

## The Viewpoint

## Failure to Designate Seat – CPC decides Court's Jurisdiction over Arbitral Proceedings

*The Delhi High Court in M/s Kings Chariot vs Mr Tarun Wadhwa held that the jurisdiction of the Court will be determined as per CPC if an arbitration agreement does not expressly specify the seat of arbitration.*



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### Introduction

A Single Judge of the Hon'ble Delhi High Court ("High Court") in *M/s Kings Chariot vs Mr Tarun Wadhwa* held that if an arbitration agreement does not specify the seat or place of arbitration, the jurisdiction of the Court will be determined as per Sections 16 to 20 of the Code of Civil Procedure, 1908 ("CPC"), even if the contract contains a general jurisdiction clause.

### Contentions of the Parties

The present decision was made in the context of proceedings for the appointment of an arbitrator under the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). The petitioner filed an application before the High Court to appoint an arbitrator to resolve disputes which had arisen under a contract executed in October 2018 ("contract"). The contract was silent on the seat and venue of arbitration. However, Annexure – 2 of the contract provided for an exclusive jurisdiction clause which recorded that "*all disputes subjected to Delhi jurisdiction only.*"

In the absence of an express seat in the contract (which otherwise had an arbitration clause) and contending that the general clause in Annexure - 2 of the contract cannot designate the seat of arbitration as Delhi, the respondent challenged the maintainability of the petition before the High Court. The respondent also argued that since no cause of action arose in Delhi, the High Court lacked territorial jurisdiction. Instead, the respondent submitted that since the entire cause of action arose in Madhya Pradesh, an application for the appointment of an arbitrator was filed by him and was pending before the Hon'ble Madhya Pradesh High Court, Gwalior Bench.

The petitioner asserted that as the clause in Annexure-2 of the contract conferred exclusive jurisdiction upon the High Court, even if an earlier petition (for appointment of an arbitrator) was filed before the Madhya Pradesh High Court, the High Court was the "Court" under the Arbitration Act and as such had jurisdiction.

## **Analysis**

The High Court, while referring to the arbitration clause in the contract, noted that it was silent on the seat and/ or venue for arbitration and that the general jurisdiction clause in Annexure - 2 cannot be read to define the seat or venue.

The High Court relied on the judgment in Ravi Ranjan Developers Pvt Ltd vs Aditya Kumar Chatterjee wherein the Supreme Court held (in a dispute arising out of an agreement that did not specify the seat/ place of arbitration in the arbitration clause) that the intention of Section 11(6) of the Arbitration Act could not be that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court. The Hon'ble Supreme Court further stated that an application in such cases (where no seat is mentioned) will be before the High Court which exercises superintendence or supervisory jurisdiction over the court within the meaning of Section 2(1)(e) of the Arbitration Act.

In view of the aforesaid, and as the contract did not specify the seat or place of arbitration, the High Court held that the territorial jurisdiction is to be determined in accordance with Sections 16 to 20 of the CPC (which Sections

deal with the place for filing suits based on certain factors such as where the subject matter is situated or where the cause of action arises). The High Court held that as the contract was executed in Madhya Pradesh and the place of business of the respondent as well as the respondent's hotels (for which interior works were to be done under the contract) were situated in Guna, Madhya Pradesh, only the courts of Madhya Pradesh would have the jurisdiction to adjudicate the dispute.

## Takeaway

The significance of seat is that it determines the applicable law when deciding arbitration proceedings, arbitration procedure and the judicial review over the arbitral award. This also means that the seat Court has supervisory jurisdiction over the arbitration proceedings and decides applications for the grant of interim reliefs and challenges to an arbitral award.

Once the parties by agreement designate 'the seat', it becomes akin to an exclusive jurisdiction clause. However, uncertainty looms if parties fail to designate a seat/ place of arbitration.

Therefore, the present judgment provides a much-needed reminder for all contracting parties to select the seat of arbitration expressly and unambiguously in the dispute resolution clause in the agreement. Notably, in the present case, the High Court dismissed the reliance on the general jurisdiction clause (mentioned in the Annexure of the contract) noting that such a clause cannot be read to define seat or venue when there is an arbitration clause. Specifying the 'seat' as intended by the parties in an agreement only aids in maintaining party autonomy, which is of utmost importance in arbitration agreements.

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