

Misc. Case No. 6381 of 2022

Present: Jayashree Banerjee, Chief Judge

Order No.16 dated 10.03.2025:

This is an application under Section 34 of the Arbitration and Conciliation Act challenging the award passed by the Ld. Arbitrator dated 26.07.2022 in Arbitration Case No.AA/2022/SBIC/ARB/22828.

At the very beginning Ld. Counsel appearing for the respondents raised a preliminary objection that this Court has no jurisdiction to entertain the Misc. Case as the head office of the respondents company is at Delhi.

Ld. Counsel for the petitioner on the other hand submitted that the agreement was signed in Kolkata, he got delivery of the vehicle in Kolkata, therefore the cause of action arose herein in Kolkata. If that be so, the competent Court at Kolkata having jurisdiction shall have the power to entertain the matter. To fortify such contention, Ld. Counsel for the petitioner invited the attention of this Court to a Judgment reported in 2017 SCC OnLine Cal 16379 : (2018) 1 CHN 561.

This a Judgement of the Hon'ble Single Bench passed in A.P. No.145 of 2017.

Ld. Counsel after having cited the decision, invited the attention of this Court to paragraph 7 of the said judgment. Relevant portion to which the attention of this Court was invited is quoted hereunder:

"96. We are of the opinion, the terms "subject-matter of the arbitration" cannot be confused with "subject-matter of the suit". The term "subject-matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify 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. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provision in Section 20 which give

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recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, 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 courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the 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 at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located."

The Hon'ble Apex Court in *Balco v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 held -

"The term, "subject-matter of the arbitration" cannot be confused with "subject-matter of the suit". The terms "subject-matter" in Section 2(1)(e) is confined to part-I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify 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 provision in Section 2(1)(e) has to be construed keeping in view the provision in Section 20 which gives recognition to a party autonomy. Legislature has

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

Having quoted the ratio of the judgement of the Hon’ble Apex Court, which is also followed by the Hon’ble High Court in the cited case by the petitioner, this Court is of the opinion that the matter is entertainable by this Court as no doubt cause of action arose within the jurisdiction of this Court.

Having decided the preliminary objection in favour of the petitioner, the matter is fixed for contested hearing on **29.04.2025**.

Dictated & corrected by me:

Chief Judge

Chief Judge

City Civil Court, Calcutta.