



Arb.O.P.(Com.Div.) No.587 of 2022 & EPSR No.122191 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02.08.2024
Pronounced on	30.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.587 of 2022 and
A.Nos.4765 & 4793 of 2023
and
E.P.SR.No.122191 of 2022

M/s.Reha Environ Private Limited
formerly known as M/s.Kivar Environ Private Limited
represented by its Director
Having its Registered Office at
No.18 C, 1st Main HSR Layout Sector 6,
Hosur Sarjapur Road,
HSR Layout (Near Silk Board)
Bangalore- 560 034.

..Petitioner in
both OP & EPSR

Versus

- 1.Government of Puducherry,
Represented by its Secretary,
II Floor, Chief Secretariat,
Gubert Avenue,
Puducherry-605 001.
- 2.Local Administration Department,
Represented by its Director,
No.2, Eveche Street,
Puduchery - 605 001.



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3."POMS" Comprising of

- (a) The Commissioner,
Puducherry Municipality,
No.1, Dumas Street,
Puducherry - 605 001.
- (b) The Commissioner,
Oulgaret Municipality,
Jawahar Nagar,
Opp. to Town & Country Planning Department,
Puducherry - 605 005.
- (c) The Commissioner
Villianur Commune Panchayat,
Villupuram Main Road,
Villianur, Puducherry.
- (d) The Commissioner,
Ariankuppam Commune Panchayat,
Cuddalore Main Road,
Ariankuppam, Puducherry.

4. Puducherry Urban Development Agency,
represented by its Project Director,
No.2, Eveche Street, Puducherry-605 001.

... Respondents in
both OP & EP SR.

Prayer in O.P.:

Arbitration Original Petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 10.02.2022 and amended Award dated 31.03.2022 passed by the Hon'ble Sole Arbitrator to the extent of dismissal of 'Claim No.5-



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Interest, past, pendent lite to the tune of Rs.40,53,20,039/-.

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Prayer in EP.SR:

To direct the respondents/Judgment Debtors to pay a sum of Rs.59,11,32,254/- and interest at Rs.1,22,03,898/- (being the interest awarded towards Claim 1 and 2 at 6% p.a.), totalling to Rs.60,33,36,152/- and further to pay interest from the date of this Execution Petition till the date of actual payment and costs of these proceedings, failing which, attach the property of the respondents/Judgment Debtors which is fully described in Schedule-A in the Execution Petition and further direct the respondents/Judgment Debtors to disclose on affidavit the details of all properties in order to realize the amounts awarded by the Hon'ble Arbitral Tribunal vide award dated 10.2.2022 and amended award dated 31.3.2022.

For Petitioner: Mr.S.Muralidhar, Sr.Counsel for
in Mr.Anirudh Krishnan
both OP & EP

For Respondent: Mr.Ramaswamy Meyyappan, GA(P)
in for R1 to R3
both OP & EP Mr.T.P.Manoharan, Sr.Counsel for
Mr.T.M.Naveen for R4

COMMON ORDER

The present O.P. has been filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 (in short, 'the Act'), challenging the award



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passed by the learned Sole Arbitrator to the extent of rejection of Claim

No.5 -interest, past, pendent lite to the tune of Rs.40,53,20,039/-.

2. The E.P. has been filed by the petitioner/award holder, praying to direct the respondent/Judgment Debtors to pay a sum of Rs.59,11,32,254/- and interest at Rs.1,22,03,898/- (being the interest awarded towards Claim 1 and 2 at 6% p.a.), totalling to Rs.60,33,36,152/- and further to pay interest from the date of this Execution Petition till the date of actual payment and costs of the proceedings, failing which, attach the property of the respondents/Judgment Debtors which is fully described in Schedule-A in the Execution Petition

3. Since both the present matters arise out of the same Arbitral Award dated 10.02.2022 and amended Award dated 31.03.2022 passed by the Hon'ble Sole Arbitrator and as the parties are similar and the issues involved pertain to the same award, these matters are taken up together for being disposed vide this common order.



4. The brief facts, which lead to the filing of the present matters are as follows:

4.1 The 2nd respondent herein, invited Expression of Interest (EOI) for the establishment of an Integrated Municipal Solid Waste Management ("IMSW") Project for the Respondent No. The IMSW Project is an attempt at successful waste management techniques and was initiated for the purpose for better treatment of garbage/waste. In line with the same, the IMSW project consisted of two stages, viz., i) Collection and Transportation ("C&T") activities wherein the waste is essentially collected from the region and transported to the dump yard; and ii) Processing and Landfilling ("P&L") activities wherein the waste collected is processed and the residue is landfilled by setting up a waste management plant.

4.2 Out of the various bidders who had submitted their bids in line with the EOI, one M/s.Reha Environ Private Limited (hereinafter referred to 'the petitioner') was chosen as the successful bidder. After extensive negotiations, it was agreed that the petitioner would carry out the above mentioned works at a final price/tipping fee of Rs. 1746 per tonne of MSW with an escalation of 5% per annum.



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4.3 Pursuant to the above, the petitioner was awarded the Letter of Award ("LOA") on 16.07.2010, which was duly accepted by the petitioner.

Subsequent to the signing of the LOA, the petitioner and the Respondents entered into the Agreement on 18.10.2010, wherein it was agreed for setting up of SPV (Special Purpose Vehicle) for the purpose of carrying out the above mentioned works. Therefore, the parties, had constituted the SPV under the name of M/s.Puducherry Municipal Services Private Limited (2nd petitioner in O.P.) wherein the Petitioner held 95% of the ownership and the rest was held by Respondent No. 4.

4.4 According to the petitioner, as per Article 7.2.1 of the Agreement, the Respondents were obliged to release a total of Rs. 22.35 Crores as a Mobilization capital grant, as per JNURM Scheme, in two instalments, i.e. Rs. 12.42 crores as Mobilization Grant and Rs. 9.93 Crores prior to the commencement of C&T activities. This arrangement was entered into in order to support the capital requirement of the project and as the share from the Respondents. The Petitioner, pursuant to the agreement had commenced the execution of the C&T works on 11.01.2011. However, to the shock and surprise of the petitioner, the Respondent failed to disburse Rs. 2.481 crores



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of the entire capital grant to be released at this stage of the project, which was a material breach of the Agreement.

4.5 Further, apart from the non-release of the capital grant, there was non- payment and consequent defaults in the payment of the monthly Running Account Bills by the Respondents (to be paid as per the tipping fee), despite the timely completion of works and due reminders to the Respondents. It is stated that owing to the non- release of the capital grant and the non-payment of the monthly bills, the petitioner was unable to carry out the works in the Project as they underwent a severe financial crisis in the execution of the Project. It is due to this irresponsible attitude of the Respondents, the activities of the Petitioner were disrupted in April 2012. However, the Respondents, despite its clear breach of the Agreement, illegally terminated the Agreement on 23.08.2013 on the ground that no work was being undertaken by the petitioner since April 2012.

4.6 Aggrieved by the termination, the Petitioner was constrained to invoke arbitration against the Respondents and accordingly, sent a notice of arbitration on 12.06.2012, wherein, the Respondents failed to respond it, which prompted the petitioner to approach this Court by way of filing a



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petition under Section 11 of the Act vide O.P. 127 of 2013 and pursuant to the orders passed therein by this Court, the Learned Sole Arbitrator came to be appointed.

4.7 The learned Sole Arbitrator, on consideration of the claims made by the petitioner and on notice to the respondents, passed a detailed Award, dated 05.03.2022 and later, at the instance of the petitioner, an amended award dated 31.03.2022 came to be passed.

5. Now the petitioner has come forward with the present O.P., challenging the Award passed by the learned Sole Arbitrator dated 10.02.2022 and the amended arbitral award dated 31.03.2022, to the extent of dismissal of 'Claim No.5-Interest, past, pendent lite to the tune of Rs.40,53,20,039/-.

6. Since the respondents in the Arb.O.P. failed to challenge the said Award and thereby, the award has become final and accordingly, the petitioner/Award holder filed an Execution Petition vide EPSR No.122191



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of 2022 before this Court for execution of the award, primarily citing the reason that one of the properties. Guest House belonging to the respondents is situated within the jurisdiction of this Court.

7. Resisting the above petitions, Mr.T.P.Manoharan, learned Senior counsel appearing for the respondents would submit that the present O.P. is not maintainable before this Court and the same is liable to be dismissed on the ground of lack of jurisdiction. He would submit that this Court does not have jurisdiction, but the Courts at Puducherry alone have jurisdiction in terms of Clause 11.2 (b) of the Concession Agreement, dated 18.10.2010 entered by the parties, which provides that the place of arbitration shall ordinarily be Puducherry, but by agreement of the parties, the arbitration hearing, if required, may be held elsewhere. By referring to the said Clause, he would submit that the place of arbitration is Purucherry and for the convenient of the parties, the hearing of the arbitration alone can be held elsewhere. In pursuant to the said Clause, the parties have agreed to have the hearing of arbitration at Chennai since the Arbitral Tribunal is situated at Chennai. Therefore, by citing this reason, the learned Senior counsel



would contend that the present O.P. is not maintainable.

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8. The learned Senior counsel would also submit that the place of arbitration as agreed by both parties is Puducherry, which shall be taken as 'seat of arbitration' and thereby, the Courts at Puducherry will have jurisdiction in respect of all the arbitral proceedings arises out of the arbitral Agreement entered by the parties.

9. He would also point out that Section 9 application was filed before this Court prior to the commencement of the arbitration, for which, the respondents also filed counter without raising objections as regards jurisdictional issue. However, he would submit that mere filing counter in Section 9 application by the respondents would not take away the exclusive jurisdiction of the Courts at Puducherry contrary to the terms of the agreement entered to by both parties. He pointed out that Clause 13(3) of the Concession Agreement, dated 18.10.2010 provides that the Courts at Puducherry shall have jurisdiction over all the matters arising out of or relating to this agreement. He would refer to a decision of the Hon'ble Supreme Court reported in (2020) 4 SCC 310 (*Hindustan Construction*



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Company Ltd. versus NHPC Limited and another). Hence, he would urge this Court to dismiss the O.P.

10. As regards E.P. is concerned, he would submit that since no challenge has been made against the arbitral award, the petitioner filed E.P. before this Court, citing the reason that one of the properties belonging to the respondents is situated at Chennai. He would submit that only a Guest House of Govt.of Puducherry is situated within the jurisdiction of this Court, while the award amount claimed by the petitioners is to the tune of Rs,60,33,36,152/- on the date of filing of the E.P. and this property would not fetch more than Rs.10 to 15 Crores, the same would certainly not satisfy the award amount, which would necessitate the petitioner to approach again the Courts at Puducherry where the assets of the respondents are available and hence, he would submit that entertaining the present E.P. would only lead to multiplicity of legal proceedings in different Courts. In the event if the E.P. is filed before the jurisdictional Court where the sufficient properties belonging to the respondents/J.Drs. are situated, there is every likelihood of recovering the award amount and hence, it would be



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appropriate for the award holder, the petitioner herein to approach the said Court. He would further submit that in the present case, the property belongs to Public Works Department of Puducherry and the concerned Authority has not been impleaded to represent PWD, but only the Government of Puducherry was impleaded. Further, he would submit that the agreement entered between the petitioner and the respondents in respect of various municipal contracts and each and every department will have properties in their name, likewise, the Municipalities have properties in their name and therefore, it would be appropriate for the petitioner to move the jurisdictional Court at Puducherry so that the entire award amount can be recovered by way of E.P. Therefore, the learned Senior counsel seeks to dismiss both O.P and E.P.

11. On the other hand, Mr.S.Muralidhar, learned Senior counsel appearing for the petitioner would submit that in the present case, O.P. has been filed based on the 'seat of arbitration' agreed by both parties. He would submit that though in the agreement, it is stated in Clause 11.2(b) that the place of arbitration' shall ordinarily be Puducherry but by agreement of



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parties, the arbitration hearing, if required, may be held elsewhere. He would submit that by agreement of the parties, entire arbitral proceedings were conducted at Chennai and the award was also passed at Chennai and hence, Chennai is the seat of arbitration. He would also submit that Section 9 application seeking for appointment of Arbitrator was filed before this Court and the respondents have not raised any objections. Therefore, he would submit that this Court has exclusive jurisdiction to entertain the O.P. filed by the petitioner, challenging the award passed by the learned Sole Arbitrator in respect of rejection of Claim No.5. He would refer to Section 42 of the Act and submit that since Section 9 application was filed before this Court at pre arbitral stage, this Court alone shall have jurisdiction over all the arbitral proceedings as well as all subsequent applications arising out of the arbitral agreement and therefore, the arbitral proceedings shall be made before this Court alone. Therefore, he would submit that only this Court has jurisdiction to entertain O.P. He would refer to the Judgment of the Hon'ble Supreme Court reported in “2020(4) SCC 310 (**BGS SGS Soma JV versus NHPC Limited**)”.



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12. As far as E.P. is concerned, the learned Senior counsel for the petitioner would submit that in the present, there was no challenge made to the award passed by the learned Sole Arbitrator by the respondents and the same had attained the finality and hence, the petitioner filed E.P. before this Court. He pointed out that it is well settled law that where the properties of the Judgment Debtors are situated, the E.P. can be filed in terms of the provisions of the CPC. He would submit that one of the properties, viz., Puducherry Guest House is situated in Chennai, which is well within the jurisdiction of this Court. Therefore, he would submit that E.P. can be entertained before this Court.

13. With the above submissions, the learned counsel would urge this Court to grant the reliefs sought for in the O.P. and to number E.P. and enable the petitioner to recover the award amount.

14. I have given due consideration to the submissions made by the learned counsel for the petitioner and the learned Senior counsel appearing



for the respondents and perused the entire materials available on record.

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15. Arbitration is a very popular alternative dispute resolution mechanism that provides parties with a more efficient and flexible way to resolve their disputes. Two key aspects of arbitration that require careful consideration are the '*place of arbitration*' and the '*seat of arbitration*'. While these terms are often used interchangeably, they have distinct legal implications and can significantly impact the arbitral proceedings.

16. The Hon'ble Supreme Court has rendered several decisions that have clarified the distinction between the 'place of arbitration' and the 'seat of arbitration', particularly in situations where the exclusive jurisdiction is conferred on Courts of another place.

17. In fact, the Arbitration and Conciliation Act, 1996, does not mention the words '*Seat*' or '*Venue*.' In common parlance, the 'place of arbitration' and 'seat of arbitration' are defined as under:

Place of Arbitration:



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The place of arbitration refers to the physical location where the arbitral proceedings are conducted. It is the site where hearings, meetings, and other procedural aspects take place. The place of arbitration is primarily concerned with practical considerations, such as convenience, availability of facilities, and ease of access for the parties and arbitrators.

e.g.: All the proceedings pertaining to the arbitration, viz., filing of statement of claims, statement of defence, recording of evidence and passing of award, etc., will be taken place at the **place of arbitration**.

Seat of Arbitration:

The seat of arbitration, is the legal jurisdiction to which the arbitration is tied. It determines the legal framework and procedural laws that govern the arbitration proceedings. The seat of arbitration also determines the supervisory court that exercises jurisdiction over the arbitration.

e.g. All the matters that arise from the arbitration proceedings, such as the appointment and removal/change of arbitrators, challenge of the awards under Section 34 of the Act and enforcement of awards, etc., will be taken place before a Court of law (**Seat of arbitration**).



Illustration: A and B entered into agreement, specifying 'Bangalore' as the 'place of arbitration' and 'Chennai' as the 'seat of arbitration'. Then, the parties can get the dispute resolved by way of arbitration before the Arbitrator/Arbitral Tribunal situated at Bangalore (**place of arbitration**), while if A or B is aggrieved by the appointment of Arbitrator or the award, rejection of claims, etc., they can challenge the same before the Court of law situated at Chennai (**Seat of arbitration**).

18. There would be no ambiguity or confusion as regards the 'place of arbitration' and the 'seat of arbitration' if the parties have clearly mentioned these aspects while entering into the agreement as regards 'place of arbitration' and 'seat of arbitration'. Therefore, understanding the distinction between the place of arbitration and the seat of arbitration is crucial for the parties engaging in arbitration. The choice of seat has significant legal consequences on procedural matters, Court supervision, and the enforceability of awards. Parties should carefully consider both practical and legal factors when deciding on the place of arbitration and seat of arbitration to ensure a fair, efficient, and enforceable arbitration process.



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19. However, the parties, without understanding the distinction between the 'place of arbitration' and 'seat of arbitration', after entering into the agreements without clearly mentioning about place and seat of arbitration, rushing to the Courts and testing the intelligence of the Courts in determining the seat of arbitration. The High Courts and the Hon'ble Supreme Court have rendered very many decisions, determining the seat of arbitration, taking into consideration the conduct of the parties, cause of action and other aspects of the matter, etc.

20. Coming to the case on hand, absolutely, there is no ambiguity or confusion as regards the seat of arbitration agreed by both the parties since both parties have specifically indicated both '**place of arbitration**' as well as '**seat of arbitration**' with clear terms while entering into Concession Agreement, dated 18.10.2010. It is worthwhile to extract Clauses 11.2 and 13.3.of the Agreement, dated 18.10.2020, which read under:

"11.2 Arbitration

(a) Procedure



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Subject to the provisions of Article 11.1, any dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three arbitrators, one each to be appointed by each party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 30 days of receipt such intimation, the other Party fails appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with the Arbitration and Conciliation Act, 1996

(b) Place of Arbitration

The place of arbitration shall ordinarily be Puducherry but by agreement of the Parties, the arbitration hearing, if required, may be held elsewhere.

“13. Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Puducherry shall have jurisdiction over all matters arising out of or relating to this Agreement.



21. The above Clause, particularly, 11.2 (b) makes it clear that the parties have agreed that the place of arbitration shall be Puducherry, which means, all arbitration proceedings, such as filing claim/counter claim statements, arbitration hearing, passing of award, etc., shall be held at Puducherry. It is further clear that if required, the arbitration hearing alone, may be held elsewhere, subject to agreement of the parties. Here, it appears that both parties have agreed to have arbitration hearing at Chennai since the learned Sole Arbitrator is from Chennai and accordingly, all the arbitral proceedings were conducted at Chennai and award also came to be passed.

22. Likewise, Clause 13 makes it very clear that the both parties have agreed that the seat of arbitration shall be Puducherry. The said Clause provides that the Courts at Puducherry shall have jurisdiction over all matters arising out of or relating to this Agreement. It is not in dispute that the present O.P. arose out of the arbitral award which has been passed by the learned sole Arbitrator upon conducting the arbitral proceedings pursuant to the arbitral Agreement dated 18.10.2010. Thus, as per Clause 13, which is the prime material provision, the Courts at Puducherry have



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exclusive jurisdiction over the present matter. Therefore, this Court is of the considered view that it is incumbent upon the petitioner to approach the Courts at Puducherry.

23. However, the learned Senior counsel for the petitioner would technically contend that this Court has jurisdiction to entertain these matters on two grounds. Firstly, when an application 9 of the Act was moved before this Court for appointment of Arbitrator, the respondents have not raised any objections as regards the jurisdiction of this Court and by virtue of Section 42 of the Act, this Court has exclusive jurisdiction to entertain the present petition. Secondly, though the agreement provides jurisdiction to the Courts at Puducherry, the parties can, during the course of arbitration, override the jurisdiction clause by choosing a different seat. He pointed out that all the arbitral proceedings including passing of the award, were conducted in Chennai and thereby, the parties have virtually overridden the jurisdiction clause, by which, it is clearly indicated that the parties have chosen Chennai as the seat of arbitration. In this regard, he relied upon the decision of this Court in "*Engineering Projects India Ltd. versus Balaji*



"Projects" reported in 2021 SCC OnLine Mad 409, for the proposition that the jurisdiction could be conferred *ex post facto* based on the parties' conduct. He also referred to the decision of the Hon'ble Supreme Court reported in **"BGS SGS Soma JV versus NHPC Limited"** reported in (2020) 4 SCC 234.

24. The above contentions raised by the learned Senior counsel for the petitioner are not tenable and this Court does not find any considerable force in the said contentions. Merely not raising objections to Section 9 application filed by the petitioner before this Court and conducting the entire arbitral proceedings at Chennai, as rightly contended by the learned Senior counsel for the respondents, it cannot be held that the parties have virtually overridden the jurisdiction Clause and thus, the seat of arbitration will change from Puducherry to Chennai.

25. In BGS SGS SOMA JV case (cited supra), the Hon'ble Supreme Court has prescribed the following bright-line test for determining whether a chosen venue could be treated as the seat of arbitration:



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"a) If a named place is identified in the arbitration agreement as the “venue” of “*arbitration proceedings*”, the use of the expression “*arbitration proceedings*” signifies that the entire arbitration proceedings (including the making of the award) is to be conducted at such place, as opposed to certain hearings. In such a case, the choice of venue is actually a choice of the seat of arbitration.

b) In contrast, if the arbitration agreement contains language such as “*tribunals are to meet or have witnesses, experts or the parties*” at a particular venue, this suggests that only hearings are to be conducted at such venue. In this case, with other factors remaining consistent, the chosen venue cannot be treated as the seat of arbitration.

c) If the arbitration agreement provides that arbitration proceedings “*shall be held*” at a particular venue, then that indicates arbitration proceedings would be anchored at such venue, and therefore, the choice of venue is also a choice of the seat of arbitration.

d) The above tests remain subject to there being no other “*significant contrary indicia*” which suggest that the named place would be merely the venue for certain proceedings and not the seat of arbitration.

e) In the context of international arbitration, the choice of a supranational body of rules to govern the arbitration (for example, the ICC Rules) would further indicate that the chosen venue is actually the seat of arbitration. In the context of domestic arbitration, the choice of the Indian Arbitration and Conciliation Act, 1996 would provide such indication."



26. Therefore, the Supreme Court set out 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 proceedings.

27. But in the present case, as observed above, in clear terms, the parties have indicated the 'venue of arbitration' at Puducherry and if required, by consent of parties, arbitration hearing a;pme may be held elsewhere. As regards 'seat of arbitration also, absolutely, there is significant indicia that the Courts at Puducherry shall have jurisdiction over all the matters arising out of or relating to the Agreement.

28. Therefore, this Court has no hesitation to hold that the Courts at Puducherry alone shall have exclusive jurisdiction over all the matters arising out of the arbitral Agreement and hence, the petitioner has to necessarily invoke jurisdiction of the Courts at Puducherry.



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29. At this juncture, it would be apposite to refer the law laid down by the the Hon'ble Apex Court reported in “(2020) 4 SCC 310 (*Hindustan Construction Company Ltd. versus NHPC Limited and another*), in paragraphs 4 and 5 as under:

“4) This Court in Civil Appeal No. 9307 of 2019 entitled BGS SGS Soma JV vs. NHPC Ltd. delivered a judgment on 10.12.2019 i.e. after the impugned judgment was delivered, in which reference was made to Section 42 of the Act and a finding recorded thus:

“61. Equally incorrect is the finding in Antrix Corporation Ltd. (supra) that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one Court exclusively. This is why the section begins with a non-obstante clause, and then goes on to state “... where with respect to an arbitration agreement any application under this Part has been made in a Court...” It is obvious that the application made under this part to a Court must be a Court which has jurisdiction to decide such application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the Courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all



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subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no “seat” is designated by agreement, or the so-called “seat” is only a convenient “venue”, then there may be several Courts where a part of the cause of action arises that may have jurisdiction. 0 and before such “seat” may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a Court in which a part of the cause of action arises would then be the exclusive Court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled. “

“5) This was made in the backdrop of explaining para 96 of the Balco (supra), which judgment read as a whole declares that once the seat of arbitration is designated, such clause then becomes an exclusive jurisdiction clause as a result of which only the courts where the seat is located would then have jurisdiction to the exclusion of all other courts.”

30. A reading of the above, it is very clear that once the seat of arbitration is designated, such clause then becomes an exclusive jurisdiction clause as a result of which, only the Courts where the seat is located will



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have jurisdiction to the exclusion of all other Courts. Merely because an application under Section 9 was first made to this Court, a wrong jurisdiction cannot be conferred to entertain the O.P. in terms of Section 42 of the Act. It would be apposite to extract Section 42 of the Act, which reads as under:

“42. Jurisdiction

Notwithstanding anything contained elsewhere in this Part or in 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 a 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.

31. A reading of the above provision would make it clear that in the event if any application is made first before any Court, that Court alone will have jurisdiction over the arbitral proceedings and all the subsequent applications arising out of the agreement and the arbitral proceedings shall



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be made in that Court and in no other Court. To invoke Section 42 of the Act, application should have been made in a Court in which part of cause of action arises in a case where the parties have not agreed on the seat of arbitration.

32. But in the present case, the place of arbitration has been categorically determined and agreed by both parties at Puducherry and only for the convenience of the parties and by their agreement, the venue of arbitration was shifted to Chennai only for the purpose of arbitration hearing and thus, it cannot be held that the Court at Chennai is conferred with the jurisdiction in respect of all the arbitral proceedings.

33. As far as the Section 9 application filed by the petitioner/award holder before this Court seeking appointment of Arbitrator, wherein, a counter affidavit was filed on behalf of the respondents without raising any objection as regards the issue of jurisdiction and the same was entertained by this Court is concerned, it is pertinent to note that admittedly both the parties have agreed to have the arbitration hearing at Puducherry and the



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entire cause of action has arisen only at Puducherry and more over the offices of both parties are located at Puducherry, merely because of wrongly invoking the jurisdiction, will not change the place of jurisdiction and thereby to claim that in terms of Section 42, all future arbitration proceedings should be conducted only before the Court where Section 9 application was filed.

34. Further, as regards Section 42 of the Act, it was observed by the Hon'ble Supreme Court in BGS SGS Soma case that the provision of Section 42 is provided only to avoid conflicts of jurisdiction of Courts by placing the supervisory jurisdiction over all arbitration proceedings in connection with the arbitration proceedings with one Court exclusively. For this purpose, if any party already moves Section 9 application before the Court, the same Court would have exclusive jurisdiction when there is no clear indication of seat of arbitration in the arbitral agreement entered into by the parties. In the present case, there is clear indication as regards seat of arbitration. Hence, the contentions raised by the learned Senior counsel on this aspect are not tenable.



35. Therefore, for all these reasons, this Court is unable to agree with

the submissions made by the learned Senior counsel, Mr.S.Muralidhar appearing for the petitioner. When the parties have specifically agreed the seat of arbitration at Puducherry and only the hearing of arbitration, the parties have agreed at Chennai, it is crystal clear that the parties shall always have the place of arbitration only at Puducherry. Thus, the Courts at Puducherry will have exclusive jurisdiction where, all the arbitral proceedings can be made by the parties. Therefore, this Court is of the considered view that the present O.P. is not maintainable before this Court due to lack of jurisdiction and hence, the petitioner has to necessarily invoke the jurisdiction of the Courts at Puducherry.

36. Accordingly, the Registry is directed to transfer the O.P. along with connected records to the Principal District Court, Puducherry. On receipt of the same, the learned Principal District Judge is directed to entertain the O.P. and deal with the same in accordance with law.

37. As far as the E.P. is concerned, no doubt, the Award holder can file E.P. where the assets of the Judgment Debtor are situated. In the present case, according to the petitioner, one of the assets of the



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respondents, viz., Guest House of Puducherry belongs to the respondents is situated at Chennai i.e. within the jurisdiction of this Court and thereby, the petitioner/award holder is entitled to file E.P. for execution of the award and as such, E.P. is maintainable. It is pertinent to note that, admittedly, the award amount sought to be recovered by way of E.P. is to the tune of Rs.60,33,36,152/-, whereas, the Guest House would fetch hardly Rs.10 to 15 Crores and in such event, as rightly contended by the learned Senior counsel for the respondents, it cannot satisfy the award amount, by which, the award holder, once again has to necessarily approach the Courts where the plenty of assets of the Judgment Debtors/respondents are available, viz., the Courts at Puducherry. Therefore, in order to avoid multiplicity of proceedings, it would be appropriate for the petitioner/award holder to move the Courts at Puducherry where sufficient assets belonging to the Judgment Debtors are available, which would certainly satisfy the entire award amount. Therefore, even though one of the properties is situated within the jurisdiction of this Court, by which, the Award holder is entitled to the E.P. and such E.P. is maintainable before this Court, however, taking into consideration the huge award amount, i.e. more than 60 Crores, this



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Court is of the considered view that entertaining the present E.P. would render the award in-executable in its entirety and lead to multiplicity of proceedings before different Courts. Hence, for this reason, this Court is of the view that the E.P. is not maintainable before this Court. Therefore, this Court feels it appropriate to transfer all the connected papers pertaining to E.P.SR.No.122191 of 2022 to the Principal District Court, Puducherry. On receipt of the same, the learned Principal District Judge, Puducherry is directed to entertain the same and proceed in accordance with law.

38. In the light of the above discussion and observation, these O.P. and E.P. are disposed of in terms of foregoing paragraphs 38 and 39, which are reiterated as under:

i) The Registry is directed to transfer the O.P. along with connected records to the Principal District Court, Puducherry. On receipt of the same, the learned Principal District Judge is directed to entertain the O.P. and deal with the same in accordance with law.

ii) The Registry is also directed to transfer all the connected papers pertaining to E.P.SR.No.122191 of 2022 to



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the Principal District Court, Puducherry. On receipt of the same, the learned Principal District Judge, Puducherry is directed to entertain the same and proceed in accordance with law.

iii) No costs.

iv) Consequently, connected Applications are closed.

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Internet: Yes/No

Index: Yes/No

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KRISHNAN RAMASAMY, J.

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Pre delivery common Order in
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