

Effect of Exclusive jurisdiction Clause in the Arbitration Clause

The brief facts of the case:

The IBP Company limited merged with the Indian Oil Corporation limited hereinafter referred to as 'The Company'. The company was engaged in the business of storage, distribution of petroleum products and also manufacturing and marketing of various types of lubricating oils, grease, fluid and coolant. In order to promote and augment its sale the company appointed one M/S Swastika Gases Private limited (hereinafter referred as Swastika Gases), a Rajasthan based Company with headquarters in Jaipur, as their consignment agents for promoting and augmenting its sales of lubricants and other products in Rajasthan. Thus an agreement was signed between the company and Swastika Gases on 13.10.2002 by which swastika gases were appointed as Consignment agents.

The Swastika gases as was not able to sold large quantity of stock of lubricants requested the company to either liquidate the stock or take back the stock and make payment. Various efforts were made to settle the dispute but all in Vain. As the dispute was not solved amicably the Legal notice was sent to the Company by the Swastika Gases on 25.08.2008, wherein, it was requested to name their arbitrator in 30 days as per their arbitration clause. As the Company failed to do the same the Swastika gases made an application under Section 11 of the Arbitration Act, 1996 in Rajasthan High Court.

The Swastika Gases aggrieved by the decision relating to Exclusivity of the Jurisdiction in the Arbitration clause 18 read as "Jurisdiction The Agreement shall be subject to jurisdiction of the courts at Kolkata" brought an appeal against the company.

The various contention of the Appellant (Swastika Limited) were that though the jurisdiction of the court at Kolkata by virtue of clause 18 in the agreement but there was no specific bar on the jurisdiction of the courts of the Jaipur as cause of action has arisen as agreement was signed at Jaipur, the regional office, godown, showroom and office are situated in the Jaipur. Also, the agreement cannot be construed as ouster clause because the words like, 'alone', 'exclusive' have not been explicitly used. Thus Rajasthan High Court has Jurisdiction.

The Various issues thus dealt by the Supreme Court are:

Jurisdiction of Kolkata High Court:

The Code of Civil Procedure, 1908, (CPC) under Section 16-20 lays down the law with respect to the territorial jurisdiction of the courts. Section 20, particularly says that suit shall be instituted within the jurisdiction of the of the court where the defendant or in case where there are more

than one, resides, or carries on business, or personally works for the gain provided either the leave of the court has been obtained or acquiescence of the defendant who do not reside is taken, or where the cause of action arises.

Keeping in view the facts of the present case and provision of Section 20 CPC, both the courts at Kolkata and Jaipur will have jurisdiction to try the suit.

Exclusivity of jurisdiction at Kolkata as agreed under Arbitration agreement:

Various cases were presented by the respondent. One of which was Hakam Singh v. Gammon (India) Ltd in 1971, in which Supreme Court held that where two courts have territorial jurisdiction to try the dispute between the parties and the parties have agreed that the dispute should be tried only by one of them, then the court mentioned in the agreement in the agreement shall have the jurisdiction. When the exclusive jurisdiction clause of the agreement is clear, unambiguous and specific the terms will bind the parties to the contract save in cases where absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. The facility of the deciding the jurisdiction is to fix the place of their convenience from any competent court that has jurisdiction.

Effect as of not using the word 'alone' 'exclusive' 'only'

Again various cases were brought, one of which is ABC Laminart Pvt. Ltd. and Anr. V A.P Agencies, Salem in 1989. The principle was laid down that any clause which oust the jurisdiction of all the courts having jurisdiction and conferring jurisdiction on the court not otherwise having jurisdiction would be invalid. Parties by an agreement may select a forum having exclusive jurisdiction provided it otherwise had jurisdiction but they cannot confer the jurisdiction which does not have jurisdiction or is not otherwise competent. The ouster of the jurisdiction is only allowed when the court have jurisdiction.

Also as per the rule of interpretation where the construction of the word like 'only', 'exclusive' 'alone' is used there may be no difficulty and where the words have not been used, the maxim *Expressio Unius Est Exclusio Alterius* meaning the expression of one is the exclusion of the another will be applicable. When certain jurisdiction is specified in a contract an intention to exclude all others from the operation may be inferred.

The non existence of the said terms with the exclusive jurisdiction clause does not affect the validity.

The appeal was thus dismissed and it was held that the Court at Kolkata will have jurisdiction to entertain the dispute.

