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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 27th July, 2022

+ ARB.P. 501/2020
VAIBHAV RAHEJA

..... Petitioner

Through: Mr. H.L. Tiku, Senior Advocate with
Ms. Yashmeet, Advocate.

versus

SHUTHAM ELECTRIC LIMITED & ANR Respondents

Through: Mr. Arunava Mukherjee, Advocate
for R-1.

CORAM:**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI****J U D G M E N T****(Judgment released on 01.08.2022)****ANUP JAIRAM BHAMBHANI J. (ORAL)**

By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act' for short), the petitioner seeks appointment of an arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondents from Loan Agreement dated 14.07.2013.

2. Notice on this petition was issued on 22.10.2020; consequent to which respondent No. 1 has filed its reply dated 11.01.2021 to the petition.
3. Order dated 28.02.2022 of the learned Joint Registrar records that as per affidavit of service dated 28.02.2022, the notice issued to respondent No. 2 on his first address was received back with a 'refusal



report'. Report dated 06.05.2022 submitted by the office of the Civil Judge, Senior Division, Pune records that respondent No. 2 has been served.

4. In view of the above this court is satisfied that respondent No. 2 stands duly served; but has chosen to neither appear nor has he filed any reply the present petition.
5. In view of the above this court proceeds to decide the present petition on the basis of the objections raised in reply dated 11.01.2021 filed by respondent No. 1, setting respondent No. 2 *ex-parte*.
6. The essential objection raised by Mr. Arunava Mukherjee, learned counsel appearing for respondent No. 1, as also contained in paras 4 and 5 of its reply, is that in terms of clause 13.1 of the Loan Agreement the courts of law at Mumbai have exclusive jurisdiction in relation to enforcement of the agreement. Counsel accordingly submits, that this court has no territorial jurisdiction to entertain or decide the present petition.
7. On the other hand Mr. H.L. Tiku, learned senior counsel appearing for the petitioner submits, that as is evident from the wording of clause 13.1 itself, the territorial jurisdiction of the courts in Mumbai is “ ... *subject to Clause 13.3* ... ” of the loan agreement, which latter provision contains the arbitration agreement between the parties and stipulates the ‘venue’ of arbitration to be at New Delhi.
8. In the circumstances, Mr. Tiku submits that for purposes of the supervisory jurisdiction of court in relation to arbitration proceedings, this court would have territorial jurisdiction to decide the present petition.



9. Mr. Tiku further points-out that in compliance with the procedure contemplated in clause 13.3 of the loan agreement, *vidé* invocation notice dated 18.11.2019 the petitioner nominated its arbitrator; but the respondents failed to name their nominee arbitrator on the 3-member tribunal contemplated in the arbitration agreement. It is submitted that thereby, the respondents have now forfeited their right to have a nominee arbitrator on the tribunal. Accordingly, it is prayed that this court may now nominate a sole arbitrator in the matter, especially since the quantum in dispute does not justify the cost and expense that a 3-member arbitral tribunal would entail.
10. In the opinion of this court, the objection raised by learned counsel for the respondent stands squarely answered by the decision of the Hon'ble Supreme Court in **BGS SGS SOMA JV vs. NHPC** reported as (2020) 4 SCC 234, where the Hon'ble Supreme Court has expressly held that :

“61.It will just 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.”

(para 61 of SCC report)

11. It would also be beneficial to refer to the decision of a Division Bench of the Bombay High Court in **Aniket SA Investments LLC, Mauritius vs. Janapriya Engineers Syndicate Pvt Ltd., Hyderabad & Ors** reported as 2021 (4) Mh.L.J., wherein the court was faced with a similar situation as in the present case. In that matter, the agreement in question contained two separate clauses *i.e.*, a general jurisdiction



clause which was ‘*subject to*’ the arbitration clause; and both clauses referred to different ‘places’ in the context of disputes arising from the agreement. In this backdrop, the Bombay High Court held that the phrase ‘subject to’ was to be understood in contradistinction to the phrase ‘notwithstanding’; and that therefore, the ‘venue’ mentioned in the arbitration clause would be the clause conferring jurisdiction for purposes of arbitration proceedings.

12. In view of the foregoing precedents, this court is of the view that the reference to jurisdictional territory embedded in the arbitration clause would prevail over that referred to in the general jurisdiction clause; and accordingly courts in Delhi would have territorial jurisdiction to entertain and decide the present petition.
13. Upon a conspectus of the averments contained in the petition, the stand taken by the respondent and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties as set-out *inter-alia* in demand-cum-notice dated 18.11.2019 do not appear *ex-facie* to be non-arbitrable.
14. Accordingly, the present petition is allowed; and Hon'ble Mr. Justice Manmohan Singh, former Judge of the Delhi High Court (Cellphone No. : +919717495001) is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties.
15. The learned Sole Arbitrator may proceed with the arbitral proceedings, subject to furnishing to the parties requisite disclosures



as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

16. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
17. Parties shall share the arbitrator's fee and arbitral costs, equally.
18. All rights and contentions of the parties, in relation to their claims/counter-claims are left open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
19. Parties are directed to approach the learned Sole Arbitrator appointed within 10 days.
20. The petition stands disposed of in the above terms.
21. Other pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

JULY 27, 2022

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