# CASE COMMENTARY: INDUS MOBILE DISTRIBUTION PVT. LTD V. DATAWIND INNOVATIONS PVT. LTD. AND ORS

**Utsav Ranju Suri***

## ABSTRACT

*The recent discourse in arbitral law is on the seat-venue dilemma, which poses difficulties for courts in determining the suitable place for arbitration procedures. The word "seat" denotes the venue of the arbitration or its principal focal point during the proceedings. The choice of a particular site for arbitration has considerable ramifications, since it signifies that the courts of that country will have jurisdiction over the arbitration process. The procedural legislation regulating arbitration will be dictated by the laws of the respective area. Although the words "venue" and "seat" are often used interchangeably, it is crucial to acknowledge that this use may not always convey the most precise meaning. The phrases "seat" and "venue" should not be confused with "place," which generally denotes a suitable site chosen by the parties for arbitration proceedings.*

**Keywords:** Seat vs. Venue, Exclusive Jurisdiction, Arbitration and Conciliation Act, 1996, International Arbitration.

## FACTS SURROUNDING THE CASE

The organisation, hereafter referred to as Respondent No. 1, with its registered office situated in Amritsar, was involved in the production, marketing, and distribution of mobile phones and tablets. The Appellant and Respondent No. 1 established an arrangement in which the Appellant would act as the retail chain partner for Respondent No. 1. The first respondent was conveying products from New Delhi to Chennai for the Appellant. The two people started a disagreement. The first respondent officially notified the appellant of the default of Rs. five crores, inclusive of interest, and solicited the resolution of the outstanding arrears within seven days. Respondent No.1 exercised the arbitration provision included in the agreement after the appellant's inability to meet payment commitments.

*BA LLB (HONS.), FIFTH YEAR, SYMBIOSIS LAW SCHOOL.

Clause 18 of the agreement provided that the "…dispute shall be finally settled by arbitration conducted under the provisions of the Arbitration & Conciliation Act 1996 by reference to a sole Arbitrator, which shall be mutually agreed upon by the parties. Such arbitration shall be conducted in Mumbai, in the English language. Clause 19 of the agreement further provided that "all disputes & differences of any kind whatever arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of Mumbai only."

Respondent No. 1 subsequently submitted two petitions before the Delhi High Court under sections 9[1] and 11[2] of the Arbitration and Conciliation Act, 1996. The Delhi High Court determined that jurisdiction over the matter is exclusively vested in Delhi and Chennai, where the goods were supplied, as well as Amritsar, which serves as the registered office of the appellant company. This conclusion is based on the finding that no aspect of the cause of action arose in Mumbai. This matter is entirely separate from the exclusive jurisdiction provision, as the courts in Mumbai would, in the first instance, possess no jurisdiction whatsoever. The jurisdiction over the dispute shall be vested exclusively in the court located in Delhi, as it was the initial forum engaged in the matter. The appellants asserted before the Supreme Court that, despite no part of the cause of action arising in Mumbai, the courts in Mumbai should possess exclusive jurisdiction over all procedural matters, given that the seat of arbitration is located in Mumbai. The respondents supported the ruling of the Delhi High Court, asserting that the designation of the seat as Mumbai would not confer exclusive jurisdiction to the Mumbai courts regarding the matter; it is imperative that one of the tests outlined in sections 16 to 20[3] of the Civil Procedure Code, 1908, is satisfied.

**ISSUES DISCUSSED**

1. Does the assignment of the seat of arbitration equate to the establishment of the exclusive jurisdiction clause?
2. Is it possible to revoke a provision within an arbitration agreement that stipulates exclusive jurisdiction?

A clause that specifies a certain venue as possessing jurisdiction over all issues related to the arbitration agreement would, by its very nature, invalidate the jurisdiction of any other court concerning that matter. This scenario would arise if the arbitration agreement between the

[1] Section 9, The Arbitration & Conciliation (Amendment) Act, 2019, No. 33, Acts of Parliament, 2019 (India)
[2] Section 11, The Arbitration & Conciliation (Amendment) Act, 2019, No. 33, Acts of Parliament, 2019 (India)
[3] Section 16-20, Code of Civil Procedure, 1908

parties contained a clause specifying exclusive jurisdiction. Notwithstanding the occurrence of the entirety of the cause of action outside the designated exclusive jurisdiction, the validity of such a determination shall nonetheless be upheld.

**RULE APPLICABLE**

| S.no. | Relevant Section | Parent Act | Title/Premise |
|---|---|---|---|
| 1. | Section 2(1) | Arbitration & Conciliation Act, 1996 | Definitions |
| 2. | Section 42 | Arbitration & Conciliation Act, 1996 | Jurisdiction |
| 3. | Section 20 | Arbitration & Conciliation Act, 1996 | Place of arbitration |
| 4. | Section 9 | Arbitration & Conciliation Act, 1996 | Interim measures, etc., by the Court |
| 5. | Section 11 | Arbitration & Conciliation Act, 1996 | Appointment of arbitrators. |
| 6. | Section 16-20 | Code of Civil Procedure, 1908 | Suits and Jurisdiction |
| 7. | Section 2 (1) (e) | Arbitration & Conciliation Act, 1996 | Definition of Courts |

Upon thorough examination of the pertinent clauses within the Arbitration and Conciliation Act, 1996, it becomes evident that the moment the seat is designated bears resemblance to an

exclusive jurisdiction clause. In light of the circumstances surrounding the present case, it is clear that Mumbai serves as the seat of arbitration, and Clause 19 further underscores the exclusive jurisdiction of the courts in Mumbai. In contrast to the Code of Civil Procedure, which governs litigation in judicial forums, the Law of Arbitration introduces the concept of "seat", allowing the parties involved in an arbitration agreement to select a neutral venue for the proceedings. The neutral venue may not possess jurisdiction in the conventional sense; specifically, no aspect of the cause of action may have arisen within the neutral venue, nor would any provisions from Sections 16 to 20[4] of the CPC be applicable. In the context of arbitration law, once the "seat" is determined, the designation of Mumbai as the seat confers exclusive jurisdiction upon the courts of Mumbai for the oversight of arbitral proceedings arising from the parties' agreement.

## ANALYSIS

**Supreme Court Overturning Delhi High Court Judgment:** The Supreme Court set aside the order of the Delhi High Court in the following words: "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 the CPC be attracted. In arbitration law, however, as has been held above, the moment 'seat' is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties".

Nevertheless, the Supreme Court, as shown in the above remark, endorsed two contradictory claims. It was first said that the facts of the present case clearly indicate that the seat of arbitration is Mumbai, and Clause 19 further elucidates that jurisdiction is exclusively conferred upon the Mumbai courts. Moreover, the paragraph indicates that following the establishment of the "seat," the choice of Mumbai as the seat would provide exclusive jurisdiction to the courts of Mumbai for the governance of arbitral proceedings arising from

[4] Section 16-20, Code of Civil Procedure, 1908

the parties' agreement. The primary assertion is that the court at the arbitration venue should have sufficient authority, but the parties maintain the right to pursue remedies from a court with subject matter jurisdiction. Nevertheless, the second plan eliminates the capacity for parties to make decisions according to their preferences. Moreover, both of these legal assertions are unfounded and erroneous, as they rely on the presumption that the court of the seat of arbitration, lacking any connection to the subject matter or cause of action in dispute, possesses the requisite jurisdiction over the arbitral proceedings.

The Court in Indus Mobile referenced the ruling of the Constitution Bench in *BALCO*[5], wherein it was determined that section 2(1)(e)[6] of the Act confers jurisdiction upon two courts: those in which the cause of action arises and those in which the arbitration is conducted. Nevertheless, this determination in *BALCO* does not establish the ratio decidendi of the decision. Moreover, the Court failed to engage with and assess prior decisions that have interpreted section 2(1)(e) in a divergent manner. The relevance of the observation is consequently subject to considerable doubt. The Court ignored the language of section 2(1)(e)[7] of the Act which defines court as: *"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."* The provision enacted by Parliament stipulates that, in the case of litigation, the principal civil court should have the necessary competence to resolve matters related to arbitration. [6] The Delhi High Court's interpretation of the clauses is exemplified in *GE Countrywide Consumer Financial Services Ltd. v. Surjit Singh Bhatia*[8], where it is established that the first step is to identify the subject of arbitration, specifically the dispute in question. In the absence of an arbitration agreement, it is essential to determine the correct jurisdiction for initiating the litigation. Only courts where an action may be commenced may be regarded as courts under *section 2(1)(e)* and shall have supervisory jurisdiction over the proceedings. The Delhi High Court analysed the effects of the arbitration seat on jurisdiction in *Sushil Ansal v. Union of India*[9]. The location of arbitration does not automatically provide jurisdiction to the courts. Consequently, it is

[5] Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc. 2010 1 SCC 72
[6] Section 2(1)(e) The Arbitration & Conciliation (Amendment) Act, 2019, No. 33, Acts of Parliament, 2019 (India)
[7] Section 2(1)(e) The Arbitration & Conciliation (Amendment) Act, 2019, No. 33, Acts of Parliament, 2019 (India)
[8] GE Countrywide Consumer Financial Services Ltd. v. Surjit Singh Bhatia AIR 2006 (NOC) 903 (DELHI)
[9] Sushil Ansal v. Union of India, 2014 AIR SCW 2689

necessary to evaluate the court's jurisdiction over the subject matter of the dispute, especially in the context of a submitted lawsuit. Consequently, according to *section 2(1)(e) of the Act*, courts located in a neutral arbitration seat, devoid of any relation to the subject matter or cause of action, have not been granted authority.

The courts possess a statutory authority for supervision, as opposed to a natural one. The House of Lords upheld this position in *Bremer Vulkan Schiffbau v. South India Shipping Corp. Ltd*[10], rejecting the notion that courts possess a general supervisory authority over arbitration conduct that exceeds the scope delineated by the Arbitration Acts. Moreover, it is established jurisprudence that parties cannot confer jurisdiction upon a court by mutual consent if such jurisdiction is not inherently possessed by that court. However, in instances where multiple forums are available for the initiation of a lawsuit, the parties are entitled to select a specific forum, thereby excluding all others.

## COMPARATIVE ANALYSIS

**United Kingdom:** Mostly controlling the choice of seat and venue inside the United Kingdom is the Arbitration Act 1996. The Act underlines the idea of party autonomy, therefore letting the parties choose their favourite seat at will. By respecting the parties' choice of seat and reducing their engagement in the arbitral procedure, the English courts have taken a pro-arbitration posture. Important decisions, such as *Sulamerica Cia Nacional de Seguros S.A. v. Enesa Engelharia S.A.*[11,] have helped the English court to define its interpretation of arbitration agreements and apply the parties' choice of seat.

**United States of America:** Court judgments and the terms of the *Federal Arbitration Act* (FAA) greatly affect the choice of seat and venue in the United States. The Federal Arbitration Act offers a structure that greatly encourages the execution of arbitration agreements. Although the FAA does not specifically address the issues of seat or venue, court rulings have maintained the idea of party sovereignty and acknowledged the significance of the selected seat in deciding the appropriate procedural law. Important decisions as *Bremen v. Zapata Off-Shore Co*[12] The verdict have underlined the enforceability of arbitration agreements and the respect paid to the decisions taken by the parties engaged.

[10]Bremer Vulkan Schiffbau v. South India Shipping Corp. Ltd [1981] UKHL J0122-1
[11] Sulamerica Cia Nacional de Seguros S.A. v. Enesa Engelharia S.A., [2012] EWCA Civ 638
[12] The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972)

**Switzerland:** Switzerland is a sought-after location for international arbitration processes as it is known for having a good legislative framework around arbitration. The Swiss Private International Law Act (PILA) lays out the rules controlling choice of venue and jurisdiction. The PILA stresses the idea of party sovereignty and offers a flexible structure for the choice of a neutral jurisdiction, therefore reducing the impact of local courts. It is clear from instances like *Dow Chemical Pacific Limited v. Isover Saint-Gobain (Switzerland)* [13]AG that the Swiss approach stresses the need to maintain the autonomy of the parties engaged while guaranteeing an objective and effective arbitration procedure.

**Singapore:** The legal system of Singapore is meant to encourage international arbitration, therefore establishing the city-state as a major Asian arbitral base. The International Arbitration Act (IAA) provides the basis for choosing the seat and venue. The courts in Singapore have shown a positive attitude towards arbitration in respect to the choice of seat and the execution of arbitration agreements. The *BCY v. BCZ*[14] case shows Singapore's will to respect party autonomy and provide an unbiased arbitration system.

## THE INTERPLAY OF LEX ARBITRI – ILLUSTRATION

The legal framework relevant to arbitration processes is known as the juridical seat of arbitration, or more generally, as *Lex Arbitri*. The *Lex Arbitri* defines the courts that have supervisory jurisdiction over the arbitration procedure. The parties may choose a legal system that naturally has jurisdiction over one party as the venue for arbitration. This decision aims to alleviate any possible prejudice or unfamiliarity stemming from a judicial system that is not directly linked to the parties concerned. An examination of the judgment in *XL Insurance Ltd. v. Owens Corning*[15] offers a significant understanding of the phrase "*lex arbitri*". An American entity, known as Party A, entered into a formal agreement with a British organisation, identified as Party B. The contract is governed by *New York State law*, whilst the arbitration agreement is regulated by the *English Arbitration Act of 1996*. The insured party A commenced legal action in the Delaware Court (USA) seeking reimbursement for certain insured losses. B, the insurer, initiated legal actions in London to prevent A from engaging in litigation in Delaware. The English Court ruled that the arbitration provision would remain legitimate notwithstanding the selection of a legal framework that diverges from the *lex arbitri*. The applicability of English Law is singular, and the English Arbitration

[13] Dow Chemical Pacific Ltd. v. Isover Saint-Gobain (Switzerland) AG, 30 ASA Bull 107 (2012)
[14] BCY v. BCZ, [2016] SGHC 249
[15] XL Insurance Ltd. v. Owens Corning (2000) 2 Lloyd's Rep 500, (2001) 1 All ER (Comm) 530

Act of 1996 shall be applied. English Law shall govern all aspects related to the arbitration agreement, including its formal validity and the jurisdiction of the arbitrators, since the parties have chosen English Law for their arbitration proceedings.

## CONCLUSION

While the ratio established in this context indicates that the courts of the neutral seat shall possess exclusive jurisdiction over arbitral proceedings, it is evident that this approach is more conducive to arbitration than what was originally contemplated by the legislature. It is incumbent upon the legislators to amend the Act and explicitly confer authority to the court located at the site of arbitration. Failure to adhere to this may result in complications for the parties selecting a neutral seat of arbitration when engaging with the courts. Moreover, Indian courts would not possess jurisdiction in situations where two foreign entities consent to arbitrate in India, provided that the dispute has no connection to India. The two latest verdicts regarding the issue of Seat vs Venue have conformed to the precedent set in the Indus v. Datawind case. This verdict posits that it is a logical conclusion that the parties have appointed the venue as the arbitration seat in the absence of any contrary indication from the concerned parties. The legal concepts established in the Indus v. Datawind case provide a framework for examining contemporary trends in the selection of seat, venue, and the relevant laws controlling the arbitration procedure. The last two verdicts regarding the issue of Seat vs Venue have conformed to the decision made in the Indus v. Datawind case. This case establishes that, in the absence of any different indication from the parties, it is a fair conclusion that they have chosen the venue as the arbitration seat. The legal concepts established in the Indus v. Datawind case provide a framework for examining contemporary trends in the selection of seat, venue, and the relevant laws controlling the arbitration procedure.