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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ARB.P. 314/2016

ELIXIR REALTY SOLUTIONS PRIVATE LIMITED

..... Petitioner

Through: Mr Kartik Nayar, Ms Natasha Tuli & Ms Sonali Mehta, Advs.

versus

SPRINT CARS PRIVATE LIMITED

..... Respondent

Through: Mr Vaibhav P Shukla, Adv

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 24.08.2016

1. This is a Petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter "the Act") praying for appointment of an arbitrator.

2. The learned counsel for the Petitioner referred to a Lease Deed dated 08.05.2011 and drew the attention of this Court to the arbitration clause contained therein, which reads as under:-

> "7.8 Arbitration & jurisdiction: if any dispute, controversy or claim between the Parties arises out of or in connection with or in relation to this Lease Deed, the same shall be referred to arbitration and. The Arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation act, 1996 by a sole arbitrator appointed in accordance with the said act. Any arbitral award shall be final and binding on the parties. The venue of the arbitration shall be Delhi. The language of the arbitration shall be English. This Deed shall be subject to exclusive jurisdiction of Courts of Gurgaon only and the governing law pertaining to the same shall be the laws of India for the time being in force."

3. The learned counsel for the Respondent does not controvert that

certain disputes have arisen between the parties in relation to the aforesaid lease deed and the same are liable to be resolved by arbitration in terms of the aforesaid clause. He, however, states that this Court would not have any jurisdiction to entertain the present petition as the lease deed was executed in Gurugram, Haryana.

4. It is seen from the aforesaid clause that the seat of arbitration is Delhi. It is now well settled that the Courts having the jurisdiction over the seat of arbitration would have also jurisdiction under Part-I of the Act. This issue has been authoritatively settled by the Constitution Bench of the Supreme Court in ***Bharat Aluminium Company and Ors. v. Kaiser Aluminium Technical Services, Inc. and Ors.***: **2012 (9) SCC 552**, wherein it has been held as under:-

> "96. Section 2(1)(e) of the Arbitration Act, 1996 reads as under:-
>
> > 2. Definitions.-(1) In this Part, unless the context otherwise requires-
> >
> > > (a)-(d)
> > >
> > > (e) 'Court' means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
>
> We are of the opinion, the term "subject matter of the arbitration " cannot be confused with "subject matter of the

suit". The term "subject matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located."

5. The aforenoted decision in ***Bharat Aluminium*** (*supra*) has also been followed by a Division Bench of this Court in ***Ion Exchange (India) Ltd.v. Panasonic Electric Works Co. Ltd.***: **208(2014) DLT 597 (DB)**. In that case, the Division Bench concurred with a similar view expressed by a Single Judge of this Court in ***Sai Consulting Engineers Pvt. Ltd. V. Rail Vikas Nigam***: **198 (2013) DLT 507** and held as under:-

> "We agree with the view taken in Sai Consulting (supra) and hold that the Courts at the seat or place of arbitration would have territorial jurisdiction to entertain an application under the said Act subject to the provisions of Section 42 thereof, irrespective of the fact that the cause of action arose elsewhere and/or the respondent resides elsewhere."

6. In view of the aforesaid , the contention advanced by the Respondent is devoid of merits.

7. In view of above, it is directed that an Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DAC). The representatives of the parties shall appear before the Co-ordinator, DAC on 20.09.2016 at 11:00 AM. The arbitration shall be conducted under the aegis of DAC and in accordance with its Rules.

8. The petition is disposed of.

VIBHU BAKHRU, J

AUGUST 24, 2016
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