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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 28.11.2019

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Date of Judgment: 21.01.2020

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ARB.P. No.334/2019

CINEPOLIS INDIA PVT LTD

..... Petitioner

Through

Mr. Venkita Subramaniam,
Mr. Varun Mudgal, Mr. Rahat
Bansal and Mr. Likhi Chand,
Advocates.

versus

CELEBRATION CITY PROJECTS PVT. LTD. & ANR.

..... Respondents

Through

Mr. Vedant Singh and Mr. Nilotpal
Bansal, Advocates for R-1
Mr. Abhinav Agnihotri, Advocate
for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act') seeking appointment of a sole arbitrator in accordance with the Arbitration Clause stipulated in the Lease Deed dated 30.09.2014.

2. Attracted by the initiative taken by the Government of India for promoting Foreign Direct Investment, petitioner came to India in

the year 2007 and claims to have become the fourth largest cinema operating brand in India, with approximately 300 plus cinema screens across the country. As the case of the petitioner goes, respondent No. 1 approached the petitioner for setting up and operating a multiplex cinema theatre representing that it has unfettered an absolute right to a land 'Nehru Vikas Minal' developed as 'Red Mall'. A Lease Deed was entered for the second floor of the said property, which is situated at Ghaziabad. Rectification Deed was also executed on 19.02.2015.

3. On 02.06.2016 an agreement was entered into between the Ghaziabad Development Authority (GDA), respondent No. 1 and respondent No. 2. Vide the said agreement respondent No. 1 conveyed all rights of the multiplex to respondent No. 2 for a total sale consideration of Rs. 21,52,70,000/- by executing a Sale Deed and respondent No. 2 undertook to be bound by all the terms of the said Deed. It was specifically stated in a Sale Deed that respondent No. 2 confirms and undertakes that the terms of the lease deed would remain binding on it and it would comply with all obligations and undertakings stipulated under the lease deed.

4. After handing over the possession of the property by respondent No. 1 to the petitioner, operations of the multiplex were started by the petitioner on 27.04.2017 by investing approximately Rs. 25 crores.

5. Due to certain financial liabilities upon respondent No. 1, the Mall was sealed by the concerned authority on 28.11.2017. Subsequently, however, on 09.03.2018 the property was de-sealed.

6. It is the case of the petitioner that after the de-sealing of the property, petitioner is entitled to commence the operations of the multiplex as per the Lease Deed and it has been regularly following with respondent No. 2 but on some pretext or the other, respondent No. 1 kept on delaying the start of necessary services. The respondents are not giving permission to the petitioner to enter the premises, contrary to the agreement. Written communications and reminders have been sent in this regard by the petitioner. The petitioner avers that there is an Arbitration Clause in the agreement which was invoked by the petitioner and a notice was sent both to the respondents as well as to the Arbitrator which the petitioner desired to nominate. There has been no response from the respondents.

7. Learned counsel for the petitioner contends that there is an Arbitration Clause in the Lease Deed executed between the parties. Disputes having arisen and the Arbitration Agreement having been invoked, respondents should have appointed the Arbitrator in terms of the Clause. Further, learned counsel contends that the parties are under mutual obligations under the Lease Deed, but respondent No. 1 has failed to fulfil its obligations. The petitioner having spent crores of rupees in investment in the multiplex is being prevented

from operating the multiplex and is not even permitted to enter the property. It is thus contended that the respondents having failed to appoint an Arbitrator, have forfeited their right to do so and thus this Court should appoint an Arbitrator to adjudicate the disputes between the parties.

8. After the notice was issued respondent No. 1 and 2 had entered appearance. Respondent No. 2 has filed its reply but respondent No. 1 despite three opportunities has chosen not to file a reply.

9. In the reply filed by respondent No. 2, it has taken two preliminary objections. Firstly, it is stated that the present petition has been filed on the basis of a Lease Deed which was entered into between the petitioner and respondent No. 1. Respondent No. 2 is neither a signatory nor party to the agreement and hence invocation of Arbitration against it is without jurisdiction and bad in law. Although a mention of the Lease Deed was made in the Sale Deed, but no further assignment or attornment of the Lease Deed was done between the parties. Petitioner till date has paid no rentals to respondent no. 2 and there is thus no contractual relationship. Respondent no. 2 has no control over the ingress of the petitioner into the Mall complex and neither over the rent being paid. It is contended that respondent No. 2 is not a party to the Arbitration Agreement and this petition is not maintainable against it. Reliance is

placed on the Judgment of the Supreme Court in ***SBP & Co. vs. Patel Engineering Ltd. AIR 2006 SC 450*** and ***National Insurance Co. Ltd. vs. Boghara Polyfab Pvt. Ltd. (2009) 1 SCC 267*** where the Court has held that the Court while examining a petition under Section 11 of the Act must see the existence of an arbitration agreement between the parties.

10. The second objection raised is with respect to the Territorial Jurisdiction of this Court to entertain the present petition. It is submitted that the Lease Deed relied upon by the petitioner was entered into at Ghaziabad. Respondent no. 2 had purchased the property in June, 2016 and the Sale Deed was also executed between it and Ghaziabad Development Authority at Ghaziabad. Reliance is placed on ***Swastik Gases Private Limited vs. Indian Oil Corporation Limited (2013) 9 SCC 32.***

11. Reliance is also placed on a judgment of a Co-ordinate Bench of this Court in ***CVS Insurance and Investments vs. Vipul IT Infrasoftware Pvt. Limited 2018 (167) DRJ 87*** where the arbitration clause mentioned the 'venue' of arbitration to be Delhi/Noida and at the same time had an exclusive jurisdiction clause for the disputes relating to the arbitration proceedings and all connected matters to be subject to Courts at Noida. It is argued that the Court held that the facts revealed that no cause of action had arisen within the jurisdiction of the Court at Delhi. The Agreement was executed at

Noida and performed at Noida. Payments and all other transactions between the parties were outside Delhi. In view of the exclusive jurisdiction clause in the arbitration agreement, no Court other than the High Court exercising jurisdiction over Noida would have the jurisdiction to entertain the petition. The reference in the clause to the venue of Arbitration is merely relating to the convenience of the parties in holding the Arbitral hearings and does not confer jurisdiction upon the Delhi Courts.

12. Learned counsel for the petitioner in rejoinder submits that the contention of respondent No. 2 that it is not a party to the agreement and thus not bound by the Arbitration Clause is without merit. Respondent No. 2 has admitted that it had entered into an agreement to sell with the GDA. Sale Deed entered into between the parties clearly stated that respondent No. 2 was bound by the terms of the Lease Deed and would comply with all the obligations there under. Furthermore, respondent No. 2 in its reply to petition under Section 9 of the Act filed by the petitioner seeking permission to remove the equipment from the Mall had specifically stated that it was willing to honour the Lease Deed.

13. With respect to the objection of respondent no.2 to the Territorial Jurisdiction of this Court, it is argued by the petitioner that the Arbitration Clause between the parties clearly provides that the place/seat of the arbitration shall be Delhi. It is argued that it is a settled law that the 'seat' of Arbitration alone will determine which

Court would have jurisdiction to entertain a petition under Section 11 (6) of the Act. Reliance is placed on the judgment of the Supreme Court in the case of *Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited & Ors.* (2017) 7 SCC 678 wherein the Court referring to a decision of a Constitution Bench in *Bharat Aluminium Company & Ors. vs. Kaiser Aluminium Technical Service, Inc. & Ors.* (2012) 9 SCC 552 (hereinafter referred to as 'BALCO') held that the moment a seat is designated, it is akin to an exclusive jurisdiction clause. Unlike the CPC 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. No part of cause of action may have arisen at the neutral venue, yet the Court where the seat is determined will have exclusive jurisdiction for regulating the arbitral proceedings.

14. Reliance is further placed on the judgment of the Supreme Court in the case of *Brahamini River Pellets Limited vs. Kamachi Industries Limited* 2019 SCC OnLine SC 929 wherein following *Indus Mobile Distribution Private Limited (supra)* it was held that once the parties have agreed to a venue of Arbitration the Court where the venue is situated will have Territorial Jurisdiction.

15. Although no reply has been filed by respondent No. 1, but written submissions have been placed on record. The contention of respondent No. 1 is that the controversy in the present matter arises out of the Arbitration Clause referred to in the Lease Deed dated

30.09.2014. Under Section 2(1)(e) of the Act, jurisdiction for deciding a petition under Section 11 of the Act, lies with the Court having jurisdiction to decide questions forming 'the subject matter of arbitration' if the same had been 'the subject matter of a suit'. Admittedly the property is situated outside the jurisdiction of this Court and thus this Court would have no territorial jurisdiction in the matter.

16. It is next contended that the exclusive jurisdiction with regard to the Lease Deed has been given to Courts in Ghaziabad. Reference in the Agreement to New Delhi as place of Arbitration only indicates the intention of the parties to designate Delhi as place of mutual convenience for the Arbitral Tribunal to hold hearings. Lack of mention of any seat of arbitration and a clear stipulation of an exclusion clause is a pointer to the intent of the parties to vest jurisdiction only in the Courts at Ghaziabad, U.P. Reliance is placed on the judgment of the Supreme Court in ***Brahamini River Pellets Limited (Supra)*** for the proposition that where cause of action arises at multiple places and the seat of arbitration is deemed as a neutral venue, law is clear that the designation of juridical seat of arbitration is akin to an exclusive jurisdiction clause. The judgments cited by the petitioner in ***Brahamini River Pellets Limited (Supra)*** and ***Indus Mobile Distribution Private Limited (supra)*** are distinguished on the ground that in neither of the two cases the Court was dealing with an

agreement wherein an exclusive jurisdiction was vested in a Court at a place different from the place of arbitration.

17. Respondent No. 1 has also contended that petitioner is bound by Section 42 of the Act as a petition under Section 9 has been filed by the petitioner before the District Court, Ghaziabad and thus it has already submitted to the jurisdiction of the Courts at Ghaziabad. It is further argued that the facts of the present case are similar to *CVS Insurance and Investments (supra)* and the principle of party autonomy emphasized therein. In *Brahamini River Pellets Limited (Supra)*, *Indus Mobile Distribution Private Limited (supra)* and *CVS Insurance and Investments (supra)* the common thread that runs is that priority has to be given to the choice of the parties wherever there is an exclusive jurisdiction clause. The said view in the present case is applicable with greater vigour as the entire cause of action, if any, had arisen in Ghaziabad, besides the fact that the agreement was executed there, the property is situated in Ghaziabad and the stamp paper was also purchased at Ghaziabad. Thus, going by the provisions of Section 2(1)(e) of the Act only the Courts at Ghaziabad would have jurisdiction to entertain a petition under Section 11 of the Act.

18. I have heard the learned counsels for the parties and examined their rival contentions.

19. The first issue that needs to be decided in the present petition is whether this Court has Territorial Jurisdiction to entertain the

present petition. In order to decide the said controversy it is important to extract the relevant clause of the agreement between the parties, being Clause 12.9, which reads as under :

“12.9 Governing law and dispute resolution

*(i) This Agreement is governed by and is to be construed in accordance with the Laws of India. All notices required to be issued under this Agreement shall be addressed to the Parties at the addresses mentioned hereinabove and shall be issued in English language. **Courts in Ghaziabad shall have exclusive jurisdiction on the subject matter of this Agreement.***

*(ii) All disputes or differences between Parties in respect of or concerning or connected with the interpretation or implementation of this Agreement or arising out of this Agreement shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof. The reference shall be to a sole arbitrator. In the event of the Parties not being able to agree on the name of a sole arbitrator each party hereto shall be entitled to appoint one arbitrator each and the two duly appointed arbitrator shall appoint the third arbitrator who shall act as the presiding arbitrator (“Arbitrators”). The Parties shall be bound by the nomination of the presiding Arbitrator. Unless otherwise agreed to between the Parties. The arbitration proceedings shall be conducted in English language. **The place of the Arbitration shall be at New Delhi.**”*

Emphasis supplied

20. A perusal of the said clause shows that the parties by agreement had conferred exclusive jurisdiction on the subject matter

of the agreement on the courts in Ghaziabad, while the place of the arbitration was New Delhi. Learned counsels for the respondents primarily contend that in view of the exclusive jurisdiction on the subject matter of the agreement being in Ghaziabad and the cause of action having arisen at Ghaziabad, this Court would have no territorial jurisdiction. The place of arbitration is of no significance as it was only decided as a convenient venue for the proceedings to be held. Per contra, the principle contention of the petitioner is that the arbitration clause between the parties clearly provides that the place of arbitration shall be Delhi and once a seat is designated, it is akin to an exclusive jurisdiction clause and even though no part of cause of action may have arisen at the neutral venue, the Court where the place or seat is determined will have exclusive jurisdiction.

21. Having examined the respective contentions of the parties on this issue, I am of the view that there is no merit in the contention of the respondents. A bare perusal of the arbitration clause shows that the parties have clearly designated New Delhi as the place for arbitration proceedings. While it is true that the arbitration clause does not specifically use the word “seat” but it is no longer res integra that the term “place” would be the “juridical seat” for the purpose of Section 2(2) of the Act. It has also been settled by various judgments that the word “place” would refer to ‘juridical seat’ for the purpose of Section 20(1) and Section 20(2) of the Act whereas in Section 20(3) the word “place” is equivalent to “venue”.

This position of law is clear from reading of the judgment of the Constitution Bench in the case of **BALCO** (*supra*) and **Indus Mobile Distribution Private Limited** (*supra*).

22. The Constitution Bench of the Supreme Court examining the issue of seat and venue of an Arbitral proceeding observed as under:-

75. We are also unable to accept the submission of the learned counsel for the appellants that the Arbitration Act, 1996 does not make seat of the arbitration as the centre of gravity of the arbitration. On the contrary, it is accepted by most of the experts that in most of the national laws, arbitrations are anchored to the seat/place/situs of arbitration. Redfern in Para 3.54 concludes that “the seat of the arbitration is thus intended to be its centre of gravity.” [Blackaby, Partasides, Redfern and Hunter (Eds.), Redfern and Hunter on International Arbitration (5th Edn., Oxford University Press, Oxford/New York 2009).] This, however, does not mean that all the proceedings of the arbitration have to take place at the seat of the arbitration. The arbitrators at times hold meetings at more convenient locations. This is necessary as arbitrators often come from different countries. It may, therefore, on occasions be convenient to hold some of the meetings in a location which may be convenient to all. Such a situation was examined by the Court of Appeal in England in Naviera Amazonica Peruana S.A. v. Compania International de Seguros del Peru [(1988) 1 Lloyd's Rep 116 (CA)] wherein at p. 121 it is observed as follows:

“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 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 arbitration remains the place initially agreed by or on behalf of the parties.”

“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.”

23. The Supreme Court in the case of ***Indus Mobile Distribution Private Limited (supra)*** after referring to Sections 2(1)(e) and 20 of the Act and various judgments including the judgment in the case of ***BALCO (supra)*** held as under:-

18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] 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 Sections 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. 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 Sections 16 to 21 of 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.”

24. The Supreme Court in the case of ***Indus Mobile Distribution Private Limited (supra)*** analyzed Section 2(1)(e) and Section 20 of the Act as well as the Law Commission Report, 2014. It was held that the moment a seat is designated it is akin to an exclusive jurisdiction clause. It was further held that under the law of arbitration unlike the CPC which applies to suits, reference to seat is a concept by which a neutral venue can be chosen by the parties which may not in the classic sense have jurisdiction i.e. no part of the cause of action may have arisen and neither would any of the provisions of Sections 16 to 21 of the CPC be attracted. In the said case, the Court was concerned with two different clauses, one which stipulated that arbitration shall be conducted at Mumbai and the other as per which the disputes and differences arising out of the agreement was subject to the exclusive jurisdiction of the courts at Mumbai. The respondent had filed a petition under Section 11 of the Act for appointment of an arbitrator before this Court. The petition

was disposed of by the High Court holding that no part of the cause of action arose in Mumbai and the exclusive jurisdiction clause would not apply and Delhi being the first Court in which the petition was filed and where the part of cause of action had arisen would have jurisdiction. The Supreme Court held that the seat of arbitration was Mumbai and even the exclusive jurisdiction vested in the Mumbai courts. It was thus held that Mumbai courts alone would have jurisdiction to the exclusion of all other courts as the juridical seat of arbitration was at Mumbai.

25. Very recently the Supreme Court in the case of **BGS SGS Soma JV vs. NHPC Ltd. 2019 SCC OnLine SC 1585** has decided the issue of jurisdiction of a Court to entertain a petition under Section 11 of the Act. The Apex Court has at length analyzed the definition of “Court” under Section 2(c) of the Act as well as Section 20 relating to the place of arbitration. Reliance has been placed on the judgment of the Apex Court in the case of **BALCO (supra)** as well as several other judgments such as **Roger Shashoua vs. Muksh Sharma, (2009) EWHC 957 (Comm)**, **Indus Mobile Distribution Private Limited (supra)**, **Enercon (India) Ltd. vs. Enercon GMBH, (2014) 5 SCC 1**. In **Enercon (supra)** the Supreme Court followed the dictum in **Roger Shashoua (supra)** as follows :

“126. Examining the fact situation in the case, the Court in Shashoua case observed as follows:

“The basis for the court's grant of an anti-suit injunction of the kind sought depended upon

the seat of the arbitration. An agreement as to the seat of an arbitration brought in the law of that country as the curial law and was analogous to an exclusive jurisdiction clause. Not only was there agreement to the curial law of the seat, but also to the Courts of the seat having supervisory jurisdiction over the arbitration, so that, by agreeing to the seat, the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of the arbitration.

Although, 'venue' was not synonymous with 'seat', in an arbitration clause which provided for arbitration to be conducted in accordance with the Rules of the ICC in Paris (a supranational body of rules), a provision that 'the venue of arbitration shall be London, United Kingdom' did amount to the designation of a juridical seat..."

In Paragraph 54, it is further observed as follows:

There was a little debate about the possibility of the issues relating to the alleged submission by the claimants to the jurisdiction of the High Court of Delhi being heard by that court, because it was best fitted to determine such issues under Indian Law. Whilst I found this idea attractive initially, we are persuaded that it would be wrong in principle to allow this and that it would create undue practical problems in any event. On the basis of what I have already decided, England is the seat of the arbitration and since this carries with it something akin to an exclusive jurisdiction clause, as a matter of principle the foreign

court should not decide matters which are for this Court to decide in the context of an anti-suit injunction.”

The Supreme Court placed reliance on the observations made by the Court of Appeal, England in **C v. D (2008) BusLR 843**, wherein it is observed that:-

“It follows from this that a choice of seat for the arbitration must be a choice of forum for remedies seeking to attack the award.”

In the aforesaid case, the Court of Appeal had approved the observations made in **A v. B (2007) 1 All ER (Comm) 591**, wherein it is observed that:

“... an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause. Any claim for a remedy.... as to the validity of an existing interim or final award is agreed to be made only in Courts of the place designated as the seat of Arbitration.”

26. In fact in the case of **BGS SGS Soma JV (supra)**, the Supreme Court has laid down the tests for determination of the seat. It has been held that wherever there is an express designation of a venue and no designation of any alternative place as the seat combined with supranational body of rules governing the arbitration and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.

27. Finally, it was held that whenever there is a designation of a place of arbitration in an arbitration clause as being the venue of the arbitration proceedings, the expression “arbitration proceedings”

would make it clear whether the venue is really the seat. If the arbitration proceedings as a whole are intended to be held at a particular place, including the making of an award at that place, then the venue is the seat. This language has to be contrasted with the language where it is only mentioned that the tribunal is to meet or have witnesses examined and in such a case the place is only a venue and not the seat.

28. It is significant to mention that in the case of **BGS SGS Soma JV (supra)**, the Supreme Court was examining an arbitration clause which stated that the arbitration proceedings shall be held at New Delhi / Faridabad. The impugned judgment before the Supreme Court had held that since the agreement was executed at Faridabad, part of cause of action arose at Faridabad and that was the place where the request for reference to arbitration was received, the courts at Faridabad would have jurisdiction and this would thus oust the jurisdiction of the courts at Delhi, in which no part of the cause of action arose. The Supreme Court analyzed the arbitration clause to find out the real intent of the parties as to whether the expression “shall be held” indicated a venue or a seat. It was held that the parties had chosen Delhi as the seat of arbitration under Section 20(1) of the Act and therefore, even though the cause of action arose at Faridabad, it would be of no relevance and the courts at Delhi would have the jurisdiction. Relevant para of **BGS SGS Soma JV (supra)**, reads as under:-

“64. It will thus be seen that wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.

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85. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an International context, if a supranational body of rules is to govern the arbitration, this would further be an

indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”

29. What emerges therefore by reading of the various judgments referred to above is that it is really the seat of arbitration which is akin to an exclusive jurisdiction clause. Where there are no contrary provisions in the agreement, the place would be the juridical seat which would determine the territorial jurisdiction of a Court. Where the words in the arbitration clause are neither seat nor place and the arbitration clause only refers to words such as ‘venue’ or “held in” the intent of the parties would have to be seen from the agreement. If the parties intend that the arbitration proceedings are to be held as a whole at that particular venue then the venue also becomes a juridical seat. It is also clear from the now well settled law that it is the seat or the juridical seat which will be the guiding factor for a Court to determine its jurisdiction while examining a petition under Section 11 of the Act.

30. In the case of ***Devyani International Ltd. vs. Siddhivinayak Builders & Developers*** being OMP (I) (COMM) 373/2017, decided on 27.09.2017, a Coordinate Bench of this Court was dealing with an inter-play between an Arbitration Clause and a clause relating to ‘Governing Law’. Relevant para of the Arbitration Clause is as under:

“11.1 The seat of arbitration shall be at New Delhi.”

Clause 12 which was a clause of the Governing Law read as under:

“12.1 The Courts at Mumbai shall have the exclusive jurisdiction to entertain the dispute or suit arising out of or in relation to this agreement.”

The Court relied upon the judgment of the Supreme Court in ***Indus Mobile Distribution Private Limited (supra)*** and held that the agreement records that the seat of Arbitration shall be at Delhi and thus the Delhi Courts will have exclusive jurisdiction to adjudicate the disputes between the parties.

31. In the case of ***Ramandeep Singh Taneja vs. Crown Realtech Private Ltd.*** being Arb. P. 444/2017, decided on 23.11.2017, the issue of territorial jurisdiction arose on account of the fact that under Arbitration Clause 24 of the agreement between the parties, the jurisdiction of all disputes was at Delhi while the venue for arbitration proceedings was agreed to be at Faridabad, Haryana. A coordinate Bench of this Court relying on ***Indus Mobile Distribution Private Limited (supra)*** and ***BALCO (supra)***, held that the place where the venue of arbitration was located would take precedence over the exclusive jurisdiction vested in the Courts at Delhi. The judgment of the Supreme Court in the case of ***BALCO (supra)*** was relied upon wherein the Supreme Court held that a distinction is to be drawn between “subject matter of the arbitration” and “subject matter of the suit”. For the purpose 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 and that would take precedence over the Court where the “subject matter of the suit” is situated.

32. The Coordinate Bench resolved the conflict between the two parts of clause 24 by holding that where the disputes are to be adjudicated without reference to 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 would have exclusive jurisdiction. The same Bench thereafter decided a petition under Section 11 of the Act titled as ***Global Credit Capital Limited vs. Krrish Realty Nirman Pvt. Ltd.*** being Arb. P. 123/2018, decided on 16.05.2018, where again the issue of territorial jurisdiction of this Court arose. The said case being Arb Pet. 123/2018 was decided on 16.05.2018 and allowed. The conflict was between the Arbitration Clause 24 as per which the venue of arbitration was Delhi and clause 31 of the Collaboration Agreement, which provided that “Courts at Gurgaon shall have jurisdiction of all matters concerning this agreement”. The word ‘venue’ was construed by the Courts at ‘Seat’ of arbitration following the judgments of the Supreme Court on the said issue. Reliance was then placed on ***Indus Mobile Distribution Private Limited (supra)*** and ***Ramandeep Singh Taneja (supra)*** and it was held that the seat of arbitration being Delhi, the Courts at Delhi

would have the territorial jurisdiction to decide matters concerning arbitration.

33. Thus, applying the law laid down the arbitration clause in the present case is clearly referring to a juridical seat of arbitration and since the seat is designated at New Delhi, this Court would have jurisdiction to entertain the present petition, even though cause of action may have arisen in Ghaziabad.

34. The second issue that needs determination in the present case is the objection raised by respondent no.2 that it is neither a signatory nor a party to the agreement and hence invocation of the arbitration against it is without jurisdiction. As the facts of the present case go, there is no doubt that the petitioner had entered into a lease deed with respondent no.1 for running a multiplex cinema complex. Subsequently, respondent no.1 conveyed all rights of the multiplex to respondent no.2 for a sale consideration by executing a sale deed. Respondent no.2 admittedly undertook to be bound by all the terms not only of the sale deed but the obligations and covenants of the lease deed which was clearly referred to in the sale deed. The dispute that the petitioner is seeking to raise is operating the multiplex complex in the mall which is apparently with respondent no.2 at present. The disputes of the sale deed and the lease deed are now intrinsically linked with each other and respondent no.2 cannot absolve itself of the obligations and liabilities under the sale deed. The said contention of respondent no.2 therefore has no merit. In

fact, reliance in this regard can be placed on the judgment of the Supreme Court in the case of ***Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc. and Ors.***, (2013) 1 SCC 641, relevant para of which reads as under :-

“72. This evolves the principle that a non-signatory party could be subjected to arbitration provided these transactions were with group of companies and there was a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. In other words, “intention of the parties” is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties.

73. A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite transaction. The transaction should be of a composite nature where performance of the mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute. Besides all this, the court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed.”

35. Thus, in my view the present petition deserves to be allowed.

36. I, hereby appoint Mr. Justice Madan B. Lokur, former Judge of the Supreme Court of India as sole Arbitrator to adjudicate the disputes between the parties.

37. The address of the learned Arbitrator is as under:

Mr. Justice Madan B. Lokur (Retd.)
A-26, 1st Floor, Gulmohar Park,
New Delhi-110049
Mobile: 9868219007

38. The learned Arbitrator shall give disclosure under Section 12 of the Act before entering upon reference.

39. Fee of the Arbitrator shall be fixed as per Fourth Schedule of the Act.

40. The petition is allowed in the aforesaid terms.

JANUARY 21st, 2020
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JYOTI SINGH, J