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

% *Date of Decision: 14th September, 2023*

+ ARB.P. 1414/2022

RITA NANDWANI

..... Petitioner

Through: Mr. Rajiv Raheja and Ms.
Geetu Raheja, Advocates

versus

M/S NESTAWAY TECHNOLOGIES PVT. LTD.

..... Respondent

Through: Mr. Kushank Sindhu and Ms.
Sanya Singh, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of a sole Arbitrator.

2. Disputes between the parties arise out of a Service Agreement executed between the parties on 18.02.2019 pertaining to alleged non-payment of rent by the Respondent. According to the Petitioner, when the Respondent did not pay the demanded sum of money, despite two demand notices, Petitioner invoked the Arbitration Clause and there being no response by the Respondent for appointing an Arbitrator, present petition was filed.

3. Reply has been filed by the Respondent in which a preliminary objection is taken to the maintainability of the present petition on the ground that this Court lacks the territorial jurisdiction to entertain the



present petition. It is stated that the parties entered into a Service Agreement on 18.02.2019, which contains a Dispute Resolution Clause 23. It is categorically provided in Clause 23.6 that “*The place of arbitration will be at Bangalore, India only*” and therefore parties have agreed for a place of arbitration which is Bangalore and in the absence of a contrary indicia, the venue is *akin* to a seat of arbitration. It is urged that when a contract specifies the jurisdiction of a Court at a particular place, only that Court will have jurisdiction to deal with the matter, to the exclusion of jurisdiction of all other Courts. Reliance is placed by the Respondent on the judgments of the Supreme Court in ***Brahmani River Pellets Limited v. Kamachi Industries Limited, (2020) 5 SCC 462*** and ***BGS SGS SOMA JV v. NHPC Limited, (2020) 4 SCC 234***, to argue that the venue of the arbitration being Bangalore, this Court cannot entertain the present petition.

4. Learned counsel for the Petitioner has been unable to controvert that the place of arbitration envisaged and provided in the Arbitration Clause is Bangalore. Nothing contrary thereto has been either pleaded or argued during the course of hearing.

5. I have heard the learned counsels for the parties and find merit in the contention of the Respondent that this Court lacks the jurisdiction to entertain the present petition. It was held by the Supreme Court in ***Brahmani (supra)***, that where the parties agree to a ‘venue’ of arbitration, the intent of the parties is to submit to the jurisdiction of the Court within the territorial boundaries of which the venue is located, to the exclusion of all other Courts. In the said case, the parties had agreed to have the venue of arbitration at Bhubaneswar and the Supreme Court held that the Madras High Court had erred in



assuming jurisdiction under Section 11(6) of the Act since only the Orissa High Court had the jurisdiction to entertain the petition.

Relevant paragraph from the judgment is as follows:-

“18. Where the contract specifies the jurisdiction of the court at a particular place, 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 intent of the parties is to exclude all other courts.....”

6. The Supreme Court in **BGS SGS SOMA JV (supra)**, reiterated and reaffirmed 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 arbitration, and no other significant contrary indicia, the inexorable conclusion is that the venue contemplated by the parties is the juridical seat for arbitral proceedings. Relevant paragraphs of the judgment are as follows:-

“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.

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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. This language has to be 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 may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a



convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”

7. Applying the law laid down by the Supreme Court, there is no room for doubt that in view of the agreement between the parties that venue of arbitration shall be Bangalore and there being no contrary indicia, the stated venue is the juridical seat of arbitral proceedings and this Court has no jurisdiction to entertain the present petition.

8. Accordingly, the petition is disposed of as not maintainable, with liberty to the Petitioner to approach the appropriate Court having jurisdiction in the matter. It is made clear that this petition is being disposed of as not maintainable and no opinion has been expressed on the merits of the disputes between the parties.

JYOTI SINGH, J

SEPTEMBER 14, 2023/kks