TRANSFER OF SEAT IN INTERNATIONAL ARBITRATION: A FLY ON THE RAZOR'S EDGE?

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ABSTRACT

International arbitration has seen its practitioners and experienced arbitrators address and overcome panoply of problems and issues at various stages. One stifling chokepoint for arbitrators which has posed a recurrent risk is the possibility to convene hearings at venues outside the place of arbitration and interference by the courts of the country of origin of a party. In the course of the findings, some general principles of international arbitration are considered so as to ascertain the wisdom that prevails over the tribunals, institutions or courts for that matter. The present article is restricted to summarily revisiting some issues relating to the place of arbitration which continue to haunt international arbitrations. Since every arbitration agreement is cast upon the favourableness of the legal environment surrounding the seat or place of arbitration, investigation is stimulated on the lines of factors contributing to a change of circumstances and its subsequent

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ramifications on the contractual agreement. A part of the paper is dedicated towards positing how several ubiquitous principles of contract law come into conflict and at the end reach a stalemate. Several case studies are then taken up to explore whether the choice of a place of arbitration is in effect, a banal consideration. Lastly, a fresh Indian perspective is lent with an elaborate criticism of a very recent Supreme Court judgment and how best can it be reconciled with trends in international arbitration.

I. INTRODUCTION

After having enacted the Arbitration and Conciliation Act in 1996, the Indian government was somewhat vindicated of its responsibility to shape up an effective response to its much-complained erratic and sluggish court system. This brought the country a step closer towards demonstrating itself as a center for international commercial arbitration in the global sphere. Nevertheless, there continues to exist a few potholes in the system which need to be filled and looked at, including the slackness of the courts in the interpretation of its myriad provisions such as those of enforcement and challenging of foreign awards[1], interim measures etc. Here, however, the most vexing bottleneck is the one that has to do with the "'transfer of seat"[2]. However, to shed more abundant light on the concept of "transfer of

[1]Sandeep S Sood, *Finding Harmony With UNCITRAL Model Law: Contemporary Issues In International Commercial Arbitration In India After The Arbitration And Conciliation Act Of 1996* (Dec. 21, 2011), http://works.bepress.com/sandeep_sood/1.

[2]Justice K.A. Abdul Gafoor, *Arbitration Law- Need for Reforms*, ICA QUARTERLY (2003).

seat", its significance and associated conditionality need to be assessed in the international plane so that Indian courts may strike common ground with international tribunals, institutions etc. This would only go on to ensure a steady flow of intellectual exchanges and ideas that would foster the scope of international arbitration in India and the other way round as well.

II. TRANSFER OF SEAT: A PRIMER

The importance of clearly and conspicuously drafted arbitration clauses cannot be overemphasized. The pre-conditions and the guiding framework would enable the parties to know where to go and how to resolve problems if things do not go quite as expected. Identification of the place where the arbitration will be located in the event a dispute arises between the parties under the contract, i.e. the 'seat' of arbitration is a crucial element in such clauses as it would only determine as to which country's laws would govern the arbitration process and also the magnitude of any legal guarantee or right of a party to challenge the award in a court of law.

It is submitted that one would, for all practical intents and purposes, set out in express terms the choice of the place where any dispute, if arisen, is to be heard and not take the ill-advised risk of leaving open any possibility of more than one place in different countries exercising jurisdiction over any dispute arising out of the contract. However, it is worthwhile to note that it is always not the case for parties to agree to incorporate into their contract an arbitration clause an exclusive 'seat' of arbitration. Whether or not this is a good practice, the present article seeks to examine the ramifications that follow when such scope of ambiguity persists in the arbitration clause and how and to what extent the disposition of the parties is influenced.

International commercial arbitration generally confers upon parties the discretion to choose for them the juridical seat of arbitration[3]. Here it must be pertinent to note that 'seat' is in some ways a more accurate word than 'place'. 'Seat' means the juridical base of the arbitration, whereas 'place' can mean the place (or places) where the parties assemble to hold deliberations, which need not always be at the 'seat'.

It is only obvious to assume that parties are to make the choice of a place of arbitration at any time preceding the commencement of arbitration, in the event that they do not, they may leave it to be made on their behalf by an arbitral institution or by the tribunal itself. After having made the choice, the next question that begs to be interrogated is as to where the arbitration is to be held.[4] For this, though there is no answer that could be given in express, unequivocal terms and be regarded as universally applicable, yet, the nationality of the parties must be taken into account. The general trend in the international scenario shows the proclivity of parties to favour a country that is "neutral", that is to say the countries of which either of the parties are not natural citizens of. Place of business is a preponderant factor just as well, since the over-riding consideration for parties very often is the need to cut down as far as possible on the expense and inconvenience of travelling. Political factors are crucial as well, though only subordinate. The question as to whether any restrictions are likely to be imposed on the entry of parties, their advisers and witnesses are relevant in this regard.[5] The practical suitability of a particular place for an international arbitration depends to a sizeable

[3]Arbitrations conceived and conducted as under the Washington Convention are an exception as here the parties must consult the Secretary-General and obtain the approval of the arbitral tribunal if they are to insist upon the hearing to take place elsewhere than at the International Centre in Washington; *see* ICSID Arbitration Rules, r. 13(3).

[4]K. Iwasaki, *Selection Of Situs: Criteria And Priorities*, 2 ARBITRATION INTERNATIONAL 57 (1986).

[5]Shri K.R. Narayana, *Inauguration of the International Council for Commercial Arbitration Conference*, 17 INTERNATIONAL ARBITRATION 153,154 (2000).

extent on whether there is satisfactory infrastructure to accommodate the parties. Notwithstanding such flights of fancy, the primordial consideration is usually the legal environment. This is relevant both to the conduct of the arbitration and the degree of enforcement of the award. Now, the proposition as to whether or not a particular legal environment is suitable for the conduct of an international arbitration is as much an issue of personal judgment as of legal investigation. As is always the case, there are certain minimum international touchstones on which most arbitrators agree such as the local law must be equipped and sophisticated enough to put into action international arbitration agreements, in consonance with the New York Convention[6] and the Model Law.[7] Constitution of the arbitral tribunal by a transparent mechanism empowering such entities to carry out their mandate more efficiently and effectively, recognition and enforcement of foreign awards are some of the minimum threshold standards for international arbitration to play its course.

However, as it appears necessary to issue a *caveat* at the very outset, views as to what does and what does not constitute a suitable legal environment for the conduct of an international commercial arbitration is often plagued by a situation when the 'place of arbitration' had been agreed upon by the parties[8] but yet when an unforeseen or 'exceptional' change of circumstances made 'unduly difficult' the proper conduct of a fair, free arbitral proceeding in that venue. Here the flux in circumstances could also be extended to mean a transformation in attitude of the State party, or of its political regime.

[6]United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38.
[7]Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, G.A. 40th Session, 40/72, Treaty Series, vol.330, No. 4739.
[8]A State or State enterprise and a foreign private company.

It is germane to note here the acceptance of the proposal set forth by one Professor Arthur von Mehren by the Institut de Droit International in its 64th Session in the year 1989. Mehren, among other things had proposed a Draft Resolution containing clause which was formulated after considerable revision by the Institut[9] in the following terms:

"Article 3(d) - Should it become unduly difficult to carry on an arbitration at the agreed place, the tribunal is entitled, after consultation with the parties, to remove the arbitration to such place as it may decide."

This principle so adopted was hailed in the academic circles as well as among the practitioners for being harmonious with the modern conditions and practical imperatives of global commerce and economy.[10] But before we set ahead any further, it would be practicable to differentiate between the venue of hearing versus place of arbitration.

III. VENUE OF HEARING VERSUS PLACE OF ARBITRATION

This distinction is rather banal and has become redundant through overuse. It is essential to note that the place or 'seat' of arbitration is not the physical location but the associating linkage or connecting factor to a given procedure or '*lex arbitri*' of the State in whose territory the 'seat' is situated.[11] For convenience of parties and the arbitrator, hearings and deliberations may be held at a place distinct from the 'seat' of arbitration.[12] In a hypothetical case situation, the

[9]ANNUAIRE (YEARBOOK) DE L'INSTITUT DE DROIT INTERNATIONAL, vol. 63, I, 31–204 (1989); ANNUAIRE (YEARBOOK) DE L'INSTITUT DE DROIT INTERNATIONAL, vol. 63, II, 121–221, 220–221 (1990).

[10]Ph. Kahn, *Le Contrat International*, Brussels, 195 (1975); R. Köbler, *Die 'clausula rebus sic stantibus' als allgemeiner Rechtsgrundsatz*, Tübingen (1991).

[11]2 J.W. ROWLEY, ARBITRATION WORLD, JURISDICTIONAL COMPARISONS cl. Viii (2nd ed., 2006).

[12]ICC Rules, art. 14; LCIA Rules, art. 16, UNCITRAL Arbitration Rules, art. 16. A recent matter arose in England with respect to the same, *The Bay Hotel and Resort*

arbitrators may give assent to a decision to hold a hearing in New Delhi and not at the place of arbitration in State A, which is also a party to the arbitration. Some 'non-legal' factors, that is to say practical considerations should be put into the balance when fixing the venue of such hearing in a territory distinguishable from the place of arbitration. Parties here may need to exercise caution in that the *lex arbitri* may be less flexible and more exacting than the mutually agreed procedural rules. As some national arbitration laws require for the proceedings or at least a part of it to take place physically within the territory of the state, in failure of which the award may lose the degree of its enforceability as the 'host State' just might refuse to acknowledge that such an award has been rendered on its territory.[13]

IV. CHANGE OF THE AGREED PLACE OF ARBITRATION

There may arise situations which may render the performance of an arbitration agreement partially or entirely impossible. It must be remembered that such situations may be of persuasive consideration only after the signature between the parties has already been affected. Some instances which render the proceedings at the agreed place of arbitration difficult or impossible are death or non-availability of an arbitrator named in the agreement, the disbanding of the selected arbitration institution, etc. Whether removing the venue of hearing may suffice to ensure a free and fair proceeding is a question of expediency and is usually found to be effective where physical access to the location is impeded by lack of infrastructure, rebellions or civil wars. In a setting where a State intervenes, directly or clandestinely through its courts, with the arbitration to which it might be a party, a change of place of arbitration is warranted for.

Ltd. v. *Cavalier Constructions Co. Ltd and Anr*, 16 July 2001, P.C. Lords Nicholls, Cooke, Clyde, Hutton and Millet, unreported; summarized by Stewart R. Shackleton, *Annual Review of English Judicial Decisions on Arbitration*, [Int. A.L.R. 206, 213 (2002).

[13]5 N. BLACKABY, C. PARTISIDES WITH A. REDFERN & M. HUNTER, REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION (5th ed. Oxford University Press, 2009).

By looking back into the pages and annals of the history of international arbitration, a lot many cases come to mind. Teheran, Dhaka, Kabul and Belgrade have given rise to troubles over the years where, more often than not, the private party felt compelled to accept a place situated in the territory of the State contracting party.[14] An arbitration clause providing for a choice of 'place' or 'seat' of arbitration had been concurred with before extenuating circumstances came into play, such as coming into power of a new political regime.[15] What needs to be interrogated is two-fold:

1. Was the change of circumstances unforeseen or unforeseeable?
2. Are the new circumstances so exceptional as to actually prevent the normal and orderly course of the proceedings, in keeping with the fundamental principles of arbitration?[16]

The basic centerfold of international arbitration being based on contract as we know it, such change in the place of arbitration when agreed by the parties would inevitably lead to a confrontation between two fundamental bedrock doctrines of contract law: *pacta sunt servanda* and *rebuc sic stantibus.*[17] While determining the question as to what might have been the common and real intention of the parties when they mutually consented to a place of arbitration, no definitive analysis is required to answer the same. It is universal wisdom that most parties when they choose to arbitrate a dispute, are actuated by the neutrality of the process and thus a place of arbitration will be a

[14]ANNUAIRE (YEARBOOK), *Supra* note 9, at 188.
[15]Such as advent of the bloody Islamic Revolution in Iran, Slobodan Milosevic putting into place his dictatorial regime.
[16]Pierre Lalive, *The Transfer of Seat in International Arbitration,* LAW AND JUSTICE IN A MULTISTATE WORLD, ESSAYS IN HONOUR OF ARTHUR T. VON MEHREN 515 (2002).
[17]H. Van Houtte, *Changed Circumstances and Pacta Sunt servanda*, ICC/DOSSIER OF THE INSTITUTE 105–114 (1993).

mere mechanical modality to implement the parties' fundamental understanding to arbitrate.[18]

V. CHANGED CIRCUMSTANCES: A GENERAL CONCEPTION IN CONTRACTS

It is a universal truth that changed circumstances may alter the effect of a contract.[19] Further, the Vienna Convention on the Law of Treaties also provides for changed circumstances in Article 62 whereby States agree on the binding effect and the limits of the treaties they contract among each other. The International Court of Justice has not stayed behind and has stated in express terms:

"….that the fundamental change of the circumstances that induced a State to adhere to a treaty may justify a termination of the treaty if they lead to a radical transformation of the obligations under the treaty."[20]

The impact of changed circumstances was also a matter of discussion in the Iran-U.S. Claims Tribunal.[21] The Tribunal assumed for itself the authority to decide in situations wherein on account of change in circumstances, an earlier existing forum selection clause in favour of the courts of Teheran had become unenforceable.[22] Problems regarding an agreed place of arbitration have been a recurrent topic in international arbitrations as was reflected in one case where the ICC Court refused to follow the Arbitral Tribunal's proposal to transfer the

[18]Pierre Lalive, *Supra* note 16, at 4.
[19] Principles of European Contract Law,art. 6.111, UNIDROIT Principles Article 6.2, CENTRAL List of *lex mercatoria* principles, rules and standards,art. VIII.1, http://www.tldb.de.
[20]Fishery Jurisdiction,(Germany v. Iceland), Judgment, 1973, ICJ Rep. 1973, 49, 62-65 (Feb. 2).
[21]In re Halliburton Co.et al., 1982 1 Iran-US, CTR, 242 (Nov. 5).
[22]Ted Stein, *Jurisprudence and Jurists' Prudence: the Iranian-Forum Clause Decision*, 78 AM. J. INT'L L1(1984).

seat as courts had interfered into the matter of the earlier agreed seat at Abu Dhabi.[23]

VI. CHOICE OF PLACE OF ARBITRATION: AN IRRELEVANT CONSIDERATION?

A firm understanding is needed in that the contractual provision for the place of arbitration is, in most cases of secondary or subordinate importance, when compared to the much larger considerations such as impartial decision by free, independent arbitrators and award rendering in accordance with due process, respect of equality of the parties.[24] This can be further justified by the fact that even when no exact, definite or precise place has been specified by the parties, the arbitration clause continues to be perfectly valid and operative. Its importance is however put to test in the case of State contracts where a choice of a particular place is a condition *sine qua non* for one of the parties of the agreement to arbitrate.

Whatever may be the nature of requirement or consideration, the choice must be reasonably exercised on the common understanding that it does not jeopardize or render ineffective the very purpose of the arbitration agreement itself because otherwise the integrity and fairness of the arbitration process would be compromised with and would play out in sheer disregard of the common expectations of the parties. One such plausible expectation would be minimum interference by the courts in the arbitral process. Parties submit to arbitration only to avoid the unnecessary formalities and laches that the court system brings with it, thus if the courts seem to interfere on their own motion or upon direction of the State party, the essential purpose of arbitration itself gets defeated. A sensational illustration in

[23]ASSOCIATION SUISSE DE L'ARBITRAGE BULLETIN, 293 (Volume 4, 1987).

[24]W.M. REISMAN, W.L. CRAIG, W. PARK & J. PAULSSON, INTERNATIONAL COMMERCIAL ARBITRATION: CASES, MATERIAL AND NOTES ON THE RESOLUTION OF INTERNATIONAL BUSINESS DISPUTES (University Casebook series, New York, Foundation Press, 1997).

this respect is the *Himpurna* case where the Court at Jakarta obstructed the normal course of the arbitration by attempting to ponder over the merits of the dispute.[25]

A less spectacular, but yet more telling account is to be found in an ICC arbitration in the 21st century. Here, a U.S. company was facing the Republic of Serbia and a State enterprise of that country.[26] Dispute arose between the two parties, leading to claims and counterclaims, as the bone of contention was whether Belgrade, chosen earlier in 1990 as the place of the arbitration in their contract did have the requisite legal environment for fair and unbiased arbitration proceedings as the Serbian State was alleged, through its judiciary, to have expropriated the U.S. company of its shares in a local company. The U.S. party in support of its contentions asserted that the circumstances which prevailed in 1990 when it had accepted to arbitrate disputes in Belgrade had fundamentally changed by 2000 as Mr. Milosevic and his cohorts installed a dictatorial regime which flexed its muscles conveniently to use the judiciary to their ends. Further, it had also contended that the personal safety of its party and some witnesses could not be guaranteed. The Serbian State on the other hand rebuffed such change in circumstances and stated that as a matter of principle, the honing down on Belgrade had been a condition *sine qua non* of the agreement and therefore such change in the place of arbitration was visibly inconceivable.

It could safely be asserted here that the initial choice of place must have been based on a common assumption that Belgrade would continue to remain a legal environment conducive to fair and impartial international arbitration, in accordance with the ICC Rules.[27] But the situation that followed saw a systematic, iron-fisted

[25]ASSOCIATION SUISSE DE L'ARBITRAGEBULLETIN, 583 (1999).
[26] Knoepfler, *Note on the Partial Award in ICC Arbitration Case No. 10373, Rev. arb*, 413-421.
[27]P. Lalive, *On the Neutrality of the Arbitrator and of the Place of Arbitration*, SWISS ESSAYS ON INTERNATIONAL ARBITRATION 23-33 (1984).

crackdown on political expression by citizens and fomenting of a xenophobic hatred of the United States which saw its ultimate culmination in the degrading, manipulating and purging of the Yugoslav judiciary. This would mean that any future award in favour of the U.S. would understandably be annulled in Belgrade. Such a situation would justifiably raise doubts in the mind of a reasonable, prudent man as to the independence of the arbitrators and thus the latter, clearly runs the risk of losing the trust of the parties as well as the respect and acknowledgment of international opinion-makers and readers. This runs contrary to Article 1 of the von Mehren Resolution which states: "*An arbitrator……shall exercise its functions impartially and independently*."[28]

Article 7.1 of the ICC Arbitration Rules also is clear to this extent that "*Every arbitrator must be and remain independent of the parties involved in the arbitration*."

The ICC Court of International Arbitration when called upon to decide on the U.S. company's fate surprisingly reverted the question to the Arbitration Tribunal to resolve whether the 'clause fixing the seat in Belgrade was still binding'. By citing earlier controversial precedents,[29] the Tribunal refused to change the place of arbitration and stated that even if its awards were struck down by the Serbian courts, they could still be enforced elsewhere. The reasoning employed is erroneous as it is for the Tribunal to ensure that its award is enforceable and thus they conveniently avoided the very noble mission that was entrusted to them. Justice must not only be done, but seen to be done. The totalitarianism prevailing today in Serbia sought to destroy the equality of the parties in arbitration and also affected the very independence of an arbitral tribunal sitting in Serbia and called upon to decide an essentially "Serbian-American dispute".

[28]P. Lalive, *La procédure arbitrale et l'indépendance des arbitres*, BULLETIN DE LA COUR D'ARBITRAGE CCI 119–135 (1991).

[29]*Hilmarton* and *Chromalloy* are the controversial cases that were made reference to.

What escapes all rational understanding is how the Arbitrators were seen as enjoying the full confidence of all parties and be considered as exercising their functions impartially and independently when the integrity and fairness of the whole arbitration process was threatened by the prevalence of such violent tendencies on behalf of the State.[30]

VII. TRANSFER OF SEAT: AN INDIAN PERSPECTIVE

In the Indian context, to etch out the evolution of the concept of 'transfer of seat', it is advisable to traverse the decision in Videocon Industries Ltd. Vs Union of India.[31] An arbitration clause in the Production Sharing Contract (PSC) between Union of India and a consortium led by Videocon provided for Kuala Lumpur, Malaysia as the seat of arbitration. The clause of arbitration read as follows:

"34.12. Venue and Law of Arbitration Agreement: *The venue of sole expert, conciliation or arbitration proceedings pursuant to this Article, unless the Parties otherwise agree, shall be Kuala Lumpur, Malaysia, and shall be conducted in the English language. Insofar as practicable, the Parties shall continue to implement the terms of this Contract notwithstanding the initiation of arbitral proceedings and any pending claim or dispute. Notwithstanding the provisions of Article 33.1, the arbitration agreement contained in this Article 34 shall be governed by the laws of England."*

In the events that followed, the arbitration proceedings were held in Amsterdam and London due to the onset of SARS disease that had plagued almost the entire stretch of South-East Asia. The Tribunal in October 2003 passed a consent order deeming the seat of arbitration to have been shifted to London. The issue of contention was whether by this, parties had arrived at a consensus to hold the proceedings in London but to retain Kuala Lumpur as the seat or an express transfer

[30]H. GHARAVI, THE INTERNATIONAL EFFECTIVENESS OF THE ANNULMENT OF AN ARBITRAL AWARD (Kluwer Law International, 2002).
[31]Videocon Industries Ltd vs Union Of India & Anr, (2011) 6 S.C.C. 161 (India).

of the seat of the arbitration itself. The Supreme Court reasoning was based on the implications of the amendment clause[32] wherein the parties could amend the PSC only through a written instrument as per Article 35.2. Thus, it could not be contended that there was any transfer of seat but a mere shifting of venue for convenience. It further clarified that the Arbitration and the Conciliation Act did not provide for a situation where the seat could be changed by the arbitral tribunal. As distinction between the place of arbitration and hearings taking place in a jurisdiction outside the seat was a clearly established international custom, the SC had seized of the same matter already in Dozco India Ltd. Vs Doosan Infracore. Thus, it contended that there was an agreement merely to hold proceedings outside the seat.

The author here differs in opinion. Firstly, the arbitral tribunal need not have passed any such agreement as the proceedings were already being successfully conducted in Amsterdam and London even before the agreement saw the light of the day. Secondly, since the agreement expressly uses the term "seat of arbitration", the intention of the parties and that of the tribunal was clear to have used it to mean a transfer of jurisdiction which would grant a legal association to the arbitration. Thirdly, Article 35.2 of the PSC provided for three requisites to bring forth an amendment to the PSC, commencing by way of a written instrument, to be signed by all the parties thereafter and eventually followed with the amendment providing for the date from which it would come into force. Agreeing that such steps were not followed, here in the present matter a consensus was reached between the parties to have the seat changed to London by an undertaking given in a court of law. It is submitted here that the manner of performance in a contract can be altered extra-contractually by a concession before a court of law. In the *Jamilabai*

[32]It read – *"This Contract shall not be amended, modified, varied or supplemented in any respect except by an instrument in writing signed by all the Parties, which shall state the date upon which the amendment or modification shall become effective*."

case,[33] the court had stated that the pleader had an implied authority to enter into a compromise on behalf of his client even when the client has not expressly authorized him to do so. Similarly, in the *Commissioner of Endowments* case[34] and that of *Byram Pestonji*[35], the court allowed for compromises and concessions to be made without having to amend the contract. If that be the case, it is difficult to conceive as to why an exception should be made out for counsels for the governments as existence of implied authority of advocates applies with equal force in this situation.

According to the author, the concession made before the tribunal to transfer the seat was not an amendment to the agreement, and the Supreme Court had erred to that extent, as its reasoning, if it were to be tested on the anvil of practicality, would obviate the very purpose of making the compromise in a court of law.

VIII. CONCLUSION

Admittedly, it must be emphasized here that caution is to be exercised by an arbitration tribunal, institution, or as the case maybe by a Court, while seized as to the question of deciding to change a pre-agreed place of arbitration from one country to another. The aforementioned entities should not sway to the allurements of those parties who may claim to justify such transfer on the ground that they had assumed the risk of signing an arbitration clause locating the seat in such State by threat, inducement or otherwise. Due consideration is to be given to the risk of setting aside and to the possibility of enforcing the future awards. Such a change should not be lightly accepted without any reservations. Though seat or place as defined is a constituent part of the agreement, its proper interpretation only goes onto show its rank

[33]Jamilabai Abdul Kadar v. Shankerlal Gulabchand & Ors., A.I.R. 1975 S.C. 2202 (India).
[34]Commissioner of Endowments v. Vittal Rao, (2004) MANU S.C. 1003 (India).
[35]Byram Pestonji Gariwala v. Union Bank of India and Ors., A.I.R. 1991 S.C. 2234 (India).

among the other modalities such as the applicable law, language of the proceedings etc. By dint of such arbitration agreements being of contractual nature, it is submitted that such agreements are not precluded from the operation of general principles and rules of contract law, especially the rule of *rebus sic stantibus* i.e. changed circumstances must be given its due recognition. Even though there is a plethora of possibilities for the arbitration tribunal to circumvent any interference by the courts at the seat of arbitration by disregarding temporary injunctions that only put brakes to the process of arbitration rather than facilitating it, a change of seat is still one of the most effective alternative means to ensure that the parties' sense of comity and reliance find adequate expression in their legitimate expectations and common intentions during the time they entered the arbitration agreement.

In essence, any arbitration tribunal, institution or for that matter a court has to exercise judicious care and caution before it plunges to make a snap judgment as to a request for a transfer of the place or seat of arbitration. If circumstances so appear after the signing of contract that render its very purpose obsolete, diligent circumspection should be used so that the common intention of the parties is preserved and the proceeding does not falter on the touchstone of fairness and equality between parties.