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

+ **ARB.P. 273/2023**

SUMIT BANSAL

..... Petitioner

Through: **Mr Rameezuddin Raja and Ms Tanya
Sharma, Advs.**

versus

**MGI DEVELOPERS AND PROMOTORS THROUGH ITS
PROPRIETOR SH MANOJ KUMAR GOYAL & ORS.**

..... Respondents

Through: **Dr Harshvir Pratap Sharma, Sr. Adv.
with Ms Stuti Jain, Mr Bhagvan
Swarup Shukla, Mr Akshu Jain, Mr
Akul Krishnan and Mr Amit Kumar,
Advs.**

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

14.05.2024

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1. This is a petition seeking appointment of an Arbitrator as per Clause 15 of the Agreement dated 07.11.2016 for adjudication of disputes between the parties.
2. The respondent had executed the Agreement to Sell in favour of the petitioner in respect of commercial units bearing Nos. S-1, S-2 and S-3 in their project at MGI MANSION. It is stated that pursuant to the said Agreement to Sell, the petitioner paid a sum of Rs. 1,72,21,200/- in respect of purchasing the said commercial units. The respondents have neither given the commercial units nor refunded the amount.
3. Since there were disputes, the petitioner invoked arbitration vide Legal Notices dated 29.06.2022, 26.09.2022 and 06.12.2022.



4. Since the disputes are still pending, the petitioner has filed the present petition.
5. Dr Harshvir Pratap Sharma, learned senior counsel for the respondents opposes the petition. He states that the petition is barred in view of Section 269SS of the Income Tax Act, 1961 and any transaction relating to real estate has to be from bank to bank.
6. Learned senior counsel further relies on Section 23 of the Indian Contract Act, 1872 to state that the consideration is unlawful, forbidden by law and hence, the contract is void.
7. Dr Harshvir Pratap Sharma further states that the contract was executed in Noida, the respondent is situated at Noida and the property with regard to which the Agreements to Sell were executed were also situated at Noida and hence this Court has no territorial jurisdiction to entertain and try the present suit.
8. Lastly, he states that the respondents had issued certain post dated cheques which have bounced and the petitioner has already initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881. Learned senior counsel states on instructions that they only received Rs. 66 lakhs and Rs. 97 lakhs has been paid in different names of the family members of the petitioner.
9. As regards the first two objections regarding the provisions of Income Tax Act, 1961 and Indian Contract Act, 1872 are concerned; I am unable to agree with learned senior counsel for the respondents.
10. Under Section 11 of the Arbitration and Conciliation Act, 1996, this Court is only required to see the existence of an arbitration clause and the first two issues which are agitated by the respondents are within the domain



of the Arbitrator to decide.

11. As regards the third objection regarding territorial jurisdiction is concerned, the arbitration clause being clause 15 reads as under:

“15. That if there shall be any difference or disputes between the parties or any matter arising hereunder, the same shall be referred to only one arbitrator, who shall be appointed by the Second Party only. The award given by so appointed arbitrator shall be final and binding on all the parties. The arbitration under this clause shall be deemed to be arbitration under the Arbitration and Conciliation Act, 2015 or any other statutory modification thereof. The Courts of Delhi/New Delhi shall abide by the award given by the arbitrator. All expenses of arbitration including arbitrator fees etc shall be borne by the first party only.”

12. Admittedly, there is no seat of arbitration fixed nor is there any clause which oust the jurisdiction of any of the Courts. Hence, the judgment passed by a Coordinate Bench of this Court in **‘Aarka Sports Management Pvt. Ltd. v. Kalsi Buildcon Pvt. Ltd.’** 2020:DHC:2223 will apply to the facts of the present case. Relevant paragraphs of the said judgments are reproduced:

“26. If the parties have not agreed on the seat of the arbitration, the Court competent to entertain an application under Section 11 of the Arbitration and Conciliation Act would be the “Court” as defined in Section 2(1) (e) of the Act read with Sections 16 to 20 of the Code of Civil Procedure.

Findings

27. The arbitration agreement dated 16th March, 2018 does not



stipulate any seat of arbitration as the parties had not agreed on the seat of the arbitration under Section 20(1) of the Arbitration and Conciliation Act. In that view of the matter, the seat of the arbitration shall be determined by the Arbitral Tribunal under Section 20(2) of the Arbitration and Conciliation Act.

28. Since the parties have not agreed on the seat of the arbitration, the Court within the meaning of Section 2(1)(e) of Arbitration and Conciliation Act read with Sections 16 to 20 of Code of Civil Procedure would be competent to entertain an application under Section 11 of the Arbitration and Conciliation Act.”

13. In the present case, the petitioner is seeking to recover the amount paid by the petitioner to the respondents for purchase of three flats along with certain other amounts.

14. The same is disputed by learned senior counsel for the respondents on instructions.

15. The ledger maintained by the respondents *vis-a-vis* the petitioner shows that a sum of Rs. 40,00,000/- and Rs. 23,50,000/- have been paid by the petitioner through RTGS from/to bank being Central Bank of India, A/c. No. 3338013674.

16. It is stated by Mr Rameezuddin Raja, learned counsel for the petitioner that the RTGS has been made by the petitioner from his bank account at YES Bank Ltd., Prashant Vihar, Rohini, Delhi. Hence, I am of the view that a part of cause of action has arisen within the territorial jurisdiction of this Court.

17. Mr Sharma, learned senior counsel for the respondents has relied upon the judgment passed by a Coordinate Bench of this Court titled



‘Vasudev Garg & Ors. v. Embassy Commercial Projects (Whitefield) Private Limited & Ors.’ in O.M.P.(I) (COMM.) 269/2023, decided on 31.10.2023 and more particularly paragraph 24 which reads as under:

“24.It is now a settled law that principles of Section 20 of CPC do not apply to the arbitration proceedings, hence accrual of cause of action, howsoever trivial or significant, would not make Delhi a seat of arbitration and it is for this reason that the draftsman who drafted the arbitration agreement contradistinguished the scope of clause 21.3 from of clause 17.1 by excluding arbitration proceedings from the scope of clause 21.3 and restricting the scope of clause 21.3 to those matters which are required to be adjudicated in court only being excepted from arbitration. Furthermore, to say it is clause 21.3 of SHA which provides for "seat" of arbitration, would lead to a situation of dual seats of arbitration, giving courts in both Mumbai and Delhi supervisory jurisdiction, which is clearly contrary to the rationale for providing “seat” of arbitration.”

18. In the said judgment, the Coordinate Bench was concerned with a situation wherein the issue was with regard to venue of arbitration and seat of arbitration. In the present case, that is not so. The arbitration clause is totally silent with regard to venue as well as seat of arbitration and hence, ***Aarka Sports (supra)*** will be applicable in the present case.

19. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- i) Mr. Justice V.K. Jain (Retd.) (Mob. No. 9650116555) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.



- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
 - iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - v) The parties shall approach the learned Arbitrator within two weeks from today.
20. The petition is allowed and disposed of in the aforesaid terms.
21. Written submissions filed are taken on record.

JASMEET SINGH, J

MAY 14, 2024

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Click here to check corrigendum, if any