

\$~7

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

+ **O.M.P.(I) (COMM.) 271/2021**

HENNA INDUSTRIES PVT. LTD

..... Petitioner

Through: Mr. Arvind Chaudhary,
Advocate

versus

RPS INFRASTRUCTURE LTD

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

JUDGEMENT (ORAL)

%

31.08.2021

(Video-Conferencing)

OMP(I) (COMM) 271/2021

1. The dispute between the parties in the present petition, preferred under Section 9 of the Arbitration and Conciliation Act, 1996 (“1996 Act”) arises out of 12 Memoranda of Understanding (MOU), all of which were executed on 18th January, 2018. The Arbitration Clause in all these Memoranda is identical, and reads thus:

“9. That all disputes or differences, if any, arising out of or in connection with this MOU shall be first attempted to be resolved through mutual negotiations between the parties, failing which the same shall be referred to the Sole Arbitrator, being appointed jointly by both the parties, for arbitration as per the provisions of Arbitration and Conciliation Act, 1996. The decision of the named Sole Arbitrator shall be final and binding upon the parties. The venue of such Arbitration proceedings shall be at Faridabad or as mutually decided by the parties.”

2. The only stipulated venue of arbitration is Faridabad. It is well

settled that, in the absence of any exclusive jurisdiction clause, conferring Section 9 jurisdiction on this Court, where a venue of arbitration is stipulated in the agreement between the parties, the petition under Section 9 would lie before the Court having territorial jurisdiction over such venue.

3. I myself had occasion to deal at length with similar issues and have held, clearly, that where a venue of arbitration is specifically stipulated in the agreement, the Section 11 proceedings would have to be moved before the Court having territorial jurisdiction over such venue and that, in such cases, the stipulated venue would be akin to a “seat” of arbitration. Even if the agreement contains a separate exclusive jurisdiction clause, the stipulation of a venue of arbitration would exclude the jurisdiction of the Court envisaged in the exclusive jurisdiction clause, unless the exclusive jurisdiction clause specifically confers exclusive jurisdiction *vis-à-vis* proceedings under Section 11 of the 1996 Act.¹ This principle would apply, equally, to proceedings under Section 9 of the 1996 Act.

4. Mr. Chaudhary, learned Counsel for the petitioner, relies on the words, “or as mutually decided by the parties”. This caveat, as contained in Clause 9 of the MOU, cannot, in my view, be of any assistance to the petitioner. There is no evidence of any mutual decision, between the parties, that the arbitration should take place within the territorial jurisdiction of this Court.

¹ Cars24 Services Pvt. Ltd. v. Cyber Approach Workspace MANU/DE/2017/2020; My Preferred Transformation and Hospitality Pvt. Ltd. v. Sumithra Inn MANU/DE/0019/2021; Larsen & Toubro v. Punatsangchhu-1 Hydroelectric Project Authority MANU/DE/2237/2020

5. Mr. Chaudhary submits that in the reply to the notice invoking arbitration, issued by his client, the respondent did not contest holding of the arbitral proceedings in Delhi. That, in my view, cannot amount to a “mutual decision by the parties” that the arbitral proceedings should be within the territorial jurisdiction of this Court.

6. Reserving liberty with the petitioner to move the appropriate forum, therefore, this petition is dismissed for want of territorial jurisdiction.

IA 10091/2021 (Section 151 CPC)

7. In view of the order passed in the petition, this application is disposed of.

C. HARI SHANKAR, J.

AUGUST 31, 2021

r.bararia