

ARBITRATION

Arbitration agreement – Interpretation of agreement – Venue of arbitration – Seat of arbitration – Difference between “venue” and “seat” – Arbitration agreement referred to “venue” of arbitration – Whether “venue” meant “seat” of arbitration

Government of India v Petrocon India Ltd

[2016] 3 MLJ 435, Federal Court

Facts The appellant (the Government of India) and the respondent (a company), signed an agreement (“the Agreement”) to develop petroleum resources in India. The Agreement contained a clause (“the Clause”) referring to Kuala Lumpur as the venue of the arbitration proceedings, unless the parties agree otherwise. A dispute subsequently arose. The arbitral tribunal had initially fixed preliminary meetings in Kuala Lumpur, but due to the SARS outbreak, they were shifted to Amsterdam. Subsequently proceedings were held in London. The arbitrators, pursuant to a consent order made in London, recorded that the seat of arbitration had been moved to London. The arbitration proceeded and a partial award (“the Award”) was made. The appellant applied to set aside part of the Award at the Kuala Lumpur High Court. The High Court held, however, that it had no jurisdiction as Kuala Lumpur had ceased to be the seat of arbitration. Dissatisfied, the appellant appealed to the Court of Appeal. The Court of Appeal affirmed the decision of the High Court, but on different grounds. The appellant now appeals to the Federal Court.

Issue The main issue was whether the word “venue” used in the Clause referred to the “seat” of arbitration.

Held In dismissing the appeal, the Federal Court ruled that the “seat” of arbitration must be distinguished from “venue” of arbitration as the former refers to the law governing the proceedings whilst the latter points to the geographical place of arbitration. However, in this case, based on the language of the agreement and conduct of the parties, the word “venue” is construed to mean the “seat”. The words in the clause gave the parties the flexibility to change the “venue” of the arbitration to a place other than KL, and by the consent order, the change of “venue” meant that the “seat” had also been moved to London.

ZUL RAFIQUE & partners
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