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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 23.04.2024*

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Pronounced on: 14.05.2024+ **ARB.P. 322/2024****ABHIMANYU THROUGH SPECIAL POWER OF ATTORNEY
HOLDER**

..... Petitioner

Through: Mr.Anil Kumar, Advocate

versus

PARMESH CONSTRUCTION CO. LTD

..... Respondent

Through: Mr.Govind Keshav, Advocate

AND+ **ARB.P. 358/2024****ASHISH KAUSHAL RANJAN**

..... Petitioner

Through: Mr.Anil Kumar, Adv.

versus

PARMESH CONSTRUCTION CO. LTD

..... Respondent

Through: Mr.Govind Keshav, Advocate

CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G E M E N T****DINESH KUMAR SHARMA, J.**

1. Present petitions have been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator to adjudicate the dispute inter se the parties.



2. The petitioner has invoked the jurisdiction of this court for appointment of a sole arbitrator after having served the notice under Section 21 of the Arbitration and Conciliation Act.
3. The preliminary objection taken by the respondent in ARB.P. 322/2024 is that this court does not have jurisdiction to entertain the present petition. Since the question of jurisdiction has been invoked, it is desirable to first have a look into the relevant clause of the agreement. The builder-buyer agreement in both the cases is dated 09.03.2017. Both agreements contain an identical arbitration clause at clause 21 which reads as under:

“Clause 21. **ARBITRATION & JURISDICTION**

All or any dispute arising out of or touching upon or in relation to the terms of the Application Form/this Agreement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration. The Arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996, or any statutory amendments, modifications thereof for the time being in force. The Arbitration Proceedings shall be held by a sole Arbitrator who shall be appointed by the Company. The Allottee(s) hereby confirms that they shall have no objection to the appointment of the Sole Arbitrator nor will they challenge his/her appointment on grounds of biasness or partiality. However, the Company assures that such Arbitrator shall be independent and impartial.

The Arbitration proceeding shall be held at NOIDA/Delhi and the Courts at NOIDA shall, to the specific exclusion of all other courts, have the jurisdiction in all matters arising out of/or concerning the Application Form/this Agreement, regardless of the place of execution of this Agreement.”

(emphasis supplied)



4. Though the reply has only been filed in ARB.P. 322/2024, however, since the builder-buyer agreement in both the cases are identical, the same has also been considered in ARB.P. 358/2024. The issue being legal one is required to be adjudicated out rightly. The perusal of the arbitration clause as reproduced hereinabove makes it clear that the parties agreed that the arbitration proceedings shall be held at Noida/Delhi. However, it was agreed that the courts at Noida shall have an exclusive jurisdiction in all matters arising out of/or concerning the application form/agreement, regardless of the place of execution of the agreement. Before proceeding further it is pertinent to mention that the subject matter of the property is situated at Noida, the builder-buyer agreement was also executed at Noida as revealed from the agreement itself. The coordinate bench of this court in ***CVS Insurance and Investments v. Vipul IT Infrasoft Pvt. Ltd.***¹ had an opportunity to deal with an identical clause. In ***CVS Insurance and Investments***², the relevant clause was as under:

“ARTICLE 12 : ARBITRATION AND JURISDICTION

12.1 This Agreement shall be construed, interpreted and applied in accordance with and shall be governed by the laws of India.

12.2 Any dispute arising between the parties in relation to this Agreement and its schedules, annexures (if any) or the Maintenance Agreement or any other congruent Agreement, shall first be tried to be amicably resolved by the parties. Failing amicable resolution within 30 days of the

¹ 2017 SCC OnLine Del 12149

² *Ibid*



commencement of negotiations, the dispute shall be referred to a Sole Arbitrator as appointed by the Company. The Intending Sub Lessee hereby agrees and confirms that it shall have no objection to such appointment. The Arbitration shall be conducted as per the Arbitration and Conciliation Act, 1996 or its statutory modifications, amendments or re-enactments thereof. The Award of the Arbitrator shall be final and binding upon the parties. The venue of arbitration shall be Noida/New Delhi.

12.3 It is agreed by and between the Parties hereto that the arbitration proceedings and all other matters connected to arbitration and any disputes, suits, complaints, litigation, claim or any other matter arising out of or in relation to this Agreement, shall be subject to the exclusive jurisdiction of Courts at Noida.”

(Emphasis supplied)

5. The coordinate bench of this court after considering ***Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd.***³, ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. & Ors.***⁴, ***BALCO v. Kaiser Aluminium Technical Services Inc.***⁵, ***Devyani International Ltd. v. Siddhivinayak Builders and Developers***⁶ and ***Roger Shashoua v. Mukesh Sharma***⁷, culled out the principles as below:

“10. Hence the principles culled out from the above discussions are : (a) there shall be only one seat of arbitration though venues may be different; (b) where the arbitration seat is fixed (may be neutral), only such court shall have an exclusive jurisdiction; (c) where a seat/place of arbitration is

³ (2013) 9 SCC 32

⁴ (2017) 7 SCC 678

⁵ (2012) 9 SCC 552

⁶ 2017 SCC Online Del 11156

⁷ 2017 SCC Online SC 697



fixed it is section 20(1) and section 20(2) of the Act we are referring to; and (d) venue relates to convenience of parties, per section 20(3) of the Act.”

6. The facts are identical in nature. In the present case also the cause of action arose at Noida, the agreement was executed at Noida, the suit property is also situated at Noida. Furthermore, the parties had agreed to the fact that Noida will have the exclusive jurisdiction. I consider that in view of the settled proposition, there is no point to detain this court any further or elaborate on this point.
7. Therefore this court having no territorial jurisdiction, both the petitions stand dismissed.

DINESH KUMAR SHARMA, J

MAY 14, 2024
rb/aj.