

When ‘venue’ means ‘seat’ (Delhi High Court)

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Raj Kumar Brothers v. Life Essentials Personal Care Pvt. Ltd.

Court: Delhi High Court | **Case Number:** OMP (COMM) 435 of 2019 & IAs.14406-14409 of 2019
| **Citation:** 2019 SCC OnLine 10803 | **Bench:** V Kameswar Rao J | **Date:** 31 October 2019

The arbitration agreement provided that the “venue of Arbitration shall be Gurgaon” and “all disputes ... shall be subject to GURGAON jurisdiction.”

When a dispute arose, an application under Section 11(6) of Arbitration and Conciliation Act, 1996 (“ACA”) was filed by Life Essentials in the Punjab & Haryana High Court (“P&H HC”), which referred the dispute to the Delhi International Arbitration Centre, New Delhi (formerly Delhi High Court Arbitration Centre). The arbitral proceedings were then held in Delhi, and the award was passed on 29 November 2018.

The petitioner filed set-aside proceedings in the High Court of Delhi. The respondent contested jurisdiction arguing that Delhi was merely the venue and the arbitral seat at Gurgaon (now, Gurugram), only courts had jurisdiction. The petitioner pointed to the order of the P&H HC and the fact that arbitration was held in Delhi.

The court concluded it did not have jurisdiction: –

- (a) In Section 20(1)¹ and 20(2)² of the ACA, the word “place” is used to refer to the juridical seat. In Section 20(3), the term “place” refers to the venue. In this case, though parties used the expression “venue”, they agreed that Gurugram would be the place of arbitration under Section 20 (1), that is, the seat of arbitration. [citing to *Reliance Industries Union of India*, (2014) 7 SCC 603 and *Brahmani River Pellets Limited v. Kamachi Industries Limited*, 2019 SCC Online SC 929].
- (b) The parties decided to hold the arbitration proceedings at Gurugram as the contract was executed there, and the respondent was also based there. For this reason, the respondent had invoked the jurisdiction of P&H HC for the appointment of an Arbitrator. That apart, the parties have also limited all the disputes to the jurisdiction of Gurugram. Also, P&H HC regulated the arbitrator’s fee not under the DIAC rules but the Chandigarh Arbitration Center Rules, 2014.³

NGC Network India Pvt. Ltd. v. Orangefish Entertainment Pvt. Limited, 2018 (172) DRJ 169, a single-judge bench decision of the Delhi High Court (Rajiv Shakhder J), did not apply because the venue, in that case, was Gurugram in an earlier agreement but changed subsequently to Delhi.

¹ 20. Place of arbitration. — (1) The parties are free to agree on the place of arbitration.

² Section 20 (2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of parties.

³ Though the court does not directly say so, it appears these were the factors considered to conclude that Gurgaon was the arbitral seat even though the arbitration agreement used the expression ‘venue’.