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

+ **ARB.P. 59/2023 & I.A. 1289/2023**

MS POONAM SURI AND ORS

..... Petitioners

Through: Mr. Karunesh Tandon, Mr. Rahul Chauhan and Mr. Abhishek Singh, Advocates.

versus

ADVANCE INDIA PROJECTS LIMITED

..... Respondent

Through: Mr. Arjun Jain and Ms. Renuka Anand, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

15.03.2024

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Learned counsel appearing for the parties inform the court that mediation between the parties has not borne fruit. Mediator's report dated 11.03.2024 records that the mediation has ended as 'Not-Settled'.

2. By way of the present petition filed under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioners seek appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Unit Buyers' Agreement dated 06.06.2016 ('Agreement').
3. Mr. Karunesh Tandon, learned counsel appearing for the petitioners submits, that the present petition is maintainable before this court



since, as is evident from a perusal of Agreement dated 06.06.2016 from which the disputes have arisen, both parties to the disputes are based in New Delhi, with only a Sales & Marketing office of the respondent situate in Gurgaon, Haryana.

4. On the other hand, Mr. Arjun Jain, learned counsel appearing for the respondent submits, that the dispute resolution mechanism *inter-alia* the arbitration agreement between the parties, is comprised in clauses 57 and 58 of the Agreement which read as follows :

“57. DISPUTE RESOLUTION BY ARBITRATION:

All or any disputes arising out of or touching upon or in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms hereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussions, failing which the same shall be settled through reference to a sole Arbitrator to be appointed by the Company, whose decision shall be final and binding upon the Parties. The Allottee hereby confirms that it shall have no objection to the appointment of such Sole Arbitrator and the Allottee hereby accepts and agrees that this shall not constitute a ground for challenge to the independence or impartiality of the said Sole Arbitrator to conduct the arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto and shall be held at the Company's offices or at a location designated by the said Sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The Award of the Sole Arbitrator shall be final and binding on the Parties. Both the Parties will share the fees of the Arbitrator in equal proportion.

58. APPLICABLE LAWS OF INDIA:

That the rights and obligations of the Parties under or arising out of this Agreement shall be construed and enforced in accordance with the Applicable Laws of India. Subject to the above Arbitration clause, the Courts at Gurgaon and the Punjab & Haryana High



Court at Chandigarh alone shall, have the exclusive jurisdiction in all matters arising out of/touching and/or concerning this Agreement, to the exclusion of all other locations, regardless of the place of execution or subject matter of this Agreement.”

(emphasis supplied)

5. A plain, conjoint reading of clauses 57 and 58 of the Agreement shows that the parties have agreed that the arbitration proceedings “...
...shall be held at the Company’s offices or at a location designated by the said Sole Arbitrator in Gurgaon.” and furthermore that “...
... Subject to the above Arbitration clause, the Courts at Gurgaon and the Punjab & Haryana High Court at Chandigarh alone shall, have the exclusive jurisdiction in all matters arising out of/touching and/or concerning this Agreement, to the exclusion of all other locations, regardless of the place of execution or subject matter of this Agreement.”.
6. Clearly therefore, in the context of territorial jurisdiction, there are only 02 places mentioned in the agreement, viz. Gurgaon and Chandigarh; and nowhere does the agreement contain any reference to Delhi insofar as the dispute resolution mechanism agreed-to between the parties is concerned.
7. The narration in clause 58, that that provision would be subject to the arbitration clause, is clearly a reference *only* to a situation where a suit comes to be filed between the parties, which again does not negate or detract from the fact that the parties had agreed that arbitration proceedings will be conducted at Gurgaon, Haryana.



8. Applying the test laid-down by the Supreme Court in ***BGS SGS SOMA JV vs. NHPC Limited***,¹ even if the relevant portion of clause 57 is taken to be a reference only to the ‘venue’ of the arbitration proceedings (*i.e.* Gurgaon), this court finds that there are no other contrary indicia in the agreement to suggest that the ‘venue’ should not also be taken as the ‘seat’ of arbitration agreed-to by the parties. Yet again therefore, there is nothing to suggest that the arbitration proceedings should be anchored in Delhi.
9. Accordingly, this court is of the view that the present petition under section 11 of the A&C Act is not maintainable before this court, since it lacks territorial jurisdiction to entertain or decide the petition.
10. Accordingly, the petition is dismissed, granting liberty to the petitioner to approach the court of competent territorial and subject-matter jurisdiction in relation to the relief sought, in accordance with law.
11. The petition stands disposed-of.
12. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 15, 2024/ak

¹ (2020) 4 SCC 234