

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.01.2021

Delivered on : 19.03.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No. 438 of 2020

&

A.Nos.2723, 2108 & 2687 of 2020

M/s.Balapreetham Guest House Pvt Ltd
represented by its Authorised Signatory
Mrs.Arunjitkaurkohli
having office at No.25 & 27,
Aziz Mulk 3rd Street,
Thousand Lights, Chennai – 600 006

... Petitioner

Vs

Mypreferred Transformation and Hospitality Pvt. Ltd.,
'known as' "Alcott Town Planners Private Limited",
(Under the Brand Name OYO)

Registered Office at:

E 43 / 1, Okhla Industrial Area,
Phase 2, Delhi – 110020.

Corporate Office at:

9th Floor, SpazePalazo,
Sector 69, Periphery Road,
Gurgaon, Haryana – 122018

... Respondent

Prayer: Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator to arbitrate over the dispute arising out of the violation of the Agreement dated 30.09.2018.

For Petitioner : Mr.Arun C Mohan

For Respondent : Mr.Sricharan Rangarajan

ORDER

Despite the definitive pronouncements on the terms “Place”, “Seat” and “Venue” by the Hon'ble Supreme Court through its decisions in *BALCO, Indus Mobile Distribution Private Ltd., Brahmani River Pellets Limited, BGS SGS Soma JV* to name but a few, innovative and incisive arguments continue to engage both the Bench and the Bar. This could probably be on account of the fact that though Judicial pronouncements have been made on seat and place of arbitration, however, the definition of Court as defined in Section 2 (1) (e) of the Arbitration and Conciliation Act, 1996 has

not been amended. Therefore, arguments are time and again being addressed in this regard. Since I am considering the Preliminary issue regarding the maintainability I have not traversed into the facts and merits of the case except extracting the arbitration clause in the instant case.

2. As a prelude, the instant petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, which hereinafter for the sake of brevity will be referred to as the Act. The respondents have raised the preliminary objection regarding the jurisdiction as it is their case that the seat of arbitration having been agreed to be at New Delhi this Court does not have the jurisdiction to entertain the petition and it is only the Courts at Delhi that has supervisory jurisdiction over the arbitration proceedings. It was also stated that the respondents have moved a similar application before the High Court of Delhi.

3. Useful reference may be made to the following provisions of the Act:

"Section 2 (1) (e): (i) "Court" in the case of an arbitration other than international commercial arbitration, 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;"

"Section 2 (e) (ii): in the case of international commercial arbitration, 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, and in other cases, a High Court having jurisdiction to hear appeals from decrees of Courts subordinate to

that High Court."

*"(ii) **Section 2 (2):** This Part shall apply where the place of arbitration is in India."*

"Section 20: Place of arbitration.—

(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property"

***"Section 31 (4):** The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place."*

"Section 42: Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."

4. In the Arbitration Act, 1940, there was no reference to "Seat", "place" or "Venue". It is only in the 1996 Act that the word "place" of arbitration finds reference in two places. Once in Section 20 and the other in Section 31 (4) of the Act. The Arbitration Act came into force on 22.08.1996. Since certain glitches were felt in the said act a request was made to the Law Commission to review the said Act and propose amendments to the same. The 176th Law

Commission report had made certain recommendations which however did not transform into an Amending Act.

5. The Ministry of Law and Justice had once again requested the Law Commission to suggest an amendment to the 1996 Act which led to the Law Commission filing its 246th report with regard to the amendment to the Arbitration and Conciliation Act, 1996.

6. The Commission, besides other suggestions, had recommended amendments to Section 20 of the Act by deleting the word “place” and adding the words seat and venue before the words arbitration. In Sub-Section 1 after the words “agreed” delete the word “place” and substitute with “seat”. Likewise, in Sub-Section 3 also they had suggested the deletion of the word “place” and substituting it with a word “venue”. This amendment was suggested in order to make the wording of the Act consistent with the international usage of the concept of the seat of arbitration to denote

the legal home of arbitration. The amendment also proposed to distinguish the "[legal] seat" from "[mere] venue".

7. Likewise, in Section 31 (4) of the Act also the word "place" was sought to be deleted and substituted with the word "seat". However, no amendment was recommended to Section 42 of the 1996 Act. While the Amendment Act 2015 and 2019 had been introduced, the recommendations in the 246th report with reference to Section 20 and 31 (4) had not been incorporated. On a reading of the Law Commission Report juxtaposed with the Arbitration Act, it appears that the definition of "Court" continues to be the Principal Civil Court of original jurisdiction in a district including the High Court exercising ordinary Civil jurisdiction which would have jurisdiction *"to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit"*.

8. Therefore on an analysis of Section 2 (1) (e) of the Act the

following principles emerge. The Court which has jurisdiction is the Principal Civil Court of original jurisdiction including the High Court exercising ordinary original Civil jurisdiction having jurisdiction to decide the question forming the subject matter of an arbitration. Let us consider this principle with an example. “A” enters into a contract with “B” for the construction of an apartment complex. If disputes arise between the parties regarding the quality of construction then the subject matter is the construction itself and the Principal Civil Court of original jurisdiction of the District where the building is situate would have jurisdiction.

9. If on the other hand it relates to a dispute regarding payment then the place of the recipient of the payment and the place where payment has been made would both have jurisdiction in terms of Section 2 (1) (e) (i) of the Act. It is in such situation where one or more courts have jurisdiction that provisions of Section 42 of the Act assume significance. The Section clearly provides that the Court

before which one of the party first approaches with an application under the Act would be the Court to which all other subsequent applications should be moved.

10. However, with the March of law in this regard, by an agreement parties may fix one place as the seat which may not come within the jurisdiction as contemplated under Section 2 (1) (e) of the Act. By legal pronouncements the Principal Court of original jurisdiction where the seat is situate acquires the status of a Court which is alien to the definition as given under Section 2 (1) (e) of the Act since the definition does not recognize a seat centric jurisdiction.

11. I shall, in this backdrop, consider the issue of maintainability apropos jurisdiction as decided by the plethora of legal pronouncement. If the issue is held in favour of the respondent no further orders are required in the application filed under Section 9 of the Arbitration Act.

12. Before proceeding to analyse the various judicial pronouncement it is necessary to extract the Arbitration clause found in the Management Services Agreement entered into between the parties on 30.09.2018 and which is set out in Article 10 thereon. The same is extracted herein below:

“10.1 This Agreement shall be governed and interpreted in accordance to the laws of India and the courts at Chennai shall have exclusive jurisdiction in all matters arising out of this Agreement.

10.2 In the event any dispute arises between the Parties out of or in connection with this Agreement the Parties hereto shall endeavor to settle such dispute amicably in the first instance. This attempt to bring about an amicable settlement shall be treated as having failed as soon as one of the Parties hereto, after

reasonable attempts, which shall continue for not less than thirty (30) days, gives a notice to this effect, to the other Party in writing.

10.3 In case of such failure, the dispute shall, upon the expiry of the aforesaid period, be referred to arbitration to be conducted by a sole arbitrator, who shall be jointly appointed by the Parties. The language of arbitration shall be English and the place of arbitration shall be New Delhi. The decision of the arbitrators shall be final and binding on the parties.

For the purpose of the case on hand, we are concerned in particular with Article 10.1 and 10.3.

13. It is the contention of Mr.Arun C Mohan, learned counsel appearing for the petitioner that since Article 10.1 has clothed the exclusive jurisdiction in all matters arising out of the agreement to

the Courts in Chennai, all applications / petitions shall be filed only before this Court. He would contend that the use of the word 'place' in Article 10.3 is in the nature of a “Venue”. In view of the language of Article 10.1, the 'Seat' of arbitration is only Chennai.

14. Per contra, Mr.Sricharan Rangarajan, learned counsel appearing on behalf of the respondent would contend that the use of the word 'place of arbitration' in Article 10.3 is akin to the word “seat”. Article 10.1 only relates to the jurisdiction of Court with reference to other matters. He has also placed judgements of the Hon'ble Supreme Court as well as the Delhi High Court in this regard.

15. Before giving my finding on the issue on hand I have extracted in a tabular form the Judgements of the Hon'ble Supreme Court (the Bench Strength, the clause in question, the ratio laid down etc) and of the Delhi High Court which have considered the

issue of “seat”, “place” and “venue”.

I. SUPREME COURT:

S.No	Citation	Bench Strength	Arbitration clause (in a nutshell)	Ratio
1	2012 (9) SCC 522 [Kaiser Aluminium Technical Service, Inc.]	Constitution Bench	Any dispute relating to the Agreement shall be settled by Arbitration pursuant to English Law. The arbitration proceedings would be at London, England.	Section 20(1) states parties are free to agree to any 'place' or 'seat' for arbitration in India. Section 20(2) authorises the Tribunal to decide the place/seat. Section 20(3) enables the Tribunal to meet at any place for conducting hearings, examining witnesses etc., Court holds that where arbitration takes place assumes

S.No	Citation	Bench Strength	Arbitration clause (in a nutshell)	Ratio
				supervisory jurisdiction. (The learned Judges however hold that both the place where the seat of arbitration was situate and the place where the subject matter of arbitration was situate would acquire jurisdiction).
2	2017 (7) SCC 2678 [Indus Mobile Distribution Pvt. vs. Datawind Innovations Pvt. Ltd]	2	Arbitration to be conducted at Mumbai. All disputes relating to the Agreement to be subject to jurisdiction of Mumbai.	Once seat is designated it is akin to an exclusive jurisdiction clause and only Mumbai Courts would have the supervisory jurisdiction over arbitration in that case.
3	2017 (14) SCC 722	2	Venue arbitration of	Courts in India have no

S.No	Citation	Bench Strength	Arbitration clause (in a nutshell)	Ratio
	[Roger Shashoua and others v. Mukesh Kumar and others]		London, United Kingdom, governing Law of the Agreement is the Laws of India.	supervisory jurisdiction over the arbitration as 'Seat' is designated at London.
4	2019 (13) 3 SCC 472 [Union of India v. Hardy Exploration and Production (India) INC]	3	Contract to be governed by Indian Laws. Arbitral proceedings to be conducted as per UNCITRAL Model and Venue at Kuala Lumpur unless otherwise agreed.	When place agreed upon it assumes the status of Seat, Place and seat interchangeable. When place used with a condition precedent then that condition has to be fulfilled for place to become equivalent to seat.
5	2020 (5) SCC 462 [Brahmani River Pellets Ltd. vs Kamachi Industries Ltd.]	2	Arbitration to be under Indian Arbitration and Conciliation Act and venue of arbitration shall be Bhubaneswar.	Relying on Indus Mobile, BALCO, Enercon (India) Ltd., etc., the learned Judges held that venue is fixed at

S.No	Citation	Bench Strength	Arbitration clause (in a nutshell)	Ratio
				Bhubaneswar all other Courts are excluded, since by choosing an exclusive venue the parties have intended to exclude all other Courts. Non-use of words "exclusive jurisdiction", "only", "alone", "exclusive" does not make a material difference.
6	2020(4) SCC 3 234 [BGS SGS SOMA JV v. NHPC Limited]		In case of Indian contractor dispute to be settled in accordance with the Arbitration and Conciliation Act. In the case of a foreign contractor dispute to be settled in accordance with Arbitration and Conciliation act	The expressions "shall be held" indicates the Venue to be the seat. In this case, arbitration could be held at New Delhi or Faridabad. Since parties had filed appeals at New Delhi and the Award was

S.No	Citation	Bench Strength	Arbitration clause (in a nutshell)	Ratio
			read with the UNCITRAL Law. Arbitration proceedings shall be held at New Delhi/Faridabad, India	signed at New Delhi, parties have chosen New Delhi as the seat and Courts at Delhi alone have jurisdiction.

II. HIGH COURTS: Delhi

S.No	Citation	Arbitration clause (in a nutshell)	Ratio (in a nutshell)
1	2020 SCC Online Del 301 Cinopolis India Pvt. Ltd., Celebration City Projects Pvt. Ltd and another	Courts at Ghaziabad has exclusive jurisdiction over [subject matter of agreement. Place of Arbitration shall be at New Delhi.	Arbitration clause clearly spelling out the jurisdictional seat as New Delhi Courts at Delhi will have jurisdiction with regard to the arbitral proceedings.

16. On perusing the arbitration clause, in some of the cases

listed above, the parties have agreed that the contract would be subject to the jurisdiction of the Court as defined under Section 2 (1) (e) of the Act but the venue of arbitration is elsewhere. The above Judgments have clearly laid down that where parties have agreed to the place of arbitration as contemplated under Section 20(1) of the Act or where they have not decided on the place and the same is decided by the Arbitral Tribunal taking into consideration the circumstances of the case including the convenience of parties as contemplated under Section 20 (2) of the Act then the “place of arbitration” so agreed or decided would be the 'Seat of Arbitration'. The Constitution Bench of the Hon'ble Supreme Court in the Judgement reported in **2012 (9) SCC 552 – Bharat Aluminium Co. Vs. Kaiser Aluminium Technical Services Inc.**, hereinafter referred to as **BALCO** has held that it is the seat of arbitration which decides that the Courts having supervisory power over the arbitral agreement will have the supervisory jurisdiction. The learned Judges held as

follows in paragraph nos.96 and 97:

“96. Section 2(1)(e) of the Arbitration Act, 1996

reads as under:

“2. Definitions (1) In this Part, unless the context

otherwise requires –

(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.

97. The definition of Section 2(1)(e) includes “subject matter of the arbitration” to give jurisdiction to the courts where the arbitration takes place, which otherwise would not exist. On the other hand, Section 47 which is in Part II of the Arbitration Act, 1996 dealing with enforcement of certain foreign awards has defined the term “court” as a court having jurisdiction over the subject-matter of the award. This has a clear reference to a court within whose jurisdiction the asset/person is located, against which/whom the

enforcement of the international arbitral award is sought. The provisions contained in Section 2(1)(e) being purely jurisdictional in nature can have no relevance to the question whether Part I applies to arbitrations which take place outside India.”

The learned Judge carved out the distinction between “the subject matter of arbitration” and “the subject matter of suit” and held that one should not be confused with the other. According to the learned Judges “subject matter of arbitration” referred to in Section 2 (1) (e) of the Act related to the process of dispute resolution. The learned Judges had held that the phrase “subject matter of arbitration” would confer jurisdiction upon the Courts where arbitration took place. The learned Judges have however observed that jurisdiction is vested with two Courts, one where the cause of action is located and the other where the arbitration has taken place.

17. In the Judgment in ***Indus Mobile Distribution Pvt Ltd. Vs. Datawind Innovations (P) Ltd and others – 2017 (7) SCC 678***, the learned Judges relying on *BALCO - 2012 (9) SCC 552* and *Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1*, observed as follows in paragraph nos. 18 and 19 of the Judgment:

“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. 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.”

The learned Judges have distinguished the jurisdiction of a Civil Court vis-a-vis the Courts defined under the Arbitration Act by holding that reference to “seat” would automatically clothe a neutral place with jurisdiction.

18. In the Judgment in ***Union of India Vs. Hardy Exploration Production (India) Inc – 2019 (13) SCC 472***, the Honourable Supreme Court had held that where parties had not agreed on the place the Arbitral Tribunal shall determine the same taking into consideration the convenience of parties and such determination has to be contextual. The arbitral tribunal shall state such determination in the “form and contents of award”. Ultimately they held as

follows:

“34. The word ”determination” has to be contextually determined. When a “place” is agreed upon, it gets the status of seat which means the juridical seat. We have already noted that the terms “place” and “seat” are used interchangeably. When only the term “place” is stated or mentioned and no other condition is postulated, it is equivalent to “seat” and that finalises the facet of jurisdiction. But if a condition precedent is attached to the term “place”, the said condition has to be satisfied so that the place can become equivalent to seat.”

19. In **BGS SGS Soma JV Vs. NHPC Ltd - 2020 (4) SCC 234**, (hereinafter referred to as BGS Soma), the Hon'ble Supreme Court was deciding on the maintainability of Section 37 appeals before the

Special Commercial Court at Gurguram given that the arbitration clause in the proceedings states that arbitration proceedings shall be held at New Delhi / Faridabad. The learned Judges after analysing all the earlier judicial pronouncements with regard to this issue held that in the case before them the parties had agreed that New Delhi / Faridabad would be the designated seat under the agreement. However, since three appeals were finally held at New Delhi and the Award was signed at New Delhi, the learned Judges held the “seat” of arbitration to be New Delhi.

20. The learned Judges have extensively analysed the reasons for giving importance to the “juridical seat” to bring it on par with the internationally recognized framework as framed under the UNCITRAL Model law. The learned Judges have also referred to the fact that though the definition of “Court” as found in Section 2 (1) (e) of the Act is narrowed to mean only the Principal Civil Court and High Court in exercise of its ordinary original Civil jurisdiction

however to bring the concept of juridical seat on par with international practice it had to be developed on a case to case basis by the Courts.

21. The learned Judges have also considered the observation of the Constitutional Bench in **BALCO** regarding the concurrent jurisdiction of Courts within whose jurisdiction the cause of action arises wholly or in part and Courts within whose jurisdiction the arbitration is located. However, after considering the entire judgment in **BALCO** the learned Judge observed that on a reading of paragraphs 75,76, 96, 110, 116, 123 & 194 of the said judgement it could be construed that Section 2 (1) (e) of the Act has to be considered keeping in mind Section 20 of the Act. This Analysis had been done in the judgement in **2017 (7) SCC 678 - [Indus Mobile Distribution Pvt. vs. Datawind Innovations Pvt. Ltd]** and the learned judges therein had held that the moment “seat” is designated

it is akin to an exclusive jurisdiction clause. This analysis was accepted by the learned Judges in **BGS Soma**.

22. The learned Judges in paragraph no.82 has held the test for determination of “seat” as follows:

“On a conspectus of the aforesaid judgements, 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.”

23. Ultimately, the learned Judges had gone on to hold that once “seat” is designated then it is only the Courts within whose jurisdiction the juridical seat is situate that would have the supervisory jurisdiction.

24. The Delhi High Court in the Judgment reported in **2020 SCC Online Delhi 301** in the case of **Cinepolis India Pvt. Ltd., v. Celebration City Projects Pvt. Ltd and another** has succinctly

brought out the essence of the Judgments of the Supreme Court in Paragraph 31 of the Judgment as follows:

"31.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. It 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."

25. The learned Judge had also relied on the Judgment of coordinated Bench in **2017 SCC Online Del 11966** in the case of **Mr.Raman Deep Singh Taneja vs. Crown Realtech Private Limited.** in that Judgment as per the Agreement between the parties, the jurisdiction of all disputes was at Delhi while the Venue for arbitration was at Faridabad, Haryana. The learned Judge relying on the Judgment in BALCO and Indus Mobile resolved the conflict between the two parts of the arbitration clause by holding that where the disputes are to be adjudicated without reference to arbitration, the Courts at Delhi would have exclusive jurisdiction but where it has to be resolved through arbitration, Venue being at Faridabad,

Haryana, Courts at Faridabad would have exclusive jurisdiction.

26. In the case on hand there are two inconsistent and conflicting clauses. They are:

i) This agreement shall be governed and interpreted in accordance with the laws of India and the Courts at Chennai shall have exclusive jurisdiction in all matters arising out of this agreement.

ii) Where any disputes arise between parties in respect of or in connection with the agreement then parties shall first endeavour to conciliate the disputes failing which the same shall be referred to arbitration to be conducted by a sole arbitrator. The place of arbitration is at New Delhi.

27. Considering the apparent conflict in respect of these 2 clauses the two have to be harmoniously constructed to give meaning to both. The rule of harmonious construction is to harmonise and not

to destroy and while interpreting the clauses Courts have to presume that the parties had inserted every clause thereof for a purpose and therefore attempt to give effect to both. A reading of the 2 clauses would indicate that the parties had agreed that in case of a cause of action arising from out of the agreement then the Courts at Chennai alone will have jurisdiction, if parties abandon their right to arbitrate the dispute and file a civil suit.

28. However, the latter clause viz; 10.2 and 10.3 relates to disputes between the parties arising out of or in connection with the agreement and parties have agreed to resolve their disputes through Arbitration and have agreed that the seat of such Arbitral proceedings will be New Delhi. Therefore, the two clauses can be harmoniously constructed without one doing violence to the other.

29. Even if we were to assume that the two clauses are in conflict with each other the same can be resolved by considering the

law laid down by the Supreme Court. The Hon'ble Supreme Court has in the judgements referred above placed importance on the juridical seat to confer jurisdiction on Courts in the case of Arbitration Proceedings. In the Judgement in **BGS Soma** the learned Judges had held that the very fact that parties have chosen a place to be the seat necessarily implies that both parties have agreed that the Courts at the seat would have jurisdiction over the entire arbitral process. Therefore, on account of a conspectus of the above judgements of the Hon'ble Supreme Court, wherein emphasis and importance has been given to the juridical seat, in the instant case the Court having supervisory jurisdiction is the Courts where parties have agreed would be the place of arbitration.

30. Therefore, relying upon the judgement **BGS Soma** in the case on hand since parties herein have agreed to have the arbitration proceedings at New Delhi, the “seat” is at New Delhi. Consequently

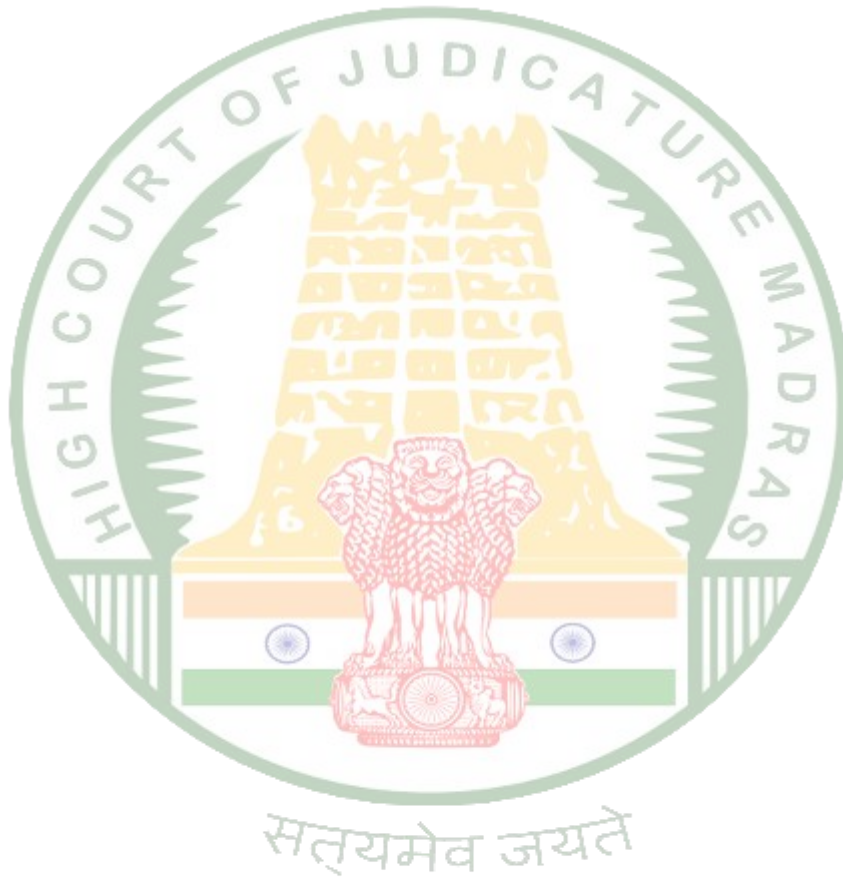
only the High Court at Delhi would have the jurisdiction over the arbitral proceedings. Therefore, the proceedings before this Court is without jurisdiction and therefore stands dismissed.

31. As already submitted by the learned counsel for the respondent, the respondent has already moved the High Court of Delhi for appointment of an arbitrator. It is open to the petitioner to file necessary applications for interim measures before the High Court of Delhi under Section 9 of the Arbitration Act or before the Arbitration Tribunal once constituted, under Section 17 of the Arbitration Act.

32. In the light of the order passed in O.P.No.438 of 2020, the applications are closed. There shall be no order as to costs.

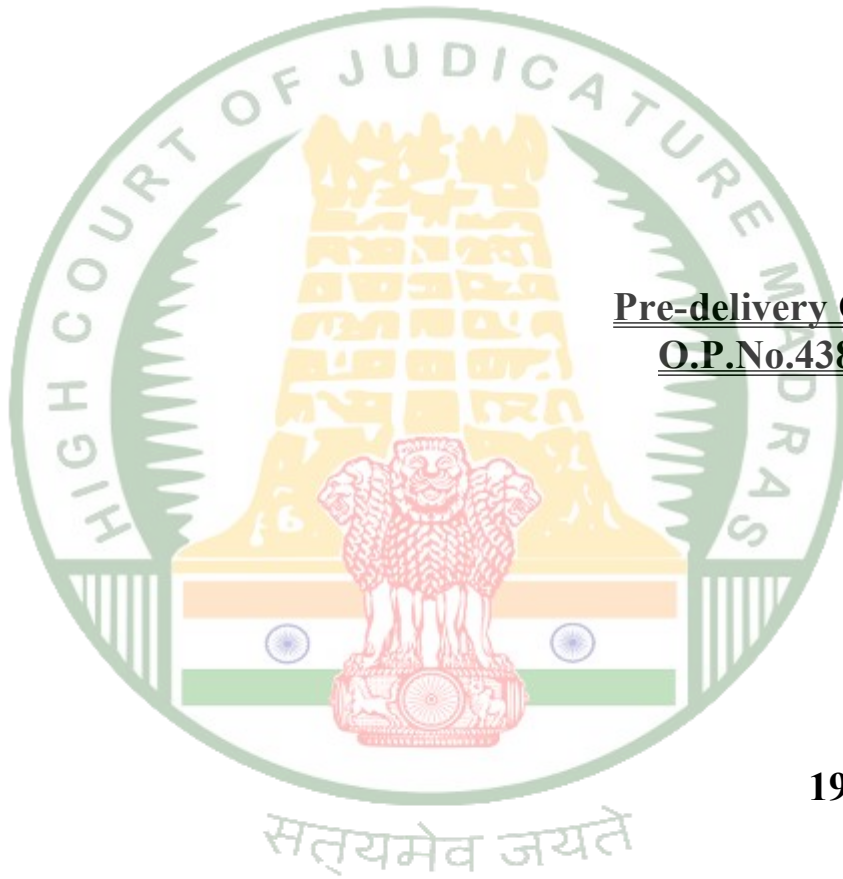
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Pre-delivery Order in
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