

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

+ **ARB.P. 444/2017**

***Date of decision: 23<sup>rd</sup> November, 2017***

MR. RAMAN DEEP SINGH TANEJA ..... Petitioner  
Through: Mr.Rakesh Mukhija, Adv.

versus

CROWN REALTECH PRIVATE LIMITED ..... Respondent  
Through: Mr.Sonam Sharma, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner seeking appointment of an Arbitrator to adjudicate the disputes that have arisen between the parties in relation with the allotment of unit in 'Abacus Technopark' located at 12/4, Delhi Mathura Road, 20 KM Stone, Near Sarai Khwaja, NH-02, Faridabad, Haryana.

2. In the terms and conditions for allotment, the arbitration agreement is contained in clause-24 which is reproduced hereinunder:-

*“In the event of any dispute/differences between the Company and/or the intending Allottee(s)/ buyer in*

*respect of any of the terms and or interpretation thereof or otherwise the same shall be referred to for adjudication to the sole arbitrator to be appointed by the Company. The said arbitrator shall decide the issue(s) as per the Arbitration and Conciliation Act, 1996 or any amendments thereto. The venue of the arbitration for the convenience shall be the office of the Company. The decision of the Arbitrator shall be final and binding on the parties to the arbitration. The jurisdiction of all disputes will be Delhi only. The venue for arbitration proceedings will be at Faridabad, Haryana.”*

3. Counsel for the respondent has raised a preliminary objection with regard to the territorial jurisdiction of this Court to entertain the present petition. He submits that as the venue for arbitration proceedings has been prescribed to be at Faridabad, Haryana, therefore, this Court would not have territorial jurisdiction to entertain the present petition. He places reliance on the judgment of the Supreme Court in ***Indus Mobile Distribution Pvt. Ltd. vs. Datawind Innovations Pvt. Ltd. & Ors.*** 2017 (3) R.A.J. 682 (SC) to contend that the Supreme Court has held that once the seat of the arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the Courts which exercise supervisory powers over the arbitration. He further relies on the judgment of this Court in ***Calderys India Refractories Ltd. vs. A2Z Powercom Ltd.*** 2014 Lawsuit (Del) 5573.

4. On the other hand, counsel for the petitioner submits that clause 24 also provides that “jurisdiction of all disputes will be Delhi only”. He submits that in view of this stipulation, Courts

at Delhi alone will have the jurisdiction to entertain the present petition. He places reliance on the judgment of Supreme Court in *Swastik Gases Pvt. Ltd. vs. Indian Oil Corporation Ltd.* (2013) 9 SCC 32 and *B.E.Simoese Von Staraburg Niedenthal & Anr. vs. Chhattisgarh Investment Ltd.* (2015) 12 SCC 225. He submits that in para-21 of the *Indus Mobile (supra)*, Supreme Court has also approved of the above judgments.

5. I have considered the submissions made by the counsel for the parties. Though, it is correct that clause-24 provides that the jurisdiction of all disputes will at Delhi only, at the same time the venue of arbitration proceedings is prescribed to be held at Faridabad, Haryana. As the venue of the arbitration would be in the nature of conferring 'exclusive jurisdiction' to the Court, in my view, the present petition would not be maintainable before this Court.

6. In *Indus Mobile (supra)* Supreme Court, after considering the provisions of the Act and various judgments of the Supreme Court, including the judgment of *Bharat Aluminium Company vs. Kaiser Aluminium Technical Services INC*, (2012) 9 SCC 552 has held as under:-

*“14) This Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration.*

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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 exclusive 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.

21) It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases Private Limited v. Indian Oil Corporation Limited*, (2013) 9 SCC 32: 2013(4) R.A.J. 30. This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited*, (2015) 12 SCC 225: 2014(6) R.A.J. 632. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks

*from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly.”*

7. In **Swastik Gases Pvt. Ltd. (supra)**, the question was whether exclusive jurisdiction can be conferred only where the Agreement uses the words like ‘alone’, ‘only’, ‘exclusive’ or ‘exclusive jurisdiction’. This is not the controversy in the present case.

8. In **B.E.Simoes (supra)**, Supreme Court was again dealing with the clause in the agreement which gave exclusive jurisdiction to the Courts at Goa. The above judgment would also, therefore, be of no assistance to the petitioner.

9. In the present case we are faced with the situation where one part of the agreement provides for exclusive jurisdiction to Courts of Delhi, while the other, due to the venue of arbitral proceedings, vests exclusive jurisdiction in Courts in Faridabad, State of Haryana. As was held by the Supreme Court in the judgment of **Bharat Aluminium Company (Supra)**, a distinction is to be drawn between “Subject-Matter of the Arbitration” and “Subject-Matter of the Suit”. For the purposes of identifying the Court, which shall have supervisory control over the arbitral proceedings, it would be the Court where the ‘Subject-Matter of Arbitration’ is situated that would have precedence over the Court where the “Subject-Matter of the Suit” is situated. In this case, therefore, the exclusive

jurisdiction conferred due to venue of arbitration would take precedence over the exclusive jurisdiction vested over the Subject-Matter of the suit in the Courts at Delhi. There are various provisions in the Act where the Court has to exercise supervisory jurisdiction over the arbitration proceedings. These include not only Section 11 of the Act but also Sections 14, 27, 29A, 34 and 37 of the Act. It is, therefore, evident that the Court having jurisdiction over the arbitration proceedings would have precedence over the Court which has jurisdiction over the Subject-Matter of the suit or where the cause of action has arisen. The purported conflict between the two parts of Clause 24 quoted above can be resolved by holding that where the disputes are to be adjudicated without reference to the arbitration, Courts at Delhi would have exclusive jurisdiction, however, where they have to be resolved through arbitration, venue being at Faridabad, Haryana, the Courts at Faridabad, State of Haryana, would have exclusive jurisdiction.

10. In view of the above, the present petition is dismissed for want of territorial jurisdiction with liberty to the petitioner to approach the Court of competent jurisdiction in accordance with law.

**NAVIN CHAWLA, J**

**NOVEMBER 23, 2017**  
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