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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Reserved on: 29th November, 2017
Pronounced on: 08th December 2017**

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ARB.P. 9/2017

CVS INSURANCE AND INVESTMENTS

..... Petitioner

Through : Ms.Pritha Srikumar and Ms.Neha
Mathew, Advocates.

versus

VIPUL IT INFRASOFT PVT. LTD.

..... Respondent

Through : Mr.Nitesh K Sharma and
Mr.Rupesh Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This application under Section 11 of the Arbitration and Conciliation Act, 1996 raises a question as to where shall be the seat of the arbitration viz. at Delhi or Noida when the agreement between the parties give exclusive jurisdiction to courts at Noida?

2. Suffice is to note the parties entered into an agreement dated 1.1.2013 and had some disputes qua payments. Article 12 of the

agreement relates to arbitration. It was invoked by the petitioner and as ignored by the respondent, the petitioner has filed this petition.

3. Article 12 of the Agreement dated 1.1.2013 assume relevance for the controversy raised and it notes:

ARTICLE 12: ARBITRATION AND JURISDICTION

12.1 This Agreement shall be construed, interpreted and applied in accordance with and shall be governed by the laws of India.

12.2 Any dispute arising between the parties in relation to this Agreement and its schedules, annexures (if any) or the Maintenance Agreement or any other congruent Agreement, shall first be tried to be amicably resolved by the parties. Failing amicable resolution within 30 days of the commencement of negotiations, the dispute shall be referred to a Sole Arbitrator as appointed by the Company. The Intending Sub Lessee hereby agrees and confirms that it shall have no objection to such appointment. The Arbitration shall be conducted as per the Arbitration and Conciliation Act, 1996 or its statutory modifications, amendments or re-enactments thereof. The Award of the Arbitrator shall be final and binding upon the parties. The venue of arbitration shall be Noida/New Delhi.

12.3 It is agreed by and between the Parties hereto that the arbitration proceedings and all other matters connected to arbitration and any disputes, suits, complaints, litigation, claim or any other matter arising out of or in

relation to this Agreement, shall be subject to the exclusive jurisdiction of Courts at Noida.

4. What Article 12.2 above lays is the venue of arbitration and not the seat of arbitration. Admittedly there cannot be two or more seats of arbitration though the venue of arbitration may depend upon convenience of the parties, which fact is noted in Article 12 above giving exclusive jurisdiction to courts at Noida while keeping Delhi and Noida as venue for arbitration.

5. In *Swastik Gases Pvt. Ltd. V. Indian Oil Corporation Ltd.* (2013) 9 SCC 32 it was held where the ouster is included in an agreement between the parties, it convey their clear intention to exclude the jurisdiction of courts other than those mentioned in the concerned clause. Conversely, if the parties had intended that courts where the cause of action or the part thereof had arisen would continue to have jurisdiction over the dispute, the exclusion clause would not have found a place in the agreement between the parties.

6. Further *Indus Mobile Distribution Pvt. Ltd. V. Datawind Innovations Pvt. Ltd. & Ors.* (2017) 7 SCC 678 highlights there is a difference between venue and the seat of arbitration and merely because the arbitrator chooses to hold the arbitration at a venue different than the seat of the arbitration, it shall not confer territorial jurisdiction on the courts where the venue of the arbitration exists. Para 18 and 19 are relevant:-

“18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO judgment in no uncertain

terms has referred to “place” as “juridical seat” for the purpose of Section 2(2) of the Act. It further made it clear that Section 20(1) and 20(2) where the word “place” is used, refers to “juridical seat”, whereas in Section 20 (3), the word “place” is equivalent to “venue”. This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

19. 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.”

7. Further *BALCO V. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 held :

98. A plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any “place” or “seat” within India, be it Delhi, Mumbai etc. In the absence of the parties’ agreement thereto, Section 20(2) authorizes the tribunal to determine the place/seat of such arbitration. Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.

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100. xxx The legal position in this regard is summed up by Redfern and Hunter, *The Law and Practice of International Commercial Arbitration* (1986) at Page 69 in the following passage under the heading “The Place of Arbitration”:-

“The preceding discussion has been on the basis that there is only **one** “place” of arbitration. This will be the place chosen by or on behalf of the parties; and it will be designated in the arbitration agreement or the terms of the reference or the minutes of proceedings or in some other way as the place or “seat” of the arbitration. This does not mean, however, that the arbitral tribunal must hold all its meetings or hearings at the place of arbitration. International commercial arbitration often involves people of many different nationalities, from many different countries. In these circumstances, it is by no means unusual for an arbitral tribunal to hold meetings – or even hearings – in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses... It may be more convenient for an arbitral tribunal sitting in one country to conduct a hearing in another country - for instance, for the purpose of taking evidence..... In such circumstances, each move of the arbitral tribunal does not of itself mean that the seat

of arbitration changes. The seat of the arbitration remains the place initially agreed by or on behalf of the parties.”

This, in our view, is the correct depiction of the practical considerations and the distinction between “seat” (Section 20(1) and 20(2)) and “venue” (Section 20(3)).

8. In *Devyani International Ltd. V. Siddhivinayak Builders and Developers* 2017 SCC Online Del 11156 it was held as under :

6. As far as the issue of jurisdiction is concerned, reference may be had to the arbitration clause in the Agreement being Clause 11.1 which reads as follows:-

11. ARBITRATION

11.1 Any dispute or difference arising between the parties shall be resolved amicably at the first instance. Unresolved disputes, controversies, contests, disputes, if any shall be submitted to arbitration to a sole arbitrator. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act 1996 along with the Rules there under and any amendments thereto. The arbitration shall be conducted in English. The decision/award of the arbitrator shall be final/conclusive and binding on the Parties; The seat of the arbitration shall be at New Delhi.

7. Clause 12 of the Agreement reads as follows:

“12. GOVERNING LAW

12.1 This Agreement shall be construed, interpreted and applied in accordance with, and shall be governed by, the laws applicable in India... The courts at Mumbai shall have the exclusive jurisdiction to entertain the dispute or suit arising out of or in relation to this Agreement.”

9. In the light of the above legal position, it is manifest that the Agreement records that the seat of arbitration shall be Delhi. In view of the above legal position the courts at Delhi would have exclusive jurisdiction to adjudicate the dispute between the parties. The reliance of the learned counsel for the respondent on clause 12 of the agreement is misplaced due to the clear terminology used in clause 11.1 of the agreement, i.e. “seat of arbitration shall be Delhi.”

9. In *Roger Shashoua V. Mukesh Sharma*, 2017 SCC Online SC 697 it was held as under :

*68. It is submitted by Mr. Dwivedi, learned senior counsel appearing for the appellants that the nature of the language employed in the aforesaid clauses clearly lay the postulate that the arbitration shall be carried only in London and the seat of arbitration shall be in London. Apart from relying upon the decision in *Enercon (India) Ltd.* (supra) for the said purpose, he has copiously referred to the*

Rules of Conciliation and Arbitration of the International Chambers of Commerce. Per contra, Mr. Chidambaram would submit that the arbitration agreement clearly lays down with regard to the venue and as has been held by this Court, venue cannot be equated with the seat/place of arbitration. As we perceive, the clause relating to the arbitration stipulates that the arbitral proceedings shall be in accordance with the ICC Rules. There is a clause in the SHA that the governing law of SHA would be laws of India. The aforesaid agreement has already been interpreted by the English Courts to mean that the parties have not simply provided for the location of hearing to be in London.

68. It is worthy to note that the arbitration agreement is not silent as to what law and procedure is to be followed. On the contrary, Clause 14.1 lays down that the arbitration proceedings shall be in accordance with the Rules of Conciliation and Arbitration of the ICC. In Enercon (India) Ltd. (supra), the two-Judge Bench referring to Shashoua case accepted the view of Cooke, J. that the phrase “venue of arbitration shall be in London, UK” was accompanied by the provision in the arbitration clause or arbitration to be conducted in accordance with the Rules of ICC in Paris. The two-Judge Bench accepted the Rules of ICC, Paris which is supernational body of Rules as has been noted by Cooke, J. and that is how it has accepted that the parties have not simply provided for the location of hearings to be in London. To elaborate, the distinction between the venue and the seat remains. But when a Court finds there is prescription for venue and something

else, it has to be adjudged on the facts of each case to determine the juridical seat. As in the instant case, the agreement in question has been interpreted and it has been held that London is not mentioned as the mere location but the courts in London will have the jurisdiction, another interpretative perception as projected by the learned senior counsel is unacceptable.

10. Hence the principles culled out from the above discussions are :
(a) there shall be only one seat of arbitration though venues may be different; (b) where the arbitration seat is fixed (*may be neutral*), only such court shall have an exclusive jurisdiction; (c) where a seat/place of arbitration is fixed it is section 20(1) and section 20(2) of the Act we are referring to; and (d) venue relates to convenience of parties, per section 20(3) of the Act.

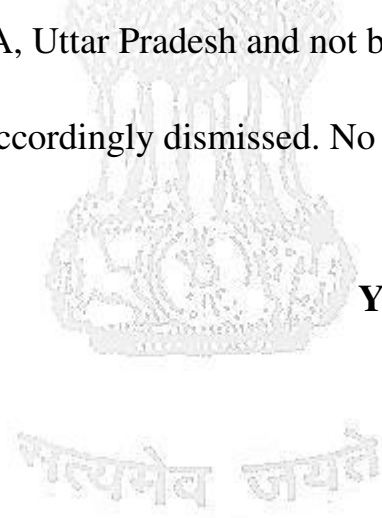
11. Though *Roger Shashoua* (supra) gives a discretion to find if venue referred to in the agreement relates to mere location or something else can be read to it based on facts of the case.

12. The facts herein show barring the registered office of the respondent company at Delhi, none of the cause of action arose within the jurisdiction of this Court. Admittedly the agreement was executed at NOIDA; it was to be performed at NOIDA; payments pursuant to the agreement were to be made at NOIDA; the agreement pertains to a sub-lease of unit based in NOIDA; the stamp paper on which the agreement was executed pertains to Uttar Pradesh; and that the petitioner and respondent had agreed to an exclusive jurisdiction of NOIDA per article

12(3) even in relation to the arbitration proceedings and all other matters connected to the arbitration besides suits, complaint, litigation etc.

13. Now simply to allege *there being no High Court in NOIDA would not confer the jurisdiction upon the Courts at U.P.*; would be stretching the Article 12 (supra) too much. The subject agreement when refer to the venues of arbitration be at NOIDA/New Delhi it relate only to the convenience of parties in holding arbitral hearings and does not in any way confer jurisdiction upon Delhi Courts. Thus in the light of an exclusive jurisdiction clause in relation to arbitration proceedings, which excludes the jurisdiction of all other Courts than the Court mentioned therein, the application would only lie before the High Court exercising jurisdiction over NOIDA, Uttar Pradesh and not before this Court.

14. The petition is accordingly dismissed. No order as to costs.

**YOGESH KHANNA, J**

DECEMBER 08, 2017
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