



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

% **Pronounced on: 04.07.2023**

+ **ARB. P. 847/2022**

SAMSUNG INDIA ELECTRONICS PVT. LTD.

Samsung India Electronics Pvt. Ltd
Part of the ground floor and 1st to 9th floor,
Building 11, CandorTechspace, Plot No. 20-21,
Sector 135, Noida, Uttar Pradesh 201 304

..... Petitioner

Through: Mr. Aseem Chaturvedi and Ms.
Abhipriya, Advocates.

versus

ENN ENN CORP LIMITED

CTS NO. 322/322/1, BS Deoshi Marg
Near US Vitamin Factory, Deonar,
Mumbai-400 053

.....Respondent

Through: Mr. Satendra K. Rai, Advocate.

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "A & C Act"*) has been filed on behalf of the Petitioner seeking appointment of a Sole Arbitrator for adjudication of disputes between the parties.

2. The Petitioner a globally recognised Company as an Industry leader in technology, entered into the Sub-Lease Deed on 31.10.2020 with the respondent, a public incorporated Company engaged inter alia, in the business of real estate, whereby the respondent agreed to sub-lease the Ground to 10th Floor of the property situated at Tower D, Logix Cyber



Park, C-28 and 29, Sector-62, Noida - 201 301 ("Property") for a period of 05 (Five) years w.e.f. 1.11.2020 to 31.10.2025 on a monthly rent of INR 1,50,03,452 (Rupees One Crore Fifty Lakhs Three Thousand Four Hundred Fifty-Two only) @ Rs.46/- per sq. ft.

3. In terms of Clause 4.1 of the Sub-Lease Deed, the petitioner had deposited an Interest Free Refundable Security Deposit (IFRSD) of INR 9,00,20,712 (Rupees Nine Crores Twenty Thousand Seven Hundred Twelve only) at the time of signing of Lease Deed with the respondent.

4. The petitioner Vide email dated 30.11.2021 gave the requisite written notice period of 3 months in terms of Clause 11 of the Agreement, to terminate the Sub-Lease Agreement and also stated that the premises would be vacated and the possession of property shall be handed over to the Lessor/respondent by 28th February, 2022. The notice of Termination was duly acknowledged and confirmed by the respondent vide return email dated 13 December 2021.

5. **It is submitted by the Petitioner that** it has been in occupation of the property for over a decade from the time it was under the ownership of the respondent's predecessor and stated that the property was maintained in excellent condition barring the natural wear and tear, for which even the Sub-Lease Deed provided leeway.

6. Further, the petitioner made a reference to the Agreement between the parties to retain the furniture and fixtures in the lease premises. However, in view of putting dispute to rest, the petitioner stated that they would get the fixtures removed and urged the respondent to refund the Security Deposit. Despite this offer, the respondent refused to return the Security Deposit by illegally retaining the Security Deposit against the



payment of the purported rent and charges beyond the date of handover of the premises. Consequently, disputes have arisen between the parties with respect to the refund of security deposit.

7. Accordingly, the petitioner sent a Notice for Invocation of Arbitration dated 17.06.2022 in terms of Arbitration Clause 14 of Sub-lease Deed dated 31.10.2020 and nominated a former Judge of this Court as the Sole Arbitrator. However, the respondent *vide* its E-mail dated 20.06.2022 and a detailed Reply dated 28.06.2022 did not consent to the name of the Sole Arbitrator.

8. The petitioner then sent a Letter dated 05.07.2022 seeking the consent of the respondent for the appointment of the named Sole Arbitrator, in response to which the respondent suggested the name of another Sole Arbitrator. There was no consent on the name of the Arbitrator, therefore, the present petition u/s 11 of the A&C Act has been preferred for appointment of the Arbitrator.

9. The **respondent in its Reply** has taken the objection that this Court has no jurisdiction as no part of the cause of action in arose within the territorial jurisdiction of this Court. The dispute pertained to payment of lease rent for immovable property situated in Noida, Uttar Pradesh i.e., Ground to 10th Floors of the Tower D, Logix Cyber Park, C-28 and 29, Sector-62, Noida-201301. The Sub-lease Deed was executed and registered in Noida, Uttar Pradesh. The respondent has its registered office in Mumbai, Maharashtra and principal place of business in Noida, Uttar Pradesh.

10. It is claimed that New Delhi was only the venue for conducting the arbitration proceedings. It cannot be construed as the seat of arbitration.



Clause 14 of the Sub-lease Agreement merely states that “*arbitration will be conducted at New Delhi*”, thus, making New Delhi a venue for arbitration and it does not vest this Court with jurisdiction.

11. The respondent has contended that the court cannot consider any fact which is beyond the pleadings of the parties for which reliance has been placed on the case of Kalyan Singh Chouhan vs C.P. Joshi, (2011) 11 SCC 786, and Bachhaj Nahar vs Nilima Mandal and Anr, (2008) 17 SCC 491.

12. Further, the respondent has asserted that Sections 16 to 19 and 21 of the Code of Civil Procedure, 1906 shall be applicable for the determination of jurisdiction in respect of immovable property, as held in the case of Rehmania Academy of Sciences, Mathura vs B.B.D. Bhargava & Ors 2011 SCC OnLine Del 1232 and M/s Ravi Ranjan Developers Pvt. Ltd. v Aditya Kumar Chatterjee (2022) SCC OnLine SC 568 ("Ravi Ranjan Developers").

13. The respondent has submitted that the present Petition can only lie before the High Court of Allahabad.

14. **The petitioner in its Rejoinder** has submitted that as per Clause 14 of the Sub-Lease Deed, the parties had agreed to confer exclusive jurisdiction onto the courts at New Delhi. As per the observations of various courts, the parties in commercial parlance use ‘venue’ and ‘seat’ interchangeably and the true intent of whether the reference to the “*place*” was meant to be “seat” or “venue”, has to be derived from a reading of the Agreement. It is submitted that the clause provides for arbitration to be “conducted at New Delhi” which is an all-encompassing term as opposed to usage of words indicating New Delhi to be merely the venue, place or



location of arbitration. Thus, by agreeing to conduct the proceedings at New Delhi, the parties had consciously chosen New Delhi to be the seat of the arbitration. The Ld. Counsel for the petitioner has placed reliance is placed on the case of BGS SGS Soma JV v. NHPC Limited (2020) 4 SCC 234; Kush Raj Bhatia v. M/s DLF Power and Services Limited (2022) SCC OnLine Del 3309.

15. The petitioner has referred to earlier the Sub-Lease Agreement entered into with the previous owner, to point out that the Sub-Lease dated 31.10.2020 was modified when the parties entered into the present Sub Lease Deed to provide for arbitration at New Delhi which clearly indicates the intent of the parties was to confer exclusive jurisdiction to the courts of New Delhi.

16. The petitioner has submitted that the provisions of Code of Civil Procedure, 1906 do not apply to arbitral proceedings as per Section 19 of A&C Act, 1996. Moreover, Section 20 of the A&C Act gives the parties a freedom to choose the place of arbitration, which includes the seat and the venue.

17. The Respondent's objection regarding the jurisdiction of this court is thus, frivolous.

18. The Learned Counsel for the Petitioner during their arguments, has placed reliance on Omega Finvest LLP vs Direct News Private Limited (2022) SCC OnLine Del 3418, Sikka Motors Pct. Limited vs Hyundai Motor India Ltd (2022) SCC OnLine Del 1187, Brahmani River Pellets Limited v Kamachi Industries Limited (2020) 5 SCC 462 and Indus Mobile Distribution Private Limited vs Datawind Innovations Private Limited &Ors. (2017) 7 SCC 678 in support of the above arguments to



contend that the courts in New Delhi has jurisdiction to appoint the sole arbitration.

19. **Submissions heard.**

20. Essentially, the only objection to the appointment of the arbitrator taken by the Respondent is that this Court lacks territorial jurisdiction to entertain the petition under Section 11 of the A & C Act. as New Delhi was agreed to be the *venue* and not the *seat* of Arbitration.

21. To get the right perspective about jurisdiction, it would be pertinent to reproduce Clause 14 of the Sub-lease Agreement which provides for Arbitration, reads as under:

"14. Arbitration:

All disputes and differences whatsoever between the Parties arising under or relating to this Sub Lease Deed shall be referred to a sole arbitrator to be appointed jointly by the Sub-Lessee and Sub-Lessor. The arbitration will be conducted at New Delhi in English language in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof".

22. **The first aspect** which needs to be delved upon is the distinction between the '*seat*' and '*venue*'. The Arbitration Law envisages two jurisdictions; *one* is the "*place*" where the arbitration may be conducted keeping the convenience of the parties in mind, and the other is the "*seat*" which determines the jurisdiction of the Courts where the parties may agitate any controversy arising out of the Arbitration.

23. Much controversy over a period of time has arisen in regard to the concept of '*seat*' and '*venue*' as the Act does not define the term '*Seat*' or



‘Venue’. The term ‘Seat’ is of utmost importance as it connotes the situs of arbitration. The term ‘Venue’ though often confused with the term ‘Seat’, is a place chosen as convenient location by the parties to carry out the arbitration proceedings, but it should not be confused with ‘Seat’. The term ‘Seat’ carries more weight than ‘Venue’ or ‘place’.

24. The most significant judgment on this aspect is of Roger Shashoua v. Mukesh Sharma, (2009) EWHC 957, wherein the England and Wales High Court and held that the seat of arbitration has to have an exclusive jurisdiction over all proceedings that arise out of the arbitration, which came to be popularly referred to as the ‘*Shashoua Principle*’. It propounded that whenever 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 indica*, the inexorable conclusion is that the seated venue is actually the juridical seat of the arbitration proceeding. The position was further confirmed by the Indian leg of the case Roger Shashoua & Ors v Mukesh Sharma & Ors (2017) 14 SCC 722 wherein it has been held that the “seat” of the Arbitration would have an exclusive jurisdiction over all the proceedings that arise out of arbitration.

25. The controversy about location and Seat has been arising frequently since the Act does not specifically use either word but uses the word “place”. The Constitution Bench of the Supreme Court in the case of *BALCO (supra)* had made a reference to Section 2(1)(e) of the Act which defines the “Court.” It was observed that the Section 2(1) (e) of the Act has to be construed keeping in view the provisions in Section 20 of the Act which gives recognition to party autonomy. It refers to a *Court* which



would essentially be a court of the *seat* of arbitration process. The legislature has intentionally given jurisdiction to two courts i.e. court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the Agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes places, would be required to exercise supervisory control of the arbitration proceedings.

26. In Indus Mobile Distribution Pvt. Ltd. (supra) it was observed that conspectus of Section 2(1)(e) and 20 of the Act would show that the moment a seat is designated, it is akin to exclusive jurisdiction clause. In the said case, the Agreement provided that the seat of arbitration shall be Mumbai. Clause 19 of the Agreement further provided that jurisdiction exclusively vests in Mumbai Courts. It was held that the venue may have been agreed to be Mumbai, but that it was intended to be a seat, is further reinforced and indicated by the following Clause 19 which provided that the Mumbai Courts would be vested with the exclusive jurisdiction. It was thus held that the moment a seat is designated, it is akin to exclusive jurisdiction clause. It was further held that under the law of arbitration unlike CPC which applies to suits, reference to a seat is a concept by which a neutral venue can be chosen by the parties which may not in the classic sense, have jurisdiction i.e. no part of the cause of action may have arisen and neither would any of the provisions of Section 16 to 21 of CPC may be attracted.



27. In BGS SGS Soma (supra), following the Roger Shashoua case (supra), the Supreme Court had laid down the test for determination of the seat. It observed thus:

“It will thus 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.”

28. In Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Limited, (2012) 9 SCC 552, the Supreme Court approved the Shashoua principle and explained that a neutral court can have jurisdiction over the dispute and observed *that on many occasions it may be necessary to provide for Seat of arbitration at a place which would be neutral to both the parties*. Therefore, Courts where the arbitration takes place would be required to exercise supervisory control over the arbitral proceedings. This supervisory jurisdiction would remain irrespective of the fact that the obligation to be performed under the Contract was at different places, for example: it was to be performed either at Mumbai or at Calcutta, whereas, only the arbitration was to take place in Delhi. While stating so, the jurisdiction of the court where the subject matter of the suit is situated was also acknowledged. The court also clarified the confusion prevailing over the meaning and interpretation of Section 20 of the A & C Act by observing that Section 20(1) & (2) refer to the seat of arbitration, while Section 20(3) refers to its venue.



29. The Apex court in Enercon (India) Ltd. vs Enercon GmbH, (2014) 5 SCC 1, provided further clarity by observing that the location of the Seat will determine the Courts that will have exclusive jurisdiction to oversee the arbitration proceedings. It was further held that the seat normally carries with it the choice of that countries' arbitration/curial law.

30. Subsequently, in the case of Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd., (supra), it was observed that conspectus of Sections 2(1)(e) and 20 of the A & C Act would show that *the moment a seat is designated, it is akin to an exclusive jurisdiction clause*. In the said case, the Agreement provided that the seat of arbitration shall be Mumbai. Clause 19 of the Agreement further provided that jurisdiction exclusively vests in Mumbai Courts. It was observed that the law of arbitration, unlike Code of Civil Procedure which applies to suits, *provides for a reference to a seat by which a neutral venue can be chosen by the parties, which may not in the classic sense have jurisdiction over such disputes i.e. no part of the cause of action may have arisen and neither would any of the provisions of Section 16 to 21 of Code of Civil Procedure, 1906 may be attracted*. The same principles were revisited in BGS SGS Soma (supra).

31. Thus, "Seat of arbitration" is a vital aspect of any arbitration proceedings as it is not just about where an institution is placed or where the hearings shall be held, but it is about which Court would have supervisory power over such proceedings as explained by the Hon'ble Supreme Court in Mankastu Impex Pvt. Ltd. v. Airsual Ltd., (2020) 5 SCC 399.



32. Having discussed the distinct concepts of ‘Seat’ and ‘Venue’, it is pertinent to consider the determination of a seat, in the absence of an express agreement to that accord.

33. In BGS SGS Soma (supra), the Apex Court examined the Arbitration Clause which stated that the ‘*arbitration proceedings shall be held at New Delhi/Faridabad*’. To ascertain the real intent of the parties and determine whether the same was indicated to be the seat, the Court gave special emphasis on the words ‘*arbitration proceedings*’ to hold that the usage of this phrase encompasses the arbitration proceedings as a whole. The connotation of ‘arbitration proceedings’ was read in conjunction with the words ‘shall be held at’ which signified the intention of the parties to anchor the proceedings at the decided place, which is not restricted to individual or particular hearings, and hence constituted the seat. This expression was 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 clearly leads to the conclusion that the venue is not the seat in such cases. ***Hence, the stated venue is the seat of the arbitration unless there are clear indicators that the place named is a mere venue or a meeting place of convenience, and not the seat.*** The Apex Court thus, held that the reference to place/venue in the Agreement ipso facto designated the seat ***in absence of contrary indicia.***

34. In the case of Roger Shahsowa (supra), London was held to be ‘seat’ after reading the ‘venue’ (London) of arbitration concomitantly with the Transnational Body of Rules (ICC Rules) governing the arbitration.



35. In the case of *Mankastu* (supra) the Supreme Court explained how an Agreement with contrary clauses with respect to seat must be construed/interpreted. It was observed that the Arbitration Agreement did not use the word “*Seat or Venue*” and that there were contrary Clauses in the Agreement which provided that *the arbitration would be administered in Hong Kong and the place of arbitration would be Hong Kong while also stating that the governing law was Indian Law and the Courts of New Delhi would have jurisdiction. It was held that the terms “Seat of Arbitration” and “Venue of arbitration’ cannot be used interchangeably. The mere expression “place of arbitration” cannot be the sole basis to determine the intention of the parties that they have intended that place to be the “Seat of Arbitration” as well. The intention of the parties to agree upon the “Seat” should be determined from other Clauses in the Agreement and the conduct of the parties.* Thus, an Agreement between the parties choosing Hong Kong as place of arbitration would not lead to the conclusion that Hong Kong would also be the Seat of arbitration and the words have to be read in conjunction with the other Clauses in the Agreement.

36. In the light of aforementioned principles, for the purpose of determination of seat in the present case, the relevant Clause of the Agreement may be considered.

37. Clause 14 in the Sub-lease dated 31.10.2020 provides for the arbitration to be ‘*conducted at Delhi*’. It reads as under-

"14. Arbitration:

All disputes and differences whatsoever between the Parties arising under or relating to this Sub Lease Deed shall be referred to a sole arbitrator to be



appointed jointly by the Sub-Lessee and Sub-Lessor. The arbitration will be conducted at New Delhi in English language in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof."

38. The parties in the commercial parlance, use seat and venue interchangeably and the true sense of whether the reference to the place was meant to be 'seat' or 'venue' has to be derived from a reading of the Agreement in question. The Arbitration Agreement between the parties indicates that the parties did not merely intend New Delhi to be venue but the seat of arbitration as well. The Clause provides for arbitration to be "conducted" at New Delhi which is an all-encompassing term. The conduct of proceedings shall include all aspects of the arbitral proceedings, including and not limited to the appointment of the arbitrator. That the parties intended Delhi to be the Seat is also evident from the words "*in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof*" which clearly reflects the intention of the parties that Delhi was not intended to be merely the venue of the arbitration proceedings; rather the very fact that no other place was indicated as the seat of the arbitration was to be any other court. Hence, in absence of any contrary indicia, this court finds that New Delhi is the seat of the proceedings.

39. The **second argument** raised by the respondent with respect to the lack of jurisdiction of this court is that no part of the cause of action arose in the territorial jurisdiction of this Court.

40. The Supreme Court in the case of Bharat Aluminum Company &Ors. v. Kaiser Aluminum Technical Services &Ors. (2012) 9 SCC 552,



observed that "subject-matter of the arbitration" cannot be confused with "subject-matter of the suit". Section 2(1)(c) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy.

41. Section 2(1)(c) and Section 20 of the Arbitration Act read as under-

"2(1)(c)-

Court means a Civil Court having jurisdiction to decide the questions forming the subject- matter of the reference if the same had been the subject- matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a Small Cause Court";

"20. Place of arbitration.—

(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property."

42. In the case of Brahmani River Pellets (supra) the Apex court examined the Arbitration Clause of an Agreement and observed that under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause.

43. Hence, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 of the A&C Act which gives



recognition to party autonomy. Accepting the arguments of the Respondent would be to render Section 20 of the A&C Act otiose. The legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action arises and the courts where the arbitration takes place. The Act envisages a situation where the parties agree to confer jurisdiction upon a court where no cause of action arises and which is neutral.

44. Further, in Brahmani River Pellets (supra), the courts further observed that, “Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the “venue” of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts.”

45. Hence, in Arbitration proceedings the parties by way of agreement, can confer jurisdiction upon a court where no cause of action arises, i.e. a neutral venue and the courts in Delhi can have jurisdiction even if no cause of action arises herein.

46. Moreover, it must be noted that the claim in the dispute is regarding the refund of security deposit and not for ‘the immovable property’.

47. In light of the above observations, the argument of the Respondent has no legs to stand on.

Conclusion:

48. The respondent is at liberty to raise his rights and contentions including limitation before the Learned Arbitrator.



49. For the aforesaid reasons, the petition succeeds and the following directions are made:

- a) Justice V.B. Gupta, High Court of Delhi (Retd.) [Mobile No. 9871300039] is appointed as the Arbitrator to adjudicate the disputes between the parties as per clause 14 of the Sub-Lease Deed dated 31 October 2020.
- b) On the request of learned Counsel for the parties, it is directed that the arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi.
- c) The learned Arbitrator is requested to make a declaration in terms of Section 12 of the Act prior to entering upon the reference.
- d) The remuneration of the learned Arbitrator will be computed in terms of Schedule IV of the Act or as per the consent of the parties.

50. It is made clear that the rights and contentions of the parties are left open, including any plea raised by the respondent as to the arbitrability of any particular claim made before the learned Arbitrator.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 4, 2023/NK