

J&K Economic Reconstruction Agency Vs. Rash Builders India Pvt. Ltd.

Civil Appeal No. _____ of 2026 @ SLP (C) No. _____ of 2026 @ Diary No. 44792 of 2025 · Supreme Court of India · 2026-04-15 · Pamidighantam Sri Narasimha · Alok Aradhe · F2J-C-1121

Full judgment text

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[Civil Appeal No. _____ of 2026 @ SLP (C) No. _____ of 2026 @ Diary No. 44792 of 2025]

Alok Aradhe, J.

1. Delay condoned.

2. Leave granted.

3. The present appeal presents an occasion to revisit the settled distinction between the seat and venue of arbitration, and consequent determination of supervisory jurisdiction of the courts. The appeal arises from an order directing return of a petition under Section 34 of Jammu & Kashmir Arbitration and Conciliation Act, 1997 (Act).

FACTS:-

4. The facts giving rise to the present appeal are undisputed and may be briefly stated. The appellant, Jammu and Kashmir Economic Reconstruction Agency (JKERA) is a society registered under the Societies Registration Act, 1941 functioning as a special purpose vehicle for execution of externally aided infrastructure projects.

The respondent is a contractor engaged by the appellant for execution of four infrastructure road projects namely, (i) Kralgund-Ashpora- Qaziabad Road Project (Kralgund Project) (ii) Handwara-Zachaldara-Waddur Road Project (Handwara Project) (iii) Hubdipora-Kadar-Qaimoh Road Project (Hubdipora Project) and (iv) Shahdra-Kamalkote Road Project (Shahdra Project) in the State of Jammu & Kashmir. The agreements between the parties were executed on 31.03.2008.

5. Disputes having arisen between the parties regarding the contractual claims, the respondent invoked the arbitration, by issuing a notice on 18.04.2014, in terms of Arbitration clause contained in the agreements. The respondent thereafter filed four separate applications on 12.06.2014 under Section 11 of the Act before the High Court of Jammu & Kashmir and Ladakh at Srinagar (High Court) for appointment of sole arbitrator for each project. By an order dated 30.07.2015, the High Court, appointed Mr. Javed Ahmad Kawoosa, former District and Sessions Judge as sole arbitrator.

6. The appellant challenged the said order by filing Civil Appeal Nos.14167-14170 of 2015. By an order dated 07.12.2015, this Court, having regard to the value of the contracts, modified the High Court order and appointed Mr. Justice S.S. Nijjar, former Judge of this Court as the sole arbitrator in substitution of the previously appointed arbitrator.

7. By an order dated 26.03.2016, the Arbitral Tribunal, with the consent of the parties fixed Srinagar as seat of arbitration and New Delhi as the venue. Upon the demise of sole arbitrator, on 26.03.2021, the High Court in exercise of powers under Sections 14 and 15 of the Act vide order dated 17.09.2021 appointed Mr. Justice Amitava Roy, a former Judge of this Court, as the sole arbitrator to continue proceedings from the stage left by the previous arbitrator. The arbitral award was delivered on 15.01.2024 at New Delhi. The applications under Section 33 of the Act filed by the appellant, were subsequently decided by an order dated 12.03.2024.

8. The appellant filed a petition under Section 34 of the Act before the High Court seeking to set aside the arbitral award dated 15.01.2024 and order dated 12.03.2024 in so far it related to Shahdra Project. The respondent raised a preliminary objection regarding the territorial jurisdiction.

9. By an order dated 08.07.2024, the High Court returned the petition, holding that since the arbitration proceedings were conducted and the award was rendered at New Delhi, the courts at New Delhi alone had jurisdiction.

SUBMISSIONS:-

10. Learned counsel for the appellant contended that by an order dated 26.03.2016, with the consent of the parties, the arbitrator had fixed the seat of arbitration at Srinagar and the same could be altered only by mutual agreement. It is submitted that where the seat and venue differ, the seat determines the supervisory jurisdiction, hence the courts at Srinagar alone possess jurisdiction under Section 34 of the Act.

11. Learned counsel for the respondent, on the other hand, submitted that appellant had also approached High Court of Delhi by filing petitions under Section 34 of the Act and thereafter has filed the Special Leave Petition. It is contended that arbitral award recorded New Delhi as the place of arbitration for all intents and purposes, and parties may alter seat by mutual consent. Therefore, the appeal is liable to be dismissed. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court¹.

CASE LAW AND THE LEGAL PRINCIPLES:-

12. The distinction between the seat and venue of arbitration though, firmly embedded in arbitral jurisprudence, continues to give rise to jurisdictional errors. The present appeal exemplifies one such instance, necessitating judicial correction. The core issue is whether, despite an express designation of Srinagar as seat of arbitration, the conduct of proceedings and rendering of the award at New Delhi would confer jurisdiction upon courts at New Delhi. In order to answer this question, it becomes necessary to revisit the well-settled principles governing the concept of juridical seat of arbitration.

13. A Constitution Bench of this Court², recognised that arbitration is anchored to the seat or place chosen by the parties, and that the law of that seat governs the arbitration. It was observed that Section 20 of the Arbitration and Conciliation Act, 1996 embodies party autonomy in the choice of seat, while also permitting, under sub-section (3), the holding of hearings at a place convenient to the parties. The distinction is both deliberate and doctrinal: while the seat determines jurisdiction and applicable law, the venue is merely a matter of convenience for conducting proceedings.

14. A two-Judge Bench of this Court³ while placing reliance on the "closest and most intimate connection" test involved in English jurisprudence⁴, held that seat of arbitration is juridical home of arbitration and where the agreement of the parties is clear, such designation must be given full effect. Even in cases of ambiguity, the seat is to be determined by identifying the place with the closest and most intimate connection to the arbitration.

15. Another two-Judge Bench of this Court⁵ authoritatively expounded the concept of the "juridical seat" and held that the designation of a seat of arbitration is akin to an exclusive jurisdiction clause. It was observed that the expression "subject-matter of arbitration" in Section 2(1)(e) of the Act is not to be confused with the subject-matter of the suit, but rather refers to the process of dispute resolution, thereby identifying the court which exercises supervisory jurisdiction over the arbitral proceedings.

It was further held that once a seat is designated, it operates as the centre of gravity of the arbitration and vests exclusive jurisdiction in the courts of that place for all matters arising out of the arbitration, including challenges to the arbitral award. The designation of a seat, therefore, is not a matter of mere form, but carries with it significant legal consequences.

16. The aforesaid principle has been affirmed by a three-Judge Bench of this Court⁶ and it has been held that the moment the seat is designated, it operates as an exclusive jurisdiction clause, irrespective of whether any part of the cause of action has arisen there. Arbitration law, in this respect, departs from the Code of Civil Procedure, permitting parties to choose a neutral seat which may have no connection with the underlying dispute, yet vests exclusive jurisdiction in the Courts of that place.

17. A three-Judge Bench of this Court⁷ held that once the seat of arbitration is designated, such clause becomes the exclusive jurisdiction clause as a result of which only the courts where the seat is located would have jurisdiction to the exclusion of all other courts. Recently, another three-Judge Bench of this Court⁸ reaffirmed the principle that seat remains the judicial anchor, determining both the applicable law and the supervisory jurisdiction.

18. Thus, the principles governing the distinction between the seat and venue of the arbitration, and the jurisdictional consequences that follow, may be summarised as under:-

(i) The seat of arbitration constitutes the juridical home or legal place of arbitration. It determines the curial law governing the arbitral process and identifies the Court having supervisory control over the arbitration.

(ii) Once the seat is designated by agreement of the parties, the courts of that place alone have exclusive jurisdiction to entertain all proceedings arising out of the arbitration, including challenges to the award. The designation of the seat operates akin to an exclusive jurisdiction clause, excluding all other courts - even those where the cause of action may have arisen.

(iii) The venue is merely a geographical location chosen for convenience for holding hearings, examination of witnesses, or meetings of the arbitral tribunal. It does not confer jurisdiction and does not, by itself, alter or determine the seat. The arbitral tribunal is free to conduct proceedings at locations different from the seat without affecting the juridical seat.

(iv) The mere fact that arbitral proceedings are conducted or the award is rendered at a particular place does not confer jurisdiction on courts of that place if it is different from the designated seat. The seat remains fixed unless expressly altered by agreement of the parties.

(v) Where the seat is not expressly designated, courts determine it by applying:

(a) the closest and most intimate connection test, identifying the place most closely connected with the arbitration (based on the *Naviera Amazonica* principle); and

(b) in appropriate cases, construing the venue as the seat where the agreement and surrounding circumstances indicate such intention (as reflected in the *Shashoua* principle⁹).

(vi) The intention of the parties, as discerned from the arbitration agreement and surrounding circumstances, is the paramount factor in determining the seat. Once such intention is expressed-either expressly or by necessary implication-it must be given full effect by Courts.

APPLICATION TO FACTS:-

19. In the backdrop of aforesaid well-settled legal principles, we may advert to the facts of the case in hand. In the instant case, the sole arbitrator by an order dated 26.03.2016 had fixed the seat of arbitration as Srinagar and venue of arbitration as New Delhi. The relevant extract of the order dated 26.03.2016 reads as under:-

"In the order dated 16.01.2016 the direction that the seat of arbitration shall be Srinagar and that the venue shall be New Delhi has been inadvertently omitted. Please note that on agreement of the parties seat of Arbitration shall be at Srinagar and Venue shall be at New Delhi."

20. In the present case, not only have the parties expressly agreed upon Srinagar as seat of arbitration, but even the surrounding circumstances reinforce this conclusion. The contracts are executed in the State of Jammu & Kashmir and the works were to be carried out within the said State. The arbitration proceedings were initiated in the State of Jammu and Kashmir and the High Court had appointed the arbitrator. These factors as well as the 'closest and most intimate connection test' unmistakably anchors the arbitration at Srinagar.

21. The contention of the respondent that arbitral award records New Delhi as place of arbitration and is therefore determinative of the seat cannot be accepted. The seat of arbitration is governed by the agreement of the parties and not by any stray recital in the award. Once the seat of arbitration is fixed, it remains immutable unless altered by an express agreement. In the absence of any agreement, the designation of Srinagar as seat of the arbitration continues to hold the field.

22. The High Court ought to have appreciated that Srinagar was consciously designated as the seat of arbitration. Once such a designation was made, the legal consequence that inexorably follows is that courts at Srinagar alone would have supervisory jurisdiction over the arbitral proceeding. The mere fact that arbitral tribunal for reasons of convenience, conducted proceeding at New Delhi or rendered the award at that place does not and cannot, alter the juridical seat of arbitration

23. The approach adopted by the High Court, if upheld, would have the effect of rendering the concept of juridical seat otiose, and would introduce uncertainty in arbitration proceeding by allowing the place of hearing or the place where the award is signed to determine the jurisdiction. Such a consequence would be contrary to principles of party autonomy and legal certainty that underly the Arbitration and Conciliation Act, 1996.

CONCLUSION:-

24. For the foregoing reasons, the impugned order returning the application filed by the appellant under Section 34 of the Act cannot be sustained. The court at Srinagar being the court of seat of arbitration, alone possesses the jurisdiction to entertain and decide the challenge to the arbitral award. It was stated at the Bar that after the impugned order, the appellant had filed four separate petitions under Section 34 of the Act before High Court of Delhi. Needless to state that the appellant shall be at liberty to withdraw the petition under Section 34 of the Act relating to Shahdra Project and the fate of remaining three petitions shall abide by this decision.

25. In the result, impugned order dated 08.07.2024 passed by the High Court is quashed and set aside. The proceeding under Section 34 of the Act shall stand restored. The High Court shall consider and decide the same on its own merits, with due expedition. The appeal is allowed. There shall be no order as to costs.

.....J. [Pamidighantam Sri Narasimha]

.....J. [Alok Aradhe]

New Delhi;

April 15, 2026.

1 Inox Renewables Ltd. v. Jayesh Electricals Ltd.; (2023) 3 SCC 733, BBR (India) Private Limited v. S.P. Singla Constructions Private Limited; (2023) 1 SCC 693, BGS SGS SOMA JV v. NHPC Ltd.; (2020) 4 SCC 234 and Mankastu Impex (Pvt.) Ltd. v. Airvisual Ltd.; (2020) 5 SCC 399

2 Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552.

3 Enercon (India) Ltd. & Ors. v. Enercon GMBH & Anr.; (2014) 5 SCC 1.

4 Naviera Amazonica Peruana S.A. v. Compania Internacional de Seguros del Peru (1988) 1 Lloyd's Rep 116 (CA).

5 Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. & Ors.; (2017) 7 SCC 678

6 BGS SGS Soma JV v. NHPC Ltd.; (supra)

7 Hindustan Construction Co. Ltd. v. NHPC Ltd. & Anr.; (2020) 4 SCC 310; See also: Mankastu Impex Pvt. Ltd. v. Airvisual Ltd. (supra) and BBR (India) Pvt. Ltd. v. S.P. Singla Constructions Pvt. Ltd. (supra).

8 Arif Azam Co. Ltd. v. Micromax Informatics FZE; (2025) 9 SCC 750.

9 Shashoua v. Sharma 2009 EWHC 957 (COMM).

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

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