



Delhi HC distinguishes SC Judgment in Indus Mobile v. Datawind

Antrix Corporation Ltd. v. Devas Multimedia Pvt. Ltd. (Delhi High Court, May 30, 2018)

BRIEF BACKGROUND

The Appellant and the Respondent had entered into an agreement which contained an arbitration clause. The Appellant filed a petition under Section 9 (“**Section 9 Petition**”) of the Act before the Bangalore City Civil Court (“**the Bangalore Court**”), seeking certain interim reliefs.

The Respondent filed a petition under Section 9 (“**second Section 9 Petition**”) of the Act before the Delhi High Court (“**Delhi HC**”) for interim reliefs, as Delhi was the seat of arbitration.

The Single Judge of the Delhi HC (“**the Single Judge**”) decided that, as Delhi was the seat of arbitration, and the Section 9 Petition before the Bangalore Court was not maintainable in his view, therefore the bar under Section 42¹ of the Act would not apply, and the Delhi HC would be the appropriate forum for hearing petitions arising out of the Arbitration Clause.

The Appellant, being aggrieved by the decision of the Single Judge, filed the present appeal (“**the Appeal**”) before a Division Bench of the Delhi HC (“**the DB**”), under Section 13(1)² of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (“**the Commercial Court Act**”).

ISSUES AND FINDINGS

The issues which arose for the DB’s consideration and the finding with respect to each of the issues are set out below:

(i) Whether the Appeal was maintainable under Section 13 of the Commercial Courts Act?

The DB agreed with the Respondent’s contention that an appeal under Section 13 of the Commercial Courts Act can only lie from orders specifically listed under Section 37 of the Act (or Order XLIII of the Code of Civil Procedure, 1908). The DB also recognised that the nature of the Order passed by the Single Judge was that of “granting or refusing to grant any measure under Section 9”. It observed that as regards the Single Judge’s finding that the Bangalore Court did not have jurisdiction, it was an adverse order against the Appellant, and if the Order was allowed to stand without appeal, it would prejudice the Appellant. Thus, the Appeal was found to be maintainable under Section 37 of the Act and Section 13 of the Commercial Courts Act.

(ii) If the Appeal was found to be maintainable, would the Delhi HC have exclusive jurisdiction to adjudicate these petitions arising out of the Arbitration Clause, since Delhi was the seat of arbitration?

The DB held that the Supreme Court’s judgement in *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.*³ (“**Datawind**”) – which states that designating the seat of arbitration is akin to conferring exclusive jurisdiction on the courts located there – must be read in its context. Not only was the judgement in *Datawind* passed in a situation where parties had specified the seat of arbitration as well as expressly granted exclusive jurisdiction to the courts there, but it had also heavily relied on the Supreme Court’s landmark decision in *Bharat Aluminium Company v. Kaiser Aluminium Technical Service*⁴ (“**BALCO**”). In *BALCO*, two courts had been recognised as being ‘Court’ within the scope of Section 2(1)(e) of the Act: (1) the court of the seat; and (2) the court within whose jurisdiction the cause of action had arisen. The DB was of the view that, if *Datawind* was interpreted to mean that choosing a seat automatically grants the courts there exclusive jurisdiction, such an interpretation would denude the jurisdiction of the court where the cause of action had arisen, and the same would go against

¹ “**42. Jurisdiction** –Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

² “**13. Appeals from decrees of Commercial Courts and Commercial Divisions.**—(1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).”

³ (2017) 7 SCC 678.

⁴ (2012) 9 SCC 552.

the decision in *BALCO*. Thus, in the present case, although the Delhi HC would have jurisdiction, so would the courts in Bangalore, as the cause of action had arisen in Bangalore and the Appellant's office was situated in Bangalore.

(iii) *If the Delhi HC did not have exclusive jurisdiction, would Section 42 of the Act bar the Delhi HC from hearing these petitions as the Section 9 Petition had been filed first before the Bangalore Court?*


From a reading of the Supreme Court's decision in *State of West Bengal v. Associated Contractors*⁵ ("**Associated Contractors**"), it was clear that an application to a court which does not have lawful jurisdiction, would not act as a bar under Section 42 of the Act. However, in the present case, as decided in the issue above, the Bangalore Court did, in fact, have jurisdiction. The Respondent's contention that the Appellant could not have asked for an anti-arbitration injunction under Section 9 of the Act (which contention was nevertheless resisted by the Appellant), would not strike at the jurisdiction of the matter, but instead at the maintainability of the Section 9 Petition. Thus, the DB opined that the Bangalore Court would have to hear the Section 9 Petition, and would be the correct forum for the Respondent to argue against the maintainability of the same. If the Section 9 Petition was found to be maintainable, Section 42 of the Act would come into play, and the Delhi HC would be divested of its jurisdiction. However, if the Bangalore Court found the Section 9 Petition to be barred in law, in such a case the second Section 9 Petition before the Delhi HC would be considered the first application for the purposes of Section 42 of the Act.

In light of the above reasoning, the DB set aside the Order of the Single Judge.

CONCLUSION

While the DB has interpreted the *Datawind* judgment and read it harmoniously with *BALCO*, the DB has not considered the judgment of the Delhi HC in the case of *Devyani International Ltd. v. Siddhivinayak Builders and Developers*⁶ ("**Devyani**"). In the *Devyani* judgment, despite courts at Mumbai being vested with exclusive jurisdiction and despite the cause of action having arisen in Mumbai, the Delhi HC relied solely upon the position taken in *Datawind*, and held that since the seat of arbitration is Delhi, the courts at Delhi would have exclusive jurisdiction to adjudicate the dispute between the parties. However, this does not appear to be the end of the Antrix-Devas saga. It remains to be seen whether the Respondent will take this in appeal to the Supreme Court or will argue on maintainability before the Bangalore Court.

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⁵ (2015) 1 SCC 32.

⁶ 2017 SCC Online Del 11156