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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 03.10.2024

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ARB.P. 339/2024

TATA CAPITAL HOUSING FINANCE LIMITEDPetitioner

Through: Mr. Vishwanathan Iyer, Ms. Pooja
Sharma, Advs.

versus

BEENA SHARMA & ANR.Respondent

Through: Mr. Mohit K. Jakhar, Mr. Lakshay
Sonker, Mr. Sandeep Dahiya, Mr. Vibhor Jain, Mr.
Ankur Jakhar, Ms. Priyanka Rani, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

:

JASMEET SINGH, J (ORAL)

APPLICATION NO. /2024-DELAY (TO BE NUMBERED)

1. This is an application seeking condonation of delay of 35 days in filing the reply which was handed over in court and the same is taken on record.
2. For the reasons stated in the application, the application is allowed and the delay of 35 days in filing the reply is hereby condoned. The reply handed over in Court is taken on record.
3. The application is disposed of.

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4. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator.
5. The facts are that the respondents approached the petitioner seeking grant of a Home Loan facility. The petitioner sanctioned the loan on



30.04.2022 in favour of both the respondents jointly for an amount of about Rs. 50 lakhs.

6. The respondent was to make 240 Equal Monthly Instalments (EMIs) towards re-payment of the loan.
7. The respondent mortgaged the property, i.e. Plot No. 338, Scheme Nand Puri, B, Jagatpura, Jaipur, in order to secure the loan.
8. Since there was default, a petition under section 9 of the Arbitration and Conciliations Act, 1996 was filed in Delhi by the petitioner. Subsequently, the same was withdrawn.
9. The Loan Agreement contains Arbitration clause, being clause 12 and the same reads as under:-

“12. Dispute Resolution

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held at the place as mentioned at Serial No.13 of Annexure 1 hereto in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors.

Notwithstanding anything contained hereinabove, the Lender reserves the right to, at its option, also enforce the security under the Securitization and Reconstruction of Financial Assets



and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") or proceed to recover dues from the Obligors under the SARFAESI Act and/or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("DRT Act")."

10. The petitioner did not invoke any SARFAESI proceedings.
11. Since the loan was not re-paid, the petitioner invoked Arbitration *vide* legal notice dated 18.11.2023 to respondent no.1 and 23.11.2023 to respondent no. 2. Thereafter, filed the present petition.
12. The clause Nos. 13 and 14 of the Annexure-1 to the Loan Agreement are important and read as under:-
“13) **Place of Arbitration** *Delhi/Chennai/Mumbai/Kolkata/Bangalore*
14) **Jurisdiction** *Delhi/Chennai/Mumbai/Kolkata/Bangalore”*
13. Mr. Jakhar, learned counsel for the respondent has filed a reply and has only taken objection *vis-a-vis* the territorial jurisdiction of this Court to entertain and try the present petition.
14. He states that in the present case, Clause 13 and 14 of Annexure-1 contemplates 5 places to be the place of Arbitration and Jurisdiction. Since both the parties did not tick any of the places, this Court will have no jurisdiction on the ground that no part of cause of action has arisen within the territorial jurisdiction of this Court.
15. He states that the territorial jurisdiction of the Court should be determined in accordance with Section 16 to 20 of the CPC and should be with courts at Jaipur (since the agreement was executed in Jaipur and the respondents reside in Jaipur). He relies upon the judgments of this court in “*Aarka Sports Management Pvt. Ltd. vs. Kalsi Buildcon Pvt. Ltd.*” [(2020) SCC OnLine Del 2077] and “*Kings Chariot vs. Mr.*



Tarun Wadhwa” Arb. P. 421/2024 dated 21.05.2024.

16. I have heard learned counsels for the parties.
17. In the present case, the jurisdiction as well as the place of Arbitration clause contemplates the place of Arbitration as well as the jurisdiction of the Court to be either of the 5 places, namely, Delhi, Chennai, Mumbai, Kolkata or Bangalore. It gives a choice to the parties to invoke the territorial jurisdiction of either of these Courts. There is no ambiguity in the said clause. The parties are at liberty to choose either of these jurisdictions to govern the Arbitration proceedings.
18. The Hon’ble Supreme Court in the judgment of “**Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited**” [(2017) 7 SCC 678] observed that it is not imperative for the cause of action to have arisen at the neutral venue to choose the seat of arbitration and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. The operative portion reads as under:-

“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 of 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.”

(Emphasis Supplied)

19. In addition, I have already taken a view in “**Vedanta Limited vs. Shreeji Shipping**” [(2024) SCC OnLine Del 4871] wherein I have observed that in case the seat of arbitration is contemplated at three places, then the parties are at liberty to approach any one of the said three places. The operative portion reads as under:-

“19. I am unable to agree with the contention of the learned senior counsel for the respondent that where three other ports are stated to be having the seat of arbitration, in that scenario, the provisions of Section 16 to 20 of CPC should be applied for determining which of the Courts has jurisdiction, as the law in this case is already settled by the above paragraphs of the judgment of the Hon’ble Supreme Court. In case the seat of arbitration is at three places, the parties are at liberty to approach any one of the said three places.”

20. The SLP preferred against **Vedanta Limited** (*supra*) has been dismissed by the Hon’ble Supreme Court on 05.03.2024 in SLP(C) No. 5288/2024.
21. What can be seen from the above is that the judgment of the Hon’ble Supreme Court in **Indus Mobile** (*supra*) categorically permits choosing of a neutral venue by the parties, and thereafter the place, so chosen, would have exclusive jurisdiction over the regulation of the arbitral proceedings. Admittedly, in the present case, Jaipur is not one of the



options, either for jurisdiction or for Arbitration. The petitioner, in view of the options available under the agreement between the parties (for place of Arbitration and jurisdiction of the Court), has approached this court. Therefore, by invoking the jurisdiction of this court, the petitioner has exercised the said option and determined the seat of Arbitration as Delhi.

22. Additionally, the judgments of “*Aarka Sports*” (*supra*) and “*Kings Chariot*” (*supra*) relied upon by the respondent are distinguishable as in those cases, the court observed that no seat of Arbitration is determined in the contract between the parties. It is distinguishable as under:-

a) *Aarka Sports* (*supra*): Contrasting Clauses, wherein under one clause jurisdiction of the Agreement was given exclusively to the courts at New Delhi and on the other hand, in the clause for Arbitration, it stipulated that if the parties fail to reach a consensus with respect to the choice of the Arbitrator, then the courts of competent jurisdiction shall be approached. The court observed that no seat of Arbitration is determined in the contract between the parties and the jurisdiction shall be determined according to Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 read with Sections 16 to 20 of the CPC. However, in the present case, the dispute in question is with respect to choice amongst multiple seats of arbitration given in the contract between the parties. Since the petitioner exercised his option to invoke the arbitration at Delhi, therefore this court has the territorial jurisdiction over the arbitral proceedings.



- b) “*Kings Chariot*” (*supra*): No seat of arbitration was given in the clause for Arbitration, however the clause contained in Annexure of the Contract vested jurisdiction in courts at Delhi. The court held that the above clause is a general jurisdictional clause and cannot be read to define the seat or venue for the purpose of Arbitration. Therefore, the court was of the opinion that territorial jurisdiction has to be determined in accordance with section 16 to 20 of CPC. However, in the present case, the Clause 13 and 14 of Annexure-1 contemplates 5 places to be the place of Arbitration alongwith place with Jurisdiction. It cannot be construed as a general clause and therefore the jurisdiction of this court can be exercised for the purpose of Arbitration proceedings.
23. For the said reasons, the petition is allowed and the following directions are issued:-
- i) Ms. Ruchi Gaur Narula, Adv. (Mob. No. 9810084123) 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’).
 - iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) 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/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

- vi) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

OCTOBER 3, 2024 / (MS)

(Corrected and released on 15.10.2024)