

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO No.3520 of 2019

M/s Madhava Brahamputra Consortium Ltd.

...Appellant

Versus

State of Punjab and others

...Respondents

FAO No.3524 of 2019

M/s Madhava Brahamputra Consortium Ltd.

...Appellant

Versus

State of Punjab and others

...Respondents

Dated of decision: - 08.04.2021

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

**Present:** Mr. Dheeraj Mahajan, Advocate for the appellant.

Ms. Sunint Kaur, AAG, Punjab.

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**Harsimran Singh Sethi, J. (Oral)**

By this order, two appeals, details of which have been given in the heading are being decided as both the appeals arise out of the same contract between the parties.

The above said two appeals have arisen on account of the fact that the appellant initially had filed one claim petition in respect of which an Award was passed by the Arbitrator on 11.08.2015 and in respect of the

subsequent claim petition filed by the appellant in pursuance to the same agreement, an Award dated 22.01.2017 was passed by the Arbitrator. In respect of both the Awards passed by the Arbitrator, objections were filed by the State of Punjab before the Additional District Judge, Jalandhar, which objections have been decided vide orders dated 01.02.2019, which have been impugned in these appeals.

The brief facts which have led to the filing of the present appeals are that the appellant and the respondent-State of Punjab entered into an agreement for the execution of the work namely “Construction of approaches to road over bridge (excluding Railway Portion)” which work was to be executed at Jalandhar. This work was advertised in the year 2006 and the appellant, who competed for the allotment of the said work was found eligible for the allotment of the same and the parties entered into an agreement for execution of the said work vide agreement No.1 of 2006-07. As per the admitted facts, the work was to commence from 17.11.2006 and was to be executed within the time limit of fifteen months.

After the allotment of the work, the appellant started executing the same but, for one reason or the other the same could not be completed within the stipulated time of fifteen months and the scheduled date for completion of work got extended from time to time. Due to the said extension of stipulated time for completion of work, certain disputes arose between the parties. It is a further conceded position between the parties that as per the agreement, all the disputes between the parties were to be decided by way of arbitration and the venue/seat of the arbitration proceedings was Chandigarh.

Keeping in view the disputes, which arose between the parties,

a claim petition was filed by the appellant before the Sole Arbitrator and the Sole Arbitrator Lt. Gen. Hari Uniyal, PVSM (Retd.) conducted the proceedings at Chandigarh. On completion of the proceedings, the Arbitrator gave an Award dated 11.08.2015 while being stationed at Gurugram.

It is noticed here itself that the appellant also raised certain other claims which were not a part of the first claim petition qua the same agreement by filing a second claim petition before the Arbitrator. In respect of the said claims, raised in the second claim petition, the Arbitrator gave an Award dated 22.01.2017.

Both the Awards were objected to by the respondent-State of Punjab and objection petitions were filed under Section 34(2) (b) (ii) read with Section 18 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the 1996 Act') before the Additional District Judge, Jalandhar.

The appellant raised an objection with regard to the maintainability of the objection petitions against the Awards dated 11.08.2015 and 22.01.2017 filed before Additional District Judge, Jalandhar on the ground that the arbitration proceedings were held in Chandigarh and, therefore, the Court at Jalandhar will not have the jurisdiction to entertain the objection petitions. The objection petitions by the respondent-State of Punjab have been decided by the concerned Court at Jalandhar vide impugned judgments dated 01.02.2019. Objections raised by the respondent-State have been decided on merit but without deciding plea of the appellant of non-maintainability of the objection petitions before a Court at Jalandhar.

The judgements dated 01.02.2019 passed by the Additional

Sessions Judge, Jalandhar in respect of the two Awards dated 11.08.2015 and 22.01.2017 are challenged by way of the present appeals.

Learned counsel for the appellant argues that the objection raised by the appellant before the Court below that the objection petitions filed by the State of Punjab under Section 34(2) (b) (ii) read with Section 18 of the 1996 Act against the Awards dated 11.08.2015 and 22.01.2017 are not maintainable at Court in Jalandhar due to lack of jurisdiction, though, has been noticed by the Court below but, the same has not been decided while passing impugned judgments dated 01.02.2019. Learned counsel for the appellant argues that once the venue of the arbitration was at Chandigarh and all the arbitration proceedings were held at Chandigarh, the objections to the Awards as envisaged under Section 34 of the 1996 Act could not have been filed before a Court at Jalandhar as the jurisdiction to raise objections to the awards lies only before the Principal Civil Court at Chandigarh and, therefore, the Court at Jalandhar has exceeded its jurisdiction in deciding the objections raised by the State of Punjab in respect of the Awards dated 11.08.2015 and 21.01.2017.

Learned counsel for the appellant further argues that once the appellant had taken a preliminary objection qua the maintainability of the objection petitions at Jalandhar, despite noticing the said objection, no finding has been returned on the said aspect, hence, the judgements dated 01.02.2019 are liable to be set aside on this ground as the jurisdiction of the Court at Jalandhar to decide the objections raised by the respondent-State should have been decided before deciding the objection petitions on merits.

Learned State counsel concedes that there was an objection raised qua the jurisdiction of the Court at Jalandhar to deal with the

objection petitions filed by the State of Punjab qua the Awards dated 11.08.2015 and 27.01.2017 under Section 34 (2) (b) (ii) read with Section 18 of the 1996 Act and there is no finding recorded by the Court below on the said aspect. Learned counsel for the respondent argues that the Court at Jalandhar will have the jurisdiction to entertain the objection petitions filed by the State qua the awards given by the Arbitrator as some part of the cause of action has accrued in Jalandhar. Learned State counsel submits that as the work under the agreement was to be executed at Jalandhar, the Court at Jalandhar will have the jurisdiction to entertain the objections raised against the Awards given by the Arbitrator.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

From the above narration, it is clear that the appellant and the respondent-State of Punjab entered into an agreement being agreement No.1 of 2006 for the execution of certain works to be executed at Jalandhar. It is also a conceded position that as per the said agreement, in case of any dispute, the same was to be settled by way of an arbitration and the venue of the arbitration was fixed at Chandigarh. It is also not disputed by the learned counsel appearing for the State of Punjab that the claim petitions filed by the appellant before the Arbitrator were dealt with by the Arbitrator at the venue of the arbitration i.e. Chandigarh and all the arbitration proceedings were held in Chandigarh except that the Award was given by the Arbitrator at Gurugram. The two Awards in respects of the two claim petitions filed by the appellant were given by the Arbitrator on 11.08.2015 and 27.01.2017 which Awards were objected to by the respondent-State by filing objections as envisaged under Section 34 of the 1996 Act. It is the conceded position

between the parties that the objection qua jurisdiction was raised by the appellant before the Principal Civil Judge, Jalandhar with regard to the maintainability of the objection petitions filed by the State of Punjab qua the Awards given by the Arbitrator dated 11.08.2015 and 27.01.2017. Once, the said objections were raised, it becomes the duty of the Court to decide the same in accordance with law coupled with the facts of the case before deciding the objection petitions filed by the State of Punjab qua the Arbitral Awards on merits. It is a matter of fact that despite noticing the said objections in the impugned judgements, the same have not been decided by the Court at Jalandhar in the impugned judgments dated 01.02.2019 which is contrary to the settled principles of law that the Courts are required to decide all the objections raised by the parties in accordance with law. The objections such as jurisdiction, cannot be ignored once the same goes to the root of the controversy. Admittedly, in the present case, the Court below has ignored the objections qua maintainability of the objection petitions filed by the respondent-State of Punjab against the Awards as envisaged under Section 34 of the 1996 Act. The said act of the Court below is not in accordance with law hence, cannot be sustained. The judgments dated 11.08.2015 and 27.01.2017 rendered by the Court below are liable to be set aside on this ground alone.

The Hon'ble Supreme Court of India in Civil Appeal No. 1498 of 2005 titled as 'K. Sagar, M.D., Khan Chit Fund, Musheerabad Vs. A. Bal Reddy & Anr.', decided on 11.06.2008 held that where the question of jurisdiction has been raised, the same is to be decided first. The non-deciding of the objections regarding the jurisdiction though, the same was raised and noticed as well, was found contrary to the law. The relevant

paragraphs of the judgment are as under:-

“7. We find that M/s Dwarkadish Chits' case (supra) dealt with the issue of jurisdiction under the [Consumer Protection Act, 1986](#) (in short the `Act') as to whether the Consumer Forums established under the Act have jurisdiction to entertain dispute between the chit fund and one of its prized subscriber or between the subscribers. It is not correct as contented by the respondent No. 1 that the question of jurisdiction was not raised. In fact the State Commissioner observed that since the respondents before it i.e. functionaries of the chit fund were not consumers, the issue regarding jurisdiction cannot be adjudicated in the appeal before it. The National Commissioner unfortunately does not appear to have referred to its earlier decision while dismissing the revision petition.

8. In the aforesaid background, we are of the view that the issue relating to jurisdiction has to be decided by the forums first.

9. We therefore, set aside the impugned order of the National Commission confirming the order passed by the State Commission, and remit the matter to the State Commission to consider the question of jurisdiction. To avoid unnecessary delay let parties appear before the State Commission without further notice on 7th of July, 2008 so that the date of hearing can be fixed. We make it clear that we have not expressed any opinion on the merits of the case. The parties are permitted to produce

certified copy of the judgment so that necessary follow up action can be taken.”

Hon'ble Supreme Court of India while deciding Civil Appeal No.8078 of 2001 titled as **Arun Agarwal vs. Nagreeka Exports (P) Ltd. and another** decided on 26.11.2001 has held that where the question of jurisdiction has been raised, the same has to be decided as a preliminary issue before deciding the dispute on merits. The relevant portion of the judgment is as under:-

“Heard counsel for the parties. We are of the view that the question regarding the jurisdiction of the Court was required to be decided as a preliminary issue. We, therefore, set aside the order under challenge and send the case back to the High Court to decide the question of jurisdiction of the Court as a preliminary issue. The order passed by the High Court directing the defendant-appellant to furnish security for a sum of Rs. 55 lakhs by way of bank guarantee shall remain suspended till the said question pertaining to jurisdiction of the Court is decided by the High Court. In case it is held by the High Court that the Court has jurisdiction, the direction to furnish security for a sum of Rs. 55 lakhs shall come into operation. The appeal is disposed of in the aforesaid terms.”

Keeping in view the above, it is clear that the decision rendered in the impugned judgments on merits without deciding the objections qua the jurisdiction is contrary to the settled principle of law and, hence, cannot be sustained.

Though, the matter can be remanded to the Court below for fresh adjudication on the objection raised by the appellant qua the

jurisdiction of the Principal Civil Judge at Jalandhar to deal with the objections raised by the State of Punjab against the arbitral Awards dated 11.08.2015 and 27.01.2017 but as the main object of the Arbitration and Conciliation Act, 1996 is to decide the lis between the parties quickly, this Court is of the view that remanding the case back for adjudication on the aspect whether the Principal Civil Judge at Jalandhar has the jurisdiction to deal with the objections raised by the State of Punjab to the Arbitral Awards dated 11.08.2015 and 27.01.2017 or not will consume further time and this Court should decide the said objection regarding maintainability keeping in view the facts and circumstances of the present case.

The question which now arises before this Court in these appeals is whether the State of Punjab could have preferred the objections under Section 34 (2) (b) (ii) read with Section 18 of the 1996 Act qua the Awards dated 11.08.2015 and 27.01.2017 before the Court at Jalandhar or not.

In order to answer the question of jurisdiction of the Principal Civil Judge at Jalandhar to entertain the objection petitions filed by the respondent-State certain provisions of the 1996 Act, as amended from time to time, needs to be noticed. Section 2 (e) of the 1996 Act which deals with definition of "Court, Section 20 which gives definition of the place of arbitration and Section 42 which gives definition of the jurisdiction are reproduced hereunder for the ready reference:-

**Section 2(e) Court means-**

**(i)** in 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;

(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 a suit 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;

**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, good or other property.”

**Section 42, Jurisdiction:-** Notwithstanding anything contained elsewhere in this Part or 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 any 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 no other Court.”

A bare reading of the above reproduction of the provisions of 1996 Act makes it amply clear that the Court means Principal Civil Court of the ordinary jurisdiction in a district and also includes 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.

Section 20 which deals with the place of arbitration makes it clear that parties to the agreement are free to decide the place of arbitration and in case there is no place of arbitration decided then, the place where the actual arbitration proceedings have taken place will be considered as place of arbitration

The question which needs to be decided in the present proceedings is whether the Court where the arbitration proceedings have taken place keeping in view the agreement between the parties will have the exclusive jurisdiction to entertain the proceedings arising in respect of the arbitration agreement between the parties or even the Court, where some cause of action has accrued in terms of the agreement between the parties, will also have the concurrent jurisdiction to entertain the proceedings arising out of the arbitral agreement between the parties.

The said question is no longer res integra and has been decided in detail keeping in view the provisions of the 1996 Act as amended time to time as well as the law on the subject by the Hon'ble Supreme Court of India in a recent judgment in Civil Appeal No.9307 of 2019 titled as **BGS SGS**

**Soma JV vs. NHPC Limited 2020(4) SCC 234.** While deciding the precise question whether only one Principal Court will have the exclusive jurisdiction to entertain the proceedings arising out of the arbitral agreement or more than one Court will have the concurrent jurisdiction to entertain the proceedings arising out of the arbitral agreement between the parties, the Hon'ble Supreme Court of India while discussing the provisions of the 1996 Act and the law on the subject including the judgment of a Five Judges Bench in **Bharat Aluminium Company Limited ('BALCO') vs. Kaiser Aluminium Technical Services 2012(9) SCC 552** held as under:-

2. Three appeals before us raise questions as to maintainability of appeals under [Section 37](#) of the Arbitration and [Conciliation Act](#), 1996 ), and, given the arbitration clause in these proceedings, whether the “seat” of the arbitration proceedings is New Delhi or Faridabad, consequent upon which a petition under [Section 34](#) of the Arbitration Act, 1996 may be filed dependent on where the seat of arbitration is located.

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40. A reading of paragraphs 75, 76, 96, 110, 116, 123 and 194 of BALCO (supra) would show that where parties have selected the seat of arbitration in their agreement, such selection would then amount to an ex-clusive jurisdiction clause, as the parties have now indicated that the Courts at the “seat” would alone have jurisdiction to entertain challenges against the arbitral award which have been made at the seat. The example given in paragraph 96 buttresses this proposition, and is supported by the previous and subsequent paragraphs pointed out hereinabove. The BALCO judgment (supra), when read as a whole, applies the concept of “seat” as laid down by the English

judgments (and which is in [Section 20](#) of the Arbitration Act, 1996), by harmoniously construing [Section 20](#) with [Section 2\(1\)\(e\)](#), so as to broaden the definition of “court”, and bring within its ken courts of the “seat” of the arbitration<sup>1</sup>.

41. However, this proposition is contradicted when paragraph 96 speaks of the concurrent jurisdiction of Courts within whose jurisdiction the cause of action arises wholly or in part, and Courts within the jurisdiction of which the dispute resolution i.e. arbitration, is located.

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“50. The aforesaid amendment carried out in the definition of “Court” is also a step showing the right direction, namely, that in international commercial arbitrations held in India, the High Court alone is to exercise jurisdiction over such proceedings, even where no part of the cause of action may have arisen within the jurisdiction of such High Court, such High Court not having ordinary original jurisdiction. In such cases, the “place” where the award is delivered alone is looked at, and the High Court given jurisdiction to supervise the arbitration proceedings, on the footing of its jurisdiction to hear appeals from decrees of courts subordinate to it, which is only on the basis of territorial jurisdiction which in turn relates to the “place” where the award is made. In the light of this important change in the law, [Section 2\(1\)\(e\) \(i\) of the Arbitration Act, 1996](#) must also be construed in the manner indicated by this judgment.

51. Take the consequence of the opposite conclusion, in the light of the facts of a given example, as follows. New Delhi is specifically designated to be the seat of the arbitration in the

arbitration clause between the parties. Part of the cause of action, however, arises in several places, including where the contract is partially to be performed, let us say, in a remote part of Uttarakhand. If concurrent jurisdiction were to be the order of the day, despite the seat having been located and specifically chosen by the parties, party autonomy would suffer, which BALCO (supra) specifically states cannot be the case. Thus, if an application is made to a District Court in a remote corner of the Uttarakhand hills, which then becomes the Court for the purposes of [Section 42](#) of the Arbitration Act, 1996 where even [Section 34](#) applications have then to be made, the result would be contrary to the stated intention of the parties - as even though the parties have contemplated that a neutral place be chosen as the seat so that the Courts of that place alone would have jurisdiction, yet, any one of five other Courts in which a part of the cause of action arises, including Courts in remote corners of the country, would also be clothed with jurisdiction. This obviously cannot be the case. If, therefore, the conflicting portion of the judgment of BALCO (supra) in paragraph 96 is kept aside for a moment, the very fact that parties have chosen a place to be the seat would necessarily carry with it the decision of both parties that the Courts at the seat would exclusively have jurisdiction over the entire arbitral process.

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59. The view of the Delhi High Court in Antrix Corporation Ltd. (supra), which followed judgments of the Bombay High Court, does not commend itself to us. First and foremost, it is

incorrect to state that the example given by the Court in paragraph 96 of BALCO (supra) reinforces the concurrent jurisdiction aspect of the said paragraph. As has been pointed out by us, the conclusion that the Delhi as well as the Mumbai or Kolkata Courts would have jurisdiction in the example given in the said paragraph is wholly incorrect, given the sentence, “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”. The sentence which follows this is out of sync with this sentence, and the other paragraphs of the judgment. Thus, BALCO (supra) does not “unmistakably” hold that two Courts have concurrent jurisdiction, i.e., the seat Court and the Court within whose jurisdiction the cause of action arises. What is missed by these High Court judgments is the subsequent paragraphs in BALCO (supra), which clearly and unmistakably state that the choosing of a “seat” amounts to the choosing of the exclusive jurisdiction of the Courts at which the “seat” is located. What is also missed are the judgments of this Court in Enercon (India) Ltd. (supra) and Reliance Industries (supra).

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61. Equally incorrect is the finding in Antrix Corporation Ltd. (supra) that [Section 42](#) of the Arbitration Act, 1996 would be rendered ineffective and useless. [Section 42](#) is meant to avoid conflicts in jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in

one Court exclusively. This is why the section begins with a non-obstante clause, and then goes on to state "...where with respect to an arbitration agreement any application under this Part has been made in a Court..." It is obvious that the application made under this part to a Court must be a Court which has jurisdiction to decide such application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the Courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so called "seat" is only a convenient "venue", then there may be several Courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the "seat" of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under [Section 20\(2\)](#) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a Court in which a part of the cause of action arises would then be the exclusive Court under [Section 42](#), which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.

63. 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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84 .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. Correctness of the judgment in Hardy Exploration and Production (India) Ltd.”

A bare perusal of the above reproduction of the judgment would show that the Hon'ble Supreme Court of India has held that two Courts do not have concurrent jurisdiction to be treated as Principal Civil Court to decide the disputes between the parties arising out of an arbitral agreement. Hon'ble Supreme Court of India held that exclusive jurisdiction to decide the dispute arising out of the arbitral agreement between the parties will only be with the Principal Civil Court of the place, where the arbitral proceedings have been held between the parties in terms of their agreement which might be explicit or implicit and no two Courts can have the concurrent jurisdiction to decide the dispute between the parties arising out of the arbitral contract, even if, some part of the cause of action has accrued at a place other than the place where the arbitral proceedings have taken place between the parties in terms of the agreement entered into between them.

By applying the said principle of law in the present case, it is clear that the parties had undisputedly decided that the arbitration

proceedings will be held at Chandigarh and as a matter of fact all the arbitral proceedings were held at Chandigarh. That being so, applying the ratio of Hon'ble Supreme Court of India in **BGS SGS Soma JV's case (supra)** only the Principal Civil Judge at Chandigarh will have the jurisdiction to entertain the dispute arising out of the arbitral proceedings including the objections raised against the Arbitral Award. The contention being raised by the respondent-State that as the works were to be executed at Jalandhar, hence, the Court at Jalandhar will also have the jurisdiction on account of the fact that cause of action has accrued there, cannot be accepted in view of the settled principle of law noticed hereinbefore. For this purpose, the observations and the law laid down by the Hon'ble Supreme Court of India, paragraphs 97, 98, 99 and 100 of **BGS SGS Soma JV's case (supra)** are reproduced hereunder for the ready reference:-

97. Coming to the impugned judgment in the present appeals, it is clear that the reasoning followed stems from the subject-matter test that flows from the definition of 'court' in [Section 2\(1\)\(e\)\(i\)](#) of the Act. According to the impugned judgment, since the agreement was executed at Faridabad, part of the cause of action would arise at Faridabad, clothing Faridabad courts with jurisdiction for the purposes of filing a [Section 34](#) petition. The second part of the reasoning is that Faridabad is the place where the request for reference to arbitration was received, as a result of which part of the cause of action arose in Faridabad, which ousts the jurisdiction of Courts of New Delhi, in which no part of the cause of action arose.

98. We have extracted the arbitration agreement in the present case (as contained in Clause 67.3 of the

agreement between the parties) in paragraph 3 of this judgment. As per the arbitration agreement, in case a dispute was to arise with a foreign contractor, clause 67.3(ii) would apply. Under this sub-clause, a dispute which would amount to an ‘international commercial arbitration’ within the meaning of Section 2(1)(f) of the Arbitration Act, 1996, would have to be finally settled in accordance with the Arbitration Act, 1996 read with the UNCITRAL Arbitration Rules, and in case of any conflict, the [Arbitration Act](#), 1996 is to prevail (as an award made under Part I is considered a domestic award under [Section 2\(7\)](#) of the Arbitration Act, 1996 notwithstanding the fact that it is an award made in an international commercial arbitration). Applying the Shashoua principle delineated above, it is clear that if the dispute was with a foreign contractor under Clause 67.3 of the agreement, the fact that arbitration proceedings shall be held at New Delhi/Faridabad, India in sub-clause (vi) of Clause 67.3, would amount to the designation of either of these places as the “seat” of arbitration, as a supranational body of law is to be applied, namely, the UNCITRAL Arbitration Rules, in conjunction with the [Arbitration Act](#), 1996. As such arbitration would be an international commercial arbitration which would be decided in India, the [Arbitration Act](#), 1996 is to apply as well. There being no other contra indication in such a situation, either New Delhi or Faridabad, India is the designated “seat” under the agreement, and it is thereafter for the parties to choose as to in which of the two places the arbitration is finally to be held.

99. Given the fact that if there were a dispute between NHPC Ltd. and a foreign contractor, clause 67.3(vi) would have to be read as a clause

designating the “seat” of arbitration, the same must follow even when sub-clause (vi) is to be read with sub-clause (i) of Clause 67.3, where the dispute between NHPC Ltd. would be with an Indian Contractor. The arbitration clause in the present case states that “Arbitration Proceedings shall be held at New Delhi/Faridabad, India...”, thereby signifying that all the hearings, including the making of the award, are to take place at one of the stated places. Negatively speaking, the clause does not state that the venue is so that some, or all, of the hearings take place at the venue; neither does it use language such as “the Tribunal may meet”, or “may hear witnesses, experts or parties”. The expression “shall be held” also indicates that the so-called “venue” is really the “seat” of the arbitral proceedings. The dispute is to be settled in accordance with the [Arbitration Act](#), 1996 which, therefore, applies a national body of rules to the arbitration that is to be held either at New Delhi or Faridabad, given the fact that the present arbitration would be Indian and not international. It is clear, therefore, that even in such a scenario, New Delhi/Faridabad, India has been designated as the “seat” of the arbitration proceedings.

100. However, the fact that in all the three appeals before us the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, would lead to the conclusion that both parties have chosen New Delhi as the “seat” of arbitration under [Section 20\(1\)](#) of the Arbitration Act, 1996. This being the case, both parties have, therefore, chosen that the Courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the “seat”

has been chosen, which would then amount to an exclusive jurisdiction clause so far as Courts of the “seat” are concerned.”

Learned State counsel has not been able to controvert the law settled by the Hon'ble Supreme Court of India as noticed hereinbefore, that the Courts cannot assume the jurisdiction only on the basis of some cause of action accruing within their jurisdiction and only the Court having jurisdiction over the area where the parties have agreed to conduct the arbitration proceedings and the same were in fact conducted will have the exclusive jurisdiction. No law contrary to the above noticed principle of law has been cited in favour of the contention being raised to support the impugned orders. As per law, it is clear that the Principal Civil Court at Jalandhar will not have the jurisdiction to entertain the objection petitions filed by the respondent-State to the Awards dated 11.08.2015 and 22.01.2017 under Section 34 of the 1996 Act on the pretext that some cause of action had accrued within Jalandhar. That being so, the judgments dated 01.02.2019 deciding the objection petitions filed by the State of Punjab against the said Arbitral Awards by the Court at Jalandhar cannot be sustained and are accordingly set aside.

As the present appeals are being accepted on the ground of lack of jurisdiction of the Principal Civil Judge at Jalandhar to decide the objection petitions, the respondent-State cannot be left remediless in respect of the Awards dated 11.08.2015 and 22.01.2017 given by the Arbitrator. The objection petitions filed before the Principal Civil Court at Jalandhar were wrongly presented by the State of Punjab hence the same be returned

to the State of Punjab to be filed before the competent Court of law provided, the State of Punjab still wants to pursue the objections to the awards dated 11.08.2015 and 22.01.2017 even at this stage.

**April 08, 2021**  
*aarti/naresh.k*

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

*Whether speaking/reasoned : Yes/No*  
*Whether reportable : Yes/No*