IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

BEFORE:
The Hon'ble Justice Soumen Sen
And
The Hon'ble Justice Biswaroop Chowdhury

APOT/389/2024
WITH
AP.COM/822/2024
IA NO: GA-COM/1/2024

VERSATILE CONSTRUCTION
VS
TATA MOTORS FINANCE LTD.

For the Appellants	: Mr. Tapas Dutta, Adv. Ms. Atrayee Chatterjee, Adv.
For the Respondent	: Ms. Hasnuhana Chakraborty, Adv. Ms. Anna Malhotra, Adv. Mr.Rishav Maity, Adv.
Order dated	: 15th January, 2025

Dictated by Soumen Sen, J :

1. The present appeal has been preferred against the order dated 30th September 2024 passed by the single judge bench of Hon'ble Justice Sabyasachi Bhattacharya in GA COM 1 of 2024 arising out of AP COM 822 of 2024 wherein the learned single judge refused to adjudicate the application for setting aside of the Award under Section 34 of the Arbitration and Conciliation Act (hereinafter referred to as "the Act") along with the

connected application under Section 9of the Actbefore this Court due to lack of territorial jurisdiction.

2. The primary issue for consideration in this appeal is whether the City Civil Court or any other civil court in the State of West Bengal would have jurisdiction to entertain an application under Section 34 of the Arbitration and Conciliation Act, 1996 in view of a dispute being raised by the present appellant with regard to the validity of the arbitration agreement.

3. The facts of the case enumerate that the appellant herein is a proprietary concern engaged in the business of construction and transportation i.e, hiring vehicle for carrying goods. It had purchased a vehicle bearing registration No. WB39B9650 i.e., "Dumper" on 21st October, 2020 on hire-purchase basis financed by the respondent. The appellant obtained a loan for an amount of Rs.42,16,095/- out of which he had paid an amount of Rs.28,23,796/- and the balance amount of Rs.13,92,299/- was payable to the respondent. The respondent had invoked the arbitration clause contained in the loan agreement and a notice dated 19 July, 2022 was sent to the appellant but the appellant had admittedly not chosen to participate in the arbitration since he did not consent to the said arbitrator in terms of Section 12(5) of the Arbitration and Conciliation Act. Subsequently an award dated 9th September, 2024 was passed in the arbitration proceeding being arbitration case No. TMFL/295/5792 of 2022 held by Mr. Sachin Gorwadkar, the sole arbitrator.

4. At the stage of entertaining the Section 34 and/or Section 9 application, the learned single judge in the impugned order dated

30thSeptember, 2024 has noted that at the very inception an issue as to the jurisdiction of this Court under Section 34 of the Act as well as the connected application under Section 9 of the Act has been raised. In the present case the appellant has already suffered an Award and irrespective of the contentions of the appellant in respect of the said Award and although the award was passed ex-parte, such an award was equally binding as an uncontested one. It was held by the learned single judge that it was settled position of law that once the seat of arbitration is decided by the parties the provisions of Sections 16 to 20 of the Code of Civil Procedure 1908 would not be a determinant as to the jurisdiction of the arbitral court.

5. The learned judge has observed that although the appellant in this case had disputed the veracity and authenticity of the purported loan agreement between the parties, a copy of the same had been made a part of the record in this court and was the premise of the Award passed against the appellant and hence at this stage the court is only to look into the clauses of the purported document and could not go elsewhere. Since clause 21.1 of the document clearly stated the phrase “Arbitration to be held in Mumbai”, in the absence of any contrary indication throughout the document as to any other place being designated as the seat of arbitration, Mumbai had to be construed to be not merely a “venue” but also the intended seat of arbitration. It was also significantly noted that the limited gateway for the court the enter into the dispute, even if pertaining to fraud, was the territorial jurisdiction envisaged in section 34 read with the definition of “Court” in Section 2(1)(e) of the 1996 Act, and the appellant

having failed to cross the hurdle this Court could not entertain the issues including that of fraud in the present proceeding.

6. The learned Court in conclusion, held that as per the purported agreement, relying on which the respondents had obtained an Award from the arbitral tribunal, this Court had no territorial jurisdiction to take up the matter and it was even doubtful whether the Mumbai High Court had jurisdiction, since it could well be possible that one the District courts of Mumbai qualified as the jurisdictional court having original civil jurisdiction as contemplated in Section 2(1)(e) of the Act.

7. In ***Roger Shashoua v. Mukesh Sharma***[1], the England and Wales High Court and held that the seat of arbitration has to have an exclusive jurisdiction over all proceedings that arise out of the arbitration, which came to be popularly referred to as the 'Shashoua Principle'. It propounded that whenever there is an express designation of a "venue" and no designation of any alternative place as the seat combined with a supranational body of Rules governing the arbitration and no other significant contrary indica, the inexorable conclusion is that the seated venue is actually the juridical seat of the arbitration proceeding. The position was further confirmed by the Indian leg of the case ***Roger Shashoua v. Mukesh Sharma***[2], wherein it has been held that the "seat" of the Arbitration would have an exclusive jurisdiction over all the proceedings that arise out of arbitration.

[1](2009) EWHC 957
[2](2017) 14 SCC 722

8. The landmark five judge bench of the Supreme Court in the case of ***Bharat Aluminium Company v Kaiser Aluminium Technical Services Inc***.[3](hereinafter referred as "BALCO") succinctly stated that the phrase "subject matter of the arbitration" in Section 2(1)(e) of the Act should not be confused with "subject matter of the suit". The term "subject matter" in this Section was confined to Part I and its purpose is to identify the courts having supervisory control over the arbitration proceedings and hence referred to a court which would essentially be a court of the seat of the arbitration process.

9. The bench opined that the legislature had intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and courts where the arbitration takes place. This was necessary as on several occasions the agreement may have provided for a seat of arbitration at a place which was neutral to both the parties and thus the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. Consequently, the provisions of Section 2(1)(e) of the Act must be construed keeping in mind the provisions of Section 20 which gives recognition to party autonomy.Such above mentioned theory of concurrent jurisdiction was enunciated with the help of an illustration as follows-

"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

[3](2012) 9 SCC 552

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."

10. Though it seemed that there was an internal inconsistency in BALCO supra, subsequently, a three-judge bench of the Apex Court affirmed and elucidated upon Bharat Aluminium (supra) in ***BGS SGS SOMA JV v NHPC Limited***[4] observing that where parties have selected the seat of arbitration in their agreement, such selection would then amount to an exclusive jurisdiction clause as the parties had then indicated that the courts at the "seat" would alone have jurisdiction to entertain challenges against the arbitral award which has been made at the seat. In paragraph 82 it was observed that whenever there is a designation of the place of arbitration in an arbitration clause as being the "venue" of arbitration proceedings, theexpression "arbitration proceedings" would make it clear that the "venue" was really the "seat" of the arbitral proceedings as the aforesaid expression did not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. Furthermore, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby that, that place is the seat of the arbitral proceedings.

[4](2020) 4 SCC 234

This coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings.

11. In ***BGS SGS SOMA*** (supra), the Court concluded that the concurrent jurisdiction theory of BALCO was not its true ratio since if the seat was designated or determined, only the seat court would have exclusive jurisdiction.

12. The seat of arbitration is a vital aspect of any arbitration proceeding as it is not just about where an institution is placed or where the hearings shall be held, but it is about which Court would have supervisory power over such proceedings as explained by the Apex Court in ***MankatsuImpex Pvt. Ltd. v Airsual Ltd.***[5]Several division benches of the Supreme Court in earlier cases have also understood the law to be that once the seat of arbitration is chosen, it amounts to an exclusive jurisdiction clause, insofar as the courts at that seat are concerned such as ***Enercon (India) Ltd. v Enercon GmbH***[6], ***Reliance Industries Ltd. Union of India***[7], and ***Videocon Industries Ltd. v Union of India***[8].

13. In the case of ***Samsung India Electronics Pvt. Ltd. v Enn Enn Corp Limited***[9], the Delhi High Courtdelving upon the distinction between "seat" and "venue" noted that the latter was the "place" where arbitration may be conducted keeping the convenience of the parties in mind and the

[5](2020) 5 SCC 399
[6](2014) 5 SCC 1
[7](2014) 7 SCC 603
[8](2011) 6 SCC 161
[9]2023 SCC OnLine Del 3827

former was the "seat" which determines the jurisdiction of the Courts where the parties may agitate any controversy arising out of the arbitration. The term 'Seat' is of utmost importance as it connotes the situs of arbitration. The term 'Venue' though often confused with the term 'Seat', is a place chosen as convenient location by the parties to carry out the arbitration proceedings, but it should not be confused with 'Seat'. The term 'Seat' carries more weight than 'Venue' or 'place'. The Court reiterated the position that in arbitration proceedings the parties by way of agreement can confer jurisdiction upon a court where no cause of action arises i.e., a neutral venue and the courts in Delhi could have jurisdiction even if no cause of action had arisen therein.

14. In ***BGS SGS SOMA*** (supra)the Supreme Court observed that the stated venue is the seat of arbitration unless there are clear indicators that the place named is a mere venue or a meeting place of convenience and not the seat and hence that the reference to place/venue in the agreement ipso facto designated the seat in absence of contrary indicia. In ***Mankatsu Impex***(supra) it was held that the mere expression "place of arbitration" could not be the sole basis to determine the intention of the parties that they had intended that place to be the "seat of arbitration" as well and the intention of parties to agree upon the "seat" had to be determined from other clauses in the agreement and the conduct of the parties. In the present case, as has also been observed by the learned Single Judgea reading of the agreement between the parties would show that apart from Clause 21.1 which clearly stated that arbitration was to be held in Mumbai in accordance with the 1996 Act and Clause 22 the jurisdiction clause which

vested power on competent Courts and tribunals in Mumbai in respect of legal proceedings arising out of or in connection with the agreement, there was no other place indicated in the agreement as the venue of arbitration and hence in the absence of any other contrary indication visible by conduct of the parties, Mumbai was the venue as well as seat of arbitration.

15. This is not a case where one of the parties has not been served the notice of arbitration. The appellant has voluntarily chosen to not participate in the proceeding even after being sent a notice for arbitration and has hence suffered an ex parte award. Hence, in light of the discussion above it follows that the "principal civil court of original jurisdiction in a district" in Mumbai or the Bombay High Court would be the Court having supervisory jurisdiction over the arbitral proceeding as well as the post arbitral jurisdiction under Section 34 and/or Section 37 of the Act and hence there seems to be no need for interference in the learned Single judge's order.

16. Learned counsel for the appellant has relied upon a decision of the Hon'ble Supreme Court in ***Velugubanti HariBabu vs. Parvathini Narasimha Rao and Ors***.[10] in support of his submission that where serious dispute has been raised with regard to the validity of the agreement which contains an arbitration clause, the said issue is required to be decided at the threshold by the Hon'ble The Chief Justice or his designate at the time of appointment of the Arbitrator and in view of the fact that the Arbitrator was chosen unilaterally, the proceeding before the Arbitrator is itself invalid inasmuch as the Arbitrator has not made any disclosure in terms of Section

[10](2016) 14 SCC 126

12(5) of the Arbitration and Conciliation Act. The said judgment has no manner of application as the issue before the Hon'ble Supreme Court was the questions that are required to be decided by the Court and the Arbitrator raised in a proceeding under Section 11 of the Arbitration and Conciliation Act, 1996. Moreover, if it is demonstrated in the arbitration proceeding that the Arbitrator has pecuniary and other interest and thereafter continued with the arbitration, that can be a valid ground for setting aside of the award. The issue decided by the learned Single Judge was confined to the jurisdiction and not on merits.

17. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

18. The appeal and the application stand dismissed.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)