



2023:DHC:9339



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

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RESERVED ON – 6th Decmeber, 2023
PRONOUNCED ON – 20th December, 2023+ **ARB. P.777/2023****POWER HF PRIVATE LIMITED**

... Petitioner

Through: **Ms. Gunjan Sinha Jain, Mr. Manu Bajaj, Adv.**

Versus

PERFECT DIESEL SALES & SERVICE & ANR. ... RespondentsThrough: **Mr. Sandeep Kumar, Adv.****CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J:**

1. The present petition under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (for short, "*the A&C Act*") is filed seeking the appointment of a Sole Arbitrator for adjudication of the disputes between the petitioner and respondents in terms of the Arbitration Agreement contained in Clause 20 of the Sale Agreement and Clause 15 of the Service Agreement, both dated 15.01.2019, entered into between the petitioner and respondents.

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2. The material on record discloses that Respondent No. 2 being Sole Proprietor of Respondent No.1 approached the Petitioner representing that the Respondents have the necessary skill and expertise to undertake sales and service of Diesel Generator sets, spare parts of generators and for the same they intend to collaborate with the Petitioner. The Petitioner entered into the Sales Agreement dated 15.01.2019 in terms of which the respondents were to act as a dealer for resale in the territory of Bardhaman East, North 24 pgs, Bardhaman West, Murshidabad, Nadia of HF Diesel Generator sets, engine spare parts and accessories manufactured and imported by the petitioner. Further, Vide the Service Agreement, dated 15.01.2019, the Respondent was appointed as Petitioner's authorized dealer in the territory to provide after-sales services to the Petitioner's customers in respect of repairs and maintenance of Diesel Generator sets and engines supplied to such customers. The earlier agreements were initially valid for a period of one year; however, the said agreements were periodically and mutually renewed as per the understanding between the Applicant and Respondents.
3. Allegedly, Respondents were not able to keep up with the performance in the field as well as in the office in compliance with the terms of the said agreements. Petitioner issued several correspondences requesting Respondents to provide clarifications on certain aspects that are crucial for the smooth functioning of the business operations. However no appropriate response was received from the respondents, and therefore the petitioner issued a Show Cause Notice dated 29.11.2019 to respondents indicating the poor



performance and lack of obligatory compliance. However, allegedly the respondents failed to improve the services and hence the Service Agreement was terminated on 30.12.2019 as per Clause 6 in view of the breach to the specific terms, conditions and provisions of the Agreement by the respondents. Further on 30.12.2019, Petitioner also issued a Written Notice of one month expressing their intention to terminate the Sales Agreement as per Clause 10(b), and thereby the Sales Agreement also came to an end on 30.01.2020.

4. Respondents, were also allegedly supposed to reconcile the stocks and conduct the closure of financial accounts with the petitioner in respect of the transactions that were carried out between the parties prior to the discontinuation of the said agreements. As per the accounts maintained by the petitioner in the ordinary course of business, the Respondents, have failed to pay the outstanding dues amounting to Rs. 49,10,942/- (Rupees Forty Nine Lakhs Ten Thousand Nine Hundred & Forty-Two Only) owed to Petitioner. Thereafter, a Demand Notice dated 05.10.2021 demanding the dues of Rs. 49,10,942/- (Rupees Forty Nine Lakhs Ten Thousand Nine Hundred & Forty-Two Only) was issued to Respondents. Further, two more Demand Notices dated 09.02.2022 and 03.11.2022 were also issued to the Respondents which were not replied to by either disputing/denying the liability to clear the outstanding payment due to Petitioner.
5. On 30.05.2023, a notice under section 21 of the *A&C Act* was issued to the respondents calling upon them to constitute an Arbitral Tribunal in terms of the appointment procedure provided under



Clause No.20(C) & Clause 15 of the above-said agreements and the said notice was received by the respondents.

6. Clause No.20(C) of the Sale Agreement contains an arbitration agreement which provides for resolution of disputes by reference to arbitration and both parties have agreed upon a procedure for appointment of arbitrators in terms of Clause No.20(C) of the Sale Agreement, which is extracted hereunder for easy reference:

“20 (C) However, in case any dispute cannot be settled amicably within a period of thirty (30) days of a written notice being served by either Party on the other, then such dispute shall be finally seuled by a sole arbitrator in accordance with the Arbitration & Conciliation Act, 1996. Arbitration proceedings shall take place in New Delhi. The award of Arbitrator(s) shall be a reasoned award and shall be final and binding on the Parties. The arbitration proceedings shall be conducted and the award shall be and the award shall be stated in English Language.”

7. Further Clause 15 of the Service Agreement also contains an arbitration agreement that provides for the resolution of disputes by reference to arbitration and both parties have agreed upon a procedure for the appointment of arbitrators in terms of Clause No.15 of the Service Agreement, which is extracted hereunder for easy reference: :

“ 15 GOVERNING LAW AND DISPUTE RESOLUTION

14.1 This Agreement shall be governed by the laws of India. If any dispute or difference arises out of or in connection with this Agreement, such dispute or difference shall at first instance be mutually resolved by the Parties through negotiation. In the event the Parties



fails to resolve such dispute or difference within thirty (30) days of the occurrence thereof then, the same shall be referred to and resolved through arbitration. The arbitral panel shall consist of a sole arbitrator who shall be mutually appointed by the Parties. In the event of any disagreement between the parties to appoint the sole arbitrator, the arbitral panel shall consists of three arbitrators, one each to be nominated by either Party and the two nominated arbitrators shall jointly nominate the third arbitrator, who shall be the presiding officer of the arbitral tribunal.

14.2 The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 and the rules thereunder, as amended or substituted from time to time. The arbitration proceedings shall be held in New Delhi. The arbitration proceedings shall be conducted in the English language. The decision of the arbitral tribunal shall be final and binding on the Parties.

14.3 Subject to the foregoing, the courts at New Delhi shall have the jurisdiction in respect of all disputes or difference arising out of or in connection with this Agreement.”

8. On 26.06.2023. a reply was received from the counsel for the Respondents to the Notice dated 30.05.2023 issued by the Petitioner under Section 21 of the A&C Act wherein the Respondents put the blame for inconclusive reconciliation on the petitioner and also claimed that the notice under Section 21 of the A&C Act is premature and misconceived on frivolous bald allegations.
9. Learned counsel for petitioner submits that it is evident from bare reading of above clauses, that in so far as Clause 14.3 in the Service Agreement dated 15.01.2019 is concerned, it expressly and



unequivocally provides that the courts of New Delhi shall have the jurisdiction with respect of all the disputes or differences arising out of or in connection with this Agreement and also provides that the Arbitration Proceedings will be held at Delhi. Thus, in the present case, Delhi is seat of the arbitration proceedings, thereby conferring exclusive jurisdiction on this Hon'ble Court to entertain the Section 11 petition from the said Service Agreement.

10. Learned counsel also submits that Clause 20 of the sales agreement also provides that the Arbitration proceedings shall take place in New Delhi. Further, Clause 21 also confers exclusive jurisdiction on the courts in Delhi in respect of subject matters arising out of the Agreement.
11. Learned counsel for the petitioner submits that when the parties have agreed a "venue" of the Arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat of the Arbitral Proceeding, unless any other contrary clause in the Contract shows otherwise. Reliance is placed upon **"BGS SGS Soma JV v. NHPC Ltd.;** (2020) 4 SCC 234.
12. Learned counsel for the petitioner has also submitted that in so far as the judgment in **Ravi Ranjan Developers Pvt. Ltd. versus Aditya Kumar Chatterjee;** 2022 15 S.C.R. 1117 is concerned the same is clearly distinguishable and not applicable to the facts of the instant case as in that case the dispute had arisen from the Agreement for Development of Property situated in Bihar between the parties and the parties had only conferred the venue of the Arbitral Tribunal at Kolkata, without specifying seat or vesting exclusive jurisdiction in



the Calcutta High Court. In the present case there is no dispute relating to an immovable property.

13. Furthermore, the learned counsel submits that the accrual of cause of action at place for pursuing a substantive legal action is not a consideration for determining jurisdiction for the purpose of Section 11. Reliance has been placed upon ***GR Builders through its Proprietor Sanjeev Kumar v. Specially Hospital Pvt. Ltd.***; [Neutral Citation 2023 DHC 7050].

14. Learned counsel for the Respondent submits that it is an admitted fact that the Arbitration agreement placed on record as in Document No. 2 and Para No. 20 (C) as well as in Document No. 3 and Para 14.3; hold that the Arbitration Proceedings shall take place in New Delhi as well as Court at New Delhi will have the Jurisdiction to entertain the disputes. However, this Hon'ble Court lacks Jurisdiction in the light of the precedent of the Hon'ble Supreme Court of India titled ***M/s Ravi Ranjan Developers Pvt. Ltd versus Aditya Kumar Chatterjee***; 2022 SCC OnLine 568, wherein it was *inter-alia* held as under:

“45. In *Mankastu Impex Private Limited v. Airvisual Limited*, a three Judge Bench of which one of us (Hon. A.S. Bopanna, J) was a member, held:

“19. *The seat of arbitration is a vital aspect of any arbitration proceedings. Significance of the seat of arbitration is that it determines the applicable law when deciding the arbitration proceedings and arbitration procedure as well as judicial review over the arbitration award. The situs is not just about where an institution is based or where the hearings will be held. But it is all*



about which court would have the supervisory power over the arbitration proceedings. In Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59], the Supreme Court held that : (SCC pp. 43 & 46, paras 97 & 107)

“[T]he 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 country's arbitration/curial law.”

20. It is well settled that “seat of arbitration” and “venue of arbitration” cannot be used interchangeably. It has also been established that mere expression “place of arbitration” cannot be the basis to determine the intention of the parties that they have intended that place as the “seat” of arbitration. The intention of the parties as to the “seat” should be determined from other clauses in the agreement and the conduct of the parties.”

15.Learned counsel for Respondents has submitted that even with respect to the subject matter which relates to the Goods and Services Act and tax liabilities for which the petitioner has preferred the present Application, it does not fall within the territorial Jurisdiction of this Court and the same fall within the territorial Jurisdiction of the High Court of Kolkata. The respondents agreed to sell and provide services as per the agreement which duly falls within the territorial jurisdiction of the High Court of Kolkata.

16.Learned counsel submits that the respondents reside and carry out business within the territorial Jurisdiction of the Hon'ble High Court of Kolkata and therefore, this court does not have territorial jurisdiction.



17. Before the court proceeds to examine the merit or otherwise of the contentions raised by the parties, it will be appropriate to refer to the arbitration clause contained in the general terms and conditions of the agreement executed between the parties:

18. Clause No.20(C) of the Sale Agreement, which is extracted hereunder for easy reference:

“20 (C) However, in case any dispute cannot be settled amicably within a period of thirty (30) days of a written notice being served by either Party on the other, then such dispute shall be finally solved by a sole arbitrator in accordance with the Arbitration & Conciliation Act, 1996. Arbitration proceedings shall take place in New Delhi. The award of Arbitrator(s) shall be a reasoned award and shall be final and binding on the Parties. The arbitration proceedings shall be conducted and the award shall be and the award shall be stated in English Language.”

Further Clause 15 of the Service agreement reads as under:

*“ 15 GOVERNING LAW AND DISPUTE RESOLUTION
14.1 This Agreement shall be governed by the laws of India. If any dispute or difference arises out of or in connection with this Agreement, such dispute or difference shall at first instance be mutually resolved by the Parties through negotiation. In the event the Parties fails to resolve such dispute or difference within thirty (30) days of the occurrence thereof then, the same shall be referred to and resolved through arbitration. The arbitral panel shall consist of a sole arbitrator who shall be mutually appointed by the Parties. In the event of any disagreement between the parties to appoint the sole arbitrator, the arbitral panel shall consists of three arbitrators, one each to be nominated by either Party and the two nominated arbitrators shall jointly nominate the third arbitrator, who shall be the presiding officer of the*



arbitral tribunal.

14.2 The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 and the rules there under, as amended or substituted from time to time. The arbitration proceedings shall be held in New Delhi. The arbitration proceedings shall be conducted in the English language. The decision of the arbitral tribunal shall be final and binding on the Parties.

14.3 Subject to the foregoing, the courts at New Delhi shall have the jurisdiction in respect of all disputes or difference arising out of or in connection with this Agreement.”

19. In the present case, the main challenge raised is that this court lacks the jurisdiction to entertain the petition.

20. The Supreme Court in **BGS SGS Soma JV v. NHPC Ltd.**; (2020) 4 SCC 234, has dealt with the question of jurisdiction and how arbitration seat and venue are interrelated to each other and *inter-alia* held as under:

“44. If paras 75, 76, 96, 110, 116, 123 and 194 of BALCO are to be read together, what becomes clear is that Section 2(1)(e) has to be construed keeping in view Section 20 of the Arbitration Act, 1996, which gives recognition to party autonomy — the Arbitration Act, 1996 having accepted the territoriality principle in Section 2(2), following the UNCITRAL Model Law. The narrow construction of Section 2(1)(e) was expressly rejected by the five-Judge Bench in BALCO. This being so, what has then to be seen is what is the effect Section 20 would have on Section 2(1)(e) of the Arbitration Act, 1996.

46. This Court in Indus Mobile Distribution (P) Ltd., (2017) 7 SCC 678, after referring to Sections 2(1)(e) and



20 of the Arbitration Act, 1996, and various judgments distinguishing between the “seat” of an arbitral proceeding and “venue” of such proceeding, referred to the Law Commission Report, 2014 and the recommendations made therein as follows:

“17. In amendments to be made to the Act, the Law Commission recommended the following:

‘Amendment of Section 20

12. In Section 20, delete the word “place” and add the words “seat and venue” before the words “of arbitration”.

(i) In sub-section (1), after the words “agree on the” delete the word “place” and add words “seat and venue”.

(ii) In sub-section (3), after the words “meet at any” delete the word “place” and add word “venue”. [Note.— The departure from the existing phrase “place” of arbitration is proposed to make the wording of the Act consistent with the international usage of the concept of a “seat” of arbitration, to denote the legal home of the arbitration. The amendment further legislatively distinguishes between the “[legal] seat” from a “[mere] venue” of arbitration.]

Amendment of Section 31

17. In Section 31

(i) In sub-section (4), after the words “its date and the” delete the word “place” and add the word “seat”.



18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO judgment in no uncertain terms has referred to “place” as “juridical seat” for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word “place” is used, refers to “juridical seat”, whereas in Section 20(3), the word “place” is equivalent to “venue”. This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. 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. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of the Code of Civil Procedure be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32. This was followed in a recent judgment in *B.E. Simoes Von Staraburg*



Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly.”

This judgment has recently been followed in Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462.

50. In fact, subsequent Division Benches of this Court have understood the law to be that once the seat of arbitration is chosen, it amounts to an exclusive jurisdiction clause, insofar as the courts at that seat are concerned. In Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1, this Court approved the dictum in Shashoua, 2009 EWHC 957 (Comm) as follows:

“126. Examining the fact situation in the case, the Court in Shashoua case observed as follows:

‘The basis for the court's grant of an anti-suit injunction of the kind sought depended upon the seat of the arbitration. An agreement as to the seat of an arbitration brought in the law of that country as the curial law and was analogous to an exclusive jurisdiction clause. Not only was there agreement to the curial law of the seat, but also to the courts of the seat having supervisory jurisdiction over the arbitration, so that, by agreeing to the seat, the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of the arbitration.



Although, “venue” was not synonymous with “seat”, in an arbitration clause which provided for arbitration to be conducted in accordance with the Rules of the ICC in Paris (a supranational body of rules), a provision that “the venue of arbitration shall be London, United Kingdom” did amount to the designation of a juridical seat. ...’

In para 54, it is further observed as follows:

‘There was a little debate about the possibility of the issues relating to the alleged submission by the claimants to the jurisdiction of the High Court of Delhi being heard by that Court, because it was best fitted to determine such issues under the Indian law. Whilst I found this idea attractive initially, we are persuaded that it would be wrong in principle to allow this and that it would create undue practical problems in any event. On the basis of what I have already decided, England is the seat of the arbitration and since this carries with it something akin to an exclusive jurisdiction clause, as a matter of principle the foreign court should not decide matters which are for this Court to decide in the context of an anti-suit injunction.’”

51. The Court in Enercon then concluded:

“138. Once the seat of arbitration has been fixed in India, it would be in the nature of exclusive jurisdiction to exercise the supervisory powers over the arbitration.”

53. In *Indus Mobile Distribution (P) Ltd.*, (2017) 7 SCC 678, after clearing the air on the meaning of Section 20 of the Arbitration Act, 1996, the Court in para 19 (which has already been set out hereinabove) made it clear that the moment a seat is designated by agreement between the parties, it is akin to an exclusive jurisdiction clause, which would then vest the courts at the “seat” with exclusive jurisdiction for purposes of regulating arbitral



proceedings arising out of the agreement between the parties.

57. Thus, **BALCO** does not “unmistakably” hold that two courts have concurrent jurisdiction i.e. the seat court and the court within whose jurisdiction the cause of action arises. What is missed by these High Court judgments is the subsequent paragraphs in **BALCO**, which clearly and unmistakably state that the choosing of a “seat” amounts to the choosing of the exclusive jurisdiction of the courts at which the “seat” is located. What is also missed are the judgments of this Court in **Enercon (India) Ltd. v. Enercon GmbH**, (2014) 5 SCC 1, and **Reliance Industries Ltd. v. Union of India**, (2014) 7 SCC 603.

58. Equally, the ratio of the judgment in **Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.**, (2017) 7 SCC 678, is contained in paras 19 and 20. Two separate and distinct reasons are given in **Indus Mobile Distribution (P) Ltd.** for arriving at the conclusion that the courts at Mumbai alone would have jurisdiction. The first reason, which is independent of the second, is that as the seat of the arbitration was designated as Mumbai, it would carry with it the fact that courts at Mumbai alone would have jurisdiction over the arbitration process. The second reason given was that in any case, following the **Hakam Singh v. Gammon (India) Ltd.**, (1971) 1 SCC 286, principle, where more than one court can be said to have jurisdiction, the agreement itself designated the Mumbai courts as having exclusive jurisdiction. It is thus wholly incorrect to state that **Indus Mobile Distribution (P) Ltd.** has a limited ratio decidendi contained in para 20 alone, and that para 19, if read by itself, would run contrary to the 5-Judge Bench decision in **BALCO**.

61. 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.

21. Further, it was *inter-alia* held in ***Brahmani River Pellets***, (2020) 5 SCC 462; that: “this Court in a domestic arbitration considered Clause 18 — which was the arbitration agreement between the parties — and which stated that arbitration shall be under Indian Arbitration and Conciliation Act, 1996, and the venue of arbitration shall be Bhubaneswar. After citing several judgments of this Court and then referring to ***Indus Mobile Distribution***, the Court held :

“18. 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. As held in *Swastik*, non-use of words like “exclusive jurisdiction”, “only”, “exclusive”, “alone” is not decisive and does not make any material difference.

19. When the parties have agreed to have the “venue” of arbitration at Bhubaneswar, the Madras High Court erred, 2018 SCC OnLine Mad 13127 in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order is liable to be set aside.”

22. Further in ***BGS SGS Soma JV v. NHPC Ltd.*** (*Supra*), it was *inter-alia* held that:



“82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place...

90. The Court then went on to see for itself Articles 20 and 31 of the UNCITRAL Model Law and then went on to state that under the UNCITRAL Model Law, either the juridical seat of the arbitral proceedings is indicated in the agreement between the parties, or if it is not, must be determined by the Arbitral Tribunal...”

23.The Supreme Court in ***Balco v. Kaiser Aluminium Technical Services Inc.***, (2012) 9 SCC (Civ) 810, *inter-alia* held as under:

“100. ... We may point out here that the distinction between “seat” and “venue” would be quite crucial in the event, the arbitration agreement designates a foreign country as the “seat”/“place” of the arbitration and also selects the Arbitration Act, 1996 as the curial law/law governing the arbitration proceedings. It would be a matter of construction of the individual agreement to decide whether:

(i) the designated foreign “seat” would be read as in fact only providing for a “venue”/“place” where the hearings would be held, in view of the choice of the Arbitration Act, 1996 as being the curial law, OR

(ii) the specific designation of a foreign seat, necessarily carrying with it the choice of that country's arbitration/curial law, would prevail over and subsume



the conflicting selection choice by the parties of the Arbitration Act, 1996.

*Only if the agreement of the parties is construed to provide for the “seat”/“place” of arbitration being in India — would Part I of the Arbitration Act, 1996 be applicable. **If the agreement is held to provide for a “seat”/“place” outside India,** Part I would be inapplicable to the extent inconsistent with the arbitration law of the seat, even if the agreement purports to provide that the Arbitration Act, 1996 shall govern the arbitration proceedings...*

*107. ... observations in Alfred McAlpine [2008 Bus LR D 137 (QBD) : 2008 EWHC 426 (TCC)] clearly demonstrate **the detailed examination which is required to be undertaken by the court to discern from the agreement and the surrounding circumstances the intention of the parties as to whether a particular place mentioned refers to the “venue” or “seat” of the arbitration.** In that case, the Court, upon consideration of the entire material, concluded that Glasgow was a reference to the “venue” and the “seat” of the arbitration was held to be in England. Therefore, there was no supplanting of the Scottish law by the English law, as both the seat under Section 2 and the “juridical seat” under Section 3, were held to be in England. Glasgow being only the venue for holding the hearings of the arbitration proceedings. The Court rather reiterated the principle that the selection of a place or seat for an arbitration will determine what the “curial law” or “lex fori” or “lex arbitri” will be. It was further concluded that where in substance the parties agreed that the laws of one country will govern and control a given arbitration, the place where the arbitration is to be heard will not dictate what the governing law or controlling law will be.....”*



24. In the present case, Clause 20(C) & Clause 15 of the Sales Agreement & Service Agreement respectively state that in case of any dispute in between the parties, the same would be resolved by way of arbitration and has further agreed that the seat of the arbitration proceedings would be in Delhi and also it was agreed in between the parties that the Jurisdiction of the courts would be of Delhi Courts. Both, the seat of arbitration and juridical seat are agreed by both the parties to be in Delhi only. It is already settled as per the **BGS SGS Soma JV (Supra)**, the seat of arbitration alone and not the place of cause of action determines the jurisdiction of courts over the arbitration when such seat is found to be designated or determined. In the case of **M/s Ravi Ranjan Developers Pvt. Ltd versus Aditya Kumar Chatterjee**; 2022 SCC OnLine 568, the venue of the arbitration proceedings was fixed to be Kolkata and the agreement did not include a separate clause with respect to the Juridical seat of the arbitration. However, in the present case, both the parties had entered into the agreement which expressly states that the juridical seat/ Jurisdiction of court would be of Delhi Courts. Given this, it can be concluded that the parties in this case have already agreed to the seat and jurisdiction of the Delhi courts to conduct the arbitration proceedings in an event of dispute arising in between the parties.

25. In view of the aforesaid facts and circumstances, I deem it just and appropriate to allow this petition by referring the dispute between the parties to arbitration with the consent of both sides.

26. In the result, I pass the following order:



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- (i) Petition is hereby allowed.
 - (ii) Smt. Sonia Sharma, Advocate (Mob. No. 9811111993) is hereby appointed as the sole Arbitrator to resolve the dispute between the parties under the aegis of DIAC.
 - (iii) All rival claims, contentions, etc., of both parties including contentions relating to maintainability, arbitrability, jurisdiction, limitation, stamp duty, etc., are left/kept open to be decided by the Arbitral Tribunal and no opinion is expressed on the same.
 - (iv) A copy of this order be sent forthwith to DIAC, for proceeding further and also to Smt. Sonia Sharma, Advocate (Mob. No.9811111993).
 - (v) Registry is directed to return all original documents produced by any of the parties after obtaining Photostat copies of the same.
27. The present petition stands disposed of in the above terms.

DINESH KUMAR SHARMA, J

DECEMBER 20, 2023
AR/ht