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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 08 August, 2023
Pronounced on: 14th August, 2023

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ARB.P. 1204/2022, I.A.Nos.17506/2022, 7036/2023

M S TALWAR AUTO GARAGES PRIVATE LIMITED.

THROUGH ITS AUTHORIZED REPRESENTATIVE

..... Petitioner

Through: Mr.Jayant Mehta, Sr. Advocate
with Mr.Dhruva Pawan Kumar,
Ms.Shraddha Gupta and
Mr.Raghav Bhatia, Advocates.

versus

M S VE COMMERCIAL VEHICLES LIMITED..... Respondent

Through: Ms.Gunjan Sinha Jain and
Mr.Manu Bajaj, Advocates.

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O.M.P.(I) (COMM.) 84/2022, I.A. 4147/2022 I.A. 7037/2023TALWAR AUTO GARAGES PRIVATE LIMITED THROUGH
ITS AUTHORISED REPRESENTATIVE MR SARAL TALWAR

..... Petitioner

Through: Mr.Jayant Mehta, Sr. Advocate
with Mr.Dhruva Pawan Kumar,
Ms.Shraddha Gupta and
Mr.Raghav Bhatia, Advocates.

versus

VE COMMERCIAL VEHICLES LIMITED

..... Respondent

Through: Ms.Gunjan Sinha Jain and
Mr.Manu Bajaj, Advocates.

CORAM:**HON'BLE MR. JUSTICE YOGESH KHANNA****YOGESH KHANNA, J.**

1. ARB.P. 1204/2022 is filed by the petitioner under Section 11 of



Arbitration and Conciliation Act for appointment of an arbitrator to adjudicate the disputes between the parties. The arbitration clause 32 of the Dealership Agreement dated 29.10.2013, renewed on 01.04.2017 is as under:

“32) DISPUTE RESOLUTION AND JURISDICTION

The parties hereto shall endeavor to settle by mutual conciliation any claim, dispute, or controversy ("Dispute") arising out of or in relation to, this Agreement, including any Dispute with respect to the existence or validity hereof the interpretation hereof the activities performed hereunder, or the breach hereof. Any Dispute which cannot be so resolved through such conciliation within 30 days or such extended period as the parties may agree, shall be finally settled under the provisions of the Indian Arbitration and Conciliation Act, 1996 and Rules made thereunder and any statutory amendments/modifications thereof in Delhi. The seat of arbitration shall always be at Delhi. The Courts of Indore shall have exclusive jurisdiction in all matters arising under this Agreement.”

2. Reference is also made to other clauses of the agreement viz. 4 and 26, which read as under:

“4) TERM OF THE AGREEMENT

a) This Agreement shall Continue in force up to a period of 3 years commencing on 01st April 2017 and shall thereafter be renewed for successive periods of 3 years as may be mutually agreed between VECVL and the Dealer unless terminated earlier by VECVL as described in the clause 26 hereof.

b) In case the Dealer is not interested in renewal of this agreement, the Dealer shall intimate at least 90 days before the expiry of the term of this agreement or extended term thereof in writing of VECVL.

26) TERMINATION

a) VECVL reserves the right to determine and/or treat this agreement at an end forthwith on account of any breach of any of the terms and conditions contained herein on the part of the Dealer without prejudice to any other right or rights which may have accrued to it. Any dues outstanding against the dealer for one month or more shall be deemed to be a Dealers breach of this agreement within the meaning of this clause.

b) VECVL may also terminate this agreement forthwith in the event of VECVL doubting the probity of conduct of the Dealer or on VECVL believing that any acts of the Dealer are likely to prejudice the VECVL's interests, bring disrepute, cause loss of goodwill to VECVL or result in financial loss to VECVL.

c) It is agreed by the parties that in case of dissolution of or change in



structure/arrangement/agreement, in the Dealer's Partnership Firm, in whatever manner, without prior intimation to and written consent of VECVL, VECVL shall hold absolute right to terminate this Dealership Agreement forthwith.

d) It is agreed that the Dealer will not indulge in any such transaction/obligation/agreement /collaboration/amalgamation or any other such business arrangement with any other organization(s); which directly/indirectly affects VECVL's business interests, without prior written consent of VECVL. VECVL shall hold rights to forthwith terminate the dealership on occurrence of any such event

e) Notwithstanding anything contained in Clause 26 (a) & (b) hereof, this agreement shall be liable to be determined without assigning any reason upon three months' notice in writing from either side.

f) In case of the termination of the agreement by VECVL under clause 26 (a) and/or (b) VECVL shall be entitled to forfeit the security deposit amount given by the Dealer as per clause 6 of this agreement including interest, if any, accrued thereon till date.”

3. It is the submission of the learned senior counsel for the petitioner since the arbitration clause provides for the seat of arbitration at Delhi, hence this Court shall have jurisdiction to entertain the petition under Section 11 of Arbitration and Conciliation Act and to appoint an arbitrator. It is argued where there exists a seat of arbitration only such Courts shall have jurisdiction to deal with its arbitration matters. It is submitted though the agreement was entered into initially on 16.01.2002 but was extended time and again and lastly was extended on 01.04.2017. Certain disputes arose in the year 2020 and respondent then proceeded to terminate the agreement.

4. Reference was also made to legal notice dated 05.01.2022 and to notice dated 04.03.2022 invoking arbitration *qua* Balanagar Agreement. These notices were duly replied vide replies dated 01.02.2022 and 14.03.2022. It is submitted by the learned senior counsel for the petitioner per clause 4 of the Agreement, though such agreement was in force for a period of three years commencing from 01.04.2017 but was



renewable for successive period of three years as may be mutually agreed and its termination could be only under clause 26 thereof.

5. Reference was also made to invoices of January, 2021 to show the dealings continued even after 2020, hence the agreements did not expire due to efflux of time. In any case the petitioner invoked arbitration clause within three years from April, 2020 and hence proceedings are within limitation. About jurisdiction of Court vis-à-vis seat of arbitration I may refer to *Indus Mobile Distribution Pvt. Ltd. vs. Data Wind Innovations Pvt. Ltd.* (2017) 7 SCC 678, wherein the Court held:

*“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 Section 16 to 21 of the CPC 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 parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases Private Limited v. Indian Oil Corporation Limited*, (2013) 9 SCC 32. This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited*, (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.”*

6. In *BGS SGS Soma JV vs. NHPC Limited* (2020) 4 SCC 234, the



Court held as under:

“58. Equally, the ratio of the judgment in *Indus Mobile Distribution Private Ltd. (supra)*, is contained in paragraphs 19 and 20. Two separate and distinct reasons are given in *Indus Mobile Distribution Private Ltd. (supra)* 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 (supra)* 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 Private Ltd. (supra)* has a limited ratio decidendi contained in paragraph 20 alone, and that paragraph 19, if read by itself, would run contrary to the 5 Judge Bench decision in *BALCO (supra)*.

98. However, the fact that in all the three appeals before us the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, would lead to the conclusion that both parties have chosen New Delhi as the “seat” of arbitration under Section 20(1) of the Arbitration Act, 1996. This being the case, both parties have, therefore, chosen that the Courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, **the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the “seat” has been chosen, which would then amount to an exclusive jurisdiction clause so far as Courts of the “seat” are concerned.**”

7. In *Mr.Raman Deep Singh Taneja vs. Crown Realtech Private Limited* 2017 SCC OnLine Delhi 11966, wherein the venue of arbitration was at Faridabad, Haryana and there was a jurisdiction clause to refer all disputes at Delhi Courts, the Court held:

“9. In the present case we are faced with the situation where one part of the agreement provides for exclusive jurisdiction to Courts of Delhi, while the other, due to the venue of arbitral proceedings, vests exclusive jurisdiction in Courts in Faridabad, State of Haryana. As was held by the Supreme Court in the judgment of *Bharat Aluminium Company (Supra)*, **a distinction is to be drawn between "Subject-Matter of the Arbitration" and "Subject-Matter of the Suit"**. For the purposes of identifying the Court, which shall have supervisory control over the arbitral proceedings, it would be the Court where the 'Subject-Matter of Arbitration' is situated that would have precedence over the Court where



the "Subject-Matter of the Suit" is situated. In this case, therefore, the exclusive jurisdiction conferred due to venue of arbitration would take precedence over the exclusive jurisdiction vested over the Subject-Matter of the suit in the Courts at Delhi. There are various provisions in the Act where the Court has to exercise supervisory jurisdiction over the arbitration proceedings. These include not only Section 11 of the Act but also Sections 14, 27, 29A, 34 and 37 of the Act. It is, therefore, evident that the Court having jurisdiction over the arbitration proceedings would have precedence over the Court which has jurisdiction over the Subject-Matter of the suit or where the cause of action has arisen. The purported conflict between the two parts of Clause 24 quoted above can be resolved by holding that where the disputes are to be adjudicated without reference to the arbitration, Courts at Delhi would have exclusive jurisdiction, however, where they have to be resolved through arbitration, venue being at Faridabad, Haryana, the Courts at Faridabad, State of Haryana, would have exclusive jurisdiction."

8. In *My Preferred Transformation and Hospitality Pvt. Ltd. vs. Sumithra Inn*. 2021 SCC OnLine Delhi 1536, the Court held:

"33. The Supreme Court, therefore, held that the very fixation of the seat of arbitration at Mumbai resulted in courts at Mumbai being conferred with exclusive jurisdiction to entertain the petitions. The "exclusive jurisdiction clause", i.e. Clause 19 in the agreement was held only to "further to make it clear". The manner in which the Supreme Court has phrased its findings, in the afore-extracted passage, is important because, though conferment of exclusive jurisdiction on courts at Mumbai, to deal with the petitions initiated under Sections 9 and 11 of the 1996 Act, could be justified both under the "seat of arbitration" clause, as well as under the "exclusive jurisdiction" clause, the Supreme Court chose to decide the issue on the basis of the "seat of arbitration" clause, rather than the "exclusive jurisdiction" clause, observing, in the process, that the "exclusive jurisdiction" clause merely underscored the legal position that emanated from the "seat of arbitration" clause. In other words, the Supreme Court held that the designation of Mumbai as the "seat of arbitration", ipso facto, conferred exclusive Section 9 and Section 11 jurisdiction on courts at Mumbai, and that the "exclusive jurisdiction" clause merely fortified this legal position. The pre-eminence of the fixing of the seat of arbitration, in the agreement, therefore, stands emphasized in this decision as well.

D. Cases in which the contract contained a "seat of arbitration" and an "exclusive jurisdiction" clause, vesting jurisdiction in courts at different territorial locations"

9. In *Aniket SA Investments LLC vs. Janapriya Engineering Syndicate*



Pvt. Ltd. 2021 (4) Mah LJ 123, the Court held:

*“22. We are also not able to agree with either of these findings and conclusions in the Impugned Order. It is a well settled rule of interpretation of agreements that the Courts must give effect to the plain language used by the parties and that **the intention of the parties must be gathered from the plain meaning of words used.** Clause 20.3, which confers exclusive jurisdiction on the Courts at Hyderabad is not a part of the arbitration agreement clause which is Clause 20.4 of the Agreement with a heading "Arbitration". The choice of Court at Hyderabad is made clearly 'subject to' Clause 20.4. Therefore, the plain language used in Clause 20.4.2 (c) of the Agreement, which is part of the arbitration clause, is that Mumbai is chosen as the seat of the arbitration proceedings. For the reasons stated above this would have the effect of conferring exclusive jurisdiction on the Courts at Mumbai. It cannot be said, as contended by Respondent Nos. 3 to 6 in this Appeal, that the choice of 'seat' in the year 2008 when the Agreement was entered into was not understood as a choice of Courts of the 'seat' and that this cannot be the intention attributed to parties. The law as laid down by the Supreme Court in BGS SGS as to the effect of choice of 'seat' as conferring exclusive jurisdiction is by no means prospective or applicable only after a particular date. Even the judgment in BALCO, as explained in BGS SGS, must be understood as stating the legal position under the Act and which must be given effect to even if the Agreement in question was of a date prior to the judgment. We therefore, see no merit in this submission.”*

10. The learned counsel for the respondent referred to clause 32 of the agreement to say the clause mentions an exclusive jurisdiction of the Courts at Indore, hence would take away the jurisdiction from this Court. I do not agree to the submissions in view of the law discussed above.

11. However, I agree to the submissions of the learned counsel for the respondent only the disputes arising out of the Balanagar agreement dated 01.04.2017 need be referred to arbitration and not other disputes as are mentioned in legal notices.

12. Reliance placed by the respondent on the decision of the High Court of Madhya Pradesh in *V. E. Commercial Vehicles Ltd. v. Grand Motor Sales & Services Pvt. Ltd.* in AC No. 16/2019, in view of the



dismissal of the SLP filed in the Hon'ble Supreme Court, is misplaced. Firstly, the decision of the High Court of Madhya Pradesh is contrary to *Indus Mobile* and *BGS Soma* in that it applies the CPC principles as opposed to the 'seat' principle; secondly, if the said judgment is to be considered, it does not bind this Court. Thirdly, dismissal of the SLP in limine does not mean the Hon'ble Supreme Court had approved the said judgment. This is clear in view of *Kunhayammed & Ors. v. State of Kerala & Anr.* (2000) 6 SCC 359.

13. The respondent has also placed reliance on para 96 of the decision of *BALCO v. Kaiser Aluminium*, (2012) 9 SCC 552 contending the conferring jurisdiction on Delhi shall be against the principle of party autonomy. The said paragraph was explained by the Hon'ble Supreme Court in *BGS Soma* wherein, at para nos. 49 and 50, the Court held:

"49... If, therefore, the conflicting portion of the judgment of BALCO in para 96 is kept aside for a moment, the very fact that parties have chosen a place to be the seat would necessarily carry with it the decision of both parties that the courts at the seat would exclusively have jurisdiction over the entire arbitral process.

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...."

14. It was next contended by the respondent there is no arbitration agreement between the parties as the Dealership Agreement stands expired by efflux of time. Firstly, this is a disputed fact to be adjudicated by the arbitral tribunal, as and when appointed. Secondly, the petitioner relies on, inter alia, the invoices on record to show dealings between the parties post 01.04.2020. These invoices are not denied or disputed by the respondent. Thirdly, even otherwise, this issue would be significant if the respondent were to argue bar of limitation. However, the respondent has,

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fairly, not so argued since the petitioner had invoked arbitration on 04.03.2022, within two years of 01.04.2020. As such, whether agreement continued to subsist is immaterial to appointment of an arbitrator. Fourthly, the arbitration agreement in Clause 32 of the Dealership Agreement is widely worded and covers disputes arising out of or in relation to.

15. As the *seat* of arbitration is at Delhi, this Court thus shall have the jurisdiction to decide this application.

16. In the circumstances, Mr. Justice R.K. Gauba (Retd.) (Mob.No.9650411919) is hereby appointed as an arbitrator to adjudicate the disputes between the parties.

17. The rights and contentions of the parties are left open. The proceedings be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and fee be governed by 4th Schedule of the Arbitration and Conciliation Act, 1996.

18. Since the arbitrator has been appointed in the ARB.P.1204/2022, hence O.M.P.(I) (COMM.) 84/2022 be treated as a petition under Section 17 of the Arbitration and Conciliation Act, which shall be dealt with by the learned Arbitrator.

19. In view of above, both petitions stands disposed of. All pending applications also stand disposed of.

YOGESH KHANNA, J.

AUGUST 14, 2023

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