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SUPREME COURT ON SHIFTING SEAT OF ARBITRATION

A. Introduction

In the case of *Inox Renewables Ltd vs. Jayesh Electricals Ltd.*¹, the Supreme Court (“SC”) has held that the moment the seat of arbitration is chosen by parties, it is akin to an exclusive jurisdiction clause. It confers the courts at this place with exclusive jurisdiction to proceed with the arbitration.²

B. Brief Facts

1. Gujarat Fluorochemicals Ltd. (“GFL”) and respondent, Jayesh Electricals Ltd. (“JEL”), had signed a purchase agreement in January 2012, for the manufacture and supply of power transformers to wind farms.
2. The arbitration clause prescribed that the venue of arbitration shall be Jaipur, Rajasthan.
3. Eventually, a ‘slump sale’³ of the entire business of GFL arose in favour of the appellant, Inox Renewables Ltd. (“IRL”). The transfer of business was done by agreement on March 2012 (“BTA”), between GFL and the IRL. Importantly, JEL was not a party to the BTA.
4. As per the BTA, Vadodara, Gujarat was the seat of arbitration, thus conferring the courts at Vadodara with exclusive jurisdiction.
5. JEL then filed an application for appointment of arbitrators under the Arbitration and Conciliation Act, 1996 (the “Act”) ⁴ in the High Court of Gujarat. The order appointed a retired High Court judge as sole arbitrator.
6. Following this, both parties agreed that, moving forward, Ahmedabad would be the venue of arbitration, despite the purchase agreement stating it was Jaipur.
7. Later, an arbitral award was passed favouring JEL. IRL, in retaliation, filed a petition seeking the award⁵ be set aside on grounds that Vadodara courts have exclusive jurisdiction. This objection was accepted by the Commercial Court, Ahmedabad relying on the BTA.
8. On appeal by JEL to the High Court of Gujarat, it was held that Jaipur would have exclusive jurisdiction as per the terms set out in the purchase agreement.
9. IRL challenged this judgment before Supreme Court.

¹ MANU/SC/0285/2021. Judgment accessible at: https://images.assettype.com/barandbench/2021-04/dfff1aaa-d166-4044-b071-df98656a1a32/inox_Renewables_v_Jayesh_Electricals.pdf

² SC Order, n. 1, para. 13

³ Refers to “the transfer of undertakings as a result of assets sold for a lumpsum value, without assigning values to individual assets or liabilities in the sale”, Sec. 2(42C) of Income Tax Act, 1961

⁴ Section 11 of the Act

⁵ Section 34 of the Act

C. Arguments & Order:

1. IRL argued that as the arbitration venue was shifted to Ahmedabad by mutual consent, with Ahmedabad having exclusive jurisdiction.⁶
2. The SC, upon consideration of the facts, allowed the appeal holding as summarised below:
 - a. *“The moment the seat is chosen as Ahmedabad, it is akin to an exclusive jurisdiction clause, thereby vesting the courts at Ahmedabad with exclusive jurisdiction to deal with the arbitration.”*⁷
 - b. Parties may mutually arrive at a seat of arbitration and may change the seat of arbitration by mutual agreement, provided that, it is recorded by the arbitrator in their award, and no party objects.⁸
 - c. Shifting the ‘venue’ from Jaipur to Ahmedabad is analogous to shifting the venue/place of arbitration with reference to Section 20(1) and not Section 20(3) of the Act. The argument that the jurisdiction of courts in Rajasthan is independent of the venue being at Jaipur, does not stand.
 - d. As a result, the High Court of Gujarat’s judgment was set aside, and the parties were referred to the courts at Ahmedabad.

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⁶ SC Order, n. 1, para. 9

⁷ SC Order, n. 1, para. 13

⁸ SC Order, n. 1, para. 16