



2024:DHC:8768



\$~16

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

%

Date of Decision : 11.11.2024+ **ARB.P. 440/2024****M/S. GANESHA ECOSPHERE LTD**

.....Petitioner

Through: Mr. Divyanshu Rai, Mr. Vishal
Sharma, Ms. Taruna, Advs.

versus

M/S. SVP INDUSTRIES LTD

.....Respondent

Through: Ms. Swati Surbhi, Mr. Pulkit Kamboj,
Advs.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereafter '*the A&C Act*') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. The disputes between the parties have arisen in the context of an Agreement dated 01.10.2019. The said agreement contains an arbitration clause as follows:-

"7) **DISPUTE RESOLUTION**

7.1 *Any dispute or difference or claim arising out of or in relation to this Agreement including the construction, validity, performance or breach thereof which the Parties cannot settle by mutual agreement shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereto from time to time.*

7.2 *The award of the arbitrator/s shall be final and binding on both the Parties.*

7.3 *The Arbitration shall be held at Delhi and the language shall be English."*



3. Clause 9.5 of the agreement says “the Courts in Delhi shall have exclusive jurisdiction in the event of any dispute between the Parties of this Agreement”. The said provision unmistakably indicates that the designated seat of arbitration is Delhi in terms of the aforesaid clauses in the agreement between the parties.

4. Learned counsel for the respondent, however, raises a four-fold objection to the maintainability of the present petition and to oppose the appointment of the arbitrator.

5. Firstly, it is contended that the notice invoking arbitration dated 16.09.2023, although filed by the petitioner as Document No. (P-7) was never received by the respondent. It is submitted that a necessary precondition, prior to invoking the jurisdiction of the court under Section 11 of the A&C Act, is that the notice invoking arbitration should have been validly sent and served on the respondent. According to the learned counsel for the respondent, this requirement is not satisfied in the present petition.

6. Secondly, it is contended that the invoices, that were issued by the petitioner during the course of execution of the work, contain a printed clause as under:-

“4) In case of dispute the jurisdiction shall of Kanpur Court. Further the same shall be compulsory referred by aggrieved party to the Arbitrator under the provisions of Arbitration and Conciliation Act, 1996.”

On the basis of the above, it is submitted that, the parties agreed that Kanpur Court would be vested with jurisdiction in the matter and that Kanpur is also the seat of arbitration. It is submitted that the above quoted printed clause, in the invoices issued by the petitioner himself serves clear



2024:DHC:8768



“contrary indicia” showing that Delhi is not intended to be the seat of arbitration.

7. Thirdly, it is submitted that the entire cause of action has arisen in the state of Uttar Pradesh and that neither the agreement has been executed nor any part of the performance of the contract has been done within the jurisdiction of this Court.

8. Lastly, it is submitted that even the petitioner served the notice invoking arbitration at the respondent’s address in Uttar Pradesh and this, by itself, shows that the cause of action has arisen within the State of Uttar Pradesh and, therefore, it would be the High Court of Judicature at Allahabad that has jurisdiction to entertain the present petition.

9. Despite the erudite arguments of the learned counsel for the respondent, this Court is not persuaded to accept the same. A perusal of the arbitration clause in the present case evinces an unmistakable intention of the parties to designate Delhi as a seat of arbitration.

10. The relevant arbitration clause, that is, Clause 7.3 mandates that “the Arbitration shall be held at Delhi”, the language of the clause does not indicate that Delhi has been chosen as a mere convenient location for holding arbitral proceedings.

11. This aspect is fortified by Clause 9.5 which says that “the Courts in Delhi shall have exclusive jurisdiction in the event of any dispute between the Parties of this Agreement”.

12. The existence of the arbitration agreement in the above terms is not disputed by the learned counsel for the respondent. The unilateral issuance of an invoice by the petitioner and incorporation of a printed term thereon would not alter above fundamental aspect of the agreement between the



parties.

13. Moreover, the printed clause does not expressly state that Kanpur would be the seat of Arbitration. It only contains a generic statement that “in case of dispute the jurisdiction shall be of Kanpur Court”.

14. *In Reliance Infrastructure Limited v. Madhyanchal Vidyut Vitran Nigam Limited* 2023 SCC OnLine Del 4894, this Court had occasion to consider whether a clause of this kind can be construed to be a “contrary indicia” as to the designated seat of arbitration, expressly chosen by the parties in terms of a contractual provision (Clause 7.3 in the present case). It has been held therein as under:-

“32. On a conspectus of the aforesaid judgments, the position of law that emerges is that when the contract contains an arbitration clause that specifies a “venue”, thereby anchoring the arbitral proceedings thereto, then the said “venue” is really the “seat” of arbitration. In such a situation the Courts having supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to confer “exclusive jurisdiction” on a different court.

33. In the present case, the relevant clause in the LOA purporting to confer “exclusive jurisdiction” is a generic clause, and does not specifically refer to arbitration proceedings. For this reason, the same also does not serve as a “contrary indicia” to suggest that the Delhi is merely the “venue” and not the “seat” of Arbitration. As such, the same cannot be construed or applied so as to denude the jurisdiction of the Courts having jurisdiction over the “seat” of Arbitration.”

15. In *Yassh Deep Builders LLP v. Sushil Kumar Singh and Ors*, MANU/DE/1688/2024, relying upon *Reliance Infrastructure Limited v. Madhyanchal Vidyut Vitran Nigam Limited* (supra), it has been held as under:-

“42. In *Reliance Infrastructure Limited v. Madhyanchal Vidyut Vitran Nigam Limited* MANU/DE/5224/2023, another learned single judge of this court referring to several judgments held that the choice of



Delhi as the venue of arbitration was demonstrative of the fact that the arbitral proceedings were intended to be anchored to Delhi, and in the absence of any contrary indicia, the inexorable conclusion was that Delhi is the seat of Arbitration. It was further held that when the contract contains an arbitration clause that specifies a "venue", thereby anchoring the arbitral proceedings thereto, then the said "venue" is really the "seat" of arbitration. In such a situation the courts having supervisory jurisdiction over the said "seat" shall exercise supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to confer "exclusive jurisdiction" on a different court. Further, that a generic clause, not specifically referring to arbitration proceedings would not serve as a "contrary indicia" so as to denude the jurisdiction of the Courts having jurisdiction over the "seat" of Arbitration.

43. *Coming back to the facts of the present case, reference has been made by the parties to two different clauses of the collaboration agreement. One is Clause 19 (jurisdiction) which stipulates that all matters concerning the agreement and the development of the scheduled property shall be subject to the jurisdiction of courts at Gurugram, Haryana alone. The other being Clause 23 (arbitration) stipulating that "in the event any dispute or difference arises out of or in connection with the interpretation or implementation of this agreement, or out of or in connection with the breach, or alleged breach of this agreement, such dispute shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 to be decided by a sole arbitrator appointed mutually by the parties hereto. In case of any difference between the parties on appointment of a sole arbitrator, the Arbitration Tribunal shall consist of three arbitrators. The second party shall appoint one arbitrator and the first party shall appoint the second arbitrator. The third arbitrator shall be appointed by the two selected arbitrators failing which such appointment shall be done by the Arbitration Council of India, New Delhi. The decision taken by the majority of arbitrators shall be final and binding on the parties hereto. The venue of the arbitration shall be at Delhi, India.*

44. *Clause 23 is the arbitration clause and it is distinct from Clause 19. The arbitration contract is contained in Clause 23 and it is a complete contract between the parties relating to arbitration. When Clause 23 is read, it clearly establishes that the parties agreed that the venue of the entire arbitration proceedings would be Delhi, India. Even in case of a disagreement between the two selected arbitrators, the appointment of the third arbitrator is to be done by the Arbitration Council of India, New Delhi, Clause 23.1.5, which is under the main Clause 23 pertaining to arbitration stipulates that the provisions of the*



2024:DHC:8768



clause shall survive the termination of the agreement. This clearly shows that Clause 23 pertaining to arbitration is distinct from the collaboration agreement and is to survive even the termination of the agreement.”

16. Consequently, it cannot be held that the invoices, unilaterally issued by the petitioner, bring about a change in the seat of arbitration, so as to denude/prevent this Court from exercising jurisdiction.

17. Likewise, the contention that the entire cause of action has arisen within the State of Uttar Pradesh, again, is not relevant inasmuch as, it is now well settled in view of the decision in **BGS SGS SOMA JV v. NHPC Ltd.** (2020) 4SCC 234, that the choice of seat of arbitration is akin to an exclusive jurisdiction clause, and since the arbitral proceedings are anchored to the seat of arbitration, it is only the Court having jurisdiction over the seat of arbitration that can entertain the present petition, or any other application under Part I of the A&C Act.

18. The contention of the respondent that arbitration is precluded on account of the fact that the notice under Section 21 A&C Act was not received by the respondent, constitution of an arbitral tribunal, is itself a disputed question of fact that would not come in the way of constitution of an arbitral tribunal. In fact, learned counsel for the respondent concedes that the E-mail address at which the notice invoking arbitration was addressed belongs to the respondent. Needless to say, it shall be open to the respondent to further agitate this aspect before the duly constituted arbitral tribunal and raise appropriate objections as to the maintainability of the arbitration for want of a proper invocation notice. All jurisdictional objections are also necessarily to be left open to be considered by a duly constituted arbitral tribunal. As held in **SBI General Insurance Co. Ltd. v. Krish Spinning** 2024 SCC OnLine SC



2024:DHC:8768



1754, in the present proceedings, the scope of enquiry is confined to ascertaining the existence of an arbitration agreement having Delhi as the seat thereof.

19. In the circumstances, this Court appoints Ms. Ritambhara Kalra, Advocate (Mob. No.:+91 9773606577) as the Sole Arbitrator to adjudicate the disputes between the parties.

20. At this stage, the parties jointly request that the arbitration be held under the aegis and as per the rules of the Delhi International Arbitration Centre (DIAC). It is directed accordingly.

21. The learned Sole Arbitrator may proceed with the arbitral proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

22. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

23. It is clarified that the consent given by learned counsel for the respondent for constituting an Arbitral Tribunal, shall not be construed as an admission of the averments made by the petitioner in the present petition.

24. The petition stands disposed of.

SACHIN DATTA, J

NOVEMBER 11, 2024/uk