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

+ ARB.P. 1019/2021 & I.A. 13408/2021

HUNCH CIRCLE PRIVATE LIMITED Petitioner
Through: Mr. Preet Pal Singh, Mr.
Sameer Chaudhary, Mr. Siddharth Tandon
and Mr. Aaryan Sharma, Advs.

versus

FUTURETIMES TECHNOLOGY INDIA PVT LTD
..... Respondent
Through:

+ ARB.P. 1024/2021 & I.A. 13443/2021

HUNCH CIRCLE PRIVATE LIMITED Petitioner
Through: Mr. Preet Pal Singh, Mr.
Sameer Chaudhary, Mr. Siddharth Tandon
and Mr. Aaryan Sharma, Advs.

versus

GLOBEMAX COMMERCE INDIA PVT LTD Respondent
Through

+ ARB.P. 1025/2021 & I.A. 13444/2021

HUNCH CIRCLE PRIVATE LIMITED Petitioner
Through Mr. Preet Pal Singh, Mr.
Sameer Chaudhary, Mr. Siddharth Tandon
and Mr. Aaryan Sharma, Advs.

versus

FUTURETIMES TECHNOLOGY INDIA PVT LTD
..... Respondent
Through



+ ARB.P. 1026/2021 & I.A. 13445/2021

HUNCH CIRCLE PRIVATE LIMITED Petitioner
Through Mr. Preet Pal Singh, Mr.
Sameer Chaudhary, Mr. Siddharth Tandon
and Mr. Aaryan Sharma, Advs.

versus

FUTURETIMES TECHNOLOGY INDIA PVT LTD
..... Respondent
Through

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

02.02.2022

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(By Video Conference on account of COVID-19)

1. These petitions have been preferred under Section 11(6) of The Arbitration and Conciliation Act, 1996 (“the 1996 Act”), seeking reference of the disputes between the parties to arbitration.

2. The contract between the petitioner and the respondent, whereunder reference to arbitration is sought, contains, *inter alia*, the following Clauses:

“8.1. Governing Law

This Agreement and the transactions contemplated hereby shall be governed by and construed under the Laws of India without regard to conflicts of Laws provisions. Subject to resolution of disputes by arbitration, courts at the place where the Main Premises is located will have exclusive supervisory jurisdiction over matters arising out of this Agreement, especially for granting interim relief and enforcing arbitral awards.



8.2. Arbitration

Any dispute, controversy or claim arising out of or in relation to this Agreement, or at Law, or the breach, termination or invalidity of this Agreement, that cannot be settled amicably by agreement of the Parties to this Agreement shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 (as amended from time to time). by one arbitrator mutually appointed by the Parties. The seat of arbitration shall be Delhi, India and the venue of arbitration shall be India.”

3. Clause 8.1, thus, confers exclusive jurisdiction over matters arising out of the agreement “especially for granting interim relief and enforcement of arbitral awards” on courts at the place where the main premises of the petitioner is located. Admittedly, the main premises of the petitioner are located at Gurgaon.

4. Clause 8.2, on the other hand, fixes the seat of arbitration at Delhi and the venue of arbitration as India.

5. While, ordinarily, a court having jurisdiction over the seat of arbitration, fixed by contract, would be competent to exercise jurisdiction under Sections 9, 11 and 34 of the 1996 Act, this Court has, in its judgment in *Cars24 Services Pvt. Ltd. v. Cyber Approach Workspace LLP*¹, following the judgment of the Supreme Court in *Mankastu Impex Pvt. Ltd. v. Airvisual Ltd.*², taken the view that, where the exclusive jurisdiction clause confers exclusive jurisdiction in respect of arbitral proceedings on a court located elsewhere, the

¹ MANU/DE/2071/2020

² (2020) 5 SCC 399



Section 11 petition would have to be filed in the High Court having jurisdiction over that place. For ready reference, the relevant passages from the judgment of this Court in *Cars24 Services*¹ may be reproduced thus:

“49 . The issue before the Supreme Court was with respect to the courts having jurisdiction to entertain a Section 11 petition, as in the present case. The Supreme Court held that the fixing of Hong Kong as the "place of arbitration" resulted ipso facto in Hong Kong becoming the "seat of arbitration". On the attention of the Supreme Court being invited to Clause 17.1, which conferred jurisdiction on courts at New Delhi, in respect of the MOU, the Supreme Court observed, in paras 25 and 27 of the report, thus:....;

50. As such, the Supreme Court held that once the seat of arbitration has been fixed as Hong Kong, if exclusive jurisdiction, for obtaining interim relief, was required to be vested in courts at New Delhi, the agreement had necessarily to specifically so state. It was for this reason, opined the Supreme Court, that Clause 7.3 had been particularly inserted in the agreement which, apart from the exclusive jurisdiction clause i.e. Clause 7.1, specifically provided for recourse to courts at New Delhi, for obtaining interim relief. That clause, according to the Supreme Court, however, could be of no assistance in determining the controversy before it, as the Supreme Court was concerned not with an application under Section 9, but with an application for appointment of an arbitrator under Section 11. Exclusive jurisdiction to seek recourse to courts at New Delhi having been contractually restricted to applications for obtaining interim relief, the Supreme Court held that the locus of the court possessing Section 11 jurisdiction would have to be determined on the basis of the contractually fixed seat of arbitration i.e. Hong Kong.

55. Where, therefore, the seat of arbitration is at place X, and exclusive jurisdiction over the subject matter of the suit is conferred on courts at place Y, a petition under Section 11 would unquestionably lie before the courts at place X. *The*



present case, however, is different, as the exclusive jurisdiction conferred by the arbitration agreement is not in respect of the subject matter of the suit but specifically for appointment of an arbitrator. It would be doing violence to the said clause, therefore, if this Court were to treat the exclusive jurisdiction clause as limited to the subject matter of the suit, and exercise Section 11 jurisdiction contrary to the mandate thereof.

56. It is trite that a court cannot re-write a contract between the parties. *Where the contract between the parties, as in the present case, confers exclusive jurisdiction, for appointment of an arbitrator, on courts at Haryana, any petition, under Section 11, would have to be preferred before the High Court of Punjab and Haryana, and not before this Court.* There is no decision, to which my attention has been invited, which persuades me to take a different view.

59. This is the position which, according to me, emanates from ***Mankastu Impex Pvt. Ltd²*** and which, necessarily, must follow in the present case as well. Once the contract between the parties has fixed Courts at Haryana, as having jurisdiction to appoint the arbitrator, any such application under Section 11 of the 1996 Act, has necessarily to be preferred before the High Court of Punjab and Haryana and not before this Court. In view of such a particular and specific contractual dispensation, which reflects the intent of the parties and which the court cannot rewrite¹, I am of the opinion that the stipulation, in the Lease Deed, that the place of arbitration is New Delhi, cannot confer Section 11 jurisdiction on this Court.”

(Emphasis supplied)

6. Clause 8.1 ordains that courts located at Gurgaon would have exclusive supervisory jurisdiction “especially for granting interim relief and enforcing arbitral awards”. Thus, Sections 9 and Section 34 jurisdiction have, *per contract*, been invested in courts at Gurgaon. That being so, Section 11 jurisdiction would necessarily lie with the



High Court of Punjab and Haryana, which exercises jurisdiction over Gurgaon, and not with this Court, despite fixation of the seat or arbitration at Delhi. Else, a piquant situation would arise in which Section 11 jurisdiction would be exercised by this Court and Section 9 and Section 34 jurisdiction would be exercised by courts at Gurgaon.

7. Such a position would also be discordant with Section 42 of the 1996 Act, which reads thus:

“42. Jurisdiction – Notwithstanding anything contained elsewhere in this Part or in 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 a 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 in no other Court.”

8. Mr. Singh invites my attention, at this point, to Clause 9.7 of the contract, which reads as under:

“9.7. Severable Provisions

Each provision of this Agreement shall be considered separable. To the extent that any provision of this Agreement is prohibited, this Agreement shall be considered amended to the smallest degree possible in order to make the Agreement effective under applicable law.”

9. It is plain that Clause 9.7 has no application to the present dispute at all. Clause 8 is a consolidated and self-contained clause relating to arbitration and Clauses 8.1 and 8.2 form part thereof.

10. It would be completely opposed to the very structure of the 1996 Act for this Court to interpret Clauses 8.1 and 8.2 of the contract



as conferring jurisdiction on courts located at two different places, by invoking Clause 9.7. As such, I am not convinced that Clause 9.7 is at all relevant to the issue in controversy in these proceedings.

11. On the last date of hearing, this position had been put to Mr. Preet Pal Singh, learned Counsel for the petitioner, and a specific order to that effect had also been passed.

12. Mr. Singh submits, today, that he has not come across any decision which directly addresses a situation similar to that which obtains in the present case.

13. In view thereof, following my decision in *Cars24 Services*¹, which in turn follows the judgment of the Supreme Court in *Mankastu Impex Pvt. Ltd*², I am of the opinion that territorial jurisdiction, for the present petitions, would vest with the High Court of Punjab and Haryana.

14. Accordingly, these petitions are dismissed for want of territorial jurisdiction, reserving liberty with the petitioner to approach the competent forum for relief.

15. There shall be no order as to costs.

C. HARI SHANKAR, J.

FEBRUARY 2, 2022/dsn