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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 13th December, 2021

+ **ARB.P. 1056/2021 & I.A. 15726/2021**

ARJUN SETHI

..... Petitioner

Through: Mr. Anvit Seemansh, Advocate.

versus

ALL ABOUT OUTDOOR PVT. LTD.

..... Respondent

Through: Mr. Sumeir Ahuja and Mr. Yajur
Bhalla, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA HYBRID MODE]

SANJEEV NARULA, J. (Oral):

1. The present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 [*hereinafter, “the Act”*] seeks appointment of a Sole Arbitrator for adjudication of disputes arising from/ in relation to a ‘Consultancy Agreement’ dated 9th April, 2018 [*hereinafter, “Agreement”*]. The said Agreement contains an arbitration clause, which is peculiarly worded and reads as follows:

“2. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non - contractual dispute disputes or claims) shall be governed by and construed in accordance with the Arbitration and Conciliation Act, 1996 and shall be referred to arbitration by a sole arbitrator and the venue of Arbitration will be at Gurugram in accordance therewith. In case the parties fail to mutually agree upon the appointment of a sole arbitrator within 30 (thirty) days from initiation of a

recommendation, **the sole arbitrator shall be appointed by the High Court of Delhi upon application by either party.** The language of arbitration will be English and the Arbitral award will be final and binding on the parties.”
[Emphasis supplied]

2. Mr. Sumeir Ahuja, counsel for the Respondent, does not dispute the existence of the arbitration agreement, however, opposes to the maintainability of the present petition – by contending that jurisdiction does not lie with the High Court of Delhi. He submits that since the arbitration clause specifically provides for the venue of arbitration at Gurugram, Haryana – it is akin to conferring exclusive jurisdiction to the Courts at Gurugram, and therefore, the jurisdiction of this Court is ousted.

3. He further argues that the Petitioner had filed a petition under Section 9 of the Act before the Gurugram District Court,¹ and in view of Section 42 of the Act, jurisdiction of this Court to entertain the present petition is barred.

4. Mr. Ahuja further submits that Clause 2 of the Agreement designates High Court of Delhi as the appointing court – in its administrative and not judicial capacity. Since the appointment of an Arbitrator under Section 11 is a judicial function, the territorial jurisdiction of this Court has to be governed by the seat of arbitration only, or in absence of such designated seat, the exclusive jurisdiction clause.

5. He also stresses that not only is the seat of arbitration designated as Gurugram, but also Clause 3 of the Agreement stipulates that the Courts in

¹ Being Arb. P. 96/2021 dated 27th July, 2021.

Gurugram shall have exclusive jurisdiction in all matters or disputes arising out of the said Agreement. The said clause reads as under:

“3. This Agreement shall be governed by and construed in accordance with the Indian laws. The competent courts in Gurugram shall have exclusive jurisdiction in all matters or disputes arising out of this Agreement.”

Thus, he submits that in view of the exclusive jurisdiction clause under the Agreement and the fact that seat of arbitration has been agreed as Gurugram, the jurisdiction for appointment of Arbitrator would only lie before the High Court of Punjab and Haryana. In support of his submissions, reliance is placed upon the judgments in **BGS SGS Soma JV v. NHPC Ltd.**,² **Kiran Singh and Ors. v. Chaman Paswan and Ors.**³ and **AAA Landmark Pvt. Ltd. v. M/s AKME Projects Pvt. Ltd.**⁴

6. *Per contra*, Mr. Anvit Seemansh, counsel for the Petitioner, submits that jurisdiction would lie before this Court in view of the doctrine of party autonomy – which is evident from the Clause itself. He submits that the proposition advanced by the Respondent that the parties have agreed to exclusive jurisdiction by agreeing upon the venue of arbitration is not disputed. The arbitration proceedings indeed have to be anchored at the Court of competent jurisdiction in terms of the Agreement between the parties *i.e.* at Gurugram. However, for appointment of the Arbitrator, since the parties have categorically and exclusively agreed that jurisdiction would lie only before the High Court of Delhi, this Court alone would be competent to entertain the present petition.

² 2019 SCC Online SC 1585.

³ AIR 1954 SC 340.

⁴ 2018 SCC OnLine Del 7586.

7. He further contends that for the appointment of an Arbitrator under Section 11 of the Act, Section 42 of the Act would have no applicability. Therefore, the concern of the Respondent that any further proceedings arising out of arbitration would also then lie before this Court, is without merit. In support of this contention, reliance is placed upon the judgements of this Court in *Cars24 Services Pvt Ltd. v. Cyber Approach Workspace LLP*⁵ and *Orix Leasing & Financial Services v. One97 Communications Limited*.⁶

8. The Court has heard the counsel for the parties. Indeed, the arbitration clause in the Agreement is unusual. The parties have agreed upon the venue of arbitration to be Gurugram, however, at the same time, they have specifically conferred jurisdiction for appointment of a Sole Arbitrator to the High Court of Delhi. Such incongruity in an identical clause, was noticed by this Court in *Cars24 Services (supra)* – wherein after examining several case laws, it was held that in view of an express agreement, the court which has been specifically agreed to be the appointing court would possess the territorial jurisdiction to entertain the present petition under section 11 of the Act. Thus, the court upheld party autonomy.

9. In the afore-noted case, there is no mention of filing of a petition under Section 9 of the Act, which perhaps could be a distinguishing – as herein indeed, the Petitioner had filed a petition under Section 9 of the Act seeking interim measure(s). However, this distinctive factor was considered in *Orix*

⁵ 2020 SCC OnLine Del 1720.

⁶ Arb. P. 637/2019 dated 23rd November, 2021.

Leasing (supra), but not found to be of any bearing on jurisdiction of the Court in light of a specified venue in the clause.

10. The Petitioner here, does not dispute that Section 42 of the Act would not apply to the present proceedings, and states that all arbitration proceedings arising out of the arbitration clause, would be amenable to the exclusive jurisdiction of the Courts in Gurugram. In these circumstances, with arbitration agreement being admitted, and no dispute between the parties regarding the venue, the Court does not find any justifiable reason to reject the petition, in light of the Agreement between the parties.

11. In view of the above, the present petition is allowed. Accordingly, Mr. Zoheb Hussain, Advocate [Contact No.: +91-9999711099] is appointed as the Sole Arbitrator to adjudicate the disputes that are stated to have arisen between the parties out of 'Consultancy Agreement' dated 9th April, 2018.

12. The parties are directed to appear before the Sole Arbitrator as and when notified. This is subject to the Arbitrator making necessary disclosures under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

13. The Arbitrator will be entitled to charge his fee in terms of the provisions of the Fourth Schedule appended to the Act.

14. It is clarified that the Court has not examined any of the claims of the parties and all rights and contentions on merits are left open. Both the parties

shall be free to raise their claims/ counter-claims before the Arbitrator in accordance with law.

15. Accordingly, the present petition is allowed and the pending application is also disposed of.

SANJEEV NARULA, J

DECEMBER 13, 2021

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