

OCD 1

ORDER SHEET
AP-COM/652/2024
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

MOHINI AGRO PRIVATE LIMITED
VS
S JASWINDER SANGHA

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 10th July, 2025.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Rahul Poddar, Adv.
Mr. Anuosko Das, Adv.
Mr. Souvik Banerjee, Adv.
. . .for the petitioner.

Mr. Biswaranjan Bhakat, Adv.
Mr. Somnath Chattopadhyay, Adv.
. . .for the respondent.

The Court: This is an application for appointment of an Arbitrator on the strength of Clause (xi) of the agreement dated April 5, 2023 executed between the parties. The parties entered into an agreement for sale of a particular quality and quantity of potato seeds. The contention of the petitioner is that the respondent supplied sub-standard quality of potato seeds, which gave rise to a dispute. The respondent was asked to refund the money paid by petitioner. According to the petitioner, the total dues payable for violation of the terms and conditions of the agreement dated April 5, 2023 was Rs.1,21,42,715/- along with interest at the rate of 24% per annum from the date of advance payment, upto the date of realization of the dues. The petitioner, accordingly, issued a demand notice.

Thus, the fact that the parties are in dispute is available from the record. When the dispute was not resolved, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 in February 19, 2024 and proposed the name of an Advocate having office at 7C Kiran Shankar Roy Road, Ground Floor, as the sole arbitrator.

Mr. Bag submits that the arbitration clause gave an option to the parties to either select Kolkata or Jalandhar as the mutually agreed seat or venue. Mr. Bag relies on the decision of the Delhi High Court in this regard in the matter of '**Vedanta Limited vs. Shreeji Shipping**' reported in **2024 SCC Online Delhi 4871** and submits that in the said decision it was held that, when the parties had an option to decide on the seat and three places were mentioned, the party approaching the Court for reference to arbitration would have the liberty to approach any of the three places.

Mr. Chattopadhyay, learned advocate for the respondent, submits that the claim for refund of the money paid by the petitioner is not permissible. There is no basis to such claim. The quality of potato seeds was perfect. No intimation had been received from the petitioner with regard to the sub-standard quality. Such allegation is an afterthought. The petitioner did not have the right to choose Calcutta High Court as the referral Court, when the High Court of Punjab and Haryana High Court also had the jurisdiction. Option was left to the parties to select the seat or venue as either Kolkata or Jalandhar. Such seat was required to be mutually agreed upon between the parties. In the instant case, although the petitioner invoked the jurisdiction and named an Arbitrator having

office at Kolkata, the petitioner did not specifically indicate that the arbitration would be held at Kolkata.

Heard learned advocates for the respective parties.

The demand notice dated December 2, 2023 clearly indicates that the petitioner claimed refund of Rs. 44,35,715/- on the ground of supply of poor quality of potato seeds. Admittedly, the parties had the option to select the seat as either Kolkata or Chandigarh. The petitioner issued the notice invoking arbitration by suggesting the name of a learned advocate having office at 7C, Kiran Shankar Roy Road, Ground Floor, Kolkata to be appointed as the sole arbitrator. The respondent did not reply to the notice. The respondent also did not suggest the name of any arbitrator at Jalandhar. Two places have been mentioned as the seat i.e. either Kolkata or Jalandhar.

The relevant paragraphs of Vedanta (supra) are quoted below :-

...“17. In the present case, the arbitration clause clearly states that the seat of arbitration is Goa, Karnataka or Delhi. It merely gives a choice to the parties to invoke the jurisdiction of either of these courts. There is no ambiguity in the clause, as it intended for the parties to choose either of these jurisdictions to govern the arbitration proceedings invoked by the parties. The same is certain, or is capable of being made certain. Hence, I am of the view that arbitration clause is not hit by Section 29 of the ICA.

18. The fact that the seat of the arbitration has been contemplated as Delhi, Karnataka and Goa also vests jurisdiction with this Court to entertain and try the Section 11 petition in view of the judgment of the Hon'ble Supreme Court in Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678:

“19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an

arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.”

19. I am unable to agree with the contention of the learned senior counsel for the respondent that where three other ports are stated to be having the seat of arbitration, in that scenario, the provisions of Section 16 to 20 of CPC should be applied for determining which of the Courts has jurisdiction, as the law in this case is already settled by the above paragraphs of the judgment of the Hon'ble Supreme Court. In case the seat of arbitration is at three places, the parties are at liberty to approach any one of the said three places.”...

The facts of this case indicate that, execution of the agreement was at Kolkata and supply of the goods in terms of the said agreement was to be made in Kolkata. Thus, part of the cause of action arose within the jurisdiction of the court. Thus, the petitioner has rightly approached this Court as the referral court. With regard to the issues raised by Mr. Chattopadhyay, this Court is of the view that all such issues can be raised before the learned Arbitrator. The arbitration clause is quoted below:-

“Any disputes and differences arising between the parties out of this agreement, shall be referred to Arbitration. For constitution of Arbitral Tribunal, a sole Arbitrator shall be appointed by the parties on mutual consent to adjudicate upon the disputes arising hereunder. The said Arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time. The seat and venue of the Arbitration shall be either at Kolkata or Jalandhar as mutually agreed between the parties.”

Under such circumstances, the respondent will be at liberty to raise all disputes before the learned arbitrator. This Court has not entered into the merits of the issues involved.

Accordingly, this Court appoints Mr. Chayan Gupta, learned Advocate [Mobile No.: 9051511986], as the arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned arbitrator shall fix his own remuneration as per the Schedule of the Act.

The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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