



2024:DHC:8421



\$~13

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

%

Date of Decision: 28.10.2024+ **ARB.P. 1147/2024****M/S PARWANI ENTERPRISES**

.....Petitioner

Through: Dr. Anurag Kr. Agarwal and Mr.
Prateek Agarwal, advocates.

versus

T BHIMJYANI WAREHOUSING COLD CHAIN PVT. LTD.

.....Respondent

Through: Mr. Prerak Choudhary, Mr. Vibhu
Tripathi and Mr. Raghav Khanna,
Advocates.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition has been filed by the petitioner seeking appointment of a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent. These disputes stem from a "Leave and License Agreement" dated 01.01.2021 (hereinafter '*the Agreement*'), executed between the parties. Under the agreement, the petitioner took on lease a 60,000 sq. ft. warehouse from the respondent for one year at a monthly rent of ₹10,80,000, excluding taxes. Additionally, the petitioner provided an interest-free, refundable security deposit of ₹1,61,04,000.

2. The arbitration clause in the Agreement between the parties, is in the



2024:DHC:8421



following terms : -

“In case of any disputes or differences arising out of this Agreement, the same shall be submitted to Arbitration in terms of the Provisions of the Arbitration and Conciliation Act, 1996. The Arbitration shall be held in Delhi and the agreement is subject to Sonapat jurisdiction.”

3. Under the agreement, the respondent was required to refund the security deposit within 60 days of the petitioner vacating the premises. However, disputes arose when the respondent failed to return the deposit despite the lapse of the 60-day period following the petitioner's vacation of the property.
4. On 25.10.2023, the petitioner issued a notice to the respondent demanding a refund of the security deposit of ₹1,61,04,000, along with 15% interest, within seven days. The notice also stated that if the respondent failed to comply, the arbitration clause would be invoked, and the matter would be referred to the Delhi International Arbitration Centre (DIAC), pending the respondent's consent.
5. The respondent replied on 25.11.2023, with allegations against the petitioner, including claims of improper use of the premises and late payments.
6. The petitioner sent another communication dated 18.06.2024 reaffirming the demand for refund of the security deposit and reiterating that if the respondent failed to refund the security deposit, disputes would be considered to have arisen, thereby invoking the arbitration clause. The petitioner proposed that the arbitration be held under the aegis of the Delhi International Arbitration Centre (DIAC), and requested the respondent's consent. Despite receiving the said communication, the respondent neither



2024:DHC:8421



refunded the deposit nor consented to arbitration.

7. Thereafter, the petitioner has approached this Court, through the present petition, seeking the appointment of a Sole arbitrator to adjudicate the disputes.

8. The respondent does not dispute that the parties had entered into the said Agreement or that the petitioner had invoked the Arbitration Clause. However, they contest this petition, arguing that it is not maintainable on the grounds that this Court lacks the territorial jurisdiction to entertain the same.

9. The respondent while challenging the jurisdiction of this Court to adjudicate the present petition, relies on *Indus Mobile Distribution Private Ltd. v. Datawind Innovations Private Ltd. & Ors.* (2017) 7 SCC 678 and *BGS SGS SOMA JV v. NHPC Ltd.* (2020) 4 SCC 234, *Kush Raj Bhatia v. DLF Power & Services Ltd.* (2023) 297 DLT 272, *Cravants Media Pvt. Ltd. v. Jharkhand State Cooperative Milk Food Federation* 2021 SCC OnLine Del 535, *ISGEC Heavy Engineering Ltd. v. Indian Oil Corporation Limited* 2021 SCC OnLine Del 4748, *Meenakshi Nehra Bhat and Ors. v. Wave Megacity Centre Private Limited* 2022 SCC Online Del 3744, *CVS Insurance and Investments v. Vipul IT Infrasoftware Pvt. Ltd.* (2018) 167 DRJ87, *Inland Waterways Authority of India v. Reach Dredging Ltd. and Gayatri Projects Pvt. Ltd.* (2023) 300 DL T 396, *M/s. Swastik Gases P. Ltd. v. Indian Oil Corp. Ltd.* (2013) 9 SCC 32, *Hakam Singh v. Gammon (India) Ltd.* 1971(1) SCC 286 and *Sravanthi Infratech Pvt. Ltd. v. Tricolite Electrical Industries Ltd.* (2017) 237 DL T 589.

10. The petitioner, on the other hand, has countered the said contentions of the respondent by submitting that, since the parties agreed that Delhi would be the place of arbitration, this Court would have the jurisdiction to



2024:DHC:8421



entertain the present petition. The Petitioner relies upon **BGS SGS SOMA JV v. NHPC Ltd.** (Supra), **Kalaptaru Power Transmission Ltd. v. Bharat Petroleum Corporation Limited**, MANU/DE/0179/2020, **Brahmani River Pellets Ltd. v. Kamachi Industries Ltd** MANU/SC/0968/2019, **Global Credit Capital Ltd. v. Krrish Realities Nirman Pvt. Ltd** 2018 SCC OnLine Del 9178 and **Cinepolis India Pvt. Ltd. v. Celebration City Projects Pvt. Ltd** MANU/DE/0209/2020.

11. Thus, while the existence of the arbitration agreement is not disputed in the present case, the only issue that arises for consideration is whether this Court has the territorial jurisdiction to entertain the present petition.

12. At the outset, it is instructive to refer to the dicta laid down in **BGS SGS Soma v. NHPC Ltd.** (supra). The said judgment holds that a prescription in an arbitration agreement that the arbitral proceedings “shall be held” at a particular venue indicates an intention to anchor the arbitral proceedings to that place, signifying thereby, that the concerned place is the seat of arbitration. The relevant observations in the said judgment are 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.”

13. Learned counsel for the respondent has sought to highlight a seeming dichotomy within the arbitration clause in the agreement inasmuch as on the one hand, it is mentioned that the arbitration “shall be held in Delhi” and on the other hand, the agreement has been made “subject to Sonapat jurisdiction”.

14. It is now conclusively settled that a generic provision in the agreement to the effect that the same is subject to “Sonapat jurisdiction” would not detract from the exclusive jurisdiction of the Court at the seat of arbitration.

15. In ***Reliance Infrastructure Limited v. Mandhyanchal Vidyut Vitran Nigam Limited***, 2023:DHC:5745, this Court was considering an identical situation in the context of the following clauses in the General Conditions of Contract:-

“48.0 ARBITRATION

48.1 All disputes or differences in respect of which the decision, if any, of the Engineer has not become final or binding as aforesaid shall be settled by arbitration in the manner hereinafter provided.

48.1.1 The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and the Employer and the third to be appointed as an umpire by both the arbitrators in accordance with the Indian Arbitration Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other



2024:DHC:8421



party invoking the Arbitration Clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.

48.1.2 The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof. **The venue of arbitration shall be New Delhi.**

48.2 The decision of the majority of the arbitrators shall be final and binding upon the parties. The arbitrators may, from time to time with the consent of the parties enlarge the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.

48.3 The arbitrator shall have full powers to review and/or revise any decision, opinion direction, certification or valuation of the Engineer in accordance with the arbitrators to the evidence or arguments put before the Engineer for the purpose of obtaining the said decision.

48.4 No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.

48.5 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the Contract.”

5. The petitioner was declared as a successful bidder by the respondent and consequently, the two Contracts were awarded to the petitioner. The Letter of Awards (“LOA”) dated 01.08.2005 that came to be issued, contained the following stipulation:

“21.0 SETTLEMENT OR DISPUTES AND ARBITRATION:

21.1 All the difference or disputes arising out of this Contract shall be settled through the process of “Settlement of Disputes” and “Arbitration” as per clause 49.0 Section-GCC. Conditions of Contract Vol-III of the bidding Documents/The provision of Arbitration & Reconciliation Act, 1996 as amended from time to time, shall apply

21.2 The local court of Lucknow, high court of Allahabad & Supreme Court of Delhi along shall have the exclusive jurisdiction in all matters arising out of this contract.”



16. In the above context, where the ‘venue of arbitration’ was prescribed to be Delhi, and despite another Clause in the contract purporting to confer “exclusive jurisdiction in all matters arising of this contract” to some other court/s, it was held 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.

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 that 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.”

17. The Division Bench of this Court in ***Yash Deep Builders LLP v. Sushil Kumar Singh and Ors***, MANU/DE/1688/2024, while relying upon the judgment rendered in ***Reliance*** (supra) has observed 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 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.”

18. In ***Cinepolis India Pvt. Ltd. v. Celebration City Projects Pvt. Ltd.*** (2020) 2 Arb LR 355 (Del), the Court observed as under –

“31. What emerges therefore by reading of the various judgments referred to above is that it is really the seat of arbitration which is akin to an exclusive jurisdiction clause. Where there are no contrary provisions in the agreement, the place would be the juridical seat which would



determine the territorial jurisdiction of a Court. Where the words in the arbitration clause are neither seat nor place and the arbitration clause only refers to words such as ‘venue’ or “held in” the intent of the parties would have to be seen from the agreement. If the parties intend that the arbitration proceedings are to be held as a whole at that particular venue then the venue also becomes a juridical seat. It is also clear from the now well settled law that it is the seat or the juridical seat which will be the guiding factor for a Court to determine its jurisdiction while examining a petition under Section 11 of the Act.”

19. In the present case, the agreement unequivocally provides that the arbitration shall be held in Delhi. The agreement does not afford any choice to the parties to conduct the arbitral proceedings at any other place.

20. It is thus evident that the parties intended to anchor the arbitral proceedings to Delhi. The inevitable inference is that Delhi is the seat of arbitration and therefore this Court, having jurisdiction over the seat of arbitration, has the territorial jurisdiction to entertain the present petition.

21. The judgments cited by the respondent do not apply to the facts and circumstances of the present case. The arbitration clause in the case of ***Kush Raj Bhatia*** (supra) was in the following terms:-

“5. Clause 48 provided for the determination of disputes which may arise from the Lease Deed which reads as under:

Clause 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/modification 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



2024:DHC:8421



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 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.”

xxx

xxx

xxx

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.”

22. The use of the word “appropriate location” in that case, was clearly indicative that Delhi was merely a convenient venue for holding the arbitral proceedings.

23. Likewise, in other judgments relied upon by the respondent, the conclusion of the Court turned on the peculiar language of the concerned arbitration clauses in terms of which it was construed that the prescribed place for conduct of arbitral proceedings was merely the venue and not the seat.

24. Likewise, in ***Meenakshi Nehra Bhat and Anr. v. Wave Megacity Centre Private Limited***, 2022 SCC OnLine Del 3744, it was held that the prescription regarding holding of the arbitral proceedings in Delhi was indicative only of a convenient location for holding the arbitration seatings and could not be considered to be a choice of “seat”. This was in the light of the peculiar language of the clause in that case, which contemplated that the arbitration proceedings shall be held at “the corporate office of the



2024:DHC:8421



Developer alone in the New Delhi”. Thus, the situs/place of arbitration was one dictated by or dependent upon the location of the corporate office of the Developer in that case. On the contrary, in the present case, the arbitration agreement is unequivocal that the arbitral proceedings “shall be held in Delhi”.

25. ***Isgec Heavy Engineering*** (Supra) is also distinguishable from the present case as the jurisdiction clause therein explicitly mentions that the Guwahati Courts will have the jurisdiction even with respect to the arbitration. The relevant portion of the case is as under –

13. The above position gets reinforced upon a plain reading of Article 4 of the Contract. This clause vests exclusive jurisdiction at the civil court(s) at Guwahati for - all actions/proceedings, including arbitration, and reads as under:—

“ARTICLE 4 - JURISDICTION:

4.1 Notwithstanding any other court or courts having jurisdiction to decide the question(s) forming the subject-matter of the reference if the same had been the subject-matter of a suit, any and all actions and proceedings arising out of or relative to the contract (including any arbitration in terms thereof) shall lie only in the Court of Competent Civil Jurisdiction in this behalf at GUWAHATI (where this contract has been signed on behalf of the Owner) and the said Court(s) shall have jurisdiction to entertain and try such actions and/or proceeding(s) to the exclusion of all other Courts.”

[Emphasis supplied]

14. As opposed to the general stipulation in Clause 9.1.2.0, Article 4 is worded in clear, unambiguous, and directory terms. In fact, it serves as the ‘contrary indica’, which further demonstrates that the ‘venue’ in Clause 9.1.2.0 is only a physical place of meeting under Section 20(3) of the Act. Article 4 - leaves no room that all actions and proceedings arising out of the Contract, including arbitration, shall have to necessarily be tried by the civil court(s) at Guwahati exclusively, and does not lead to jurisdiction being vested in the court(s) at Delhi.



2024:DHC:8421



15. For the reasons laid out above, this Court is of the view that Clause 9.1.2.0 only provides a 'venue' of arbitration, and the juridical 'seat' shall vest with the civil court(s) at Guwahati.

26. In the circumstances, there is no impediment in appointing a sole arbitrator to adjudicate the disputes between the parties as contemplated in terms of *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666 and *SBI General Insurance Co. Ltd. v. Krish Spinning* 2024 INSC 532.

27. Accordingly, Ms. Tanvi Nigam, Advocate (Mob. No.: +91.9560586644) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

28. It is clarified that the respondent shall be entitled to raise appropriate jurisdictional objections/move application under Section 16 of the Arbitration and Conciliation Act, 1996 *inter alia* on the ground that the claim/s sought to be raised fall within the scope of excepted matters.

29. Needless to say, in the event of any application under Section 16 of the Arbitration and Conciliation Act, 1996 being filed, the same shall be dealt with and adjudicated upon by the learned Sole Arbitrator on merits.

30. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

31. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

32. The parties shall share the arbitrator's fee and arbitral costs, equally.

33. All rights and contentions of the parties in relation to the



2024:DHC:8421



claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

34. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the case.

35. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 28, 2024/SV, TS