SUPREME COURT OF INDIA CLEARS THE MURKINESS SURROUNDING THE TERMS ‘VENUE’, ‘SEAT’ AND ‘PLACE’

By Tasha Joseph

The confusion between ‘place’, ‘seat’ and ‘venue’ in International Commercial Arbitration cases was put to rest in the recent judgment of the Supreme Court in Union of India v. Hardy Explorations And Production(India) Inc.1. The decision was given by a three-judge bench which unanimously passed the decision that ‘seat’, ‘venue’ and ‘place’ did not signify the same meaning and could not be used interchangeably. Instead, the three terms denote different meanings and in the absence of express provision for any of the same, there were tests to be met in order to determine the actual ‘place’, ‘venue’ and ‘seat’.

In this case, Kuala Lumpur was selected as the ‘venue’ for the arbitration proceedings in the agreement, with the application of the UNCITRAL model for the same. Upon the Union of India challenging the award under section 342 in the Delhi High Court, the Court had to determine whether Kuala Lumpur was the ‘seat’ and hence if the action in the Indian court was unmaintainable. The Delhi High Court held that the courts did not have jurisdiction and thus refrained from looking into the merits of the case. The matter then went to a division bench and finally a three-judge bench of the Supreme Court.

The court went into the previous decisions such as Sumitomo Heavy Industries Ltd. v. ONGC & Ors. 3, Bhatia International v. Bulk Trading S.A. 4and BALCO case5 to understand the principles that need to be applied for deciding the seat of arbitral proceedings.

The Court observed that the determination of the seat has to be contextually done. Only when the ‘place’ was agreed upon, in the agreement, between the parties,

‘place’ would be equivalent to the seat. Positive action is needed and for ‘place’ to be treated as ‘seat’, a condition precedent (if any) must be met as well. For instance, a ‘place’ can become a ‘seat’ if a condition precedent present (if any) is met. For the ‘venue’ to become ‘seat’ something else was needed
as a concomitant to the provision of ‘venue’ in the agreement. ‘Venue’ and ‘place’ do not ipso facto assume the status of a ‘seat’.

There
were no conditions precedent or any positive act mentioned to determine Kuala Lumpur as the ‘seat’ in the concerned matter and hence Kuala Lumpur could not be treated as the juridical seat. Thus, the matter was maintainable as the courts in India have jurisdiction and the order passed by the Delhi High Court had been set aside.