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## **ARBITRAL SEAT AND SUPERVISORY JURISDICTION OF COURT: CHOICE OF PARTIES**

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## **ISSUE:**

Which is the appropriate Court/forum to approach in arbitral matters in respect of:

- i. Appointment of arbitrator when parties failed to appoint an Arbitrator.
- ii. Collection of evidence.
- iii. Challenging the Arbitral award.

(Referred to as the ‘court having supervisory jurisdiction’ in respect of Arbitration).

## **Provisions of Law**

### 1. The Arbitration and Conciliation Act 1996

- As per section Section 2(1)(e) the “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.
- Section 20 gives the parties freedom to choose place of arbitration failing which the place of arbitration shall be determined by the Arbitral Tribunal.

### 2. The Code of Civil Procedure, 1908

Barring special legislation, the territorial jurisdiction of courts, even in respect of arbitration, is decided in terms of section 16 and 20 of the Code of Civil Procedure, 1908, depending upon nature of dispute.

In respect of dispute concerning immovable properties, rights /interest connected therewith and recovery of movable properties, the court, in whose territorial jurisdiction such immovable or movable property situates, will have exclusive jurisdiction.

In respect of all other disputes the courts of the places where

1. Cause of action/ dispute arose.
2. Cause of action arose, in part.
3. Defendant/ Party, defending the suit, resides or works for gain and in case of corporate, registered office of a corporate situates,

will have territorial jurisdiction.

## **Conventional Legal Position**

All Courts referred in section 20, CPC, shall have simultaneous jurisdiction and a party indenting to litigate, shall have the option to choose any of such courts for litigation even in arbitral matters. Besides, where a dispute is arising out of an agreement, and the parties have agreed to exclude jurisdiction of all but one court having jurisdiction, the court of choice of parties shall have exclusive jurisdiction. However, the parties, by an agreement, cannot confer jurisdiction upon a court which otherwise have no jurisdiction in terms of section 16 and 20 of CPC.

[Reference: *ABC Laminart Pvt. Ltd. & Ors. vs. A.P. Agencies, Salem* (1989) 2 SCC 163; *Swastik Gases P. Ltd. vs. Indian Oil Corp. Ltd.* (2013) 9 SCC 32; *Harshad Chiman Lal Modi vs. DLF Universal Ltd.* (2005) 7 SCC 791 and *Inter Globe Aviation Ltd. vs. N. Satchidanand*, (2011) 7 SCC 463.]

### **Current Legal Position**

The recent judgments of the Supreme Court of India in *Indus Mobile Distribution (P) Ltd. vs. Datawind Innovations (P) Ltd And Ors.*, (2017) 7 SCC 678 which has also been followed in *Brahmani River Pellets Ltd vs. Kamachi Industries Ltd.*, Civil Appeal No. 5850 of 2019 and judgment of three Judges Bench in *BGS SGS SOMA JV Vs NHPC Ltd.* Civil Appeal No. 9307 of 2019 leave no iota of doubt that the Court, within whose jurisdiction the Seat of Arbitration situates, will have exclusive jurisdiction in arbitration matter except for the purpose of execution of the Award, which can be done at any place where the Award is likely to be satisfied. These judgments also leave no doubt about the fact that the parties have a choice to choose the Seat/Place of arbitration, and thus the choice to choose the Court which will exercise supervisory jurisdiction in arbitration matters exclusively. This is a marked change in law based on convenience theory in consonance with the international practice.

### **ANALYSIS**

The recent legal position enunciated by the Supreme Court is based on interpretation and interplay of section 2(1)(e) and section 20 of the Arbitration and Conciliation Act 1996, convenience theory and interpretation of Judgment of a five Judges bench of the Supreme Court in case of *Bharat Aluminium Co. vs. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552. The parties, intending to approach Court in a case pertaining to arbitration, shall have to approach only the Court having territorial jurisdiction over the area where the seat of arbitration situates. For appointment of Arbitrator/Arbitral Tribunal, the High Court of such area is to be approached and for all other purposes, such as, for interim relief under section 9, collection of evidence under section 27 and challenging award under section 34 of the Arbitration and Conciliation Act 1996, the court of original jurisdiction of such area only has to be approached. Section 42 of the Act, which provides for all subsequent applications in respect of arbitration to be made in the same court, is rendered meaningless as the era of multiple courts having jurisdiction has come to an end.

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