter XI dealing with Arbitration — Clause 4(*a*)(*iv*). Equally, under sub-clause (*xiv*), the place of arbitration for each reference and the places where the arbitrator can hold meetings have also to be designated. It is common ground that the National Stock Exchange referred the dispute to one Shri Mahmood Ali Khan, who held sittings in Delhi, and delivered an award dated 8-12-2009, whereby the respondent's claim was rejected. The respondent then filed a Section 34 application under the Arbitration and Conciliation Act, 1996 on 17-3-2010 before the District Court, Karkardooma, Delhi. By a judgment dated 22-9-2016, the learned Additional District Judge referred to the exclusive jurisdiction clause contained in the agreement, and stated that he would have no jurisdiction to proceed further in the matter and, therefore, rejected the Section 34 application filed in Delhi. In an appeal filed before the High Court, a learned Single Judge of the Delhi High Court held[1] as follows: (*Girdhar Sondhi case*[1], SCC OnLine Del paras 4-6)

"*4.* Accordingly, since the impugned judgment decides the disputed question of fact without allowing parties to lead evidence i.e. depositions supported by documentary evidence, and without opportunity to the other side to cross-examine the witnesses who give depositions, it is necessary that the disputed questions of fact as regards existence of territorial jurisdiction of the courts at Delhi be decided by the court below after

1 *Girdhar Sondhi* v. *Emkay Global Financial Services Ltd.*, 2017 SCC OnLine Del 12758

framing an issue to this effect and permitting the parties thereafter to lead evidence on the same.

5. I may hasten to add that I have not made any observations one way or the other, for or against any of the parties herein, on the aspect of territorial jurisdiction, and this issue of territorial jurisdiction will be decided by the courts below after parties have led evidence keeping in mind that if part of cause of action is proved to have arisen in Mumbai and there is an exclusivity clause conferring territorial jurisdiction of the Mumbai courts, then even if Delhi courts otherwise have jurisdiction, possibly the courts at Delhi would not exercise territorial jurisdiction.

6. Parties to appear before the District and Sessions Judge, East Karkardooma Courts, Delhi on 7-11-2017 and the District and Sessions Judge will now mark the objections under Section 34 of the Arbitration and Conciliation Act to a competent court for disposal in accordance with law and the observations made in the present order."

5. The learned counsel appearing on behalf of the appellant has relied upon the exclusive jurisdiction clause contained both in the agreement as well as the Bye-laws of the National Stock Exchange. According to him, this case is squarely covered by a recent judgment of this Court in *Indus Mobile Distribution (P) Ltd.* v. *Datawind Innovations (P) Ltd.*[2] He also referred to Section 34 and stated that, given the conspectus of judgments of the High Courts and one judgment of this Court, when Section 34(2)(*a*) speaks of a party making an application who "furnishes proof" of one of the grounds in the sub-section, such proof should only be by way of affidavit of facts not already contained in the record of proceedings before the arbitrator. Further, a mini-trial at this stage is not contemplated, as otherwise, the whole object of speedy resolution of arbitral disputes would be stultified. Consequently, the learned Single Judge was incorrect in referring back the parties to the District Judge to first frame an issue, and then decide on evidence, including the opportunity to cross-examine witnesses who give depositions.

6. The learned counsel for the respondent, on the other hand, supported the impugned judgment, and argued that as the seat of arbitration was at Delhi, the courts at Delhi would have jurisdiction, even though there is an exclusive jurisdiction clause vesting such jurisdiction only in the courts at Mumbai.

7. Section 34(2)(*a*) of the Arbitration and Conciliation Act, 1996 states as follows:

"**34.** ***Application for setting aside arbitral award***.—(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the court only if—

(*a*) the party making the application furnishes proof that—

(*i*) a party was under some incapacity; or

2 (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760

(*ii*) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(*iii*) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(*iv*) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(*v*) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or"

8. The effect of an exclusive jurisdiction clause was dealt with by this Court in several judgments, the most recent of which is the judgment contained in *Indus Mobile Distribution (P) Ltd.*[2] In this case, the arbitration was to be conducted at Mumbai and was subject to the exclusive jurisdiction of courts of Mumbai only. After referring to the definition of "Court" contained in Section 2(1)(*e*) of the Act, and Sections 20 and 31(4) of the Act, this Court referred to the judgment of five learned Judges in *BALCO* v. *Kaiser Aluminium Technical Services Inc.*[3], in which, the concept of juridical seat which has been evolved by the courts in England, has now taken root in our jurisdiction. After referring to several judgments and a Law Commission Report, this Court held: (*Indus Mobile Distribution case*[2], SCC pp. 692-93, paras 19 & 20)

"*19*. 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 Sections 16

2 *Indus Mobile Distribution (P) Ltd.* v. *Datawind Innovations (P) Ltd.*, (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760

3 (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810

to 21 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.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases (P) Ltd.* v. *Indian Oil Corpn. Ltd.*[4] This was followed in a recent judgment in *B.E. Simoese Von Staraburg Niedenthal* v. *Chhattisgarh Investment Ltd.*[5] Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [*Datawind Innovations (P) Ltd.* v. *Indus Mobile Distribution (P) Ltd.*[6]] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly."

9. Following this judgment, it is clear that once courts in Mumbai have exclusive jurisdiction thanks to the agreement dated 3-7-2008, read with the National Stock Exchange Bye-laws, it is clear that it is the Mumbai courts and the Mumbai courts alone, before which a Section 34 application can be filed. The arbitration that was conducted at Delhi was only at a convenient venue earmarked by the National Stock Exchange, which is evident on a reading of Bye-law 4(*a*)(*iv*) read with sub-clause (*xiv*) contained in Chapter XI.

10. However, the matter does not rest here. The learned Single Judge went on to remand the matter for a full-dressed hearing on what he referred to as a "disputed question of fact" relating to jurisdiction.

11. What is meant by the expression "furnishes proof" in Section 34(2)(*a*)? In an early Delhi High Court judgment, *Sandeep Kumar* v. *Ashok Hans*[7], a learned Single Judge of the Delhi High Court specifically held that there is no requirement under the provisions of Section 34 for parties to lead evidence. The record of the arbitrator was held to be sufficient in order to furnish proof of whether the grounds under Section 34 had been made out.

12. Again, a learned Single Judge of the Delhi High Court in *Sial Bioenergie* v. *SBEC Systems*[8], stated: (SCC OnLine Del paras 5-8)

"*5.* In my view the whole purpose of the 1996 Act would be completely defeated by granting permission to the applicant JD to lead oral evidence at the stage of objections raised against an arbitral award. The 1996 Act requires expeditious disposal of the objections and the minimal interference

4 (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157
5 (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427
6 2016 SCC OnLine Del 3744 : (2016) 158 DRJ 391
7 2004 SCC OnLine Del 106 : (2004) 3 Arb LR 306
8 2004 SCC OnLine Del 863 : AIR 2005 Del 95

by the court as is evident from the Statement of Objects and Reasons of the Act which reads as follows:

> '**4.** The main objectives of the Bill are as under:
>
> * * *
>
> (*ii*) to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration;
>
> * * *
>
> (*v*) to minimise the supervisory role of courts in the arbitral process;'

6. At the stage of the objections which are any way limited in scope due to the provisions of the Act to permit oral evidence would completely defeat the objects underlying the 1996 Act. The process of oral evidence would prolong the process of hearing objections and cannot be countenanced.

7. Furthermore, the Supreme Court in *Food Corpn. of India* v. *Indian Council of Arbitration*[9] had summarised the ethos underlying the Act as follows: (SCC p. 572, para 14)

> '*14*. ... The legislative intent underlying the 1996 Act is to minimise the supervisory role of the courts in the arbitral process and nominate/appoint the arbitrator without wasting time leaving all contentious issues to be urged and agitated before the Arbitral Tribunal itself.'

8. Accordingly, I see no merit in these applications and the prayer made therein is rejected."

13. We now come to a judgment of this Court in *Fiza Developers & Inter-Trade (P) Ltd.* v. *AMCI (India) (P) Ltd.*[10] In this case, the question that was posed by the Court was whether issues as contemplated under Order 14 Rule 1 of the Code of Civil Procedure, 1908 should be framed in applications under Section 34 of the Arbitration and Conciliation Act, 1996. This Court held: (SCC pp. 800-02 & 804, paras 14, 17, 18, 21, 24 & 31)

> "*14*. In a summary proceeding, the respondent is given an opportunity to file his objections or written statement. Thereafter, the court will permit the parties to file affidavits in proof of their respective stands, and if necessary permit cross-examination by the other side, before hearing arguments. Framing of issues in such proceedings is not necessary. We hasten to add that when it is said issues are not necessary, it does not mean that evidence is not necessary.
>
> * * *
>
> *17*. The scheme and provisions of the Act disclose two significant aspects relating to courts vis-à-vis arbitration. The first is that there should

9 (2003) 6 SCC 564
10 (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637

be minimal interference by courts in matters relating to arbitration. Second is the sense of urgency shown with reference to arbitration matters brought to court, requiring promptness in disposal.

18. Section 5 of the Act provides that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I of the Act, no judicial authority shall intervene except where so provided in the Act.

* * *

21. We may therefore examine the question for consideration by bearing three factors in mind. The first is that the Act is a special enactment and Section 34 provides for a special remedy. The second is that an arbitration award can be set aside only upon one of the grounds mentioned in sub-section (2) of Section 34 exists. The third is that proceedings under Section 34 requires to be dealt with expeditiously.

* * *

24. In other words, an application under Section 34 of the Act is a single issue proceeding, where the very fact that the application has been instituted under that particular provision declares the issue involved. Any further exercise to frame issues will only delay the proceedings. It is thus clear that issues need not be framed in applications under Section 34 of the Act.

* * *

31. Applications under Section 34 of the Act are summary proceedings with provision for objections by the respondent-defendant, followed by an opportunity to the applicant to "prove" the existence of any ground under Section 34(2). The applicant is permitted to file affidavits of his witnesses in proof. A corresponding opportunity is given to the respondent-defendant to place his evidence by affidavit. Where the case so warrants, the court permits cross-examination of the persons swearing to the affidavit. Thereafter, the court hears arguments and/or receives written submissions and decides the matter. This is of course the routine procedure. The court may vary the said procedure, depending upon the facts of any particular case or the local rules. What is however clear is that framing of issues as contemplated under Rule 1 of Order 14 of the Code is not an integral part of the process of a proceedings under Section 34 of the Act."

14. A Punjab and Haryana High Court judgment in *Punjab SIDC Ltd.* v. *Sunil K. Kansal*[11], after referring to our judgment in *Fiza Developers*[10] held: (*Sunil K. Kansal case*[11], SCC OnLine P&H para 30)

"*30.* In view of the above, we answer the question of law framed as follows:

11 2012 SCC OnLine P&H 19641

10 *Fiza Developers & Inter-Trade (P) Ltd.* v. *AMCI (India) (P) Ltd.*, (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637

(*i*) The issues, as required under Order 14 Rule 1 of the Code as in the regular suit, are not required to be mandatorily framed by the Court. However, it is open to the Court to frame questions which may arise for adjudication.

(*ii*) The Court while dealing with the objections under Section 34 of the Act is not bound to grant opportunities to the parties to lead evidence as in the regular civil suit. The jurisdiction of the Court being more akin to the appellate jurisdiction;

(*iii*) The proceedings before the Court under Section 34 of the Act are summary in nature. Even if some questions of fact or mixed questions of law and/or facts are to be decided, the court while permitting the parties to furnish affidavits in evidence, can summon the witness for cross-examination, if desired by the other party. Such procedure is keeping in view the principles of natural justice, fair play and equity."

15. The Calcutta High Court in *WEB Techniques & Net Solutions (P) Ltd.* v. *Gati Ltd.*[12], after referring to *Fiza Developers*[10], held that oral evidence is not required under a Section 34 application when the record before the arbitrator would show whether the petitioners had received notice relating to his appointment.

16. In *Cochin Shipyard Ltd.* v. *Apeejay Shipping Ltd.*[13], this Court, in a case arising out of the Arbitration Act, 1940, did not follow the decision in *Fiza Developers*[10], as objections to be filed under Sections 30 and 33 of the 1940 Act did not require any kind of oral evidence to be led.

17. A recent report of the Justice B.N. Srikrishna Committee to review the institutionalisation of the arbitration mechanism in India has found:

"5. *Amendment to Section 34(2)(a) of the ACA*: Sub-section (2)(*a*) of Section 34 of the ACA provides for the setting aside of arbitral awards by the court in certain circumstances. The party applying for setting aside the arbitral award has to furnish proof to the court. This requirement to furnish proof has led to inconsistent practices in some High Courts, where they have insisted on Section 34 proceedings being conducted in the manner as a regular civil suit. This is despite the Supreme Court ruling in *Fiza Developers & Inter-Trade (P) Ltd.* v. *AMCI (India) (P) Ltd.*[10] that proceedings under Section 34 should not be conducted in the same manner as civil suits, with framing of issues under Rule 1 of Order 14 of the CPC.

In light of this, the Committee is of the view that a suitable amendment may be made to Section 34(2)(*a*) to ensure that proceedings under Section 34 are conducted expeditiously.

12 2012 SCC OnLine Cal 4271

10 *Fiza Developers & Inter-Trade (P) Ltd.* v. *AMCI (India) (P) Ltd.*, (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637

13 (2015) 15 SCC 522 : (2016) 3 SCC (Civ) 398

Recommendation: An amendment may be made to Section 34(2)(*a*) of the Arbitration and Conciliation Act, 1996, substituting the words 'furnishes proof that' with the words 'establishes on the basis of the Arbitral Tribunal's record that'."

18. We have been informed that the Arbitration and Conciliation (Amendment) Bill, 2018, being Bill No. 100 of 2018, contains an amendment to Section 34(2)(*a*) of the principal Act, which reads as follows:

"**7.** ***Amendment of Section 34.***—In Section 34 of the principal Act, in sub-section (2), in clause (*a*), for the words "furnishes proof that", the words "establishes on the basis of the record of the Arbitral Tribunal that" shall be substituted."[14]

19. One more recent development in the law of arbitration needs to be adverted to. After the decision in *Fiza Developers*[10], Section 34 was amended by Act 3 of 2016, by which sub-sections (5) and (6) were added to the principal Act with effect from 23-10-2015. Sections 34(5) and 34(6) reads as under:

"**34.** ***Application for setting aside arbitral award.***—(1)-(4) * * *

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party."

20. In a recent judgment of this Bench in *State of Bihar* v. *Bihar Rajya Bhumi Vikas Bank Samiti*[15], this Court, after holding that the period of one year mentioned in the aforesaid sub-section is directory, went on to hold: (SCC OnLine SC paras 36 & 37)

"*36*. We are of the opinion that the view[16, 17] propounded by the High Courts of Bombay and Calcutta represents the correct state of the law. However, we may add that it shall be the endeavour of every Court in which a Section 34 application is filed, to stick to the time-limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues notice after the period mentioned in Section 34(3) has elapsed, every Court shall endeavour to dispose of Section 34 application within a period of one year from the date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will

14 Bill No. 100 of 2018, The Arbitration and Conciliation (Amendment) Bill, 2018, p. 3.
10 *Fiza Developers & Inter-Trade (P) Ltd.* v. *AMCI (India) (P) Ltd.*, (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637
15 (2018) 9 SCC 472
16 *Global Aviation Services (P) Ltd.* v. *Airport Authority of India*, 2018 SCC OnLine Bom 233
17 *Srei Infrastructure Finance Ltd.* v. *Candor Gurgaon Two Developers and Projects (P) Ltd.*, 2018 SCC OnLine Cal 5606

give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act.

37. We may also add that in cases covered by Section 10 read with Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, the Commercial Appellate Division shall endeavour to dispose of appeals filed before it within six months, as stipulated. Appeals which are not so covered will also be disposed of as expeditiously as possible, preferably within one year from the date on which the appeal is filed. …"

21. It will thus be seen that speedy resolution of arbitral disputes has been the reason for enacting the 1996 Act, and continues to be the reason for adding amendments to the said Act to strengthen the aforesaid object. Quite obviously, if issues are to be framed and oral evidence taken in a summary proceeding under Section 34, this object will be defeated. It is also on the cards that if Bill No. 100 of 2018 is passed, then evidence at the stage of a Section 34 application will be dispensed with altogether. Given the current state of the law, we are of the view that the two early Delhi High Court judgments[7, 8], cited by us hereinabove, correctly reflect the position in law as to furnishing proof under Section 34(2)(*a*). So does the Calcutta High Court judgment[12]. We may hasten to add that if the procedure followed by the Punjab and Haryana High Court judgment[11] is to be adhered to, the time-limit of one year would only be observed in most cases in the breach. We therefore overrule the said decision. We are constrained to observe that *Fiza Developers*[10] was a step in the right direction as its ultimate ratio is that issues need not be struck at the stage of hearing a Section 34 application, which is a summary procedure. However, this judgment must now be read in the light of the amendment made in Sections 34(5) and 34(6). So read, we clarify the legal position by stating that an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator. However, if there are matters not contained in such record, and are relevant to the determination of issues arising under Section 34(2)(*a*), they may be brought to the notice of the Court by way of affidavits filed by both parties. Cross-examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, as the truth will emerge on a reading of the affidavits filed by both parties. We, therefore, set aside the judgment[1] of the Delhi High Court and reinstate that of the learned Additional District Judge dated 22-9-2016. The appeal is accordingly allowed with no order as to costs.

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7 *Sandeep Kumar* v. *Ashok Hans*, 2004 SCC OnLine Del 106 : (2004) 3 Arb LR 306
8 *Sial Bioenergie* v. *SBEC Systems*, 2004 SCC OnLine Del 863 : AIR 2005 Del 95
12 *WEB Techniques & Net Solutions (P) Ltd.* v. *Gati Ltd.*, 2012 SCC OnLine Cal 4271
11 *Punjab SIDC Ltd.* v. *Sunil K. Kansal*, 2012 SCC OnLine P&H 19641
10 *Fiza Developers & Inter-Trade (P) Ltd.* v. *AMCI (India) (P) Ltd.*, (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637
1 *Girdhar Sondhi* v. *Emkay Global Financial Services Ltd.*, 2017 SCC OnLine Del 12758