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

Date of decision: 16th May, 2018

+ ARB.P. 123/2018

GLOBAL CREDIT CAPITAL LTD. Petitioner
Through Mr.Manish Sharma and Mr.Ninad
Dogra, Advs.

versus

KRRISH REALTY NIRMAN PVT.LTD. Respondent
Through Mr.Abhay Anand Jena, 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 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Collaboration Agreement dated 17.05.2011 read with Supplementary Collaboration Agreement dated 18.03.2013 between the parties. Both the Agreements contain an Arbitration Agreement between the parties. The only dispute raised by the respondent is with respect to the territorial jurisdiction of this Court to entertain the present petition.

2. The Collaboration Agreement dated 17.05.2011 contains the Arbitration Agreement in the form of Clause 24 thereof, which is reproduced herein below:

“Clause 24:- That any dispute or difference touching upon or arising of or in connection with this Agreement or interpretation of any of the provisions of this Agreement, shall be resolved amicably at the first instance. If such disputes are unresolved for a period exceeding 30 (thirty) days, such disputes shall be submitted to arbitration. The arbitration shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act, 1996 read with Rules framed thereunder and any amendments thereto. The venue of arbitration shall be at New Delhi.”

3. Clause 31 of the Collaboration Agreement provides that the “Courts at Gurgaon shall have the jurisdiction of all the matters concerning this Agreement”.

4. While the learned counsel for the petitioner relies upon Clause 24 and specifically where it states that the venue of the arbitration shall be at New Delhi, the learned counsel for the respondent submits that Courts at Gurgaon have been given jurisdiction and therefore, this Court would not have the territorial jurisdiction to entertain the present petition.

5. As far as the Supplementary Collaboration Agreement is concerned, admittedly there is no separate clause providing for the jurisdiction in Gurgaon Courts. As far as the venue is concerned, Clause 30 of the Supplementary Collaboration Agreement is relevant and is reproduced herein below:

“That any dispute or difference touching upon or arising out of or in connection with this Agreement or interpretation of any of the provisions of this Agreement, shall be resolved amicably at the first instance. If such disputes are unresolved for a period exceeding 30 (thirty) days, such disputes shall be submitted to arbitration. The arbitration shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act, 1996 read

with Rules framed thereunder and any amendments thereto. The arbitration proceedings shall be conducted in English. The venue of arbitration shall be at New Delhi. This shall in no manner preclude the Parties to resort to/ approach the concerned courts having territorial jurisdiction with respect to the subject matter of this Supplementary Agreement for interim reliefs, appointment of arbitrator, etc.”

(Emphasis supplied)

6. A reading of the above clause would show that the venue for arbitration was fixed at New Delhi. As this would have vested exclusive jurisdiction in Court at Delhi, the parties expressly carved out an exception by providing as under:

“This shall in no manner preclude the Parties to resort to/ approach the concerned courts having territorial jurisdiction with respect to the subject matter of this Supplementary Agreement for interim reliefs, appointment of arbitrator, etc.”

7. Therefore, the word “venue” used in Clause 24 of the Collaboration Agreement and Clause 30 of the Supplementary Collaboration Agreement, in my opinion has to be construed as the ‘seat’ of arbitration.

8. In ***Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited***, (2017) 7 SCC 678, 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. This Court in ***Raman Deep Singh Taneja v. Crown Realtech Private Limited***, 2017 SCC OnLine Del 11966, has considered the effect of an agreement which provided for the seat of the arbitration at Faridabad, Haryana while vesting the jurisdiction in Delhi Courts and held as under:

*“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.”*

9. In view of the above, the objection of the respondent to the jurisdiction of this Court cannot be accepted. Another important factor in this case is that Clause 34 of the Supplementary Collaboration Agreement expressly states that in case of any conflict between the terms of the

Collaboration Agreement and the Supplementary Collaboration Agreement, the terms of the latter would prevail.

10. In view of the above, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Collaboration Agreement and Supplementary Collaboration Agreement. I appoint **Justice Anil Kumar**, Retd. Judge of this Court (R/o B-33, Panchsheel Enclave, New Delhi-110017, Mobile No.9818000140) as the Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreements. The Arbitrator shall give his disclosure statement in terms of Section 12 of the Act before entering upon the reference.

11. The arbitration shall be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and the procedure and the fee shall be governed by the DIAC rules.

12. The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

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