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

Date of decision: 09th November 2022

+ ARB.P. 706/2020

MRS. MEENAKSHI NEHRA BHAT & ANR. Petitioners

Through: Mr. Navdeep Singh, Advocate.

versus

WAVE MEGACITY CENTRE PRIVATE LIMITED Respondent

Through: Mr. Aman Nandrajog with
Mr. Abhishek Lalwani, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act' for short), the petitioners seek appointment of an arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Retail Space Allottees Arrangement dated 08.10.2014.

2. Mr. Navdeep Singh, learned counsel for the petitioners has drawn the attention of this court to clause 13 of the agreement which comprises the arbitration agreement between the parties; and contemplates reference of disputes between them to arbitration in accordance with the A&C Act.
3. Considering the somewhat discordant note in the arbitration clause contained in the agreement, the provision is extracted herein-below *in-extenso*:

"13. ARBITRATION

*All or any dispute arising out of or touching upon or in relation to the terms of the Application Form/this Arrangement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration. The Arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996, or any statutory amendments, modifications thereof the time being in force, **The Arbitration Proceedings shall be held at the Corporate Office of the "Developer" alone in New Delhi by a Sole Arbitrator** who shall be appointed by the "Developer", or any person nominated by it. The Allottee(s) hereby confirms that he shall have no objection to this appointment, nor will they challenge the same on the ground that Sole Arbitrator is Developer's nominee. However, the "Developer" assures the Allottee(s) that such Arbitrator shall be independent and impartial, who will not have any concern with the outcome of the case or Award passed by the Sole Arbitrator. **The Arbitration proceeding shall be held at New Delhi and the Courts at Gautam Budh Nagar, Uttar Pradesh shall, to the specific exclusion of all other courts, alone have the exclusive jurisdiction in all matters arising out of/or concerning the Application Form / this Arrangement, regardless of the place of execution of this Arrangement. This will be without prejudice to the territorial and statutory jurisdiction of Allahabad High Court.**"*

(emphasis supplied)

4. For completeness, it may be recorded that a separate clause 14, titled 'Applicable Laws and Jurisdiction' is also contained in the agreement, which it is also necessary to notice, and which reads as follows :

APPLICABLE LAWS AND JURISDICTION

"All agreements between parties shall be construed, interpreted and applied in accordance with and shall be governed by the Laws of India".

5. As per the record, the petitioners invoked arbitration *vide* Notice dated 08.01.2020; to which the respondent sent reply dated 05.02.2020; whereafter further communications were also exchanged between the parties.
6. Notice on this petition was issued on 04.12.2020; in response to which the respondent filed reply dated 17.02.2021. Rejoinder dated 05.07.2021 to the reply has also been filed by the petitioners. Both parties have also filed their written submissions in the matter to supplement the oral arguments made.
7. While the principal contention raised by learned counsel for the petitioners is that since the agreement contains an arbitration clause, which clause specifies that arbitration proceedings are to be conducted at a 'venue' in New Delhi, therefore this court should entertain, decide and allow the present petition.
8. On the other hand, the primary objection raised on behalf of the respondent is that on a plain reading of the arbitration clause, the present petition ought to have been filed before the Allahabad High Court since the arbitration clause specifies that the Allahabad High Court will have "territorial and statutory" jurisdiction over the agreement; and therefore this court cannot exercise territorial jurisdiction and ought not to entertain the present petition, in the first place.
9. Mr Aman Nandrajog, learned counsel appearing for the respondent submits, that though the arbitration clause states that the arbitration proceedings " ... shall be held at New Delhi. ", and even proceeds to

specify the address at which such proceedings will be held, viz. “ ... *at the Corporate Office of the “Developer” alone in New Delhi ...* ” that merely indicates the geographical location for arbitration sittings, as contemplated in section 20(3) of the A&C Act and nothing more. It is submitted that there are clear *contrary signifying indicia* in this case, since the arbitration agreement expressly designates that the courts at Gautam Budh Nagar would have exclusive jurisdiction in all matters arising out of the “*Arrangement*” regardless of the place where it may have been executed; and further, that the general territorial and statutory jurisdiction in relation to the transaction comprised in the agreement is reserved for the Allahabad High Court. It is argued that since a section 11 petition seeking appointment of an arbitrator (where it is not an international commercial arbitration) can only be filed before a High Court, it is the Allahabad High Court which would have territorial jurisdiction in relation to this petition.

10. In support of his contention, Mr. Nandrajog has cited the following precedents : ***BGS SGS Soma JV vs. NHPC Ltd.***,¹ ***Mankastu Impex Pvt Ltd vs. Airvisual Ltd.***,² ***Virgo Softech Ltd. vs. National Institute of Electronics and Information Technology***,³ ***ISGEC Heavy Engineering Ltd. vs. Indian Oil Corporation Ltd.***⁴, ***Cravants Media Pvt. Ltd vs. Jharkhand State Co-operative Milk Producers***

¹ (2020) 4 SCC 234
² (2020) 5 SCC 399
³ 2022 SCC OnLine Del 2441
⁴ 2021 SCC OnLine Del 4748

*Federation Ltd. & Anr.*⁵ and *Kush Raj Bhatia vs. M/s. DLF Power And Services Ltd.*⁶

11. Rejoining to the objection so raised, Mr. Singh has urged that this court would have territorial jurisdiction since by designating the ‘venue’ where arbitration proceedings are to be held, the parties have also thereby designated the ‘seat’ of arbitration, which would override the general territorial jurisdiction, if any, vesting in the courts at Gautam Budh Nagar or in the Allahabad High Court, in so far as arbitration proceedings are concerned.
12. That apart, Mr. Singh also submits that payments in relation to the transaction comprised in the arrangement were made from Delhi; and the *respondent’s registered office* is also situate at New Delhi. It is contended that all the terms of the agreement should *not* be held binding on the petitioners, since the petitioners were made to sign the contract framed by the respondent company, with no bargaining power nor any scope for discussion in the petitioners’ hands.
13. In support of his contentions, Mr. Singh has cited the following judgments: *Cinepolis India Pvt Ltd vs. Celebration City Projects Pvt. Ltd.*,⁷ and *Ireo Grace Realtech P Ltd vs. Abhishek Khanna*⁸.
14. Upon a conspectus of the averments contained in the petition and in the reply; and based upon the submissions made, in the opinion of this court, the following inferences arise:

⁵ 2021 SCC OnLine Del 5350

⁶ 2022 SCC OnLine Del 3309

⁷ 2020 SCC OnLine Del 301

⁸ (2021) 3 SCC 241

- 14.1 The evident discordance in the arbitration clause as regards territorial jurisdiction for purposes of arbitration and for purposes of general civil proceedings, is resolved by de-constructing the clause itself. It is noticed that nowhere in the arbitration clause are the words ‘venue’ or ‘seat’ used at all. What the parties have said, and agreed to in the arbitration clause, is that the arbitration proceedings shall be ‘held’ at the corporate office of the respondent at New Delhi. The agreement to hold arbitral proceedings at a given office is an indication *only of the location* where such arbitration sittings shall be conducted;
- 14.2 Though the arbitration clause could, no doubt, have been worded with more clarity, the absence of neat wording does not mean that the court can re-write the clause by inserting words that do not exist in it, or by ignoring some other part of it. In such circumstances, what the court must do, is to bear in mind the legal distinction between ‘venue’ and ‘seat’ of arbitration, and the further distinction with “*territorial jurisdiction*” generally in relation to civil proceedings other than arbitration, as settled by various precedents; and then read the arbitration clause to give the clause its plain, simple and straightforward meaning, while not effacing the territorial jurisdiction clause contained in the same agreement;
- 14.3 Though, as noted above, multiple judicial precedents have been cited by both sides, this court is persuaded to follow the interpretation given to a very similarly worded arbitration

clause in a recent decision of a Co-ordinate Bench of this court in *Kush Raj Bhati* (supra), where the court was dealing with an arbitration clause which read as follows :

“48. All or any dispute arising out of touching upon or in relation to the terms of the Lease Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act 1996 or any statutory amendments/modifications thereto for the time being in force. The arbitration proceedings shall be held at an appropriate location in New Delhi by a Sole Arbitrator who shall be appointed by the Lessee and whose decision shall be final and binding upon Lessor. The Lessor hereby confirms that it shall have no objection to this appointment even if the person so appointed, as the Arbitrator, is an employee or Advocate of the Lessee or is otherwise connected to the Lessee and the Lessor confirms that notwithstanding such relationship/connection, the Lessor shall have no doubts as to the independence or impartiality of the said Arbitrator.”

“49. That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction.”

(emphasis supplied)

In the above case, after referring to the extant legal position, and in view of the contraindication in the agreement whereby the ‘venue’ of arbitration, viz. the place where the arbitration proceedings were agreed to be held, was New Delhi, but the ‘seat’ of arbitration would lie within the territorial jurisdiction of the civil courts at Gurgaon and the High Court of Punjab & Haryana at Chandigarh, the Co-ordinate Bench declined to

entertain the arbitration petition for lack of territorial jurisdiction.

- 14.4 The arbitration clause in the present case is similarly worded, and therefore, in the opinion of this court, New Delhi is referred to in that clause *only* as the location for conducting arbitral proceedings. However, from the jurisdictional perspective, the parties have expressly agreed to territorial jurisdiction vesting in the courts at Gautam Buddh Nagar, Uttar Pradesh and the Allahabad High Court, as may be applicable, depending on the proceedings in question.
15. Accordingly, it is held that this court does not have territorial jurisdiction to entertain or decide the present petition.
16. The petition is accordingly dismissed for lack of territorial jurisdiction, granting liberty to the parties to approach the courts of competent jurisdiction in relation to the relief sought, in accordance with law.
17. Other pending applications, if any, also stands disposed of.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 09, 2022/uj