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NEWSLETTER

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SEAT OF ARBITRATION DECIDES EXCLUSIVE JURISDICTION OF COURTS

Court: Supreme Court

Date of Judgment: 19.04.2017

Case No. : Civil Appeal Nos. 5370-5371 of 2017 (Arising out of SLP (Civil) Nos. 27311-27312 of 2016)

In the present case, a question was raised as to when the seat of arbitration is Mumbai, an exclusive jurisdiction Clause stating that the courts at Mumbai alone would have jurisdiction in respect of disputes arising under the agreement, whether would oust all other courts including the High Court of Delhi, whose judgment is appealed against.

In the present case, Respondent No. 1 has its registered office at Amritsar, Punjab. Respondent No. 1 was supplying goods to the Appellant at Chennai from New Delhi. This being the case, an agreement dated 25.10.2014 was entered into between the parties which contained an arbitration clause deciding that such arbitration shall be conducted at Mumbai. The agreement also contained a clause that all disputes & differences of any kind whatever arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of courts of Mumbai only. When dispute arose between the parties Respondent filed two applications before the High court of Delhi seeking interim measures and appointment of Arbitrator respectively. The two applications were disposed by the Delhi High Court by the impugned judgment which is challenged by the Appellant before the Supreme Court on the point of jurisdiction.

The Supreme Court has held that the moment the seat is designated; it is akin to an exclusive jurisdiction clause. On the facts of the case, it is clear that the seat of arbitration is Mumbai. The Court held that the Clause 19 of the agreement between the parties further makes it clear that jurisdiction exclusively vests in the Mumbai courts. The neutral venue may not in the classical sense have jurisdiction - that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the Code of Civil Procedure be attracted. In arbitration law however, as has been held, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

PAYABLE = PAID FOR SECTION 40(A) (IA) OF THE INCOME TAX ACT, 1961

Court: Supreme Court

Date of Judgment: 03.05.2017

Case Number: Civil Appeal No. 5512 of 2017

As per clause 40 (a)(ia), certain payments made, which includes amounts payable to a contractor or sub-contractor, would not be allowed as expenditure in case the tax is deductible at source on the said payment under Chapter XVIIIB of the Act and such tax has not been deducted or, after deduction, has not been paid during the previous year or in the subsequent year before the expiry of the time prescribed under sub-section (1) of Section 200 (Duty of person deducting tax) of the Act. As per Section 194C (Payments to Contractors) of the Act, payments to contractors and sub-contractors are subject to tax deduction at source.

The subject matter of this appeal relates to the interpretation of Section 40(a)(ia) of the Income Tax Act, 1961 and question before the Apex Court was whether the provisions of Section 40(a)(ia) shall be attracted when the amount is not 'payable' to a contractor or sub-contractor but has been actually paid?

The Supreme Court considered various judgments of various High Courts on the subject matter. The Apex Court also considered the purpose with which Section 40 was enacted and also considered the provisions of Sections 194C and 200 of the Income Tax Act. The Apex Court held that Section 40(a) (ia) covers not only those cases where the amount is payable but also when it is paid. The Apex Court further held that When the entire scheme of obligation to deduct the tax at source and paying it over to the Central Government is read holistically, it cannot be held that the word 'payable' occurring in Section 40(a) (ia) refers to only those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid. If the provision is interpreted in the manner suggested by the Appellant herein, then even when it is found that a person, like the Appellant, has violated the provisions of Chapter XVIIIB (or specifically Sections 194C and 200 in the instant case), he would still go scot free, without suffering the consequences of such monetary default in spite of specific provisions laying down these consequences".

'DISPUTE' MEANS A DISPUTE IN A SUIT OR ARBITRATION PENDING; AND NOT OTHERWISE

Court: National Company Law Tribunal, Mumbai Bench

Date of Judgment: 10.04.2017

Case No. : C.P. No. 45/I & BP/NCLT/MAH/2017

The National Company Law Tribunal in this Company Petition among other things decided on meaning of the term 'existence of dispute' used in the Section 8(2) of the Insolvency of Bankruptcy Code, 2016 ('Code'). Section 8 states that when notice is given u/s 8(1) of the Code, the corporate debtor shall, within a period of 10 days of the receipt of demand notice, bring it to the notice of the operational creditor that dispute is in existence by way of suit or arbitration proceeding before the receipt of notice under sub-section 1 of Section 8 of the Code. The Tribunal held that existence of dispute means pendency of either suit or arbitration proceeding before the receipt of section 8 notice from the operational creditor, it has to be understood that pending of

suit or arbitration proceeding alone will amount to existence of dispute. In Clause (a) of sub-section 2 of Section 8, it has been said that the corporate debtor must bring two things to the notice of the operational creditor, one existence of dispute "and" record of pendency of the suit or arbitration proceeding before receipt of notice under Section 8. The Court held that there is "existence of dispute" only when there is existence of suit or arbitration proceeding before receipt of notice, it does not matter if section 9 has been invoked, if the suit or arbitration proceeding has been filed subsequent to receipt of section 8 notice.

DEBT ON ACCOUNT OF DELAYED POSSESSION OF AN IMMOVABLE PROPERTY IS NOT A DEBT UNDER INSOLVENCY AND BANKRUPTCY CODE

Court: National Company Law Tribunal, Mumbai Bench

Date of Judgment: 31.03.2017

Case No. : C.P. No. (IB)-30(PB)/2017

The Petitioners in this case were joint holders of an allotted apartment in the construction project of the Respondent Company. The petitioners' claim to be an 'Operational Creditor' within the meaning of the Sections 8 & 9 of the Insolvency and Bankruptcy Code, 2016 and have prayed that insolvency process be initiated against the Respondent Company i.e. 'Corporate Debtor' as it has committed default and has not been able to pay despite the demand made.

The Tribunal after considering facts of the case in hand held that "'Operational Debt' is a claim in respect of provision of goods or services including dues on account of employment or a debt in respect of repayment of dues arising under any law for the time being in force and payable to Centre or State Government or local authority. The framer of the Code has not included in the expression 'Operation Debt' as any debt other than the 'Financial Debt'. Thus operational debt is confined to aforesaid four

categories like goods, services, employment and Government dues. In the present case the debt has not arisen out of the provisions of goods or services. The debt has also not arisen out of employment or the dues which are payable under the statute to the Centre/State Government or local body. The refund sought to be recovered is necessarily associated with the delivery of the possession of immovable property which has been delayed. Tribunal thus held that the petitioners cannot be treated as 'Operational Creditor' within the meaning of section 9 as the debt incurred by the respondents has not arisen out of provisions of goods, services or employment. It can also not be considered 'Financial Debt' within the meaning of section 5(8) to mean a debt which is disbursed against the consideration of the time value or money.

SECURED CREDITORS CAN GIVE NOTICE SIMULTANEOUSLY TO BORROWER AND TO PUBLIC

Court: Supreme Court of India

Date of Judgment: 02-March-2017

CIVIL APPEAL NO.: 3411 OF 2017 (Arising out of S.L.P. (C) No.19118 of 2016)

The Apex Court in the case held that the secured creditor, after it decides to proceed with the sale of secured asset consequent to taking over possession (symbolic or physical as the case may be), is no doubt required to give a notice of 30 days for sale of the immovable asset as per sub-rule 6 of Rule 8. However, there is nothing in the Rules, either express or implied, to take the view that a public notice under sub-rule 6 of Rule 8 must be issued only after the expiry of 30 days from issuance of individual notice by the authorized officer to the borrower about the intention to sell the immovable secured asset. In other words, it is permissible to simultaneously issue notice to the borrower about the intention to sell the secured assets and also to issue a public notice for sale of such secured asset by inviting tenders from the public or by holding public auction. The only restriction is to give thirty days' time gap between such notice and the date of sale of the immovable secured asset.

Legal Updates:

- Section 17A inserted into Employee's Compensation Act, 1923 and as per provisions of said Section 17 every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee. [Employee's Compensation (Amendment) Act, 2017]. Click [here](#) to read and download the gazette notification.
 - As per notification dated 12th April 2017 of Ministry of Finance vide notification list of securities wherein money of the trust could be invested is issued as per provisions of Section 20. Click [here](#) to read and download the Notification.
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Prepared By:

The Team of Lawyers at [Abhay Nevagi & Associates, Advocates](#)

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