Territorial Jurisdiction of Civil Courts for Recourse against Arbitral Award

By Chakrapani Misra and Arijeet Mukherjee

An arbitral award may be challenged under the provisions of the Arbitration and Conciliation Act, 1996 (Arbitration Act). While a domestic award may be challenged under Section 34 of the Arbitration Act, enforcement of a foreign award may be challenged under the provisions of Section 48 of the Arbitration Act. A domestic award is an award rendered by an arbitral tribunal with its seat of arbitration in India. A foreign award is an award rendered by an arbitral tribunal with its seat of arbitration in a country governed by either the New York Convention or the Geneva Protocol and Convention on enforcement of arbitral awards. This article discusses the present position of law regarding the apt forum to challenge a domestic arbitral award under the Arbitration Act.

Introduction

In recent years arbitration as a dispute resolution mechanism has gained popularity and acceptance in most commercial contracts. In a recent survey, 74% (seventy four percent) of the respondents highlighted an arbitration clause as an essential part of their legal contract.[1]

However, there has also been an increasing trend of challenging the arbitral award on various grounds under the Arbitration Act. A question often arises as to which court has the jurisdiction to hear such a challenge, particularly in cases where the contract (constituting the subject matter of the dispute) and the arbitral award have a strong nexus with multiple jurisdictions.

Arbitration Act

Under Section 34 of the Arbitration Act, once an award has been given by the arbitral tribunal (including an interim award), an application may be made by a party to a ‘Court’ for setting aside the arbitral award on various grounds specified in the Arbitration Act.

The term ‘Court’ has been defined in Section 2(1)(e) of the Arbitration Act 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. The term ‘Court’ however does not include any civil court of a grade inferior to such principal civil court, or any court of small causes.

**Court**

In view of the definition of ‘Court’ in the Arbitration Act, the competent court to hear a challenge to a domestic arbitral award must have jurisdiction to decide the questions forming the subject-matter of the arbitration, had the same been the subject-matter of a suit.

The Code of Civil Procedure, 1908 (CPC) specifies the jurisdiction of civil courts in India. Section 20 of the CPC allows a suit to be instituted in a court within the local limits of whose jurisdiction:

(a) the defendant or each of defendants, where more than one, at the time of commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants (in case of more than one defendant), at the time of commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that either the leave of the court is taken or the such other defendants acquiesce; or

(c) the cause of action, wholly or part arises.[2]

On a combined reading of Section 34 and Section 2(1)(e) of the Arbitration Act along with Section 20 of the CPC, it appears that a challenge to an arbitral award may be instituted in a court which satisfies any of the criteria specified in Section 20 of CPC, stated above. However, the Hon’ble Supreme Court in the BALCO judgment [3] detailed below appears to have adopted a different approach in relation to arbitral awards.

**BALCO Judgment**
The judgment of the Hon’ble Supreme Court in Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc.\(^\text{[4]}\) (BALCO Judgment) introduced the concept of ‘supervisory jurisdiction’ of courts with respect to arbitration. In the obiter dicta of the judgment, it was stated that the ‘subject matter of suit’ is different from the ‘subject matter of arbitration’. The term ‘subject matter’ in Section 2(1)(e) of the Arbitration Act identifies the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process.

The court further stated that the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the court where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat for arbitration at a place which would be neutral to both the parties. Therefore, the courts where arbitration takes place would be required to exercise supervisory control over the arbitral process.

The Court gave an example to explain the concept of supervisory jurisdiction, stating that where one party is from Mumbai and the other party is from Kolkata, and Delhi is chosen by the parties as a neutral place to hold the arbitration and the arbitral tribunal passes an interim order under the Arbitration Act, an appeal from the same must lie to the courts of Delhi, being the courts having supervisory jurisdiction over the arbitration proceedings and the arbitral tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or Kolkata, and only the arbitration is to take place at Delhi. In such circumstances, both the courts would have jurisdiction, i.e. the court within whose jurisdiction the subject matter of the suit is located and the courts within whose jurisdiction the dispute resolution process i.e. arbitration is located.

The definition of Section 2(1)(e) includes ‘subject matter of the arbitration’ to give jurisdiction to the courts where the arbitration takes place, which otherwise would not exist.

The Hon’ble Supreme Court in the BALCO Judgment expounded the concept of dual jurisdiction, wherein the following courts would have jurisdiction:
(i) The Court within whose jurisdiction the subject matter of the suit is situated as per the provisions of the CPC; and

(ii) The courts within whose jurisdiction the dispute resolution process i.e. arbitration is located. (Supervisory jurisdiction)

In view of the above, it appears that an application to challenge a domestic arbitral award under Section 34 of the Arbitration Act may be either made in a court having jurisdiction over the subject matter of the suit as per the provisions of Section 20 of the CPC or the court having jurisdiction over the seat of the arbitration.

Seat and Situs

‘Seat’ is a location which is mutually decided by the parties as the place for conducting the arbitration proceedings in case of a dispute. A typical arbitration agreement generally provides for a seat of arbitration. The UK Arbitration Act, 1996 defines ‘seat of arbitration’ as the ‘juridical seat’. ‘Situs’ is the venue or location for the arbitral proceedings which is chosen by the parties as a convenient location to carry on the arbitral proceedings. The venue or ‘situs’ of arbitration may or may not be the seat of the arbitration depending on the facts and circumstances of the case and the parties intent in choosing the location as one of convenience or as the place in accordance with whose law (curial law) the dispute is to be determined. Though the Arbitration Act does not contain the term ‘seat’ or ‘situs’, they have been introduced and differentiated through judicial interpretation by courts.

As seen in the BALCO Judgment, the seat may render a supervisory jurisdiction to a court having jurisdiction over such seat. However, numerous judgments have held that the ‘situs’ of arbitration does not render jurisdiction to a court. In Apparel Export Promotion Council v. Prabhati Patni, Proprietor Comfort Furnishers and Anr.[5] It was held that the situs of arbitration or the fact that the award was made at a particular place, would not be relevant for conferring jurisdiction on a court.

In Globe Congeneration Power Limited v. Sri Hiranyakeshi Sahakari Sakkere Karkhana Niymati[6] the Karnataka High Court held that simply because the parties have agreed to resolve the disputes between them at a
particular place, by way of arbitration, the court of such place cannot be held as ‘Court’ within the meaning of Section 2(1)(e) of the Arbitration Act.

In Mikuni Corporation v. UCAL Fuel Systems Limited, Carburettors Limited and Siemens VDO Automotive[7] the Delhi High Court held that the place where arbitration may take place is not relevant for deciding the jurisdiction of the Court for the purpose of interim reliefs.

Hence, in view of the BALCO Judgment an arbitral award may be challenged under Section 34 of the Arbitration Act in a court which has jurisdiction over the seat of arbitration. However, a court having jurisdiction over situs of arbitration will not be the apt forum for such challenge.

**VIDEOCON Judgment**

The recent judgment of the Hon’ble Bombay High Court in M/s Videocon Industries Limited v. M/s JMC Projects (India) Limited[8](VIDEOCON Judgment) further throws light on the subject matter. In this case, the contract between the parties was awarded in Gujarat, the work was to be conducted in Gujarat and the Respondent had its registered office in Aurangabad. However, the arbitral proceedings were conducted in Mumbai and the award was passed in Mumbai. The award was challenged under Section 34 of the Arbitration Act in the Bombay High Court.

The Hon’ble Bombay High Court held that if the respondents were required to file a suit, if there was no arbitration clause, such a suit could not have been filed within the jurisdiction of the Bombay High Court and thus, the petition under Section 34 could not have been filed in the Bombay High Court merely on the ground that arbitration award was delivered in Mumbai. It was further held that, the situs of arbitration or that the award was made at particular place would not be relevant for conferring jurisdiction.

The VIDEOCON Judgment delivered by the Bombay High Court is in line with the various judgments of different High Courts stating that situs of arbitration alone is not sufficient for granting jurisdiction to a court under the Arbitration Act.

**Conclusion**
Post the *obiter* of the Hon’ble Supreme Court in the *BALCO Judgment* and Bombay High Court’s decision in the *Videocon Judgment*, the position of law that has emerged is that the court having jurisdiction over the seat of arbitration would have supervisory jurisdiction and a challenge to the arbitral award under Section 34 of the Arbitration Act may be made in such a court. Though the *obiter dicta* of the Supreme Court is binding on the High Courts, there is scope for ambiguity since the judgment is not conclusive and was rendered in the context of international commercial arbitration with a foreign seat of arbitration.

As we may observe, with reference to situs of arbitration, a judgment of the Supreme Court would settle/clarify the matter conclusively. However, the current judicial trend of the High Courts is to hold that solely the situs of arbitration does not vest jurisdiction to a court under the Arbitration Act.

*Chakrapani Misra* (pictured left) is a Partner and *Arijeet Mukherjee* (pictured right) is an Associate with *Khaitan & Co.*

[1] ‘Changing face of Indian arbitration in India’, a study by Fraud Investigation & Dispute Services, Ernst & Young, Page 7, 2011.

[2] The same may not be applicable to Chartered High Courts viz. Bombay, Calcutta and Madras in view of Letters Patent jurisdictions of these High Courts, where these High Courts can entertain and try a suit whereby a part of cause of action has arisen, provided previous leave of the court is taken.


[5] 2005 (3) ARBLR 518 (Delhi)


[7] 2008 (1) ARBLR 503 (Delhi)
[8] Arbitration Petition No. 781 of 2012 (Bombay High Court)