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

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Date of Decision: 16.01.2024+ **FAO (COMM) 199/2022, CM Nos. 53723/2022 & 53755/2022****DELHI TOURISM AND TRANSPORTATION****DEVELOPMENT CORPORATION LTD (DTTDC)..... Appellant****Through: Mr. Parvinder Chauhan and Ms. Aakriti Garg, Advocates with Mr. Ram Niwas, LO.****Versus****SUNEHARI BAGH CONSTRUCTION PVT LTD..... Respondent****Through: Mr. Avinash Trivedi, Mr. Rhythm Nagpal, and Mr. Pradeep Gehlot, Advocates.****CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE RAVINDER DUDEJA****VIBHU BAKHRU, J.**

1. The appellant has filed the present appeal impugning an order dated 26.11.2022 (hereafter '**the impugned order**') passed by the learned Commercial Court, whereby the appellant's application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') being OMP (COMM.) 46/2022 captioned ***Delhi Tourism and Transportation Development Corporation (DTTDC) vs Sunehari Bagh Construction Private Limited***, was dismissed.

2. The application of the appellant was dismissed on the ground of lack of territorial jurisdiction. The appellant had filed the aforesaid application impugning an arbitral award dated 13.08.2022 (hereafter '**the impugned award**') in context of the dispute that had arisen between the parties in



connection with the contract for Construction/Creation of Disaster Management and Training Centre at Rajokri, New Delhi.

3. The learned Commercial Court had held it had no jurisdiction to entertain the appellant's application for setting aside the impugned award on the ground that it lacked the territorial jurisdiction. The said finding was premised on the basis that the learned Arbitral Tribunal had conducted the proceedings at Ghaziabad, Uttar Pradesh and the impugned award is also signed by him at Ghaziabad, Uttar Pradesh. The learned Commercial Court noted the Arbitration Clause (Clause No.25 of the GCC as applicable to the contract) provided that the venue of the arbitration would be at such place as may be fixed by the learned Arbitrator. The Court held since the Arbitration Clause did not specify the seat of arbitration and it was left to be decided by the learned Arbitrator, the seat of the arbitration was Indirapuram, Ghaziabad, Uttar Pradesh. This conclusion was also premised on the ground that the learned Sole Arbitrator had conducted the proceedings through video conference from his residence at Indirapuram, Ghaziabad, UP.

4. The appellant has drawn the attention of this Court to the procedural order dated 29.10.2020 passed by the learned Arbitral Tribunal wherein it is clearly held that the place of arbitration under Section 20 of the A&C Act, would be Delhi.

5. This order also indicates the same was passed with the consent of parties. The relevant portion of the order dated 29.10.2020 is extracted below: -

“7. With the consent of both the parties it was decided that:

(a) Place of Arbitration in terms of Section 20 of the Arbitration and Conciliation Act, 1996 will be



DELHI.”

6. It is apparent the learned Commercial Court has ignored the said order.
7. The learned counsel for the respondent fairly states that the order dated 29.10.2020 was not brought to the notice of the learned Commercial Court.
8. He does not dispute that in view of the specific decision that the place of arbitration shall be New Delhi, the learned Commercial Court would have jurisdiction to entertain the application of the appellant under Section 34 of the A&C Act.
9. In view of above, the impugned order is set aside and the appellant's application being OMP (COMM) 46/2022 is restored before learned Commercial Court at the same position as obtaining on 26.11.2022.
10. The parties shall appear before the learned Commercial Court on 05.02.2023 for further proceedings. The learned Commercial Court is requested to dispose of the said application as early as possible.
11. The petition stands disposed of with aforesaid observation. Pending application also stands disposed of.

VIBHU BAKHRU, J

RAVINDER DUDEJA, J

JANUARY 16, 2024

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