



**KOCHHAR & Co.**  
ADVOCATES & LEGAL CONSULTANTS



## Change of Seat of Arbitration by Mutual Agreement

*By Nishant Menon & Niharica Khanna*

The question whether exclusive jurisdiction of an Arbitration proceeding can be vested on the basis of the Seat of Arbitration irrespective of any cause of action having arisen at the place of the said seat has been debated now for some time before various Courts. The Hon'ble Supreme Court in its recent judgement pronounced on April 13, 2021 in *Inox Renewables vs Jayesh Electricals*<sup>1</sup> has finally settled the proposition holding that the Seat of Arbitration mutually agreed by the parties would vest exclusive jurisdiction in the Courts of the place of the Seat irrespective of whether any cause of action has arisen in the said place. The Hon'ble Supreme Court has further held that where the existing Seat of Arbitration is changed to another place, by a mutual agreement between the parties, the exclusive jurisdiction would also be changed and would vest with Courts at the changed Seat of Arbitration agreed by the Parties.

### **Brief facts of the case:**

M/s Gujarat Fluorochemicals Ltd. issued a purchase order in favour of M/s Jayesh Electricals for manufacture and supply of power transformers at wind farms. As per the Arbitration Clause in the purchase order, in case of any disputes, the Venue and Seat of the Arbitration was to be at Jaipur in the State of Rajasthan. Subsequently by a Business Transfer Agreement, the entire business of M/s Gujarat Fluorochemicals Ltd. was transferred to M/s Inox Renewables wherein the exclusive jurisdiction to adjudicate disputes between parties was vested with courts at Vadodara in the State of Gujarat.

Soon thereafter, disputes arose between M/s Inox Renewables (hereinafter referred to as "**Inox**") and M/s Jayesh Electricals (hereinafter referred to as "**Jayesh Electricals**"). Pursuant to an application made by Jayesh Electricals under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter as "**the Act**") to the Hon'ble High Court of Gujarat at Ahmedabad, a Sole Arbitrator was appointed to adjudicate the disputes between the parties.

The Sole Arbitrator passed an arbitral award in favour of the Jayesh Electricals. Aggrieved by the said Arbitral Award, Inox filed objections to the Award under the provisions of Section 34 of the Act, before the Commercial Court at Ahmedabad with a prayer to set aside the Arbitral Award. During arguments, Jayesh Electricals for the first time raised an objection that the Courts at Ahmedabad did not have jurisdiction to entertain the objections as the Courts at Vadodara were vested with exclusive jurisdiction. The Commercial Court at Ahmedabad, referring to the clauses of the Business Transfer Agreement held that the

---

<sup>1</sup>Civil Appeal No. 1556 of 2021, dated 13.04.2021.

Courts of Vadodara alone would have exclusive jurisdiction to entertain the petition as the courts at Ahmedabad were not vested with such jurisdiction. Inox appealed<sup>2</sup> against the aforesaid before the Hon'ble High Court of Gujarat at Ahmedabad which was however dismissed. Thereafter, Inox approached the Hon'ble Supreme Court of India.

**Whether the exclusive jurisdiction of courts at the seat of arbitration named in the arbitration agreement will also change with the change in the place of seat by mutual agreement between the parties?**

The Hon'ble Supreme Court has deliberated on the issue of Seat and Venue of Arbitration proceedings in a catena of judgements over the years. The issue of Seat and Venue was raised in *Bharat Aluminium Company vs Kaiser Aluminium Technical Services*<sup>3</sup>, and also in *Indus Mobile Distribution Pvt Ltd vs Datawind Innovations Pvt Ltd and Ors.*<sup>4</sup> wherein the Hon'ble Supreme Court held that once the seat of arbitration is determined, the same operates as an exclusive jurisdiction clause as a result of which only the Courts where the seat is located would have jurisdiction over the arbitration, to the exclusion of all other Courts, including Courts where part of the cause of action may have arisen.

In *Inox Renewables vs Jayesh Electricals*, the Hon'ble Supreme Court, while recording the facts, noted that the Sole Arbitrator in Para 12.3 has held that there is no controversy regarding the constitution of the Arbitral Tribunal between the parties who have agreed to arbitration as the dispute resolution mechanism. In accordance with the Arbitration Agreement, the venue of the Arbitration was to be Jaipur. The parties however mutually agreed, irrespective of a specific Clause that the Arbitration venue would be at Ahmedabad and not at Jaipur. The proceedings were thus, conducted at Ahmedabad. Pursuant to the appointment of the Sole Arbitrator by the Hon'ble High Court of Gujarat. It was thus clear, that by mutual agreement, the parties have specifically shifted the venue or place of arbitration from Jaipur to Ahmedabad. This being so, the Hon'ble Supreme Court rejected the argument made by Jayesh Electricals that any change could only have been done by a written agreement and that the Arbitrator's finding would really have reference to a convenient venue and not the seat of arbitration.

The Hon'ble Supreme Court reiterated the ratio of its judgement in *BSG SGS SOMA JV vs NHPC Limited*<sup>5</sup>, while holding that the courts at the Seat of Arbitration specifically designated in the Arbitration Clause between the parties would have exclusive jurisdiction even though part of the cause of action, arises in several places, including where the contract is partially to be performed. It held that if concurrent jurisdiction were to be the order of the day, despite the seat having been located and specifically chosen by the parties, party autonomy would suffer, which, cannot be permitted. Thus, the very fact that parties have chosen a particular place to be the seat would necessarily carry with it the decision of both parties that the courts at the seat would exclusively have jurisdiction over the entire arbitral process.

Further while distinguishing the facts in *Videocon Industries Ltd vs Union of India and Anr.*<sup>6</sup>, the Hon'ble Supreme Court held that in the absence of any clause in the contract between the parties restricting any amendment or modification of a contract to be done only by an instrument in writing, the parties, may mutually arrive at a seat of arbitration and may even change the seat of arbitration by mutual agreement. In *Inox Renewables (supra)*, the

---

<sup>2</sup> Appeal bearing No. 9536 of 2019.

<sup>3</sup> (2012) 9 SCC 552

<sup>4</sup> (2017) 7 SCC 678

<sup>5</sup> (2020) 4 SCC 234

<sup>6</sup> (2011) 6 SCC 161

Sole Arbitrator had recorded in the Arbitral Award that there was no challenge to the changed seat by any party. The Sole Arbitrator has also recorded that by mutual agreement, Jaipur as a "venue" has gone and has been replaced by Ahmedabad. In the light of this backdrop, the Hon'ble Supreme Court was of the view that it is not possible to accept that the jurisdiction of Courts in Rajasthan was independent of the venue being at Jaipur. The Courts in Rajasthan have been vested with jurisdiction only because the seat of arbitration was to be at Jaipur. Once the seat of arbitration is replaced by mutual agreement to be at Ahmedabad, the Courts at Rajasthan are no longer vested with jurisdiction as exclusive jurisdiction is now vested in the Courts at Ahmedabad, given the change in the seat of arbitration.

Thus, the Hon'ble Supreme Court in *Inox Renewables (Supra)* has settled the proposition that in a case where a mutually agreed Seat of Arbitration is changed to another place, the exclusive jurisdiction of the Courts would also change, and jurisdiction would accordingly vest with the Courts at the replaced Seat of Arbitration agreed by the parties.

**Conclusion:** - In case both the parties wish to change or alter the Venue and Seat of the Arbitration by conduct or giving implied consent to the same, it is not necessary to modify the subject contract. The parties can mutually agree to change or alter the venue of Arbitration and the mutually agreed place will become the Venue of the Arbitration. However, they must keep in mind that changing the venue of arbitration for the sake of convenience implies conferring jurisdiction upon the courts of the changed venue.

X-----X