

\$~11(2021)

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

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Date of Decision: 06.12.2021

+ **ARB.P. 915/2021**

CRAVANTS MEDIA PRIVATE LIMITED Petitioner

Through Mr. Nitin Jain, Mr. Vishal
Chauhan, Mr. Rajesh Kumar,
Mr. K.P. Singh & Mr. Akshay
Mittal, Advs.

Versus

**JHARKHAND STATE CO OPERATIVE MILK
PRODUCERS FEDERATION LTD
AND ANR**

..... Respondents

Through Mr. Arvind Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereafter the 'A&C Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in connection with the Agreement dated 15.01.2018.

2. Respondent no.1 had floated a tender for availing media services relating to media support. Subsequently, on 28.11.2017, a Work Order [Work Order bearing No. JMF/171/2017] was issued by

the respondents in favour of the petitioner and the petitioner was appointed as the media agency to handle the brand buildings, creative developments and creative disseminations for a period of one year with effect from 01.12.2017. Thereafter, on 15.01.2018, the parties entered into a formal agreement captioned 'Service Agreement' (hereafter referred to as 'the Agreement'). The Agreement includes an Arbitration Clause that reads as under:

“16. Dispute Resolution and Governing Law

16.1 In case of any issue, dispute, controversy or claim between the Parties to the Agreement wherein Parties disagree on the interpretation of the other Party arising out of this Agreement, or any other document or, invalidity or termination Agreement executed in connection with this Agreement including the breach thereof, the issue will be first referred to the senior management of both the Parties for resolution who shall act as the negotiators/mediators and shall use all reasonable endeavors to negotiate with a view to resolving the dispute amicably. If the issue remains unresolved even after thirty (30) days after reference, the dispute would then be dealt with in accordance with Clause 16.2.

16.2 The arbitration of any dispute, controversy or claim shall be conducted by a single arbitrator selected by the Parties in accordance with the rules of the Indian Arbitration & Conciliation Act, 1996. The language of the arbitration shall be English. The venue of arbitration shall be

Ranchi. The cost of arbitration will be borne by the both Parties as directed by the arbitrator.

16.3 The Parties acknowledge that the immediate remedies at law may be sometimes inadequate, the Parties shall therefore be entitled to seek additional injunctive relief in the event of any material breach of this Agreement.

16.4 All remedies available to other Party under this Agreement are cumulative and may be exercised concurrently or separately, the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies; and the rights and remedies of the parties as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it at law or in equity.

16.5 This Agreement shall be interpreted and governed by the laws of India without regard to conflict of law provisions and any disputes arising out of this Agreement shall be subject to the sole and exclusive jurisdiction of courts of Delhi.”

3. The respondents do not dispute that the parties had entered into the said agreement or that the petitioner had invoked the Arbitration Clause (Clause 16 of the Agreement). However, the respondents have opposed the present petition on the ground that it is not maintainable as this Court does not have the jurisdiction to entertain the present petition.

4. Mr. Gupta, learned counsel appearing for the respondent relies on the decision of the Supreme Court in *Bharat Aluminium Company*

& Ors. v. Kaiser Aluminium Technical Services & Ors.: (2012) 9 SCC 552, in support of his contention that since the parties had agreed that Ranchi would be the place of arbitration, the High Court of Jharkhand would have the exclusive jurisdiction to entertain the present petition. He also referred to the decision of the Supreme Court in **BGS SGS Soma v. NHPC Ltd.: (2020) 4 SCC 234** and drew the attention of this Court to paragraph no. 82 of the said decision.

5. Mr. Jain, learned counsel appearing for the petitioner countered the aforesaid submission. He referred to the decision of a Coordinate Bench of this Court in **Isgec Heavy Engineering Ltd. v. Indian Oil Corporation Ltd. & Anr.: Arb.P 164 of 2021, decided on 21.10.2021** and contended that a plain reading of the said Arbitration Clause indicates that the parties had agreed that the venue of arbitration would be Ranchi, however, the Courts at Delhi would have the exclusive jurisdiction in respect of all matters relating to the Agreement and resolution of disputes. He submits that the language of Clause 16.2 of the Agreement is clear and does not refer to the seat of arbitration but only the venue for holding arbitration proceedings.

6. The Supreme Court has in several decisions has carved out the distinction between the venue of arbitration and the seat of arbitration. In **BGS SGS Soma Vs. NHPC Ltd. (supra)**, the Supreme Court had highlighted that where the parties have agreed to a place of arbitration, it is apparent that they have also agreed that the concerned courts having territorial jurisdiction where the arbitral proceedings are held, will have the jurisdiction in respect of the arbitral proceedings.

7. Paragraph 82 of the said decision reads as under:

“82. 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.”

8. There is no cavil that if arbitration clause indicates a place where the arbitral proceedings are to be held, it must be assumed that the parties have agreed that the courts exercising jurisdiction in respect of that place would also have jurisdiction in relation to the disputes between the parties. However, that does not in any manner disable the parties from agreeing to a venue where the arbitral proceedings would be held but at the same time agreeing that the seat of arbitration would be in another location. In the aforesaid context, the Supreme Court had also specified that the venue of arbitration would be accepted as the place of arbitration in absence of any contrary indicia.

9. In *Cinepolis India Pvt. Ltd. v. Celebration City Projects Pvt. Ltd. & Anr.*: (2020) 2 ArbLR 355 (Del), this Court dealt with the controversy regarding an Arbitration Clause which provided that the “place” of arbitration shall be New Delhi. However, one of the sub-clauses provided that the courts in Ghaziabad would have 'exclusive jurisdiction' on the subject matter of the agreement in question. This Court following the decision of the Constitution Bench of the Supreme Court in *Bharat Aluminum Company & Ors. v. Kaiser Aluminum Technical Services & Ors.* (*supra*) and *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. & Ors.*: (2017) 7 SCC 678, rejected the contention that it would not have the jurisdiction to entertain the petition.

10. Paragraph 31 of the said decision reads as under:

“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. 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."

11. The question whether the intention of the parties in specifying a location for arbitral proceedings is merely to fix a convenient 'venue' or a seat/place of arbitration has to be ascertained from the language of the arbitration agreement.

12. In the present case, Clause 16.5 of the Agreement expressly provides that if any disputes arise out of the Agreement, the same would be subject to the sole and exclusive jurisdiction of the Courts at Delhi. It is also necessary to note that Clause 16.5 is part of Article 16 of the Agreement, which is captioned "Disputes Resolution and Governing Law". Thus, Clause 16.2 and 16.5 of the Agreement are required to be read together to ascertain the intention of the parties.

13. Clause 16.2 of the Agreement uses the word "venue". This clearly indicates that the parties had agreed that the venue of the arbitration shall be Ranchi and not the place of arbitration. It is clear from a conjoint reading of the two clauses (Clause 16.2 and 16.5 of

the Agreement) that the parties had agreed that the venue of arbitration would be Ranchi but the court at Delhi would have the exclusive jurisdiction. Thus, Ranchi must be considered only as the venue of arbitration and not the place or seat of arbitration.

14. In ***Isgec Heavy Engineering Ltd. v. Indian Oil Corporation Ltd. & Anr.*** (*supra*), a Coordinate Bench of this Court had interpreted a similar clause where the parties had agreed that the venue of arbitration shall be New Delhi. However, in another clause the parties had agreed that all actions and proceedings arising out of or related to the contract shall lie only in the courts of competent jurisdiction at Guwahati. In the aforesaid context, the Court held that the clause of the agreement in question, which expressly provides that Courts at Guwahati would have exclusive jurisdiction was the contrary indicator within the exception as held by the Supreme Court in ***BGS SGS Soma v. NHPC Ltd.*** (*supra*).

15. On a plain reading of Article 16 of the Agreement, it is apparent that the parties had agreed that the venue of the arbitration would be Ranchi. However, that does not lead to the conclusion that the arbitration would be seated at Ranchi.

16. This Court is unable to accept that Clause 16.5 is only restricted to civil proceedings other than arbitration. The placement of the Clause 16.5 in Article 16 of the Agreement, which relates to “Dispute Resolution”, indicates to the contrary.

17. In view of the above, the contention that this Court does not have jurisdiction to entertain the present petition is rejected.

18. Since there is no dispute as to the existence of an arbitration

agreement and that the petitioner has invoked the same, this Court considers it apposite to allow the present petition.

19. Accordingly, Mr. H.S. Sharma, (Retired) District & Sessions Judge (Mobile No. 9910384647) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. This is subject to the learned Arbitrator furnishing his consent; making the necessary disclosure under Section 12(1) of the A&C Act; and not being ineligible under Section 12(5) of the A&C Act.

20. It is further directed, with the consent and at the instance of the parties, that the arbitration be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and in accordance with its Rules.

21. The parties are at liberty to approach the Coordinator, DIAC for further proceedings.

22. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

DECEMBER 6, 2021

‘gsr’

[Click here to check corrigendum, if any](#)