

# Dispute Resolution Hotline

December 06, 2013

## SUPREME COURT CLARIFIES ON APPLICATION OF EXCLUSIVE JURISDICTION CLAUSES

- Where two or more courts have jurisdiction, if the parties by agreement have chosen one court, to the exclusion of others, only the Court chosen in the agreement will have jurisdiction.
- Usage of words “alone”, “only”, “exclusive” are not mandatory in a clause to ouster jurisdiction. If not used, the intention of parties and connecting factors as to situs of agreement and cause of action needs to be looked into.
- Such ouster clauses do not amount to violation of public policy and *did not contravene Section 28 of the Contract Act*.

The Supreme Court (“**Supreme Court**”) in its recent judgment of *Swastik Gases Private Limited* (“**Appellant**”) v. *Indian Oil Corporation Limited*<sup>1</sup> (“**Respondent**”) dealt with the issue of “exclusive jurisdiction” clauses in the context of an application under Section 11 of the Arbitration and Conciliation Act, 1996 (“**Act**”). The Supreme Court specifically held that usage of words, “only”, “exclusively”, “alone” in jurisdiction clauses are not mandatorily required to convey intention of parties to ouster jurisdiction of courts other than courts to which jurisdiction is conferred by the parties under the agreement.

### FACTS

In the present case, the Respondent was engaged in the business of storage, distribution of petroleum products, manufacturing and marketing of various types of lubricating oils, grease, fluid and coolants. The Appellant was appointed as their consignment agent for marketing lubricants at Jaipur (Rajasthan).

Disputes arose between the parties in November, 2003 due to failure to sell stock of lubricants by the Appellant. Despite several attempts, the parties failed to resolve the disputes amicably. Thereafter the Appellant invoking the arbitration clause, nominated their Arbitrator to resolve the disputes. The Respondent failed to nominate its arbitrator within thirty days of receipt of the notice. The Appellant filed an application under Section 11 of the Act in the Rajasthan High Court for appointment of arbitrator in respect of the disputes arising out of the above agreement.

The relevant clause related to jurisdiction of courts as per the agreement (Clause 18) is reproduced herein below:-

*“The Agreement shall be subject to jurisdiction of the courts at Kolkata.”*

The parties have taken a divergent stand in respect of the place of signing the agreement. The Respondent defended the application on the ground of lack of territorial jurisdiction of the Rajasthan High Court as the agreement was signed in Kolkata. The Hon’ble Supreme Court on hearing the parties held that Rajasthan High Court did not have any territorial jurisdiction to entertain the application under Section 11 of the Act. The Rajasthan High Court dismissed the application giving liberty to the Appellant to file the arbitration application before the Calcutta High Court leading to the present appeal.

### ISSUE

Whether in view of Clause 18 of the Consignment Agency Agreement dated October 13, 2002, the Calcutta High Court has exclusive jurisdiction to entertain Section 11 petition.

### ARGUMENTS

The Appellant contended that the Rajasthan High Court did have jurisdiction as part cause of action arose in Jaipur based on the following factors:-

- Agreement was signed in Jaipur;
- Regional office of Respondent was in Jaipur;
- Consignment agency functioned from Jaipur;
- Sales transaction took place in Jaipur and even stocks were delivered there;
- Meetings were held there for payments and disputes arose in Jaipur amongst several other reasons.

Further, the jurisdiction clause (Clause 18 of the Agreement) did not expressly ouster the jurisdiction due to absence of words like “alone”, “only”, “exclusive” in the clause.

Based on the above, the Appellant contended that since part of the cause of action has arisen within the jurisdiction of the courts at Jaipur and the relevant clause does not expressly oust the jurisdiction of other courts, Rajasthan High Court had territorial jurisdiction to try and entertain the petition under Section 11 of the 1996 Act.

The Counsel for the Respondent contended that from a bare perusal of the agreement, it was apparent that the parties intended to exclude jurisdiction of all courts other than the courts at Kolkata and relied on plethora of cases for the same.

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## JUDGMENT AND ANALYSIS

The Supreme Court considering the submission of the parties and the relevant clause held that the intention of the parties needs to be looked at while analyzing ouster clauses. The parties by stating that courts at Kolkata will have jurisdiction in the contract had impliedly excluded the jurisdiction of other courts. Relying on the above judgments, the SC dismissed the appeal with the liberty to the Appellant to file an appeal before the Courts in Kolkata.

Justice Lokur delivered a concurring judgment and categorized the judgments into two sets- (i) where the intention of the parties can be culled out from use of the expressions “only”, “alone”, “exclusive” and (ii) the other where such words like “only”, “alone” or “exclusively” are not used.

The present case falls under the second category where the maxim “*expressio unius est exclusio alterius*” would be applicable as there is nothing to indicate to the contrary. Justice Lokur held that the absence of words “alone”, “only”, “exclusive” is neither decisive nor does it make any material difference in deciding the jurisdiction of the court. The very existence of the clause clarifies the intention of the parties which is of utmost relevance.

The Supreme Court dealing with the same issue earlier in *Hakam Singh v. M/s. Gammon (India) Ltd.*<sup>2</sup> held that where two courts would have jurisdiction and the agreement is that the dispute should be tried only by one of them, the court mentioned in the agreement would have jurisdiction.

This principle was once again enunciated in *A.B.C. Laminart Pvt. Ltd.*<sup>3</sup> where it was held that “*an agreement which purports to oust the jurisdiction of the Court absolutely is contrary to public policy and hence void. But where two Courts or more have under the Code of Civil Procedure jurisdiction to try the suit or proceeding, an agreement between the parties that the dispute between them shall be tried in one of such Courts was not contrary to public policy and such an agreement did not contravene Section 28 of the Contract Act*”. The same concept has been reiterated in a series of judgments.<sup>4</sup> Such clauses are valid as it does not amount to an absolute ouster of jurisdiction.<sup>5</sup>

The interesting issue arising here is that though the Supreme Court in the *A.B.C. Laminart*<sup>6</sup> case while interpreting similar clause (where words like “only”, “alone” or “exclusively” are not used) had considered the other connecting factors related to situs of contract and cause of action and had concluded that courts in Salem will have jurisdiction inspite of the fact that the agreement had a clause vesting jurisdiction with courts in Karia. While in this instant case of Swastik Gases, the Supreme Court has applied strict interpretation of jurisdiction clause where the courts jurisdictions others than the courts in Kolkata is ousted inspite of the fact that Appellant showed several connecting factors similar to *A.B.C Laminart* case.

This latest decision of Supreme Court though holds that jurisdiction of courts is ousted other than courts specified in the agreement even in absence of words like “only”, “alone” or “exclusively”, since the principles laid down in A.B.C. Laminart case related to consideration of connecting factors hold good, it is still important to use such words like “only”, “alone” or “exclusively” in jurisdiction clauses to avoid any litigation related to territorial jurisdiction of the courts resulting into delays in adjudication of claims on merits

– Payel Chatterjee, Ashish Kabra & Vyapak Desai

You can direct your queries or comments to the authors

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<sup>1</sup> (2013) 9 SCC 32

<sup>2</sup> 1971 (1) SCC 286

<sup>3</sup> (1989) 2 SCC 163

<sup>4</sup> Hanil Era Textiles Limited v. Puromatic Filters (P) Limited (2004) 4 SCC 671; Rajasthan SEB v. Universal Petrol Chemicals Limited (2009) 3 SCC 107

<sup>5</sup> Supra at fn 3

<sup>6</sup> ibid

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