



Arb.O.P.(Comm.Div.) No.60 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
28.08.2024

PRONOUNCED ON
23.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU
Arb.O.P.(Comm.Div.) No.60 of 2024

Eltech Appliances Private Limited,
Represented by its Authorized Signatory Mr.Premanand,
No.71, 3rd Floor, Nungambakkam,
Chennai – 600 034.

Currently having office at:
Seethakathi Business Centre,
No.684-690, 9th Floor, Anna Salai, Thousand Lights,
Chennai – 600 006. ... Petitioner

-vs-

Bajaj Finance Limited,
Represented by its Authorized Signatory,
SNo.#208/1-B, 4th Floor,
Viman Nagar, Pune – 411 014.

Currently having Office at:
5th floor, Bajaj Finserv Corporate Office,
Off Pune-Ahmednagar Road, Viman Nagar,
Pune – 411 014.

Also at: Bajaj Finserv
Unit No 901 to 903, Raheja Towers,
No.177, Sigma Wing,
Anna Salai, Chennai – 600 002. ... Respondent

PRAYER: Arbitration Original Petition filed under Section 11(6) of the
Arbitration and Conciliation Act, 1996 seeking for following prayer to:-

<https://www.mhc.tn.gov.in/judic> (a) Appoint a Sole Arbitrator to adjudicate the disputes between the



petitioner and the respondent under the “ Interest Subsidy Agreement” dated 02.11.2017;

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(b) Direct the respondent to pay costs of this petition;

(c) Pass such further a other orders.

For Petitioner : Ms. Yamini G.K.

For Respondent : Mr.M.Arunachalam

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') to appoint an Arbitrator to adjudicate upon the disputes between the petitioner and the respondent under the “ Interest Subsidy Agreement” dated 02.11.2017.

2. Heard Ms. Yamini G.K., learned counsel for the petitioner and Mr.M.Arunachalam, learned counsel for the sole respondent.

3. The learned counsel for the petitioner would contend that in the year 2017, an“ Interest Subsidy Agreement” had been entered into between the petitioner and the respondent providing interest free loans for subsidised interest rates to the customers purchasing air conditioners from authorised



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dealers of the petitioners. Even though, such service was to be provided by the respondent's Branch Office at Chennai, the Agreement had been entered at Pune. The respondent had agreed to offer various finance scheme to the customers for the purchase of the petitioner's air conditioners from its authorised dealers. It came to the notice of the petitioner that certain subsidies and interest free loans had been raised as against the petitioner of which certain invoices were raised by the dealers who were not authorised by the petitioner. Since, then a dispute arose between the parties and the petitioner had invoked the arbitration clause under the Agreement dated 02.11.2017 and had initiated arbitration proceedings by nominating the names of certain persons who could be appointed as an Arbitrator. However, the same had been repudiated by the respondent by contending that this Court does not have jurisdiction as the venue of arbitration is Pune and jurisdiction is also at Pune. She would submit that the Clause of arbitration do not refer to the seat of arbitration and only the venue had been stated. In that context, she had referred to the judgments of the Hon'ble Apex Court which delineates the seat of arbitration from the venue of arbitration and would contend that when the seat of arbitration has not been indicated in the Agreement, even a part of cause of action arising within the jurisdiction of this Court can clothe this Court with jurisdiction under 11(6) to appoint an

Arbitrator.

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4. In that context, she would submit that the respondent was obligated to service the loans availed by the customers of its dealers who have been appointed by the petitioner. In that context, the entire cause of action of purchase by the customers happened in Chennai and the dealers who had sold the air conditioners are also located in Chennai. The Loan Agreement between the respondent and the customers were executed in Chennai and therefore, the cause of action for the dispute also arose in Chennai. Therefore, she would submit that this Court has jurisdiction to appoint an Arbitrator and requests this Court to appoint an Arbitrator to resolve the dispute between the parties.

5. Countering her arguments, Mr.M.Arunachalam, learned counsel appearing on behalf of the respondent would contend that it is true that the seat of arbitration had not been expressly stated in the agreement and in that case, this Court can definitely look into the cause of action for appointing an Arbitrator. He would further submit that the jurisdiction of the Courts at Pune alone have vested with jurisdiction and not any other Courts. When the applicant had accepted the jurisdiction of the Court at Pune, particularly under the arbitration Clause in the Agreement which would form a separate agreement by itself would mean that even for appointment of an Arbitrator or



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Section 9 reliefs or even any further proceedings pursuant to the arbitration can all only take place only in Pune and not anywhere else. He had also relied upon the various judgments of the Hon'ble Apex Court where it had been held that when the seat of jurisdiction had not been mentioned and only venue had been mentioned and a particular Court had been vested with the jurisdiction, then the seat of the Court of which exclusive jurisdiction has been placed would be the place where the proceedings under the Arbitration and Conciliation Act, 1966 could be taken out. He would further submit that the reliance placed upon by the petitioner on the agreements with its dealers, the dealers with the customers and the customers in turn with the respondent would not amount to a part of cause of action as they are all independent agreements. The agreement that had been entered between the petitioner and the respondent was for the grant of interest free loan or subsidised interest, when the air conditioners supplied by the petitioner to its dealers are purchased by the customers. He would reiterate that the agreement between the petitioner and the respondent had been executed at Pune and the agreement had been serviced to the petitioner only from Pune and not otherwise. Therefore, he would submit that this Court could not assume jurisdiction to appoint an Arbitrator.

<https://www.mhc.tn.gov.in/judis> 6. I have considered the rival submissions made by the learned



counsels appearing on either side and perused the materials available on record.

7.To resolve the *lis* as raised by the learned counsels appearing for their respective parties, it would be necessary to look into Clause 16 available in the Agreement dated 02.11.2017.

“16. *ARBITRATION*

Any dispute arising out of or in relation to this Agreement shall be referred for arbitration to the sole arbitrator appointed by BFL. The Parties agree and confirm that the arbitration proceedings shall be conducted in accordance with the Arbitration & Conciliation Act, 1996 and the rules applicable thereto,. The venue of the arbitration shall be at Pune and the arbitration proceeding shall be conducted in English language. The decision of the Arbitrator shall be final and binding on the parties. Pending the passing of final award, the Company shall be liable to perform all its obligation under this Agreement.”

8. A reading of the said Clause would indicate that the venue of arbitration had been only indicated. Even though in various judgments of the

Hon'ble Apex Court have been cited by the respective counsels, I am of the



view that the issue raised in this O.P. could be put to rest by the reference to judgments of the Hon'ble Apex court reported in **2020 (5) SCC 399** in the case of ***Mankastu Impex Private Limited Vs. Airvisual Limited***. For better appreciation, the relevant paragraphs of the above said judgment is extracted hereunder.

“ 7. In the present case, Clause 17 of MoU is a relevant clause governing the law and dispute resolution. Clause 17 reads as under:

17. Governing law and dispute resolution

17.1. This MoU is governed by the laws of India, without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction.

17.2. Any dispute, controversy, difference or claim arising out of or relating to this MoU, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered in Hong Kong.

The place of arbitration shall be Hong Kong.

The number of arbitrators shall be one. The arbitration proceedings shall be conducted in English language.



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17.3. It is agreed that a party may seek provisional, injunctive, or equitable remedies, including but not limited to preliminary injunctive relief, from a court having jurisdiction, before, during or after the pendency of any arbitration proceeding.

18. The learned counsel for the petitioner has submitted that a perusal of Clause 17.1 of MoU makes it clear that the petitioner and the respondent have only agreed that the proper law of the contract to be laws of India and MoU is clearly silent on the proper law and the curial law of the arbitration and therefore, Clause 17.1 would govern the proper law and the curial law. According to the petitioner, there is no express or implied exclusion either in Clause 17 or under the entire MoU of the non-applicability of the laws of India and/or the applicability of the laws of Hong Kong or any other country. The contention of the petitioner is that in the absence of the clear stipulation as to the proper law and curial law of the arbitration, laws of India should be taken as the proper law and curial law under MoU and under no circumstances, the terms in Clause 17.1 of MoU be undermined or diluted.

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



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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.

21. In the present case, the arbitration agreement entered into between the parties provides Hong Kong as the place of arbitration. The agreement between the parties choosing “Hong Kong” as the place of arbitration by itself will not lead to the conclusion that the parties have chosen Hong Kong as the seat of arbitration. The words, “the place of arbitration” shall be “Hong Kong”, have to be read along with Clause 17.2. Clause 17.2 provides that “... any dispute,



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controversy, difference arising out of or relating to MoU shall be referred to and finally resolved by arbitration administered in Hong Kong....". On a plain reading of the arbitration agreement, it is clear that the reference to Hong Kong as "place of arbitration" is not a simple reference as the "venue" for the arbitral proceedings; but a reference to Hong Kong is for final resolution by arbitration administered in Hong Kong. The agreement between the parties that the dispute "shall be referred to and finally resolved by arbitration administered in Hong Kong" clearly suggests that the parties have agreed that the arbitration be seated at Hong Kong and that laws of Hong Kong shall govern the arbitration proceedings as well as have power of judicial review over the arbitration award.

22. As pointed out earlier, Clause 17.2 of MoU stipulates that the dispute arising out of or relating to MoU including the existence, validity, interpretation, breach or termination thereof or any dispute arising out of or relating to it shall be referred to and finally resolved by the arbitration administered in Hong Kong. The words in Clause 17.2 that "arbitration administered in Hong Kong" is an indicia that the seat of arbitration is at Hong Kong. Once the parties have chosen "Hong Kong" as the place of arbitration to be administered in Hong Kong, the laws of Hong Kong would govern the arbitration. The Indian courts have no jurisdiction for appointment of the arbitrator.



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place of arbitration in a particular country, that choice brings with it submission to the laws of that country, in Eitzen Bulk A/S v. Ashapura Minechem Ltd. [Eitzen Bulk A/S v. Ashapura Minechem Ltd., (2016) 11 SCC 508 : (2016) 4 SCC (Civ) 251] , it was held as under : (SCC pp. 520-21, para 34)

“34. As a matter of fact the mere choosing of the juridical seat of arbitration attracts the law applicable to such location. In other words, it would not be necessary to specify which law would apply to the arbitration proceedings, since the law of the particular country would apply ipso jure. The following passage from Redfern and Hunter on International Arbitration contains the following explication of the issue:

‘It is also sometimes said that parties have selected the procedural law that will govern their arbitration, by providing for arbitration in a particular country. This is too elliptical and, as an English court itself held more recently in Braes of Doune Wind Farm [Braes of Doune Wind Farm (Scotland) Ltd. v. Alfred McAlpine Business Services Ltd., 2008 Bus LR D 137 : 2008 EWHC 426 (TCC)] it does not always hold true. What the parties have done is to choose a place of arbitration in a particular country. That choice brings with it submission to the laws of that country, including any mandatory provisions of its law on arbitration. To say that the parties have “chosen” that particular law to



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govern the arbitration is rather like saying that an English woman who takes her car to France has “chosen” French traffic law, which will oblige her to drive on the right-hand side of the road, to give priority to vehicles approaching from the right, and generally to obey traffic laws to which she may not be accustomed. But it would be an odd use of language to say this notional motorist had opted for “French traffic law”. What she has done is to choose to go to France. The applicability of French law then follows automatically. It is not a matter of choice.

Parties may well choose a particular place of arbitration precisely because its lex arbitri is one which they find attractive. Nevertheless, once a place of arbitration has been chosen, it brings with it its own law. If that law contains provisions that are mandatory so far as arbitration are concerned, those provisions must be obeyed. It is not a matter of choice any more than the notional motorist is free to choose which local traffic laws to obey and which to disregard.’ ”

24. *In the context of domestic arbitration, holding that once the “seat” is determined, only that jurisdictional court would have exclusive jurisdiction, in Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] , it was held as*



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under : (SCC p. 692, para 19)

“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 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.”

25. Clause 17.1 of MoU stipulates that MoU is governed by the laws of India and the courts at New Delhi shall have jurisdiction. The interpretation to Clause 17.1 shows that the substantive law governing the substantive contract are the laws of India. The words in Clause 17.1, “without regard to its conflicts of laws provisions and courts



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at New Delhi shall have the jurisdiction” has to be read along with Clause 17.3 of the agreement. As per Clause 17.3, the parties have agreed that the party may seek provisional, injunctive or equitable remedies from a court having jurisdiction before, during or after the pendency of any arbitral proceedings. In BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , this Court held that : (SCC p. 636, para 157)

“157. ... on a logical and schematic construction of the Arbitration Act, 1996, the Indian courts do not have the power to grant interim measures when the seat of arbitration is outside India.”

If the arbitration agreement is found to have seat of arbitration outside India, then the Indian courts cannot exercise supervisory jurisdiction over the award or pass interim orders. It would have, therefore, been necessary for the parties to incorporate Clause 17.3 that parties have agreed that a party may seek interim relief for which the Delhi courts would have jurisdiction.

26. In this regard, we may usefully refer to the insertion of proviso to Section 2(2) of the Arbitration Act, 1996 by the Amendment Act, 2015. By the Amendment Act, 2015 (w.e.f. 23-10-2015), a proviso has been added to Section 2(2) of the Act as per which, certain provisions of Part I of the Act i.e. Section 9 — interim relief, Section 27 — court's assistance for evidence, Section 37(1)(a) — appeal against the orders and



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Section 37(3) have been made applicable to “international commercial arbitrations” even if the place of arbitration is outside India. Proviso to Section 2(2) of the Act reads as under:

“2.Definitions.—(1)

(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.”

It is pertinent to note that Section 11 is not included in the proviso and accordingly, Section 11 has no application to “international commercial arbitrations” seated outside India.

27. The words in Clause 17.1, “without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction” do not take away or dilute the intention of the parties in Clause 17.2 that the arbitration be administered in Hong Kong. The words in Clause 17.1 do not suggest that the seat of arbitration is in New Delhi. Since Part I is not applicable to “international commercial



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arbitrations”, in order to enable the parties to avail the interim relief, Clause 17.3 appears to have been added. The words, “without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction” in Clause 17.1 is to be read in conjunction with Clause 17.3. Since the arbitration is seated at Hong Kong, the petition filed by the petitioner under Section 11(6) of the Act is not maintainable and the petition is liable to be dismissed.”

9. The dicta laid down by the Hon'ble Apex Court is that if the seat of arbitration had not been mentioned, then the intention of the parties as of the seat could be determined from other Clauses in the Agreement and the conduct of the parties. In the present case admittedly the seat of arbitration had not been stated in the relevant clause relating to the arbitration.

10. Clause 15 of the very same agreement deals with the governing law. It could be seen that the parties had agreed that all matters arising out of the Agreement shall be subject to exclusive jurisdiction of the Courts or Arbitral Tribunals at Pune. By applying the dicta laid down by the Apex Court, the Clause of Arbitration in the Agreement can be read along with the Clause relating to the governing law, also to determine the seat of arbitration. Hence, *prima facie*, I am of the view that by reading Clause 16 & 15 i.e., the Clause for arbitration and Clause for governing law, the Courts at Pune



would only have jurisdiction to entertain any application under the Arbitration and Conciliation Act, 1996.

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11. In the facts of the present case, the claim of the petitioner for cause of action to have arisen within the jurisdiction of this Court is based upon its Dealership Agreement and the sale of air conditioners by its dealers, to the customers and the agreement between the customers and the respondent's Office at Chennai. As rightly pointed out by the learned counsel for the respondent, the said dealership agreement cannot confer the jurisdiction into the agreement that had been entered into between the applicant and the respondent. The said dealership agreement could only be a separate agreement between the petitioner and its dealers. Similarly, the agreement that had been entered into between the customers and the respondent Office at Chennai would also not be a part of cause of action under the agreement that had been entered between the parties. Admittedly, the agreement between the petitioner and the respondent had been entered at Pune and as and when the loans are sanctioned to the customers, the petitioner can claim with the respondent the benefit under the Agreement that had been entered. Therefore, it is an independent agreement between the parties. On that aspect, I am of the view that the respondent had not substantiated any part of cause of action that had arisen within the jurisdiction of this Court to even



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entertain the petition or any other petition under the Arbitration and Conciliation Act, 1996.

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12. For the foregoing reasons, I am of the view that this Court lacks jurisdiction to exercise its powers under Arbitration and Conciliation Act, 1996. Accordingly, this Original Petition is dismissed.

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Index :Yes/No

Speaking Order/Non Speaking Order

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K.KUMARESH BABU, J.

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