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ABOUT US

"Journal of Unique Laws and Students" (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE III of Volume I focuses on three themes i.e. (i) Arbitration Law (ii) Competition Law, and (iii) Criminal Law.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

UNIQUE LAW is a law related Ed-tech premier start up in India that excels in imparting legal education. It is a registered entity under the name Ansh LexPraxis Legal Education LLP. The said LLP is recognized as a start-up India Initiative by Government of India's Ministry of Commerce and Industry and DIPP63504.

DISCLAIMER

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PREFACE

On looking at today's scenario, there are numerous issues to know about. Our journal`s Issue III of Volume I has work on three crucial themes namely ***Criminal Law***, ***Arbitrational Law*** and ***Competition Law***. We would like to express our deep appreciation of the co-operation of the contributors, who so willingly devoted their time and energies.

We have tried to cover these wide topics with the relevant research and landmark judgments. We have used standard of words for the explanation, evenly attempted to clear the concepts and presented captivating writing to the readers. The works also contains some suggestions in respective fields.

The views expressed in the articles are purely and solely of the authors and the entire team of the Journal has no association with the same. Although all attempts have been made to ensure the correctness of the information published in the articles, the Editorial team shall not be held responsible for any errors that might have been caused due to oversight or otherwise. It is up to the rest of us to help make the journal a success story in the next several years.

FOREWORD

As a member of the Advisory Board of Journal of Unique Laws and Students (JULS) which seeks to support student dynamism in action, I take pride in writing this very brief Preface to **Issue III of Volume I** of the Journal. Through this sturdy student-led initiative, the Journal provides young lawyers and law students of the opportunity to deliberate on legal issues of contemporary interest and to express their well-researched conclusions in the form of double-peer reviewed articles.

In this issue of the JULS I am happy to see a wide array of articles on *Alternate Dispute Resolution (ADR), Arbitrability, Competition Law, Juvenile Delinquency, Gender Crime, Cybercrime, Criminalisation of Politics, Sedition and Witness Protection*. Laws and legal systems are dynamic in nature and laws evolve or are enacted to suit the changing needs of society. Young lawyers and law students can contribute to this dynamic process and even recommend law reform or analyse existing laws including case law. Young lawyers can also contribute to society as civil society activists engaged in efforts to improve the quality of law and its administration. The inculcation of critical thinking, which is one of the main objectives of the JULS, can no-doubt stand in good stead to young lawyers in moulding their future careers.

While I am happy that the very first issue of the inaugural volume of JULS was a tremendous success and its wide array of articles on diverse topics were well received by the legal fraternity, I take this opportunity to thank the contributors of articles as well as the vigilant and hardworking Editorial Board and my colleagues in the Advisory Board for the high standards achieved. In this Foreword, I take the opportunity to thank the publisher for coming out with another issue of JULS almost in time despite the trying conditions in which lawyers work and law students are placed, and I am glad that JULS through its on-line presence, is able to contribute immensely to this process of dissipation of legal knowledge and skills.

Justice Saleem Marsoof PC

Judge of the Supreme Court of Fiji

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EDITOR'S NOTE

Unique Law was established in the month of April 2020 and cheerfully brings **Volume 1 Issue III** of **Journal of Unique Laws and Students (JULS)**. This journal has become a successful climb in reaching to our goal of gaining visibility in the academic front and becoming a great platform in education community.

The journal aims to present merit papers on the numerous legal issues and these topics are authored by various groups of individuals that have been reappraise and emended by our team of editors to attend the highest possible excellence. These research papers, case analysis and shortnotes are the result and we feel privileged to have been able to act as editors.

We thank to all our authors for their obedient submission to the third issue of the Journal by Unique Law and also for their productive cooperation with the editorial team to garnish their work with perfection. We would also like to express our gratitude to our diligent editorial board, whose restless support and commitment made this Journal's Issue III a success.

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MATTERS CONCERNING SEAT AND VENUE OF ARBITRATION: CRITICAL AND COMPARATIVE ANALYSIS

Author: *Prity Kumari*[*]

ABSTRACT

The parties going for arbitration must confine their mind to the assorted aspects of the Mediation process while choosing a seat under the Arbitration and Conciliation Act, 1996. The selection of seats or venues in conflict during arbitration will be seen through the instance of various countries including India. The paper explores the selection of seats and venues in domestic arbitration. It mainly widens the view of whether the change of venue of arbitration needs a mutual agreement or not. It focuses on the issues that arose before the Supreme Court while resolving the dispute of selecting seats during adjudication. The broader aspect on which this paper relies is the conundrum of the seat and venue of adjudication. Further, it'll examine the curious case of seat/venue/place in arbitration and therefore the need for legal practitioners to use clear phraseology. It'll explore the numerous features of selecting a seat for arbitration as an analysis. In addition, the paper is going to cope up with the deepening crisis within the seat venue debate in 'Indian Arbitration'. Further, the impact of seats in arbitration, then Indian parties choosing the foreign seat of arbitration, and seat v. venue in contemporary arbitral jurisprudence are some important facts that we'd like to grasp. It highlights the recent position of law decided by the Apex Court with relation to the determination of seat of arbitration and at last provides the distinction between seat and venue of Arbitration. Before summarising the entire paper we are going to have a glance at a number of remarkable controversies associated with the seat of adjudication. Lastly, some suggestions are going to be given and through these suggestions, we've tried to resolve the dispute that arises during the selection of seat or venue.

Keywords: *seat, venue, arbitration*

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RESEARCH OBJECTIVE

The objective is to resolve the difficulty of choice of "seat" and "venue" during arbitration under consideration. The study of the recent position of law was decided by the Apex Court is relevant to the determination of the seat of arbitration and in the relevancy of their duty to allow the effect to the sacrosanct principle of party autonomy. Discussion on the difficulty of the jurisdiction of Indian courts over foreign seated arbitrations and issue of Indian parties choosing a foreign seat/far off the seat of arbitration and these points are discussed keeping in mind the Arbitration and Conciliation Act, 1996.

RESEARCH QUESTION

The following are the research questions formulated for the purpose of this research---

1. Does the change of "venue of Arbitration need a mutual agreement?

2. Does the choice of a "Seat" determine a court's supervisory jurisdiction?

3. What were the issues before the Apex court while giving judgment in dispute matters?

4. What is the scenario of seat v/s venue in contemporary Arbitral Jurisprudence?

RESEARCH METHODOLOGY

The research methodology adopted for this research is doctrinal research. The research focuses on verdicts given by the Apex Court. The methods of research opted are both analytical and descriptive. The sources of information named are secondary sources like case laws, scholarly articles, journals, and blogs.

LITERATURE REVIEW

The volume under evaluation printed under the propitious of *the* ***Charles L. Bernheimer Arbitration Education Fund***

Accords greatly to the current effort of arousing general interest and presenting the important aspects of arbitration. Insight of private character of proceedings, awards which

settled past discourse are not accessible for inspection as are published digests of the court verdict.

Morris S. Rosenthal under the title of "A businessman looks at Arbitration"

Inspects the specified needs of businessmen to retreat to arbitration and to assure its effectiveness by guaranteeing that a party to an arbitration consensus cannot afterwards refuse to adjudicate the matter and that an award should be qualified.

Alternate Dispute Resolution (Arbitration) could be a solution for both domestic and foreign disputes. Both sides have equal involvement in choosing an arbitrator and therefore the spot of arbitration is also at their option to choose. So, it is a fast and inexpensive solution to go for arbitration. It's never behind time to urge going for arbitration. Our judiciary is kind of slow and steady and it is often because the judicature is already overburdened with lakhs of pending cases. Keeping the full scenario in mind it's advisable to opt for Arbitration proceedings. General recognition of the excellence of Arbitration has been handicapped for a variety of reasons. And if people think - they are not going to perceive justice or the arbitrator will be biased or the strong and dominant party will influence the resolution of the arbitrator, then there are provisions in sections 12(1)(a) and 12(1)(b) and the fifth schedule of the act which gives you a transparent vision about your rights and obligations in Arbitration proceedings. Proponents of mediation have persistently engaged in efforts to spread more information about arbitration so as to beat these misconceptions.

INTRODUCTION

Alternative Dispute Resolution is a system of settling disputes outside the official judicial mechanism. It is classified into four types-Negotiation, Mediation, Collaborative Law, and Arbitration. Arbitration is a method of bringing a business dispute before a neutral third party for a ruling. The third-party, an arbitrator, considers the evidence presented by both sides and makes a decision based on it. Bringing a subject before an adjudicator is referred to as adjudicating it. In the context of litigation, an arbitrator is hired in the hopes of resolving a dispute without the expense and time commitment of going to court. The arbitrator rendered a decision that was binding on both parties at the end of the arbitration process.

Some important terms in arbitration:

Arbitration Clause: An arbitration clause is a section of the agreement that defines the rights and obligations of the parties within the instance of any dispute which arises over the contractual obligation or the other matter associated with such contract.

Arbitration Tribunal: An Arbitration Tribunal is defined as a single arbitrator or a panel of arbitrators under section 2(1)(d) of the Arbitration and Conciliation Act, 1996. Parties have complete discretion over the number of arbitrators they hire. If the parties cannot agree on the number of arbitrators, the arbitration tribunal will be made up of a single arbitrator. The number of adjudicators should be odd.

Arbitral Award: In an arbitration case, an arbitral award refers to a decision given by an arbitration tribunal. In arbitration, it's the final, legally binding conclusion. The award specifies the amount of money that the parties are entitled to recover. This award could be money that one party must pay to the other.

(a)Various aspects of the Arbitration process while choosing a seat under Arbitration and Conciliation Act, 1996

The court is set by the seat of arbitration, which might exercise jurisdiction over the arbitration hearings. The parties may by consensus make section 9 of the 1996 Act[1] applies even if the arbitration isn't held in India. If such an agreement is inattentive, the 1996 act simply operates within the territory of India. The core law that governs contracts is distinct from the law that governs arbitration agreements. If the parties fail to specify the laws that apply to the arbitration agreement, the test of "the closest and most intimate connection" will be used to determine the outcome. As a result, in the case of Emercon India, the same strategy was used. When applying the closest connection test, the jurisdiction in which the arbitration is supervised, as well as the parties' intentions, are deciding considerations.

(b)Curious case of seat/venue/place in Arbitration and want for a legal practitioner to use clear phraseology.

[1] Vaibhav s. Charalwar, Arbitration, concept of seat and venue under Arbitration and Conciliation Act, 1996 https://www.scconline.com/blog/post/2018/06/04/co ncept-of-seat-and-venue-under-the-arbitration-and-conciliation-act-2015/ (last visited-27th Aug, 8:40am)

People must be clear about the very fact that the Arbitration and Conciliation Act, 1996 doesn't employ the words seat or venue for adjudication, rather it employs the word 'place' for adjudication within the sense of 'juridical seat'. The relevant provision given in section 20 of the 1996 Act reads as-

(1) The parties are liberal to agree on the place of arbitration.

(2) Failing any agreement stated in sub-section (1), The arbitral tribunal will determine the location of the arbitration based on the facts of the case, including the comfort of the parties.

(3) Notwithstanding subsections (1) and (2), the arbitral tribunal may meet at any location it finds acceptable for consultation among its members, hearing spectators, specialists, or the parties, or examination of papers, commodities, or other things unless the parties agree otherwise."

(c)Importance of seat in Arbitration

A 'seat' or 'place' of adjudication not only asks where hearings will be held or reflect contract law, but it also establishes the framework for the mediation by granting the seat's courts supervisory control over the hearings. Choosing the wrong seat might cause a significant delay in the arbitration procedure.

It can expand the chance of parallel court proceedings and permit the award to be challenged on the extensive ground in local courts which cannot be authentic. If you select the wrong seat, then it may lie in a jurisdiction where the counterparty is extremely well connected and it poses evident risks. An arbitration might be challenged in the seat's courts as well. The amount to which the court intervenes in each case varies greatly, as does the arbitration seat. The law of the seat is extremely important when it comes to some official issues, such as whether or not an arbitral tribunal can award costs or interest, or whether or not a conflict of law rule must be used.

BRIEF HISTORY OF ARBITRATION LAW IN INDIA

(a)The Arbitration Act, 1940 and why it failed

Right from the very beginning, India has been an arbitration-friendly country. Mediation was in practice even before the codification of arbitration laws. In ancient and medieval India, settling disputes pertaining to the third party was popular. If a person was unsatisfied then, he or she could go to the court of law or to the king itself for appeal. Within the pre-court era, the leaders of the communities and families usually acts as arbitrators, and the rest of the people used to obey their decision. Later, panchayats were formed in villages to settle discourse between the parties. The fundamental Arbitration law in India was the Arbitration Act of 1899, which supported the English Arbitration Act, 1899, and it also expanded to the other parts of British India through section 89, schedule II of the "Code of Civil Procedure 1908". Later, based on the English Arbitration Act of 1934, the Arbitration Act of 1940 was authorized in India to combine and bring changes in the law touching on arbitration.

1. The Arbitration Act 1940 was enacted in India to consolidate and amend the law pertaining to arbitration, and it took effect on July 1, 1940. The Act repealed the Arbitration Act of 1899 as well as the relevant provisions of the CPC of 1908.
2. The Indian courts were given the authority under this Act to swap the award, revoke the award of arbitrators for reconsideration, and set aside the award on specific grounds.
3. The Act established the framework within which domestic arbitration in India was deduced.
4. The scheme of the Act is:-to hand out with arbitration without the interference of the Court (Chapter II)-to handle arbitration with the interference of the court where there's no suit pending (Chapter III)-to cover arbitration in suits (Chapter IV). Provisions common to any or all three forms of arbitration mentioned in (chapter II, III, IV) respectively constitute the remaining proportion of the Act (Chapters V to VII and also the Schedules).
5. The Act broadened in entire India except for the state of J&K.

Shortcomings of the 1940 act

1. Though the Act was a huge revolution in bringing a comprehensive law covering all important facets of arbitration, the requirement of its replacement started being felt with increasing urgency insight of the liberalization programme of the govt. of India. The law lacked statutory recognition of conciliation as a technique of settling disputes.

2. The Act granted permission to the courts to intervene at every stage of the arbitration proceeding; ranging from the appointment of the arbitrator through the interim stage to the passing of the award.
This procedure updated the culture of the judicature supervising the arbitration hearings and not providing arbitration the status of an alternate resolution mechanism. This was in inclusion to the real fact that the Indian judicature had a boundless backlog of cases which delayed the resolution of the problems that visited the court;

3. Any party interested in delaying the proceedings would turn to the court during any stage of the proceedings taking advantage of the backlog of the cases;

4. The Act did not prohibit the parties from raising disputes referring to the proceeding or validity of the arbitration agreement or the constitution of arbitration even after passing the award, while they have participation within the arbitration without objection;

5. The Act allowed the award to be questioned on a number of grounds, which includes the merits of the award as well.

6. Foreign investors were unwilling to take a position in India as they require a stable business environment and a strong commitment to the rule of law.

(b)The Arbitration and Conciliation Act, 1996

The arbitration may also be contested in the courts of the seat. The extent, to which the court intervenes in each case, as well as the arbitration seat, varies substantially. When it comes to some official matters, such as whether or not an arbitral tribunal can award costs or interest, or whether or not a conflict of law rule must be applied, the law of the seat is vitally relevant.

OBJECT OF THE ACT

1. to extensively cover international commercial arbitration and conciliation also as domestic arbitration and conciliation.
2. to reduce the authoritative role of judicature within the mediation process.
3. To ensure that each final arbitral award is applied in a similar way that a court decree would be.
4. Ensuring that an arbitral procedure is fair, efficient, and capable of meeting the requirements of specific arbitration.
5. To ensure that the arbitral tribunal provides reasons for its decision,
6. To ensure that the arbitral tribunal stays within its jurisdiction.
7. To allow the arbitral tribunal to use mediation, conciliation, or other procedures to encourage settlement of disputes during arbitral proceedings.

PRINCIPLE SHORTCOMINGS OF THE 1996 ACT

1. Arbitrators are not given the authority to issue summons, examine witnesses, or take evidence.
2. Because the arbitrator is appointed by the parties, the possibility of bias is high. One of the parties in a dominant position may compel the arbitrator to act in accordance with his or her wishes.
3. Arbitration awards can be enforced by the judicial system.
4. Dispute resolution outside of court remained slow and ineffective.
5. Despite the fact that disagreements are arising in India, foreign investors prefer to use foreign arbitration.

THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT 2015

The Arbitration and Conciliation (Amendment) Act 2015 went into effect on October 23, 2015, with the goal of making it easier to execute contracts quickly, recover monetary claims quickly, reduce the number of unresolved cases in courts, and speed up the process of resolving disputes through arbitration, in order to attract foreign investment by portraying India as an investor-friendly country.

KEY CHANGED BROUGHT BY THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015:

The Act modifies:

1. Section 12 - grounds for opposing the appointment of an arbitrator:
   It lays out a list of factors that "raise reasonable doubts about arbitrators' independence or impartiality" and require a written disclosure from a prospective arbitrator, as well as a list of circumstances that render someone unfit to nominate an arbitrator.
2. Appointment of arbitrators by a judge (Section 11 of the Act): indicating that appointment judgments are final and do not appear to be subject to appeal; restricting the scope of judicial review at this stage of deciding the existence of an arbitration agreement; and anticipating the court to reject comparable applications within 60 days.
3. Fast-track arbitration procedure: Section 29B of the Act mandates arbitral tribunals to give decisions within 12 months, subject to a six-month extension with the parties' agreement, and an extra extension should be allowed by the judicial system upon showing sufficient cause.
4. Court challenges to arbitral awards under Section 34: Under the new act, court challenges to arbitral awards must be addressed within one year.
5. Sections 9 and 17-interim measures: Under the Act of 2015, arbitral tribunals have the same power as courts in terms of interim measures, both in terms of scope and impact; after the tribunals have been constituted, courts cannot hear interim measure applications.

   The Act explains why Part I of the Act has the jurisdiction to offer interim relief. This could be especially helpful in light of the BALCO decision, which held that Part I of the Act did not apply to international arbitration. While this ruling was beneficial in that it narrowed the scope of court action in an international arbitration involving India, it practically eliminated any chance of judicial remedy in such cases. This clarification has resolved the ambiguity.
6. Section 31A, which sets a cost-regulatory framework.
   The Act established a comprehensive cost framework that included elements to consider when awarding contracts and calculating prices.

   The Act also modified section 36, which formerly allowed for the delay of execution of arbitral awards pending the outcome of a set-aside application. The new provisions only allow for a stay of execution if the court has made a particular order, and an

application to set aside an arbitral verdict does not automatically result in a stay of execution.

Basic Features of Arbitration

1. ***Arbitration is consensual***-- Only if both parties to the case agree to go to arbitration can the process begin. A settlement reached by the parties willingly is far superior to one imposed by a third party such as a judge, hearing officer, arbitrator, or expert. The term "consensual" plainly says that you cannot go to arbitration without both parties agreeing. In most cases, the parties have already included an arbitration clause in the contract to resolve any future disputes. This is done in case of a future dispute emerging from the failure to perform contractual duties. If both participants agree, then an already existing discourse can also be referred to arbitration.

   "Parties choose the arbitrators: The parties are free to choose their arbitrator under the Indian arbitration legislation, and they are authorized to choose arbitrators together who would operate as an umpire. Furthermore, the number of Arbitrators must always be odd. And the odd number criteria were established to ensure that there would be no conflicts throughout the arbitration proceedings."

2. ***Arbitration is neutral***--So that there is no bias during the procedures, the arbitrator should be a neutral individual. Apart from that, parties can choose other key criteria such as the applicable legislation, the language in which the hearing shall be conducted, and, most importantly, the arbitral venue. And because of these factors, neither team has a home-court edge. The arbitral tribunal's decision is final, binding on the parties, and simple to enforce.

ARBITRATION IN CONTEMPORARY WORLD

In any arbitration proceeding, the "seat of arbitration" is crucial. It not only states where an institution is located, where hearings will be held, and where a good pool of arbitrators may be found, but it also states which court has supervisory authority over your arbitration issue and the scope of those powers. When parties decide to arbitrate, the first and most important decision they must make is where to hold the mediation. However, when picking a seat for mediation, they must consider a few key considerations.

By establishing the ‘seat of arbitration,' the country establishes a legal relationship between arbitration and the arbitration rule and the courts on the one hand, and the arbitration rule and the courts on the other. In a realistic or traditional style, the seat of mediation must not be identified. Rather, it's a mechanism that gives the mediation a formal legal home. Every mediation involves some sort of statutory or executive rule. The physical location of the proceedings should not be disrupted by the "seat."

In any case, the parties are free to agree on the location of the mediation. However, there are a few uncommon arbitration rules that limit the parties' options. If the parties cannot agree, an arbitral tribunal may decide on the place or seat. While choosing a seat for mediation, some practical issues other than legal aspects should be addressed, such as the role and attitude of local courts in terms of direction and management, the convenience of transportation, and suitable facilities.

(a)Grounds for questioning the nomination of the Arbitrator

India’s Judiciary is already overburdened and is accordingly slow in disposing cases. Around 1.65 lakh cases are awaiting in every high court and more than 2.6 crore cases are awaiting in the subordinate judiciary. So, to overcome this we are in dire need of a faster and effective technique to dispose of the discourse. *The Arbitration and Conciliation Act, 1996* came into effect keeping a similar goal in mind. In India, this statute encourages mediation as an alternative dispute resolution method. It was an attempt to lighten the judicial load. The reasons for questioning or challenging an arbitrator are outlined in Section 12 of this 1996 statute. The 2015 amendment act added a schedule to section 12 that lays out additional factors that could lead to an arbitrator's challenge.

Certain circumstances must be disclosed: Section 12(1) of the act, as revised in 2015, requires the incoming arbitrator to produce a written disclosure of certain situations that could cast doubt on his independence or partiality. Whether or not a situation calls into question an arbitrator's independence will be decided by the arbitrator himself. Section 12(1)(a) states that if the arbitrator has direct or indirect contact with the parties, he must disclose it. He should also disclose any financial, business, professional, or other types of interest in the subject matter of the debate, as this will damage the case and reveal the arbitrator's prejudice. Section 12(1)(b) identifies any circumstance that can influence an arbitrator's willingness to make time sacrifices in order to finish the arbitration within a year.

The fifth Schedule of the act provides a certain type of relations which gives rise to reasonable doubts:

1. Arbitrator's relationship either direct or indirect with parties or counsel.
2. Arbitrator's involvement in the discourse.
3. Arbitrator's self-interest in the discourse.
4. Arbitrator's past collaboration with the discourse.
5. Relationship of co-arbitrators when there is more number of arbitrators.
6. Relationship of an arbitrator with parties and his relationship with others in dispute.
7. Some other circumstances[2]

(b)Jurisdiction of Arbitrators: Section 16(2), 11,2(1)(b), 7 and 37

Arbitrators' power or jurisdiction is restricted by the parties' explicit consent or agreement as to the scope of the arbitration, as well as the arbitrators' ability to decide their own jurisdiction. Arbitration is fundamentally a contract concern, and if the parties have not agreed to arbitrate a particular matter, it cannot be presented to binding arbitration. The scope of the arbitration, or the issues that may be considered by the arbitrators, is also determined by the particular language in the parties' written agreement. If the mediators rule on an issue or questions that were not made arbitrable by the agreement between the parties to the adjudication, the judicature may void the award on the grounds that the arbitrators exceeded their authority.

In ***Prem Laxmi & Co. v/s Tata Engineering and Locomotive Co. Ltd***.: The respondent modified the general condition of the transaction of goods, and this modification was done by removing the arbitration clause. The title 'Arbitration' was there in the said clause but the content of the clause showed jurisdiction of Bombay courts in case of discourse. The question that came up was about the dominion of the arbitrator and the arbitrator mentioned that he had no jurisdiction.

The judicature upheld the mediator's decision, explaining that a perusal of the content of the mentioned clause did not suggest that it could be construed as an arbitration clause because it

[2] Atharv Joshi, Grounds for challenging the appointment of an arbitrator, https://blog.ipleaders.in/appointment-arbitrator-grounds-challenge/ (last visited-25th Aug, 2021, 8:47 am)

refers to the fact that the contract was entered into in Bombay and that any disagreements or differences arising from the contract would be resolved by the Bombay judicature.

(c)Indian parties choosing the foreign seat of arbitration

A three-judge bench of the Apex Court of India decided the question of whether two Indian parties can choose a foreign seat for mediation in PASL Wind Solutions Private Limited vs GE Power Conversion India Private Limited after the High Courts were split on the subject. For example, the Bombay High Court held that permitting two Indian parties to nominate a foreign seat would be against India's public policy. The Delhi High Court [3]and Madhya Pradesh High Court,[4] on the other hand, showed the view that Indian parties were free to select any seat of arbitration within India or outside India.

PASL contended at first that two Indian parties could not choose a mediation venue outside of India since doing so would violate Indian law and be contrary to Indian policy. PASL stated that allowing the parties to choose a foreign seat would imply that they might choose a foreign substantive law to regulate their rights and obligations, which would be contrary to the Arbitration Act's provisions.

In this case, the Supreme Court concluded that the Arbitration Act and the Indian Contract Act of 1872 do not prevent two Indian parties from resolving their dispute outside of India. When two Indian parties choose a foreign seat, they will be able to seek interim relief from Indian courts if the assets against which the foreign award will be enforced are located in India.

[3] *GMR Energy Limited v. Doosan Power Systems India Private Limited,* (2017) SCC Online Del 11625
[4] *Sasan Power Ltd v. North America Coal Corporation India Pvt Ltd,* 2015 SCC Online MP 7417

CRITICAL ANALYSIS

(a) Seat v/s venue debate in contemporary Arbitral Jurisprudence

1. The applicability of part 1 of Arbitration and Conciliation Act, 1996 to internationally seated arbitration consensus, further it was initiated from Bhatia International v. Bulk Trading S.A. (2002)4 SCC 105.[5] Later on, it was settled by the Apex Court in 2012 in Bharat Aluminium Company Ltd. V. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552.[6]
2. Other controversies include the theme of Arbitration of dispute till the judgement of the Apex Court in Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd & Ors (2011) 5 SCC 532.
3. The Arbitration related to fraud claims was in continuation since last decade and finally settled by the Court of last resort in A. Ayyasamy v/s A. Paramasivam (2016) 10 SCC 386.
4. The trendy controversy that received considerable importance is the seat-venue conundrum or you can say the courts are somehow confused or they face difficulty in regulating the seat of arbitration

The Apex court on various occasions has set forth influential judgment on seat, venue, place of arbitration, still, it seems a room full of vagueness.

(b)Change of venue of Arbitration needs mutual agreement?

It is not essential to change the subject of the contract if both parties intend to change the seat of the arbitration through conduct or implicit assent. The parties can jointly agree to change or replace the arbitration venue, and the mutually agreed location will become the arbitration venue. As a result, they keep in mind that changing the site of mediation for the sake of convenience is hinted at consulting authority upon the judicature of the altered venue.

In ***Inox Renewable v/s Jayesh Electricals***, the Supreme Court held that when a mutually agreed-upon seat of arbitration is changed to another location, the courts' exclusive jurisdiction

[5] Vaibhav s. Charalwar, Arbitration, concept of seat and venue under Arbitration and Conciliation Act, 1996 https://www.scconline.com/blog/post/2018/06/04/concept-of-seat-and-venue-under-the-arbitration-and-conciliation-act-2015/ (last visited-27th Aug, 8:35 am)
[6] Vaibhav s. Charalwar, Arbitration, concept of seat and venue under Arbitration and Conciliation Act, 1996 https://www.scconline.com/blog/post/2018/06/04/concept-of-seat-and-venue-under-the-arbitration-and-conciliation-act-2015/ (last visited-27th Aug, 8:40am)

changes and jurisdiction accordingly vests with the courts at the replaced seat of arbitration agreed upon by the parties.

The Hon'ble Apex Court decided in ***Videocon Industries Ltd. vs Union of India and Anrs*** that in the absence of any clause in the contract between the parties restricting any amendment or modification of a contract to only be done by an instrument in writing, the parties may mutually agree on a seat of arbitration and even change the seat of arbitration.

The parties have explicitly transferred the venue or location of arbitration by mutual agreement. The current legal position appears to be that if a seat is specified in the contract and the agreement has a clause requiring the contract to be amended in writing, then any change in the agreement must be made in writing in accordance with the contract's relevant requirements. In such conditions, the parties would be able to alter the seat of arbitration by following the course of action laid down in the contract.

(c)Problem before Apex Court while giving judgment in dispute matters over seat and venue

In ***Mankatsu Impex*** case- Another deviation, the apex court got an occasion to reanalyze the affair of seat and venue in the Mankatsu Impex's matter. The judicature, in this case, was moderating a contention that arose out of a memorandum of understanding which conveyed that the MoU is controlled by laws of India and courts in the country's capital will have authority in the matter. The discourse will be referred to and eventually deduced and decided in Hong Kong. The subject matter was where the arbitration proceedings will occur.

The judicature concluded in ***Hardy Exploration and Production (India) Inc. (2019) 13 SCC 472,*** that "the parties had not chosen the seat of arbitration and the arbitral panel had not established the venue of arbitration." The venue could not assume the status of the seat on its own; instead, "anything else is affixed to it as an attendant," the venue may become the seat, if "something else is affixed to it as an attendant." As a result, the Supreme Court decided that in our country the courts had jurisdiction to consider the challenges to the award. The Hardy Exploration case decision is of limited utility since it does not explicitly define the terms "seat," "place," and "venue," and it does not explain the additional conditions required to warrant considering the chosen site as a "venue." Ultimately, the court of last resort did not provide any clarity on this issue through this decision, other than the simple conclusion that a chosen venue might not be attended as the seat of adjudication in the absence of supplementary factors indicating that such chosen venue was intended to be the seat of mediation."

The court of final resort reasoned that "when a section or clause delegates a venue of arbitration and asserts that the venue of arbitration will be held at a comparable place, it specifies that the venue is eventually of arbitration- New Delhi or Hong Kong" in the case ***BGS-SGS-Soma-JV-Shashoua***.

(d)Selection of seat determines court's supervisory jurisdiction?

The term "court" is defined in section 2(1)(e) of ***the Arbitration and Conciliation Act, 199*6** as "the chief civil court of original jurisdiction in a district," which includes the High Court when it is exercising its usual original civil jurisdiction.

Section 20 allows the parties to choose a mediation location; if they do not, the arbitral tribunal will decide where the arbitration will take place. Depending on the nature of the debate, the territorial jurisdiction of courts is mentioned in sections 16 and 20 of the Code of Civil Procedure, 1908.

If the discussion is about immovable properties, their rights and interests, and the recovery of moveable properties, the court will have exclusive jurisdiction over the territory in which such moveable or immovable property is located.

The judicature of the places where hearings will be held will apply to every other discourse:

—cause of action arouses to some extent

—defendant dwells or works for profit, and in the event of a corporation, territorial jurisdiction will be exercised where the corporation's registered office is located.

Every court mentioned in section 20 of the CPC will have concurrent jurisdiction, and a party intending to litigate will be able to choose any of these courts for litigation, even in arbitral proceedings. Except for the purpose of execution of the award, which might be settled at any place where the award is likely to be satisfied, the judicature within whose jurisdiction the seat of arbitration is located will have exclusive authority in arbitration matters. The recent judgment of the Apex court of India in some cases like- ***Indus Mobile Distribution (P) Ltd. v/s Datawind Innovations (P) Ltd. And Ors. (2017) 7 SCC 678, Brahmani River Pellets Ltd. v/s Kamachi Industries Ltd. Civil Appeal No.5850 of 2019*** and judgment of three-judge bench in ***BGS SGS SOMA JV v/s NHPC Ltd. Civil Appeal No. 9307 of 2019*** leave no doubt about the

fact that the parties have a choice to choose a court that will exercise supervisory jurisdiction in arbitration matters exclusively.[7]

In Arbitration laws, the seat of Arbitration is of dominant significance. The Arbitral seat or venue is the judicial home where the proceedings will occur. When we will have a look upon the judgments where the seat/venue/place of arbitration was decided, you will get to know that it is full of controversy either it is the views of the corum or the judgment of the jury. The choice of seat in arbitration has always been a topic of debate. And till now we haven't reached any conclusion on the choice of seat or venue. There are terms and condition which shows that the seat in arbitration is determined by the mutual agreement and if the parties fail to decide mutually, then the arbitral tribunal will decide the place of arbitration where the proceedings will occur. So, you can see the criteria of choice of seat. But it's not so simple as it seems. The series of judgments shows its complexity. First of all, the parties rarely come to a mutual decision to have the same place of arbitration. Every party wants a place of proceedings as per their own convenience. And their disagreement gives the deciding power to the arbitral tribunal, which brings the parties in trouble, and sometimes it is quite expensive because the court also fixes the place of arbitration as per their own convenience. So, you can see everyone is deciding it as per their own convenience. Now if we will have a look upon the supervisory jurisdiction of the court then the series of judgments show that the court has got supervisory jurisdiction in the matters of dispute. But we have chosen the process of arbitration because we don't want to go to courts for their long procedure which sometimes takes decades for decision. But anyhow we are in any way going to court for the decision, so how is that justified because a party has chosen the process of arbitration as he/she doesn't want to get involved in the lengthy procedure of the court. But they are anyhow reaching the court for the judgment. So, there are a lot of flaws in this Arbitration process also and before anyone goes for arbitration, the party should have complete knowledge of the pros and cons of the arbitration process.

[7] Rakesh Kumar, Advocate, Arbitral seat and supervisory jurisdiction of the court: choice of parties, DSN Legal, https://dsnlegal.com/arbitral-seat-and-supervisory-jurisdiction-of-court-in-india.php (last visited-25th Aug, 2021, 7:41 pm)

CONCLUSION AND SUGGESTIONS

Seat-venue debate is a longstanding topic of discussion and it has become one of the ultimate hotly debated topics from the Arbitration world. Arbitration has a very significant feature i.e., the deduction of seat/place/venue by the parties. Here we have discussed what happens if there is a dispute between the choice of seat and venue during arbitration proceedings. Though the Apex court from the different decision has given a shot to solve this dispute and to an extent, it became successful in doing so. In the very beginning, we have seen that there is no such word as seat or venue in the Arbitration and Conciliation Act,1996, in fact, the actual term is "place of arbitration". It is on the parties whether they want to go for domestic arbitration or international arbitration but with some terms and conditions. The amount of popularity, especially the case laws this topic has created in a short span of time is just amazing. The interesting part is that every new case law comes up with ambiguity and creates confusion. The judgments or decisions unfortunately are not able to answer the above questions. But on the basis of established legal principles, we can say that answer to most of the questions mentioned above will be negative. The current judgments do not introduce any sort of the change in the position of this seat, venue debate.