

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 18th April, 2023**
+ **ARB.P. 1472/2022**

GAURI DWIVEDI Petitioner
Through: Ms.Naomi Chandra and
Ms.Chaishta Channan, Advocates

versus

DIRECT NEWS PRIVATE LIMITED Respondent
Through: Mr. Kartikeya Durrani, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') has sought the following reliefs:

*“a) Appoint an Arbitrator under section 11(6) of the Arbitration Act to adjudicate disputes between the Petitioner and Respondents;
b) Pass any such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;”*

2. Learned counsel for the petitioner submitted that the petitioner is a journalist with over 16 years of experience having Master's Degree in

Economics from Delhi School of Economics, Delhi University and has extensive work experience in print and TV journalism. The respondent is a company engaged in the business of broadcast, production, programming and telecast of English News Television channel 'NewsX'. The parties entered into an Agreement under which the petitioner was engaged as a consultant with the office designation of 'Associate Executive Editor' and was entitled to receive a monthly fee of INR 2,50,367.

3. Learned counsel for the petitioner submitted that the petitioner provided the best of her services to the respondent and worked even during the peak of COVID-19 pandemic. However, the respondent from January 2020 onward, started withholding the petitioner's monthly emolument on some pretext or the other and on 21st May 2020, without any prior discussion with the petitioner, unceremoniously relieved her from services.

4. Learned counsel for the petitioner submitted that the respondent is withholding pending dues that total to over INR 15,02,202 and has even failed to deposit TDS as deducted from her salary. Learned counsel for the petitioner submitted that the respondent did not respond to the Notice of Invocation of Arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 dated 25th August 2021. In view of the aforesaid, it is submitted that the instant petition be allowed and a sole arbitrator be appointed.

5. *Per contra*, learned counsel for the respondent vehemently opposed the instant petition and submitted that the petition filed by the respondent under Section 11(6) of the Act is erroneous and that there are

no dues pending with the respondent that are to be disbursed in favor of the petitioner as per Clause 4.4 of the Agreement dated 1st October 2019.

6. Learned counsel for the respondent further submitted that upon termination, no payment of obligation would arise, thereby, not giving rise to the need of issuance of a TDS certificate in the first place. It is submitted that the 'Dispute Resolution' clause would only arise at the existence of a valid dispute and here, there is none.

7. It is further submitted that even so, the governing law for the Dispute Resolution bars adjudication by this Court. It is submitted that the exclusive jurisdiction of the matter at hand is placed with the courts at Noida. Reliance in this regard is placed on Clause 7.8 of the Agreement between the parties. It is therefore submitted that this Court does not have the jurisdiction to adjudicate the case at hand.

8. It is submitted that the present reference to arbitration is based upon vexatious claims without any basis or indication of proof thereto. Therefore, this Court may dismiss the present Arbitration Petition as being devoid of merits.

9. Heard learned counsels for the parties and perused the record.

10. The question before this Court is whether or not it has the jurisdiction to entertain the instant petition seeking appointment of an arbitrator by this Court.

11. The Arbitration Act, 1996 refers to "the place" of arbitration and defines "court", and indicates which courts have jurisdiction in relation to arbitral proceedings in several sections in Part I. Section 2(1)(e) and Section 2(2) of the Arbitration Act, 1996 are as follows:

"2. Definitions.—(1) In this Part, unless the context otherwise

requires—

(e) “**Court**” means—

(i) in the case of an arbitration other than international commercial arbitration, the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal civil court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

(2) *Scope.*—This part shall apply where the place of arbitration is in India:

Provided that subject to an agreement to the contrary, the provisions of Sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of Section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.”

12. Sections 20, 31(4) and 42 of the Arbitration Act, 1996 read as follows:

“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.

31. Form and contents of arbitral award.—(1)-
(3) * * *

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place.

42. Jurisdiction.— *Notwithstanding anything contained elsewhere in this Part or any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in any Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”*

13. The expression “Court” is defined in section 2(1)(e) of the Act. The judgment in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., [BALCO] (2012) 9 SCC 552*** on this point, has been explained at length by the Hon’ble Supreme Court in its decision in the case of ***BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234***, where the Hon’ble Supreme Court extensively dealt with the issue while considering the precedents on the designation of seat of arbitration and the jurisdiction of the Courts. The relevant paragraphs are extracted hereunder:

“38. A reading of paras 75, 76, 96, 110, 116, 123 and 194 of BALCO would show that where parties have selected the seat of arbitration in their agreement, such selection would then

amount to an exclusive jurisdiction clause, as the parties have now indicated that the Courts at the “seat” would alone have jurisdiction to entertain challenges against the arbitral award which have been made at the seat. The example given in para 96 buttresses this proposition, and is supported by the previous and subsequent paragraphs pointed out hereinabove. The BALCO judgment, when read as a whole, applies the concept of “seat” as laid down by the English judgments (and which is in section 20 of the Arbitration Act, 1996), by harmoniously construing section 20 with section 2(1)(e), so as to broaden the definition of “Court”, and bring within its ken Courts of the “seat” of the arbitration.”

14. The Hon’ble Supreme Court laid down the Tests for determination of “seat” as under:

“60. The judgments of the English courts have examined the concept of the “juridical seat” of the arbitral proceedings, and have laid down several important tests in order to determine whether the “seat” of the arbitral proceedings has, in fact, been indicated in the agreement between the parties. The judgment of Cooke, J., in Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] , states:

“34. London arbitration is a well-known phenomenon which is often chosen by foreign nationals with a different law, such as the law of New York, governing the substantive rights of the parties. This is because of the legislative framework and supervisory powers of the courts here which many parties are keen to adopt. When therefore there is an express designation of the arbitration venue as London 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, to my mind, that London is the juridical seat and English Law the curial law. In my judgment it is clear that either London has been

designated by the parties to the arbitration agreement as the seat of the arbitration, or, having regard to the parties' agreement and all the relevant circumstances, it is the seat to be determined in accordance with the final fall back provision of Section 3 of the Arbitration Act."

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."

15. The said judgment on the reference to a place as a venue of arbitration which is generally understood to be a seat of arbitration, noted as follows:

"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.”

16. In a similar case involving the interpretation of the arbitration agreement to determine the venue and seat of the arbitration, a Division Bench of the Bombay High Court in the case of **Aniket Sa Investments LLC v. Janapriya Engineers Syndicate (P) Ltd., 2021 SCC OnLine Bom 919**, held as under:

“25. The Supreme Court in BGS SGS, has, in paragraph 82, observed that even when parties use the expression ‘venue of arbitration proceedings’ with reference to a particular place, the expression ‘arbitration proceedings’ would make it clear that the ‘venue’ should be read as ‘seat’. In the present case the language of the Agreement in Clause 20. 4. 2(c) is clear and specifically refers to Mumbai as being the ‘seat’ of the arbitration proceedings. Thus, we are of the opinion that there is no basis for reading Mumbai as a ‘venue’, only because effect has to be given to the choice of Courts at Hyderabad, which is itself ‘subject to’ the later Clause 20. 4. On this aspect, we are also of the opinion that the judgment of the Supreme Court in Hardy Exploration does not support the conclusion arrived at in the Impugned Order that Mumbai must not be regarded as a ‘seat’ but as a ‘venue’. In any event, as noted above, the Supreme Court in paragraphs 92 and 94 of BGS SGS, has observed that the law laid down in Hardy Exploration cannot be considered to be good law as it is contrary to the judgment of the Five Judge Bench in BALCO.

26. The meaning to be attributed to Clause 20. 3 vis-a-vis Clause 20. 4. 2(c) must be gathered by giving plain meaning

and effect to the important expressions ‘subject to’ and ‘seat’ and not by altering their meaning only to conclude that the true intention of the parties is to be gathered by giving effect to Clause 20. 3. In our view, Clause 20. 3 and the choice of Courts expressed therein would apply in a situation not covered by a dispute that is governed by the arbitration agreement in Clause 20. 4. In any view of the matter, even if Clause 20. 3 does overlap with Clause 20. 4 in determining which Court would have jurisdiction to entertain applications made under the Act, since Clause 20. 3 is made ‘subject to’ Clause 20.4 [which would include Clause 20. 4. 2(c)], we are of the opinion that the Court of the ‘seat’ would even under the Agreement have exclusive jurisdiction to entertain applications made under the Act. For these reasons we are of the opinion that the findings and conclusions in the Impugned Order insofar as they relate to the interpretation of the Agreement, cannot be sustained and we do not find any merit in the submissions made by the respondents before us as set out above.”

17. Having referred to the aforesaid judgments, it is pertinent to summarise the principles laid therein to the context of this case. Juridical or legal seat of arbitration once designated or determined exclusively determines which courts will have jurisdiction over the arbitration, as opposed to the place where whole or part of the cause of action arises. Thus, once the seat of arbitration is designated or determined, the same operates as an exclusive jurisdiction clause as a result of which only the courts where the seat is located would have jurisdiction over the arbitration, to the exclusion of all other courts, even courts where part of the cause of action may have arisen. The Test for determination of juridical seat wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat” is the *Shashoua principle* which states that wherever there is an express

designation of a “venue”, and no designation of any alternative place as the “seat”, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding, to the exclusion of all other courts, even courts where part of the cause of action may have arisen.

18. It is also settled 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 “arbitration proceedings” 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. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intend 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, to the exclusion of all other courts, even courts where part of the cause of action may have arisen.

19. Having delineated the law with respect to seat and venue of Arbitration in the aforementioned judgments, it is now pertinent to apply the principles therein to the facts of the case to determine the jurisdiction of this Court. It is thus essential to peruse the relevant Clauses of the Agreement between the parties.

20. Clause 7.8 as relied upon by the Respondent deals with the Governing Law as well as the territorial jurisdiction of the Court in matters pertaining to the agreement. The said clause reads as under:

“7.8 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of India and the Courts in NOIDA shall have the sole jurisdiction.”

21. Clause 7.9 deals with Dispute Resolution and specifically provides for arbitration and the venue of the Arbitration. The said clause is reproduced hereunder:

“7.9 Dispute Resolution

7.9.1 Any and all disputes or claims arising under this Agreement or out of or in connection with the execution, interpretation, performance, or non-performance of this Agreement or any or all of the foregoing shall be solely and finally settled by arbitration under the Arbitration and Conciliation Act, 1996. All arbitration proceedings shall be conducted in the English language. For the purpose of such arbitration, there shall be three arbitrators appointed in accordance with the Indian Arbitration and Conciliation Act, 1996 (the 'Arbitral Tribunal').

Judgment upon any arbitral award rendered hereunder may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

7.9.2 Arbitration shall be held in New Delhi. Each Party shall co-operate in good faith to expedite, to the maximum extent practicable, the conduct of any arbitral proceedings commenced under this Agreement.”

22. A bare perusal of the aforesaid clauses makes it evident that Clause 7.9 deals with Dispute Resolution and specifically provides for arbitration

and the venue of the Arbitration as New Delhi whereas Clause 7.8 deals with the Governing Law and confers the territorial jurisdiction of the Court in matters pertaining to the agreement on the Courts in Noida. As per the law settled in the *BALCO (supra)*, and *BGS SGS SOMA JV v. NHPC (supra)*, it is concluded that the seat and venue of the Arbitration in the instant matter shall be at New Delhi and therefore this Court shall have the territorial jurisdiction to entertain and adjudicate the instant petition for arbitration.

23. Learned counsels for the parties while vehemently opposing each other's respective submissions have fairly submitted that the disputes between the parties are arbitral in nature. Therefore, in order to resolve the dispute arising under the Agreement, the said disputes and differences arising between the parties are referred to arbitration, by appointing a sole arbitrator. Hence, the following Order:

ORDER

- i. Mr. Vineet Dhanda, Advocate is appointed as a Learned Sole Arbitrator to adjudicate the disputes between the parties which have arisen under the Agreement dated 1st October 2019;
- ii. The Learned Sole Arbitrator, before entering the Arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;
- iii. The Learned Sole Arbitrator shall be paid fees as prescribed under the Delhi International Arbitration Centre (DIAC)

(Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;

iv. At the first instance, the parties shall appear before the Learned Sole Arbitrator within 10 days from today on a date which may be fixed by the Learned Sole Arbitrator;

v. All contentions of the parties are expressly kept open.

24. A copy of the order be forwarded to the learned arbitrator at the following address:

Vineet Dhanda, Advocate
House no. 60, 1st Floor
Poorvi Marg, Vasant Vihar
New Delhi -110057
Mob. No. 9811013810

25. The petition is disposed of in the aforesaid terms along with pending applications, if any.

26. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 18, 2023

SV/AK

[Click here to check corrigendum, if any](#)