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

+ **ARB.P. 587/2023**

M/S ISHU BUILDCON PRIVATE LTD. Petitioner

Through: Mr Dheeraj Singh advocate

versus

M/S CAPITAL INFRATECHOMES PVT. LTD. & ORS.

..... Respondents

Through: Mr Sehdev Singh Tomar, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

04.03.2024

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1. This is a petition under Section 11(4) and (6) of the Arbitration & Conciliation Act, 1996 seeking appointment of an Arbitrator in terms of Clause 67 (1) and (2) of the Agreement dated 12.06.2015.

2. The parties entered into an Agreement dated 12.06.2015 for construction of Civil Work of Tower Nos. 8 and 9 of Group Housing Capital Athena at Sector-1, Greater Noida. Since there were disputes between the parties, the petitioner invoked arbitration vide legal notice dated 30.06.2022. The arbitration clause is contained in Clause 67 of the Agreement dated 12.06.2015 which reads as under:

“Settlement of Disputes

67.1 Any dispute arising out of the present agreement would be settled by mutual discussion. If the Parties or any of them are not able to resolve or settle any dispute or differences or issues or



matters as aforesaid (“Disputed Matter”) through mutual discussions, then within 30 days the Disputed Matter may be referred by either of the parties to the sole arbitrator be appointed by the Owner.

67.2 The place of the court of arbitration shall be at New Delhi. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 and the rules made there under and shall be conducted in English language. This agreement shall be subject to the jurisdiction of Court at New Delhi and venue of arbitration shall be at New Delhi. The arbitrator shall also decide the costs of the arbitration proceedings.

67.3 The arbitrator's award shall be substantiated in writing and the Parties shall submit to the arbitral panel's award which shall be enforceable in any competent court in the jurisdiction of New Delhi.

67.4 None of the Parties shall halt or hinder specific performance of their respective obligations under the Agreement, in case of a pending dispute, till it is finally settled through arbitration.

67.5 The said arbitration clause which forms part of the present agreement will be treated as an agreement independent of the other terms of the present agreement and shall survive the termination of the present agreement.

67.6 Governing Law

This Agreement shall be a contract under the laws of India and for all purposes shall be governed by and construed and enforced in accordance with the laws of India.



67.7 Jurisdiction

This Agreement shall be subject to the exclusive jurisdiction of the Courts at Noida (Gautam Budh Nagar) only.”

3. It is stated by Mr Tomar, learned counsel appearing for the respondents that in the present case, since the jurisdiction clause is at Noida, it will be the Noida Court which will be competent to entertain and try the present petition. Mr Tomar also relies upon the judgment passed by a Coordinate Bench of this Court in ***Kush Raj Bhatia v. M/s. DLF Power And Services Limited***, [2022 SCC Online Del 3309] and more particularly paragraphs 15, 30 and 31 which read as under:

“15. The main argument is in respect of the jurisdiction of this Court to entertain the petition under Section 11 of A&C Act, 1996. It is claimed that under Clause 49 of the Lease Deed, it has been clearly provided that the Civil Court at Gurgaon and High Court at Chandigarh alone shall only jurisdiction. Clause 49 reads as under:

That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction.”

.....

30. In the facts in hand, the relevant Clause 48 and Clause 49 read as under:

48. All or any dispute arising out of touching upon or in relation to the terms of the Lease Deed including the interpretation and validity of the terms 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 shall be governed by



the Arbitration and Conciliation Act 1996 or any statutory amendments/modifications thereto for the time being in force. The arbitration proceedings shall be held at an appropriate location in New Delhi by a Sole Arbitrator who shall be appointed by the Lessee and whose decision shall be final and binding upon Lessor.

The Lessor hereby confirms that it shall have no objection to this appointment even if the person so appointed, as the Arbitrator, is an employee or Advocate of the Lessee or is otherwise connected to the Lessee and the Lessor confirms that notwithstanding such relationship/connection, the Lessor shall have no doubts as to the independence or impartiality of the said Arbitrator.” That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction.

49. That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction.”

31. It is quite evident that there is a contraindication in the registered Agreement that while the venue of arbitration may be New Delhi, but the seat of arbitration shall be Gurgaon and High Court at Chandigarh. In the circumstances, it has to be held that this Court has no jurisdiction and it is the Courts at Gurgaon/High Court of Chandigarh which have the exclusive jurisdiction for entertaining the disputes arising out of the registered Lease Agreement.”

4. On the other hand, Mr Singh, learned counsel for the petitioner relies on paragraphs 67.2 and 67.3 of the Agreement dated 12.06.2015 to state that



once the place of arbitration has been fixed as New Delhi and the parties have further agreed that the Award will be enforceable in New Delhi, it will be New Delhi which will have jurisdiction to entertain the matter. He reiterates the judgment passed by Hon'ble Supreme Court in '**BGS SGS SOMA JV v. NHPC LIMITED**' [(2020) 4 SCC 234] and more particularly paragraph 82 which reads as under:

“82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral



proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”

5. Mr Singh also relies upon the judgment passed by a Coordinate Bench of this Court in **“Reliance Infrastructure Limited v. Madhyanchal Vidyut Vitran Nigam Limited” [2023 SCC Online Del 4894]** and more particularly to paragraph 32 which reads 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 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.”

6. I have heard learned counsel for the parties.

7. In the present case, clause 67.2 and 67.3 of the Agreement dated 12.06.2015 are clear and categorically state that the place of Court of Arbitration shall be at New Delhi. In addition, it has also been stated that the Award will be enforceable at New Delhi.



8. The Judgment of the Hon'ble Supreme Court in **BGS SGS SOMA JV** (**supra**) is clear and has already concluded that where the venue of the arbitration has been fixed, then that would be the seat of the arbitral proceedings and that Court would have jurisdiction to entertain and try the petition under Section 11.

9. I am of the view that the judgment of **Kush Raj Bhatia** (**supra**) is distinguishable. In that case, there was a contraindication in the registered Agreement that the venue of arbitration may be New Delhi, but the seat of arbitration was mentioned as Gurgaon and High Court at Chandigarh. That is not so in the present case.

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

- i) Mr. Tariq Khan, Advocate (Mob. No. 9999663628) 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') and shall be held at Delhi. 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.

11. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 4, 2024

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Click here to check corrigendum, if any