

Reserved

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 93 of 2025

Appellant :- Samiah International Builders Ltd.

Respondent :- Green View-II Sahkari Awas Samiti Ltd

Counsel for Appellant :- Mr. Shashi Nandan (Sr.Adv.) with Mr. Abhishek Rai, Mr. Kartik Rai

Counsel for Respondent :- Mr. Rakesh Pande (Sr.Adv.) with Mr. Gaurang Kulshreshtha

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

(Per : Arun Bhansali, CJ)

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('the Act') is directed against the order dated 13.01.2025 passed by Commercial Court No. 2, Gautam Buddha Nagar, whereby the application filed by the appellant under Section 9 of the Act for grant of interim measures against the respondent for lack of territorial jurisdiction has been dismissed.

2. The appellant is the builder and developer and respondent is a Cooperative Housing Society, which was allotted land by Greater Noida Industrial Development Authority for development and construction of multi-storey Group Housing Complex. Initially, after issuing tender, Arcmate Housing Solutions Pvt. Ltd. along with the appellant formed a consortium and was granted contract by the respondent and the work was awarded to the consortium on 08.02.2013. A construction contract was entered into on 11.03.2013. The contract was amended on 11.11.2013 and on account of delay, the same was again amended on 25.04.2016. Further, an addendum to the existing agreements was entered into between the parties on 14.12.2017. Subsequently, a quadripartite agreement dated 15.03.2020 was executed between the

appellant, respondent, Arcmate and consortium by which the settlement agreement between the appellant and Arcmate dated 19.11.2019 was acknowledged, whereby the appellant took over and acquired the entire business from the consortium with effect from 19.11.2019. A novation agreement dated 15.03.2020 was entered into between the appellant and respondent by which all the business agreements were kept alive, except for incremental changes including the appellant stepping into the shoes of Arcmate.

3. The respondent issued show-cause notice dated 02.07.2023 calling upon the appellant to show cause as to why the agreement should not be terminated to which a reply was given on 04.07.2023/14.07.2023. On 11.08.2024, the contract was terminated by the respondent. An application was filed by the appellant claiming *prima facie* case, balance of convenience and irreparable injury for grant of interim measures under Section 9 of the Act before the Commercial Court, Gautam Buddha Nagar and it was prayed that the operation of the letters dated 17.07.2024 withdrawing the selling rights granted to the appellant and 11.08.2024 terminating the agreement be stayed and further restraint was sought from appointing any contractor, developer or person for carrying out further construction and development at the project site.

4. A reply to the application was filed alleging concealment of material facts regarding dismissal of petition under Section 9 of the Act filed before the Delhi High Court on 05.09.2024 and a pending pre-litigation at Delhi High Court Mediation Centre. The territorial jurisdiction of the Court at Gautam Buddha Nagar was questioned and response was given on merits of the application. It was claimed that as per novation agreement dated 15.03.2020, it was agreed between the parties that all the disputes arising out of or in connection with the agreement shall

be subject to the exclusive jurisdiction of the Courts situated at New Delhi and the collaboration agreement dated 15.03.2020 also mentions that in case of any dispute jurisdiction of Courts will be at New Delhi.

5. After hearing the parties, the Commercial Court came to the conclusion that the novation agreement upheld all the previous agreements which also included the arbitration clause, however, place of arbitration from Uttar Pradesh was changed to New Delhi in the novation agreement, whereafter referring to Section 20 of the Act, came to the conclusion that petitioner, in an application filed under Section 9 of the Act before New Delhi High Court, had admitted that High Court at Delhi has the territorial jurisdiction to entertain the petition in view of Clause 7 of the novation agreement dated 15.03.2020 and consequently dismissed the application for lack of territorial jurisdiction.

6. Counsel for the appellant made vehement submissions that Commercial Court fell in error in coming to the conclusion that the Courts at Gautam Buddha Nagar lacked territorial jurisdiction. Submissions have been made that amended construction agreement dated 11.11.2013, in Section X pertaining to settlement of disputes and arbitration, in Clause 10.1 (ix) specifically provided that the venue of the arbitration shall be Uttar Pradesh and language of the arbitration shall be English. Further, Section XII pertaining to law governing the contract also provided that all disputes arising out of or any way connected to this agreement shall be deemed to have arisen in Noida and the Courts at Gautam Buddha Nagar/High Court of Allahabad shall have jurisdiction to determine the same. In view of the specific stipulation in Clause pertaining to settlement of disputes and arbitration, wherein the venue of arbitration has been indicated as Uttar Pradesh, in terms of

Section 20 of the Act, the jurisdiction lies before Courts at Gautam Buddha Nagar and that the indication made in Clause pertaining to law governing the contract is independent of the said arbitration clause. Further submissions have been made that the novation agreement dated 15.03.2020 specifically referred to the list of agreement signed earlier with Society and ASC and referred them as business agreement. Further effect of novation agreement clearly stipulated that save to the extent the same was inconsistent with the novation agreement, the business agreement remained in full force and that the novation agreement was supplemental to the business agreement. It was emphasized that clause-7 of the novation agreement dealing with the governing law and jurisdiction, whereby it was provided that the Courts of New Delhi shall have the exclusive jurisdiction to hear and decide any suit, action or proceedings and to settle any dispute, which may arise out of or in connection with the novation agreement, did not in any manner disturb the clause pertaining to the venue of the arbitration being Uttar Pradesh and, therefore, the plea raised seeking to question territorial jurisdiction of Courts at Gautam Buddha Nagar, based on Clause-7 of novation agreement, has no substance.

7. Further submissions were made that if an agreement contains an exclusive jurisdiction clause and a clause designating a seat/venue of arbitration, the Court having territorial jurisdiction over the seat/venue alone could be approached in connection with the arbitral proceedings which view is well settled and, therefore, the order impugned deserves to be quashed and set aside. Reliance was placed on **Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited : (2017) 7 SCC 678** and **Yassh Deep Builders**

LLP Vs. Sushil Kumar Singh and another : 2024 SCC OnLine Del 1547.

8. Regarding the fact that application under Section 9 of the Act was filed before the Delhi High Court with averments pertaining to territorial jurisdiction, it was submitted that the application was withdrawn even before it was registered and therefore the Commercial Court was not justified on relying on the same.

9. Further submissions were made that in any case, if the Commercial Court came to the conclusion that it lacked territorial jurisdiction, the petition under Section 9 of the Act could not have been dismissed and the same was required to be returned under the provisions of Order VII Rule 10 C.P.C. and to that extent, in any case, the order impugned deserves to be modified.

10. Learned counsel for the respondent vehemently opposed the submissions. It was emphasized that once the novation agreement dated 15.03.2020 was entered into between the parties, *inter alia*, providing the effect of the novation agreement, whereby anything inconsistent to the earlier agreements superseded and once the clause governing law and jurisdiction was modified, whereby the jurisdiction from Courts at Gautam Buddha Nagar and High Court of Allahabad was modified to the Courts of New Delhi, the jurisdiction lies only with the Courts at New Delhi and, therefore, the order impugned does not call for any interference.

11. Further submissions have been made that once the petition with similar relief was filed before Delhi High Court claiming jurisdiction with the said Court, withdrawal from the said Court does not water down the plea raised pertaining to jurisdiction and, as such, the plea has no substance and the appeal, therefore, deserves dismissal. With regard to prayer

made pertaining to the return of the proceedings under Section 9 of the Act under Order VII Rule 10 C.P.C., submissions were made that to that extent the respondent has no objection.

12. We have considered the submissions made by counsel for the parties and have perused the material available on record.

13. The amended contract agreement dated 11.11.2013 under Section X pertaining to settlement of disputes and arbitration, *inter alia*, provided as under:

“ix. *It is also a term of the contract that the arbitration board shall be deemed to have entered on the reference on the date it issues to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be Uttar Pradesh and language of arbitration shall be English.*”

14. In the same agreement, Section XII pertaining to law governing the contract reads as under:

“*The Indian Laws shall govern this contract for the time being in force. All disputes arising out of or any way connected to this agreement shall be deemed to have arisen in Noida and the courts of Gautam Budh Nagar/ High court of Allahabad shall have jurisdiction to determine the same.*”

15. The two clauses quoted hereinabove at the relevant time clearly provided that the venue of arbitration shall be Uttar Pradesh and that the Courts of Gautam Buddha Nagar/High Court of Allahabad shall have jurisdiction to determine all disputes arising out of or any way connected to the agreement. It would be seen from the clause pertaining to governing laws and jurisdiction that the same did not make any reference to arbitration proceedings.

16. On account of the subsequent events, as noticed hereinbefore, a novation agreement dated 15.03.2020 was entered into between the appellant and the respondent. The said novation agreement, *inter alia*, contained clauses pertaining to effect of the novation agreement and governing law and jurisdiction as under:

“Effect of this Novation Agreement

Except so far as amended by Clause 2 of this Agreement and save to the extent it is inconsistent herewith, the Business Agreements remain in full force and every reference therein to the Business Agreements shall be construed as a reference to such Business Agreements as novated and amended by this Novation Agreement. This Novation Agreement is supplemental to the Business Agreements.”

“Governing Law and Jurisdiction

This Novation Agreement shall be governed by, and construed in accordance with laws of India. The courts of New Delhi shall have the exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Novation Agreement.”

17. A perusal of above clauses of the novation agreement would reveal that while the clause governing the law and jurisdiction, which in the agreement dated 11.11.2013 was Section XII, had a change, whereby instead of Courts at Gautam Buddha Nagar/High Court at Allahabad, the same was substituted with the Courts at New Delhi, the clause pertaining to the ‘settlement of disputes and arbitration’ containing venue of arbitration was not altered. Once the venue of arbitration, as contained in the amended construction agreement dated 11.11.2013 remained unaltered, in view of the judgment of Hon’ble Supreme Court in **BGS SGS Soma JV Vs. NHPC Ltd. : (2020) 4 SCC 234** the arbitral venue, as identified in the agreement, would be deemed to be the arbitral seat, in absence of any other identified arbitral seat.

18. Once the arbitral seat stands fixed in the State of Uttar Pradesh, the law laid down by Hon’ble Supreme Court pertaining to exclusive jurisdiction for the purpose of regulating arbitral proceedings arising out of the agreement between the parties, as laid down in the case of **Indus Mobile Distribution Private Limited (supra)** would kick in, which reads as under:

“20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it

clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction – that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.”

19. The issue pertaining to clauses providing for exclusive jurisdiction and a clause designating a different seat/venue of arbitration has been dealt with by various Courts. In **Cable Corporation of India Ltd. Vs. Jay Pee Sports International Ltd. : 2018 SCC OnLine Del 10340**, wherein the dispute resolution and arbitration clause stipulated the venue of arbitration as New Delhi but the governing laws and jurisdiction clause stipulated that District Court of Gautam Buddha Nagar and High Court of Judicature at Allahabad shall have exclusive jurisdiction over all matters arising out of or relating to the said contract. It was laid down, referring to the decision in the case of **Indus Mobile Distribution Private Limited (supra)**, that the clause pertaining to the governing laws and jurisdiction did not deal with the arbitration clause and as the arbitration proceeding were to be held in Delhi, the Court in Delhi would exercise jurisdiction over the arbitration process and the seat of arbitration would be at Delhi and clause pertaining to governing laws and jurisdiction, being a general provision, would be applicable to proceedings that may take place other than arbitration proceedings.

20. Recently, in the case of **Yassh Deep Builders LLP Vs. Sushil Kumar Singh (supra)**, a Division Bench of Delhi High Court in similar circumstances laid down as under:

“57. Even, if the objection of jurisdiction could be raised before the appellate court, since the venue has been held to be the

juridical seat of arbitration in terms of the arbitration agreement Clause 23, the Courts at Delhi had the territorial jurisdiction to entertain the petition under Section 9 of the Arbitration Act. Clause 23 expressly designates Delhi as the venue for arbitration and there is no designation of an alternative place as the “seat” the inexorable conclusion is that the stated venue i.e. Delhi is the juridical seat of the arbitral proceedings. Clause 19 would be relevant only if by an agreement both parties decided not to settle their disputes through arbitration but by approaching a Court of law, in which case the exclusive jurisdiction would be of the Courts at Gurugram, Haryana.”

21. In view of the above factual and legal position, it cannot be said that in relation to the arbitral proceedings including proceedings under Section 9, 11 and 34, the jurisdiction would lie before the Courts at New Delhi and in those circumstances, the impugned determination made by the Commercial Court cannot be sustained.

22. So far as the plea raised that the appellant itself had approached the Courts at Delhi by indicating its jurisdiction to deal with the matter under Section 9 of the Act is concerned, as the petition was withdrawn from Registry itself before the same was registered, therefore, apparently, the reliance placed on the contents of the said application by the Commercial Court was totally misplaced.

23. Though there is also substance in the submissions made by the counsel for the appellant that once the Commercial Court came to the conclusion that it lacked territorial jurisdiction, the petition under Section 9 of the Act should have been returned back under Order VII Rule 10 C.P.C. and dismissal was not justified, however, in view of the finding about the jurisdiction of the Court recorded hereinbefore, the said aspect loses its significance.

24. In view of the above discussions, the appeal is allowed. The order impugned dated 13.01.2025 passed by Commercial Court No. 2, Gautam Buddha Nagar, is set aside. The matter is

remanded back to the Commercial Court to hear and decide the application under Section 9 of the Act on merits.

25. No order as to costs.

Order Date :- 02.05.2025

P.Sri.

(Kshitij Shailendra, J) (Arun Bhansali, CJ)