The Act, stated that discusses the “place of arbitration” vis-à-vis Section 2(1)(e) which defines “Court” for the purposes of arbitration confers territorial jurisdiction. The SC in is located and the courts where the arbitration takes place. In other words, even the venue of that concurrent jurisdiction vests in the court which would have jurisdiction where the cause of action however, Respondent filed a Review Petition dated 6th August 2015 based on the decision of the SC into effect. CPC conferring jurisdiction based on where the cause of action takes place would immediately come defined, the venue will have no impact on the determination of jurisdiction. In fact, the provisions of the arbitration from the venue of an arbitration and states that in the absence of the former being clearly distinguished the seat of the present decision of the Delhi High Court clearly distinguishes the seat of the contract conferring jurisdiction to the courts in New Delhi; and (b) the venue of the arbitration was in New Delhi.

Addressing the first issue, the Delhi High Court, citing the decision of the Supreme Court in A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem, AIR 1989 SC 1239, held that parties by consent cannot confer jurisdiction on a court which does not have jurisdiction. The choice of parties with respect to conferring exclusive jurisdiction on a particular court is limited to the courts that hold concurrent jurisdiction in accordance with the principles contained in Section 20 of the Code of Civil Procedure, 1908 (“CPC”). Addressing the second issue, the court held that it would be misconceived to argue that the Delhi High Court has territorial jurisdiction merely because the venue of arbitration is New Delhi and no seat of arbitration has been clearly identified in the contract. Elaborating upon the previous decisions of the Supreme Court of India (“SC”) (2012 (9) SCC 552; (2014) 5 SCC 1) discussing the distinction between the seat and venue of arbitration, it was clarified that the former refers to the legal localization of the arbitration whereas the latter refers to the appropriate or convenient geographical locality for hearings of the arbitration. Stating thus, the Delhi High Court dismissed the petition for want of jurisdiction.

The pertinent question arising from this decision is which court would have preferential jurisdiction as the court of the seat of arbitration in domestic arbitrations when there is no seat of arbitration specified in the contract. The present decision of the Delhi High Court clearly distinguishes the seat of the arbitration from the venue of an arbitration and states that in the absence of the former being clearly defined, the venue will have no impact on the determination of jurisdiction. In fact, the provisions of the CPC conferring jurisdiction based on where the cause of action takes place would immediately come into effect.

However, Respondent filed a Review Petition dated 6th August 2015 based on the decision of the SC in Bharat Aluminium v. Kaiser Aluminium, 2012 (9) SCC 552, where the court in paragraph 96 stated that concurrent jurisdiction vests in the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. In other words, even the venue of arbitration confers territorial jurisdiction. The SC in Balco, interpreting Section 20 of the Act which discusses the “place of arbitration” vis-à-vis Section 2(1)(e) which defines “Court” for the purposes of the Act, stated that*

"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.”

The review petition has therefore been admitted on grounds of semantics. The question that the Delhi High Court in Review, would be seeking to answer, therefore, would be whether the SC in saying that jurisdiction has been given to the court where the arbitration takes place was referring to the legal or actual localization of the arbitration.

The confusion fundamentally arises due to the use of the word “place” in reference to both seat and venue of arbitration in the Act. Although the review petition has been admitted, since the law in regards the distinction of seat from venue has been previously clarified in cases such as Enercon v Enercon, Civ Appeal 2087 of 2014, it would not be misplaced to expect the court to restrict supervisory jurisdiction to the courts of the seat of arbitration.

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You can direct your queries or comments to the authors