

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 127 OF 2021

Sunil Bansilal Raisonni & Anr. ... Petitioners

Versus

Bajaj Finserv / Bajan Finance Ltd. ... Respondent

Mr. Kamlesh Ghumre a/w Sonali Jadhav for the Petitioners.

Mr. Nikhil Mehta i/b KMC Legal Venure for the Respondent.

CORAM : R.I. CHAGLA, J.

DATED : 26th NOVEMBER, 2021.

ORDER :

1 Heard learned Counsel for the parties.

2 By this Arbitration Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”), the Petitioner is seeking appointment of a sole arbitrator to decide all disputes and differences which have arisen between the Petitioners and Respondent under the agreement which is described as loan-cum-pledge-cum-guarantee (the agreement) which was registered on 29.05.2015 and its

certificate of e-stamp issued on 01.04.2015. The Arbitration clause 8 of the agreement has provided for arbitration and reads as under :

“8.1 Any and all disputes arising out of or in connection with this Agreement and the Schedule(s) of Terms/Repayment Schedule/s attached hereto or the performance of this Agreement shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the tender and the award thereupon shall be binding upon the parties to this Agreement. The place of the arbitration shall be in Delhi, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof.”

3 The preliminary objection has been raised by the learned Counsel appearing for the Respondent that since the place of arbitration shall be in Delhi as stated in paragraph 8.1 of the Arbitration clause of the said agreement, this Court will not have jurisdiction to entertain the Arbitration Petition filed under Section 34 of the Act. He has further submitted that the accompanying documents with the agreement viz. the power of attorney executed by the borrower, in particular clause 12 thereof, provided that the power

of attorney shall be subject to the execution jurisdiction of the Courts of Delhi. He has submitted that it is by virtue of this power of attorney that the Respondent had been dealing with the shares of the Petitioners and by virtue of which there appears to be a dispute insofar as margin is concerned.

4 The learned Counsel appearing for the Respondent has further submitted that the parties in entering into the agreement have clearly contemplated that the exclusive jurisdiction will be that of the Courts of Delhi and that is a reason for stating in the arbitration clause of the agreement viz. Clause 8 thereof that the place of arbitration shall be in Delhi, in accordance with the provisions of the Act and any statutory amendments thereof. He has submitted that this Court will not have jurisdiction and that the jurisdiction will be that of the Courts in Delhi.

5 The learned Counsel appearing for the Petitioners has submitted that when the parties have not expressly designated the seat of arbitration or determined the seat of arbitration, the mere expression “place of arbitration” in the arbitration clause, cannot by itself be the basis to determine the intention of the parties that they have intended that place as the juridical seat of arbitration. The

intention of the parties as to the “seat” should be determined from reading all clauses in the arbitration agreement as a whole, as to whether there are any clear indicia which indicate the seat of arbitration and the conduct of parties. He has relied upon the decisions of the Supreme Court in *Union of India vs. Harrdy Exploration and Production*¹ and *Mankastu Impex Private Limited vs. Airvisual Limited*² in this context. He has further referred to the decision of the Supreme Court in *BGS SGS Soma JV vs. NHPC Limited*³ which was in the case of the cause of action having arisen partly in one State and partly in another and it was in this context that the Supreme Court held that where the seat of arbitration is designated or determined, the same operates as an exclusive jurisdiction clause as a result of which only the Court where the seat is located, would have jurisdiction over the arbitration, to the exclusion of all other Courts, even Courts where part of the cause of action may have arisen. He has submitted that the words place of arbitration should not be considered as having determined the seat of arbitration and it is only the seat of arbitration which will have exclusive jurisdiction. He has submitted that the entire cause of action has arisen within the jurisdiction of this Court as the shares were traded in the Bombay Stock Exchange and the

1 (2019) 13 SCC 472.

2 (2020) 5 SCC 399.

3 (2020) 4 SCC 234

registered office of the Respondent is in Pune. In view of the cause of action having arisen within the jurisdiction of this Court, this Court would have jurisdiction to appoint the sole arbitrator under Section 9 of the Act.

6 The learned Counsel for the Respondent in response to the arguments of the learned Counsel for the Petitioners has referred to the affidavit-in-reply of the Respondent wherein it is stated that the branch/office of the Respondent is at Delhi. Further, the agreement was duly signed, stamped as per the law applicable in Delhi and executed by the Respondent at Delhi on 06.07.2015. He has further submitted that from the decisions of the Supreme Court and in particular the decision of the Supreme Court in *BGS SGS Soma JV* (supra) it has been held that when there is 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. He has submitted that in the present case, the “venue” of arbitration has been agreed by the parties, in the arbitration clause to be in Delhi. Further, in view of the documents accompanying the agreement which includes the power of attorney, it is clearly provided that it is subject to the exclusive jurisdiction of the Courts in Delhi and

hence, there is clear intention of the parties that the Delhi Courts will have jurisdiction to entertain the application under Section 11 of the Act.

7 Having considered the submissions, it thus appears from the reading of Clause 8.1 of the agreement which provides for arbitration that the parties have expressly agreed for the place of arbitration to be in Delhi in accordance with the provisions of the Act and any statutory amendments thereof. The agreement has also been executed by the Respondents at Delhi and the agreement has been stamped as per the law applicable in Delhi. The Respondent is having its branch/office at Delhi. The documents accompanying agreement which include the powers of attorney have provided for the exclusive jurisdiction of the Courts of Delhi. It is by means of these powers of attorney that the Respondent was acting under the agreement in respect of the shares which had been pledged to the Respondent by the Petitioners. The Petitioners have raised a claim under the agreement with respect to the margin which was to be furnished by the borrower/ Petitioner No.1 and which the Respondent had not demanded by way of additional security from Petitioner No.1.

8 The decisions of the Supreme Court relied upon by the learned Counsel for the Respondent are on the seat of arbitration which when designated or determined would operate as an exclusive jurisdiction clause as a result of which only the Courts where the seat is located would have jurisdiction over the arbitration, to the exclusion of all other Courts. The Supreme Court in *BGS SGS Soma JV* (supra) has held that when there is 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. This is coupled with there being no other significant contrary indicia, that stated venue is merely “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates “seat” of the arbitral proceedings, to the exclusion of all other Courts, even Courts where part of the cause of action may have arisen. In the subsequent decision of the Supreme Court in *Mankastu Impex Private Limited* (supra), it has been held that intention of the parties as to the “seat” should be determined from reading all clauses in the arbitration agreement as a whole, as to whether there are any clear indicia which indicate the seat of arbitration and the conduct of the parties.

9 In the present case, the arbitration agreement provided for the venue/place of the arbitration to be in Delhi. It is further clear from the documents of power of attorney, that the parties intended that the Courts of Delhi would have exclusive jurisdiction. Thus, the parties consciously provided for the Courts in Delhi to have jurisdiction for proceedings under the Act. In my view, the Arbitration Petition filed under Section 11 (6) of the Act will not lie within the jurisdiction of this Court and would be required to be filed before the Courts in Delhi.

10 At this stage, the learned Counsel appearing for the Petitioners seeks permission to withdraw the Arbitration Petition with liberty to file the proceedings in the appropriate Court. Permission is granted.

11 Arbitration Petition is disposed of as withdrawn.

Digitally
signed by
WAISHALI
SUSHIL
WAGHMARE
Date:
2021.11.29
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(R.I. CHAGLA, J.)