

Deciphering Jurisdiction In Arbitration Matters

Seat v. Venue

The intricacies surrounding the determination of seat, venue, and jurisdiction in arbitration have long been deliberated. Indian courts have grappled with this issue, applying the 'Shashoua principle' to shed light on the matter. According to this principle, the 'venue' of arbitration effectively constitutes its 'seat', unless there exists a contrary indication or 'counter-indica'. The 'Shashoua Principle' originated in the case of *Roger Shashoua v. Mukesh Sharma*, where despite selecting London as the arbitration's location, it was not explicitly designated as its seat.



The concept of 'counter-indica' was developed by the Indian Supreme Court in the cases of *BALCO v. Kaiser Aluminium Technical Services Inc* and, thereafter, explained in judgement of *BGS SGS Soma v. NHPC*. The same concept was reaffirmed and used by the Delhi High Court in the case of *Axalta Coating Systems v. Madhuban Motors* wherein the court allowed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'The Act').

The 'seat' of arbitration typically denotes the procedural law governing arbitration and determines the court with supervisory authority. In contrast, the 'venue' merely indicates where arbitration hearings occur. Disputes often arise when a contract designates a specific 'seat' at a different place and the venue or the jurisdiction is assigned to a different court.

Analysis

In the case of *Axalta Coating Systems v. Madhuban Motors*, disputes arose from a supply agreement where Madhuban Motors rejected Axalta Coating System's demand. Axalta invoked the arbitration clause, but as the parties couldn't agree on a sole arbitrator, Axalta approached the Delhi High Court under Section 11 of the Act. The central issue was whether the Delhi High Court had jurisdiction to appoint the sole arbitrator.

Axalta argued that the Delhi High Court had jurisdiction because the arbitration clause specified New Delhi as the venue, and the supply agreement granted exclusive jurisdiction to New Delhi courts. Conversely, Madhuban contended that the court with jurisdiction over the cause of action should exercise powers under Section 11 in the absence of a designated 'seat'. They argued that since no cause of action arose in Delhi, the High Court lacked jurisdiction. In response, Axalta argued that if a venue's designation effectively ties the arbitration proceedings there, it serves as the arbitration's seat.

On January 18, 2024, the Delhi High Court ruled that it indeed had jurisdiction to appoint a sole arbitrator under Section 11 of the Act. The court relied on precedents such as *BGS SGS Soma v. NHPC Ltd* and *Mankastu Impex v. Airvisual Ltd*, emphasising that when determining the 'seat' of arbitration, other clauses of the agreement and the parties' conduct should be considered.

Given that the arbitration agreement designated New Delhi not only as the 'venue' for hearings but also as 'the place where the arbitration proceedings would be conducted as a whole', it indicated the parties' intention to establish New Delhi as the 'seat' of arbitration. Consequently, there was no indication in the agreement that the 'venue' should be regarded as merely a convenient location for dispute resolution.

Conclusion

The principle established in *BGS SGS Soma v. NHPC Ltd* applies when the agreement specifies both jurisdiction and seat, granting a court clear jurisdiction over the arbitration's seat. However, when the agreement specifies both venue and jurisdiction, determining jurisdiction depends on whether the venue agreement effectively designates the 'seat' of arbitration. This determination requires examining external indicators reflecting the parties' intentions and conduct and emphasises the significance of clear wording in an arbitration agreement.

The room for confusion in determining the 'seat' and 'venue' of arbitration is exacerbated by varying judgments from different High Courts. Recent cases such as *Aseem Watts* and *Homevista Décor* have diverged from the precedent set in *BGS SGS Soma v. NHPC Ltd*, suggesting that designating a specific court with exclusive jurisdiction implies the location is merely a convenient site for arbitration, not the seat. While the 'counter indica' test resolves most cases, challenges remain. Intervention by the Apex Court may be necessary to provide clarity and eliminate doubt.