



'Venue' cannot be treated as the 'Seat' if there exists a 'significant contrary indicia' in the contract

The Calcutta High Court ("Calcutta HC"), in *Homevista Décor & Furnishing Pvt. Ltd. & Anr. v. Connect Residuary Pvt. Ltd.*¹ has ruled that if a place is designated as a 'venue' in the contract and there is another clause which confers exclusive jurisdiction to courts of some other place, then the latter is a clear '*contrary indicia*'. In other words, in such a situation, venue cannot be regarded as the seat.

Brief Facts

The petitioners entered into a master rental agreement ("**MRA**") with the respondent to take office equipment and furniture on rent.

The petitioners had also issued a bank guarantee for a sum of INR 74,00,000 (Indian Rupees seventy four lakh) to the respondent.

Certain disputes arose between the parties and the respondent invoked the bank guarantee.

In the MRA, the parties had agreed to resolve their disputes via arbitration; and it was provided that the venue of arbitration will be Kolkata. In another clause, it was agreed that the courts in Mumbai will have exclusive jurisdiction in respect of all disputes under the MRA.

The Petitioners invoked the arbitration clause. For appointment of the arbitrator, the Petitioners filed an application under Section 11 ("**Section 11 Application**") of the Arbitration & Conciliation Act, 1996 before the Calcutta HC. The respondent objected to the jurisdiction of the Calcutta HC to entertain the Section 11 Application. It was urged that courts at Mumbai have exclusive jurisdiction in respect of any and all disputes under the MRA.

Issues

- 1) Whether the choice of venue mentioned in the MRA (being Kolkata) can be treated as the seat of the arbitration to confer jurisdiction on Calcutta HC?
- 2) Whether a clause, which confers exclusive jurisdiction on the courts at Mumbai, is a '*contrary indicia*' and as such, prevents the chosen 'venue' from being treated as the 'seat'.

¹ A.P. No. 358 of 2020

Findings

The Calcutta HC dismissed the Section 11 Application on the ground of jurisdiction and ruled that:

- 1) If there is a standalone clause which states that ‘arbitration’ or ‘arbitration proceedings’ are to be held in a particular place, that place would be the seat of the arbitration. The seat would then have supervisory jurisdiction over arbitral proceedings and related applications. However, other clauses of the agreement are to be analysed to ascertain the intention of the parties. Furthermore, the idea of ‘*contrary indicia*’ is of particular import. A holistic understanding must be gathered by taking into consideration other clauses, if any, which may have a bearing on deciding the seat of arbitration.
- 2) Other clauses in the agreement must be read to ascertain whether the ‘venue’ is actually the seat, or simpliciter a place of arbitration owing to there being ‘*contrary indicia*’ in the form of other clauses or conduct of parties.
- 3) In circumstances where a place is designated merely as a ‘venue’ and courts of another place have been granted the exclusive jurisdiction, the latter is a clear ‘*contrary indicia*’. It can be inferred from a comprehensive reading of such clauses, that the ‘venue’ is a convenient place of arbitration and not the seat.

In arriving at the above conclusion, the Calcutta HC analysed various judgments rendered by different high courts. It also relied upon the decisions rendered by the Hon’ble Supreme Court in *BGS SGS SOMA v. NHPC Limited*² and *Mankastu Impex Private Limited v. Airvisual Limited*³.

JSA Comment

As aptly noted by the Calcutta HC in this decision, the law on ‘seat’ versus ‘venue’ is a conundrum that has and still confounds courts to this very day. There is no crystal-clear precedent/point of view that shifts away the clouds of uncertainty that mystify this issue.

This decision is a positive step and clears the confusion surrounding this issue, more so, in view of the conflicting verdicts given by different courts. This decision applies the concept of ‘*significant contrary indicia*’ (formulated in *BGS SGS Soma*) in a practical manner so as to give effect to the true intention of the parties. This decision also underscores the importance of ensuring that the dispute resolution clauses must capture and indicate the true intention of the contracting parties.

A poorly drafted arbitration clause may result in a ‘pathological’ dispute resolution clause, which is worse than no clause at all. It is therefore critical that the dispute resolution clause is clear and unambiguous, and this can be achieved only if discussions regarding dispute resolution mechanisms in the contract are given due importance. If this is not done, the outcome will be a ‘pathological’ clause, and the primary purpose of arbitration *viz.*, speedy resolution of disputes, will get defeated.

² [2020] 4 SCC 234

³ [2020] 5 SCC 399

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