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

+ **ARB.P. 1237/2024**

MAALU FERRO ALLOYS PRIVATE LIMITEDPetitioner

Through: Mr. Shashank Verma, Mr. Vipul Agrawal, Mr. Sooraj Sharma, Mr. Jatin Kochhar, Ms. Aniruddha Das, Mr. Sharvil Kala, Ms. Tanya Mittal, Ms. Dibsha Nanda, Advocates.

versus

SYNERGY STEELS LIMITEDRespondent

Through: Mr. Kartik Nayar, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **12.08.2024**

I.A. 36159/2024 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

ARB.P. 1237/2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [‘the Act’], the petitioner seeks a reference to arbitration in terms of an arbitration clause contained in four purchases orders issued by the respondent to the petitioner between 14.12.2023 to 22.12.2023 [“POs”].

2. Mr. Vipul Agrawal, learned counsel for the petitioner, submits that



the POs contain arbitration clauses, which have been accepted by the petitioner, and goods have been supplied thereunder. The petitioner's claims arise out of unpaid invoices. The petitioner, therefore, sought to invoke the arbitration agreements by a letter dated 15.05.2024. As the communication did not elicit a response, the petitioner has filed this petition under Section 11 of the Act.

3. Mr. Kartik Nayar, learned counsel for the respondent, who appears on advance notice, raises a preliminary objection as to the jurisdiction of this Court to entertain the present petition.

4. The relevant clauses of the POs are as follows¹:

“JURISDICTION: Any dispute shall be deemed to have been concluded in Delhi,

ARBITRATION: All disputes differences and question whatsoever which shall arise between the parties hereto at any time during this contract or contraction or application thereof or any clause or thing herein contained of the rights duties and liabilities of either party otherwise in connection therewith shall be referred to the arbitration. The decision of such arbitration shall be final and binding on both the parties, All such arbitration proceedings shall be held in Alwar and shall be in accordance with the subject to the provisions of the Indian arbitration Act 1940 or any statutory modifications or reenactment thereof for the time being In force.”

5. At the foot of each of the POs, after the terms and conditions are listed, appears the following note:

“SUBJECT TO ALWAR JURISDICTION”

6. A reading of the arbitration clause, shows that the arbitration proceedings are to be “*held in Alwar*”. In general, absent contrary indicia, the identification of the place of arbitration in the agreement between the parties constitutes the “*seat*” of arbitration, as held by the Supreme Court

¹ The jurisdiction and arbitration clauses under all the POs are the same.



in *BGS SGS SOMA JV v. NHPC*² and *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.*³ On this basis, the seat of the arbitration in the present case was agreed to be in Alwar.

7. Mr. Agrawal, however, submits that, in the present case, there are indications to the contrary, firstly, in the clause entitled “*Jurisdiction*” quoted above, and secondly, because both parties have their registered offices in Delhi, the Pos were also issued by the respondent from its Delhi office, and that payments have been made by the respondent from its bank accounts in Delhi.

8. On the facts of the present case and a reading of the POs, I am unable to agree. The question of location of the registered offices, the place from which the POs are issued, or the payments made, are relatable to determination of jurisdiction for the purposes of a civil suit under Section 20 of the Code of Civil Procedure, 1908. In the case of arbitration, however, these considerations are irrelevant if the parties have agreed to the seat of arbitration, where alone supervisory jurisdiction over the arbitral proceedings would lie⁴. In the realm of arbitration law, as opposed to determination of jurisdiction for the purposes of civil suit, it is even open to the parties to locate the seat of arbitration in a neutral venue, which has no connection to either of them or with the transaction between them. Mr. Agrawal’s argument, to the extent that it is based upon the place of business of the parties, or the accrual of the cause of action, is, therefore, rejected. In any event, in the present case, in fact, Alwar also has a substantial connection with the dispute, being the place from which

² (2020) 4 SCC 234.

³ (2017) 7 SCC 678.



supplies were to be made under the POs, as also the place to which supplies were to be made.

9. The remaining question which, therefore, requires consideration, is whether the “Jurisdiction” clause mentioned above provides a sufficient contrary indication, so as to dislodge the presumption that the venue of the arbitration provided in the agreement, is also its seat. The clause relied upon by Mr. Agrawal, even though it is titled “*Jurisdiction*”, is really one which makes little sense. At the very highest, it can only mean that a dispute may be deemed to have arisen in Delhi. The fact that the dispute arose in a particular place is also not conclusive of the question of jurisdiction, particularly if there is a jurisdiction clause separately provided in the agreement. This provision is indicated in the note below the terms and conditions, which states “*Subject to Alwar jurisdiction*”. On a reading of the two clauses and the note, I am of the view that the normal presumption, that the place where the arbitration proceedings are held (i.e., Alwar) is its seat, has not been displaced.

10. Having regard to the above, this Court does not exercise supervisory jurisdiction over the proposed arbitral proceedings. The present petition is, therefore, dismissed for want of jurisdiction, leaving it open to the petitioner to approach the appropriate Court on the same cause of action.

PRATEEK JALAN, J

AUGUST 12, 2024

‘Bhupi’/

⁴ Supra (note 2).