



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

ARBITRATION APPEAL NO. 41 OF 2024

M/s. Pinnacle Teleservices Pvt. Ltd.,
through the authorised Director,
7, Pinnacle House, Nawab Layout,
Tilak Nagar, Nagpur, Maharashtra – 440010.

.... **APPELLANT**

VERSUS

- 1) Mahanagar Telephone Nigam Limited
(MTNL), through its authorised
representative, having an office at
Mahanagar Doorsanchar Sadan,
5th Floor, 9 CGO Complex, Lodhi Road,
New Delhi -110003.
- 2) Kotak Mahindra Bank Ltd.,
through its Branch Manager,
having an office at Shri Mohini Complex,
345, Kingsway, Nagpur, Maharashtra
440001.
- 3) ICICI Bank Ltd.,
through its Branch Manager, having an
office at Mega Branch, 9C/A & 9C/B,
Gr. Floor, Shriram Tower, S.V. Patel Marg,
Nagpur, Maharashtra – 440001.

.... **RESPONDENTS**

Mr. A.K. Tripathi, Advocate for the appellant,
Mr. A. Kapoor, Advocate for respondent No. 1,
Mr. R.G. Kavimandan, Advocate for respondent No. 2,
None for respondent No. 3.

CORAM : ABHAY J. MANTRI, J.

DATE : 10-09-2025

ORAL JUDGMENT :

The appellant, being aggrieved by the order dated 27-08-2024
passed below Exhibit 14 in Arbitration Case No. 58/2024 by the

learned District Judge-13, Nagpur, whereby allowing Exhibit 14 for vacation of the stay granted below Exhibit 5 on 09-05-2024, has preferred this appeal.

2. Brief facts of the case are as under:

(a) The appellant is a Company registered under the Companies Act, 1956. It is a prominent service provider in serving both the B2B and B2C sectors. Respondent No. 1 – Mahanagar Telephone Nigam Limited (hereinafter referred to as “**MTNL**”) was established by the Government of India to enhance the quality of telecom services, expand the telecom network, introduce new services, and generate revenue to meet the country's telecom development requirements. Respondent Nos. 2 and 3 are the Banks that had issued the Performance Bank Guarantees (for Short, “**PBG**”), which are in dispute herein.

(b) The appellant and respondent No. 1 had a commercial/business relationship since 2012. Their commercial relationship was continued, and the last agreement was executed between the parties on 21-09-2020 took effect on 26.03.2020. The said agreement was valid for a period of three years, i.e. up to 25-03-2023. By communication dated 11-01-2023 (Page 72), respondent No. 1-MTNL informed the appellant to stop the registration of new PE/TM

activity with immediate effect. Thereafter, by communications dated 04-05-2024 (Pages 78 and 80), respondent No. 1 requested respondents No. 2 and 3 for the encashment/invocation of bank guarantees submitted by the appellant in its favour. Pursuant to the said communication, respondent Nos. 2 and 3 banks had informed the appellant on 08-05-2024 about the same.

(c) Being aggrieved by the said communications, the appellant had filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “*the Act*”) for seeking interim relief restraining respondent No.1 from invoking the PBG/security deposit of the bank guarantee till the disposal of the adjudication of the dispute. The learned District Judge, after considering the material on record, on 09-05-2024, passed the order below Exhibit 5, thereby restraining respondent No. 1 from invoking the security deposit/bank guarantees.

(d) Thereafter, respondent No. 1 appeared and filed application Exhibit 14 for vacation of the stay of the interim order as the learned District Judge has no jurisdiction to try and entertain the application under Section 9 of the Act. After considering the material on record, the learned District Judge held that it has no jurisdiction to entertain all the applications arising out of the arbitral agreement and, therefore, vacated the interim relief granted on 09-05-2024 passed below Exhibit 5.

(e) It is pertinent to note that, as per the request of the learned Advocate for the applicant therein, i.e. the appellant herein, the order passed below Exhibit 5 was continued till 09-09-2024 so that the appellant may present the appropriate application before the Court at New Delhi. However, being aggrieved by the said order, the appellant, instead of approaching the Court at New Delhi, has filed this appeal.

3. Heard Mr. A. Tripathi, learned Advocate for the appellant, Mr. A. Kapoor, learned Advocate for respondent No. 1 at length and Mr. R.G. Kavimandan, learned Advocate for respondent No. 2. None appears for respondent No. 3. Perused the impugned order and record. I have also gone through the written notes of arguments submitted by the learned Advocates for the appellant as well as respondent No. 1, and gone through the judgments relied upon by the respective parties.

4. Having considered the same, the following points arise for determination.

“Whether any interference is required in the impugned order?”

5. Mr. A. Tripathi, learned Advocate, vehemently contended that the learned District Judge has erred in construing the venue of the arbitration as the seat of the arbitration and thereby passed the impugned order. The learned District Judge has not considered the law

laid down by the Hon'ble Apex Court in its proper perspective, nor considered Sections 2, 20 and 42 of the Act. He has drawn my attention to Page No. 70, i.e. last page of the agreement dated 24-05-2019 and pointed out Clause-7 in respect of the Dispute Resolution and venue of the arbitration proceedings, as well as Clause 8 about Governing Law and Jurisdiction. Then he has taken me through the provisions of Section 42 of the Act and submitted that Section 42 pertains to the 'jurisdiction' of the Court, which is divided into two parts. As per Part I, the person who has approached the Court first, that Court alone shall have jurisdiction over the arbitral proceedings, and all the subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court.

a) Pursuant to the above section, he has taken me through the agreement dated 21-09-2020, more particularly clauses regarding arbitration [(Page 62 and 63 as well as Clause-7, i.e. Dispute Resolution (Page 69-70)] of the agreement dated 24-05-2019 which was executed on 18-06-2019 and submitted that in both the agreements seat of arbitral tribunal has not been mentioned, alternatively his contention was that seat of arbitral tribunal is missing in both the agreements and the venue of the arbitration mentioned in the agreement dated 24-05-2019 cannot be termed as a seat of the arbitration. Similarly, he canvassed that the agreement dated 21.09.2020 neither the seat nor

the venue has been specified as New Delhi; however, it was mentioned that the office of respondent No.1 at Delhi, which shows that the venue is merely a physical location. As per the said clause, the arbitrator has authority to decide the place of seat for arbitration; therefore, as per Section 42, the party that approached the Court first, the said Court has jurisdiction to try and entertain the matters regarding arbitration. He further propounded that, undisputedly, no seat of arbitration has been mentioned in both the agreements and, therefore, the Nagpur District Court has jurisdiction to try and entertain the application.

b) He further argued that the first agreement was ended on 25-03-2023, and the second agreement was terminated by communication dated 11-01-2023. He has pointed out the said communication. Similarly, he has drawn my attention to the communications dated 04-05-2024 issued by respondent No. 1 in favour of respondent Nos. 2 and 3 respectively (Pages 78, 80 and 82). He has pointed out the letter dated 26-07-2024 (Page 205) issued by respondent No. 1 regarding the appointment of the arbitrator. Then he has taken me through Section 21 of the Act. As such, he emphasised that the learned District Judge failed to adjudicate the critical issue in its proper perspective and erred in treating 'venue' as a 'seat' of the arbitration in the absence of express terminology in the agreement or any curial clause pointing to New Delhi. The learned District Judge has

not recorded the reasons 'how the venue is converted into a seat and, therefore, urged that passing of the order by the learned District Judge is unjust and improper.'

c) He further contended that both the agreements contained two separate clauses; one pertaining to the arbitration and the other to the territorial jurisdiction under the Civil Procedure Code. None of the agreements expressly stipulates a seat of arbitration, but sub-clause (d) (Page 63) pertains exclusively to the subject matter of the suit. It was inserted with the intention to confer exclusive jurisdiction on the Courts in Delhi regarding non-arbitral disputes and, as per sub-clauses (a) to (c), deals with the unilateral appointments of the arbitrator by MTNL. That being so, the absence of a designated seat of arbitration attracts the application under Section 42 of the Act. Lastly, he submitted that as per Section 19 of the Act, the arbitral tribunal is not bound by the provisions of the Civil Procedure Code. He has further advanced submissions that the application for vacation of the stay was not maintainable and, therefore, the vacation of the interim order solely on the ground of territorial jurisdiction is illegal. Accordingly, he has pointed out paragraphs 22 and 29 of his written notes of arguments. He has submitted that the passing of the impugned order by the learned District Judge is illegal and liable to be set aside in the

appeal. In fact, the District Court at Nagpur is vested with the jurisdiction to deal with the arbitral disputes.

(d) To buttress his contention, he has relied on the following judgments and pointed out relevant paragraphs therein :

- (i) **BGS SGS SOMA JV** v. *NHPC Limited*, (2020) 4 SCC 234 (Para No. 59),
- (ii) **Indus Mobile Distribution Private Limited** v. *Datawind Innovations Private Limited*, (2017) 7 SCC 678 (Paragraphs 9, 10, 11, 13, 16 and 19),
- (iii) *Union of India* v. **Hardy Exploration and Production (India) Inc.**, (2019) 13 SCC 473 (Paragraphs 27, 32, 33 and 35),
- (iv) *Municipal Corporation for the City of Kalyan and Dombivli* v. *Rudranee Infrastructure Ltd.*, 2017(6) Mh.L.J. 753 (Paragraphs 2, 4 to 6),
- (v) *Gurumahima Heights Co-operative Housing Society Ltd.* v. *Admirecon Infrastructure Pvt. Ltd.*, 2023 SCC OnLine Bom. 2703 (Paragraphs 3, 11 to 15),
- (vi) *RK Bararia through RK Bararia Sole Proprietor* v. *JBM Global School*, 2024 SCC OnLine Del 3033,
(Though cited, the Ld. Advocate for the appellant is not relying on the said Judgment.)
- (vii) *Manmohan Kapani* v. *Kapani Resorts Pvt. Ltd. and Others* (Paragraphs 2, 4, 11, 14 & 17).

(e) In view of the law laid down in the above-cited decisions, he emphasised that, as per Section 42 of the Act, the person who approaches the Court under Part I, only that Court shall have jurisdiction to decide such an application, as well as subsequent applications arising out of the same arbitration agreement, when the seat of arbitration has not been fixed by the agreements. However, the

learned District Judge, without considering the above legal position in the above decisions, has erred in holding that the venue of the arbitration can be termed as a seat of the arbitration; that being so, submitted that the learned District Judge, Nagpur, has jurisdiction to deal with the application and therefore, passing of the impugned order is improper and liable to be set aside in appeal.

6. *Per contra*, Mr. A. Kapoor, learned Advocate for respondent No. 1, has vehemently resisted the appeal on the ground that the order passed by the learned District Judge is just and proper and, therefore, no interference is required in it in the appellate jurisdiction. He has taken me through the relevant clauses regarding Arbitration/Dispute Resolution in both agreements and argued that, as per sub-clause (d) of the arbitration agreement dated 21-09-2020, the Court in Delhi 'alone' will have the 'exclusive' jurisdiction to deal with the arbitral proceedings. He has pointed out the definition of the 'Court' as embodied in Section 2(e) of the Act and propounded that sub-clause (d) of the said agreement indicates that the Delhi Court has only jurisdiction to deal with disputes relating to the Arbitration. Similarly, he read the clauses of Dispute Resolution (Pages 69 and 70) and argued that the term 'venue' in the arbitration agreement is coupled with there being no other significant contrary indicia that such place is merely a venue, then such place would be construed as the 'seat' of the

arbitral proceedings. Therefore, the nomenclature 'venue' shall be treated as a designated seat of arbitration, hence the learned District Judge has rightly held the same. It is further submitted that nowhere in the agreements has it been stated that the Nagpur Court has jurisdiction to deal with the dispute. He has pointed out paragraphs 9 and 10 of his reply (Page 250). Lastly, he submitted that the Hon'ble Apex Court in *Arif Azim Co. Ltd. v. Micromax Informatics FZE, 2024 SCC OnLine SC 3212*, has considered all the judgments relied upon by the appellant and, in para 71 of the said judgment, drew a conclusion. He specifically pointed out Clauses (iv), (vi), (viii), (ix) and (x) of the said conclusion and contended that no cause of action arose in Nagpur; as such, he urged for dismissal of the appeal.

In support of his contentions, he has relied on the following judgments:

- (i) Sai Wardha Power Generation Ltd., Hyderabad v. Western Coalfields Ltd., Nagpur and another, 2018 (4) Mh.L.J. 301 (Paragraph 27),
- (ii) B.E. Simoes Von Staraburg Niedenthal and another v. Chhattisgarh Investment Limited, (2015) 12 SCC 225 (Paras 1, 2, 5 to 8, 10, 12 and 13),
- (iii) State of West Bengal and others v. Associated Contractors, (2015) 1 SCC 32 (Paragraphs 15, 20, 22 and 25),
- (iv) Swastik Gases Private Limited v. Indian Oil Corporation Limited, (2013) 9 SCC 32 (Paragraphs 1, 4, 5, 7, 9, 10, 13, 25, 26, 32 to 37),
- (v) **Arif Azim Co. Ltd.** vs. Micromax Informatics FZE, 2024 SCC OnLine SC 3212 (Paragraphs 5, 36, 37, 52, **71**) and

- (vi) **M/s. Activitas Management Advisor Private Limited v. Mind Plus Healthcare Private Limited**, 2025 LiveLaw (SC) 795.

(a) As per the ratio laid down in the above-cited judgments, he submitted that when an agreement contains an arbitration clause and also clause specifying exclusive jurisdiction of a particular Court, this exclusive jurisdiction clause, even without explicitly using the terms ‘seat’ or ‘venue’ must be understood in the context of arbitration for dispute resolution, as such, non-mentioning the ‘seat’ of the Arbitration in the arbitration agreement would not woe the jurisdiction of the Court. Hence, he argued that the order passed by the learned District Judge is just and proper and no interference is required in it in the appellate jurisdiction.

7. Having heard the learned Advocates for both the parties at length and having gone through the record, I would like to refer to Sections 2(1)(d) and 2(1)(e) and provisions of Sections 20 and 42 of the Act as under :

“2. Definitions.- (1) In this Part, unless the context otherwise requires,-

(d) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;

(e) “Court” means -

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original

jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]

20. Place of arbitration.—(1) *The parties are free to agree on the place of arbitration.*

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

42. Jurisdiction. - *Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”*

8. Section 2(1)(d) deals with the ‘Arbitral Tribunal’ means a sole arbitrator, a panel of arbitrators and Section 2(1)(e) deals with the ‘Court’ means the Court in exercise of its original civil jurisdiction to decide the questions forming the subject matter of the arbitration. Section 2(1)(e) has to be construed keeping in view the provisions in Section 20, which give recognition to party autonomy in choosing the

seat of the arbitration proceedings. Likewise, the legislature has intentionally given jurisdiction to two courts, namely the court where the cause of action is located and the court where the arbitration takes place. Similarly, Section 42 is meant to avoid conflicts in the jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non-obstante clause, and then goes on to state “*where with respect to an arbitration agreement any application under this part has been made in a Court.*” It is obvious that the application made under this part to a court must be a court that has jurisdiction to decide such an application. Then all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that court only.

9. It is pertinent to note that the learned Advocate for the appellant has relied on a catena of judgments. However, the Hon’ble Apex Court in ***BGS SGS SOMA JV*** (supra) has considered the other judgments relied on by the learned Advocate for the appellant. Apart from this, the Hon’ble Apex Court in ***Arif Azim Co. Ltd.*** (supra) after considering the law laid down in judgments in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552***, (***BALCO***) and ***Indus Mobile Distribution Private Limited*** (supra) and other various judgments, the

Hon'ble Apex Court in para 71 concluded the position of law that emerges in ten clauses. I would like to reproduce the same as under.

“71. From the above exposition of law, the following position of law emerges: -

(i) Part I of the Act, 1996, and the provisions thereunder only applies where the arbitration takes place in India, i.e., where either (I) the seat of arbitration is in India OR (II) the laws governing the arbitration agreement are the laws of India.

(ii) Arbitration agreements executed after 06.09.2012 where the seat of arbitration is outside India, Part I of the Act, 1996 and the provisions thereunder will not be applicable and would fall beyond the jurisdiction of Indian courts.

(iii) Even those arbitration agreements that have been executed prior to 06.09.2012, Part I of the Act, 1996, will not be applicable, if its application has been excluded by the parties in the arbitration agreement either explicitly by designating the seat of arbitration outside India or implicitly by choosing the law governing the agreement to be any other law other than Indian law.

(iv) The moment ‘seat’ is determined, it would be akin to an exclusive jurisdiction clause whereby only the jurisdictional courts of that seat alone will have the jurisdiction to regulate the arbitral proceedings. The notional doctrine of concurrent jurisdiction has been expressly rejected and overruled by this Court in its subsequent decisions.

*(v) The ‘Closest Connection Test’ for determining the seat of arbitration by identifying the law with which the agreement to arbitrate has its closest and most real connection is no longer a viable criterion for the determination of the seat or situs of arbitration in view of the Shashoua Principle. The seat of arbitration cannot be determined by formulaic and unpredictable application of choice of law rules based on abstract connecting factors to the underlying contract. Even if the law governing the contract has been expressly stipulated, it does not mean that the law governing the arbitration agreement and, by extension, the seat of arbitration will be the same as the *lex contractus*.*

(vi) The more appropriate criterion for determining the seat of arbitration in view of the subsequent decisions of this Court is that where in an arbitration agreement there is an express designation of a place of arbitration anchoring the arbitral proceedings to such place, and there being no other significant contrary indicia to show otherwise, such place would be the ‘seat’ of arbitration even if it is

designated in the nomenclature of ‘venue’ in the arbitration agreement.

(vii) Where the curial law of a particular place or supranational body of rules has been stipulated in an arbitration agreement or clause, such stipulation is a positive indicium that the place so designated is actually the ‘seat’, as more often than not the law governing the arbitration agreement and by extension the seat of the arbitration tends to coincide with the curial law.

(viii) Merely because the parties have stipulated a venue without any express choice of a seat, the courts cannot sideline the specific choices made by the parties in the arbitration agreement by imputing these stipulations as inadvertence at the behest of the parties as regards the seat of arbitration. Deference has to be shown to each and every choice and stipulation made by the parties; after all, the courts are only a conduit or means to arbitration, and the sum and substance of the arbitration is derived from the choices of the parties and their intentions contained in the arbitration agreement. It is the duty of the court to give weight and due consideration to each choice made by the parties and to construe the arbitration agreement in a manner that aligns the most with such stipulations and intentions.

(ix) We do not for a moment say that the Closest Connection Test has no application whatsoever, **where there is no express or implied designation of a place of arbitration in the agreement, either in the form of ‘venue’ or ‘curial law’, then the closest connection test may be more suitable for determining the seat of arbitration.**

(x) Where two or more possible places that have been designated in the arbitration agreement either expressly or impliedly, equally appear to be the seat of arbitration, then in such cases the conflict may be resolved through recourse to the Doctrine of Forum Non Conveniences, and the seat be then determined based on which one of the possible places may be the most appropriate forum keeping in mind the nature of the agreement, the dispute at hand, the parties themselves and their intentions. The place most suited for the interests of all the parties and the ends of justice may be determined as the ‘seat’ of arbitration.”

(Emphasis supplied)

10. Similarly, I would like to reproduce paragraphs 3, 8 and 10 of the judgment in *M/s. Activitas Management Advisor Private Limited* (supra) as under :

“3. Appellant, a management consultancy firm, was engaged by the respondent. The agreement that the appellant and the respondent have entered into on 09.07.2023 has an arbitration clause, and it also provides that “client hereby submits to the exclusive jurisdiction of the Mumbai High Courts located in Mumbai in connection with any dispute related to this letter or any of the matters contemplated thereby”. Clause 10 of the Agreement is as under:

“10. Governing Law - This Letter shall be governed by and construed in accordance with Indian Law. Client hereby submits to the exclusive jurisdiction of the Mumbai High Courts located in Mumbai in connection with any dispute related to this letter or any of the matters contemplated hereby. In case any dispute arises between the parties with respect to the above-mentioned agreement. Parties hereby agree to appoint a sole Arbitrator by consent of either party as per section 11 of the Arbitration and Conciliation Act 1996, and can amicably resolve their dispute as per the procedure laid down in the Arbitration and Conciliation Act 1996 before approaching the appropriate court for the same.”

8. Though clause 10 does not use the expression ‘seat’ or ‘venue’, we are of the opinion that the ‘jurisdiction’ is mentioned in the context of resolution of the disputes through arbitration and as such the agreement between the parties that, “client hereby submits to the exclusive jurisdiction of the Mumbai High Courts located in Mumbai” must be understood in the context of arbitration and therefore the seat of the arbitration must be taken to be Mumbai.

10. In view of the above, we allow the appeal, set aside the judgment and order passed by the High Court in ARB-130-2024 dated 27.09.2024. The appellant will be entitled to pursue his application under Section 11 of the Arbitration and Conciliation Act, and the respondent is equally entitled to contest the said application on such grounds as may be available to it in law.”

11. It is also noted that in 2019, the agreement was executed between the parties and on 30-03-2019, the appellant submitted the PBG, which was extended from time to time and therefore, the agreement of 2019 as well as 2020 is binding on both parties.

12. Having heard the learned Advocates for the parties and perusal of the record, the short question that arises for consideration in this appeal is *‘whether in view of clauses mentioned in the agreements dated 24-05-2019 and 21-09-2020, which Court has exclusive jurisdiction in respect of the application made by the parties under the Act of 1996.’* The said question is short, but the learned Advocates for the parties protracted it at length as if it were a big question of law. While dealing with the same, it is necessary to reproduce the relevant clauses of the agreements dated 24-05-2019 and 21-09-2020 as under :

“ARBITRATION

In the event of any question, dispute or differences arising under this agreement in connection therewith (except as to matters the decision of which is specifically provided under this agreement), the same will be referred to the sole arbitrator by the CMD MTNL (hereinafter referred to as the said officer) or any person nominated by him.

- a. There will be no objection to any such appointment if the ARBITRATOR is a Govt. Servant or MTNL employee, if, however, the arbitrator is a Government Servant or MTNL employee, he will not be one who had an opportunity to deal with the matter to which the agreement related during the course of his duties, and he has expressed his view on all or any of the matter in dispute or difference.*
- b. The award of the arbitrator shall be final and binding on the parties.*
- c. Subject to the aforesaid provision, the Arbitration and Conciliation Act, 1996, and the rules made thereunder, and any stipulation/modification for the time being in force shall be deemed to apply to the arbitrator proceeding under this clause.*
- d. That in case of any dispute under this agreement, the courts at ‘Delhi’ alone will have the exclusive jurisdiction.*

7. DISPUTE RESOLUTION

*In the event of any question, dispute or difference arising under this agreement or in connection there-with, the same shall be referred to the sole arbitration of the PGM, WS MTNL, New Delhi or in case his designation is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition his own duties or otherwise) with the functions of the PGM, WS, MTNL or by whatever designation such an officer may be called (hereinafter referred to as the said officer), and if the PGM, WS, MTNL or the said officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the PGM, WS, MTNL or the said officer. **The Arbitration proceeding will be held in accordance with the Arbitration and Conciliation Act 1996.***

There will be no objection to any such appointment on the ground that the arbitrator is an MTNL Officer or that he has to deal with the matter to which the agreement relates or that, in the course of his duties as an MTNL Officer, he has expressed his views on all or any of the matters in dispute. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the PGM, WS, MTNL or the said officer shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which It was left out by his predecessors.

The venue of the arbitration proceeding shall be the office of the PGM, WS, MTNL, New Delhi or such other places as the Arbitrator may decide.

The award of the arbitrator shall be final and binding on the parties.

The arbitration Clause shall not be attracted, for the forfeiture of the PBG due to the breach of the Terms and Conditions of the agreement by M/s Pinnacle Teleservices Pvt. Ltd.

8. GOVERNING LAW & JURISDICTION

This Agreement shall be governed by the laws of India and shall be subject to the exclusive Jurisdiction of the Courts at Delhi.

13. A plain reading of the above clauses reveals that while providing for a jurisdiction clause in the agreement, the words like ‘alone’, ‘exclusive’ have been used, which itself reflects the intention of the parties was clear and unambiguous that *the Court at Delhi shall have the jurisdiction alone*. It is so because for the construction of the jurisdiction clause, like Clauses 7 and 8, as well as the ‘Arbitration’ clause in the agreement, the maxim *expressio unius est exclusio alterius* comes into play, as there is nothing to indicate to the contrary. This legal maxim means that the expression of one is the exclusion of another. *By making a provision that the agreement is subject to the jurisdiction of the Courts at Delhi, the parties have impliedly excluded the jurisdiction of the other courts.* Where the contracts specify the jurisdiction of the Court at a particular place and such courts have jurisdiction to deal with the matter, *I think that an inference can be drawn that the parties intended to exclude all other courts.* It also denotes that the agreement between the parties restricted jurisdiction to only one particular court, that court alone would have jurisdiction, as neither Section 31(4) nor Section 42 of the Act contains a non obstante clause wiping out a contrary agreement between the parties. On the basis of the above, it can be said that the application preferred to the courts outside the exclusive court agreed to by the parties would also be without jurisdiction. Similarly, the above terms and conditions of the agreement itself demonstrate that the jurisdiction of the learned District Judge, Nagpur, is ousted and,

therefore, it cannot be said to have any jurisdiction dealing with the matter. The only competent court of jurisdiction is the court at '*Delhi*'. Likewise, the very existence of the exclusion of the jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like '**alone**', '**exclusive**', and so on is not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement.

14. Though the learned Advocate for the appellant argued that Section 42 read with Section 2(1)(e) of the Act consists of two parts, first part pertaining to the arbitration agreement and the second part pertaining to the territorial jurisdiction under the Civil Procedure Code, however, in the agreement, no designation of the seat of the arbitration has been expressly stipulated but merely provides for unilateral appointment of an arbitrator. Therefore, the intention behind inserting sub-clauses (a) to (c) is with respect to the unilateral appointment of the arbitrator by MTNL. Therefore, as per Sections 2(1)(e) r/w 20 and 42 of the Act, the Nagpur Court has jurisdiction to try and entertain the application pertaining to the arbitration as the cause of action arose at Nagpur. To substantiate his contention, he has relied on the judgment in *BGS SGS Soma JV* (supra), more particularly paragraph No. 59. I would like to reproduce paragraph No. 59 of the said judgment.

“59. Equally incorrect is the finding in [Antrix Corporation Ltd.](#) (supra) that [Section 42](#) of the Arbitration Act, 1996 would be rendered ineffective and useless. [Section 42](#) is meant to avoid conflicts in the jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one Court exclusively. This is why the section begins with a non-obstante clause, and then goes on to state “...where with respect to an arbitration agreement any application under this Part has been made in a Court...” It is obvious that the application made under this part to a Court must be a Court that has jurisdiction to decide such an application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the Courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, [Section 42](#) is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no “seat” is designated by agreement, or the so-called “seat” is only a convenient “venue”, then there may be several Courts where a part of the cause of action arises that may have jurisdiction. Again, an application under [Section 9](#) of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the “seat” of arbitration, and before such “seat” may have been determined, on the facts of a particular case, by the Arbitral Tribunal under [Section 20\(2\)](#) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a Court in which a part of the cause of action arises would then be the exclusive Court under [Section 42](#), which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.”

15. On perusal of the said judgment in **BGS SGS Soma JV** (supra), it is evident that the Hon’ble Apex Court in paragraphs 38 to 40 dealt with the mandate laid down by the Constitution Bench in **BALCO** (supra) wherein the Constitution Bench has considered Section 2(1)(e), r/w Section 20 and observed that definition of the ‘Court’ under the

Arbitration Act, 1996 was referred to and was construed keeping in view the provisions of Section 20 of the Act, which give recognition to party autonomy in choosing the seat of the Arbitration proceedings. Secondly, the Court went on to state in two places in the said paragraph that jurisdiction is given to two sets of Courts, namely, those Courts which would have jurisdiction where the cause of action is located and those Courts where the arbitration takes place.

16. In paragraph 59 of the judgment in **BGS SGS Soma JV** (supra), it is observed that *the findings given in Antrix Corporation Ltd. (supra) were incorrect. That Section 42 of the Arbitration Act would be rendered ineffective and useless. But held that Section 42 is meant to avoid conflicts in jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one Court exclusively. This is why the section begins with a non-obstante clause and then goes on to state. Lastly, observe that in both these situations, the earliest application having been made to a Court in which a part of the cause of action arises would then be the exclusive Court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts is held to be incorrect and is overruled.*

17. However, the Hon'ble Apex Court in paragraphs **60 and 61** *further considered the test for the determination of the 'seat'*. While dealing with the said question in paragraph 61, the Hon'ble Apex Court has categorically held that "it will thus be seen that wherever there is an express designation of a 'venue', and no designation of any alternative place as the 'seat', combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia the inexorable conclusion in that the stated venue is actually the judicial seat of the arbitral proceedings.

18. It is worth noting that the Hon'ble Apex Court in **BGS SGS Soma JV** (supra) has considered the catena of judgments, more particularly it has dealt with the judgment in **Indus Mobile Distribution Private Limited** (supra) as well as the judgment in **Hardy Exploration & Production (India) Inc.** (supra) on which the learned Advocate for the appellant has relied. In paragraphs 81 and 82 of the said judgment, the Hon'ble Apex Court has dealt with the judgment in **Indus Mobile Distribution Private Limited** (supra), and I would like to reproduce paragraphs 81 and 82 as under:

"81. Most recently, in [Brahmani River Pellets](#) (supra), this Court, in a domestic arbitration, considered clause 18, which was the arbitration agreement between the parties, and which stated that the arbitration shall be under [the Indian Arbitration and Conciliation Act, 1996](#), and the venue of arbitration shall be Bhubaneswar. After citing several judgments of this Court and then referring to [Indus Mobile Distribution](#) (supra), the Court held:

“18. Where the contract specifies the jurisdiction of the court at

a particular place, only such a court will have the jurisdiction to deal with the matter and the parties intended to exclude all other courts. In the present case, the parties have agreed that the “venue” of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik, non-use of words like “exclusive jurisdiction”, “only”, “exclusive”, “alone” is not decisive and does not make any material difference.

19. When the parties have agreed to have the “venue” of arbitration at Bhubaneshwar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order is liable to be set aside.”

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.*

19. Upon perusal of the above mandate, it is apparent that the Hon'ble Apex Court has categorically held that "*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 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 such circumstances, the venue, so stated, would be the seat for the purposes of arbitral proceedings.*

Correctness of the judgment in Hardy Exploration and Production (India) Ltd."

20. The Hon'ble Apex Court further considered the judgment in *Hardy Exploration & Production (India) Inc.* (supra) in paragraphs 83 to 94 and finally, in *paragraph 94*, held that the *judgment in Hardy Exploration & Production (India) Inc., being contrary to the Five-Judge Bench judgment in BALCO, cannot be considered to be good law.* Therefore, it would not be appropriate to consider the law laid down in *Hardy Exploration & Production (India) Inc.* (supra).

21. After considering the judgment in *Indus Mobile Distribution Private Limited, Hardy Exploration & Production (India) Inc.* and other judgments, the Hon'ble Apex Court, finally, in paragraphs 95 to 97, considered the controversy raised before it and held that the expression *The Arbitration proceedings "shall be held" at a particular place also indicates that so-called 'venue' is really the 'seat' of the Arbitral proceedings.* The dispute is to be settled in accordance with the Arbitration Act 1996.

22. In such an eventuality, in my view, the law laid down in *BGS SGS Soma JV* (supra) will prevail as it has considered the judgments in *Indus Mobile Distribution Private Limited, Hardy Exploration & Production (India) Inc.* and other judgments of the Hon'ble Apex Court

23. Based on the above settled position of the law, it would be appropriate to deal with the fact and controversy that arise in the matter. Turning to the facts of the case at hand, it reveals that the clauses of the agreement, Clause No. 7 of the agreement dated 24-05-2019, state that "the venue of the arbitration proceedings shall be the office of PGM. WS MTNL, New Delhi or such other places as the Arbitrator may decide". Undisputedly, in both the agreements, no seat of arbitration is designated and, therefore, as per the law laid down in the

case of *BGS SGS Soma JV* (supra), wherever there is an express designation of a ‘*venue*’, and no designation of any alternative place as the ‘*seat*’, combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated ‘*venue*’ is actually the judicial seat of the arbitral proceedings. The mandate laid down in *BGS SGS Soma JV* (supra) does not support the contentions of the learned Advocate for the appellant; on the other hand, it supports the case of respondent No.1.

24. Moreover, on perusal of the judgment in *Arif Azim Co. Ltd.* (supra), it is evident that the Hon’ble Apex Court in paragraph 36 dealt with the judgment passed by the Hon’ble Constitution Bench in *BALCO*. Similarly, in paragraph 52 of the said judgment, it has also discussed the decision in *BGS SGS SOMA JV*, and after considering those judgments along with other judgments, the Hon’ble Apex Court in paragraph 71 concluded that the position of law emerges from the discussion held in the said judgment. In clause (vi) of paragraph 71, the Hon’ble Apex Court categorically held that “*for determining the seat of arbitration wherein an arbitration agreement there is an express designation of a place of arbitration anchoring the arbitral proceedings of such place, and there being no other significant contrary indicia to show otherwise, such place would be the ‘seat’ of arbitration even if it is designated*

in the nomenclature of ‘venue’ in the arbitration agreement. In Clause (viii), it is further held that “*merely because the parties have stipulated the venue without any express choice of a seat, the courts cannot sideline the specific choices made by the parties in the arbitration agreement by imputing these stipulations as inadvertence at the behest of the parties as regards the seat of arbitration. But it is the duty of the court to give weight and due consideration to each choice made by the parties and to construe the arbitration agreement in a manner that aligns the most with such stipulations and intentions.* In Clause (ix), it was observed that *where there is no express or implied designation of a place of arbitration in the agreement, either in the form of ‘venue’ or ‘crucial law’, the closest connection test may be more suitable for determining the seat of arbitration”.*

25. Apart from this, in *M/s. Activitas Management Advisor Private Limited* (supra), the Hon’ble Apex Court has categorically held that “though clauses of the arbitration agreements do not use the expression ‘seat’ or ‘venue’, in such circumstances, the mentioning of the jurisdiction in the context of the resolution of the disputes through arbitration and as such the agreement between the parties must be taken into consideration.

26. Having considered the above discussions and the law laid down in the above cited judgments, the following legal position that emerges from the conspectus of all the decisions that “*the Courts have time and again held that in cases where the arbitration clause specifies a particular ‘venue’ for arbitration, such designation is to be construed as the ‘seat’ of arbitration, unless there is a clear indication to the contrary.*”

27. In view of the above legal position and on scrutiny of Clauses 7 and 8 of the arbitration agreement, it would clearly indicate that the same will relate to the arbitration proceedings to be held in accordance with the Act. In clause (d) of the arbitration agreement dated 21-09-2020, it is categorically mentioned that in case of dispute under the agreement, the Courts at “Delhi” alone will have the exclusive jurisdiction. The said clause is in the arbitration clause, which means the Courts that are dealing with the arbitral proceedings have jurisdiction at “Delhi” alone and exclusively. Similarly, on perusal of Clause 7, i.e. ‘Dispute Resolution’ of the agreement dated 24-05-2019, it is evident that said clause specifically states that “the venue of the arbitration proceedings shall be at New Delhi” or such other places as the arbitrator may decide. The said clause itself is divided into two parts; first, *the venue of the arbitration proceedings shall be at ‘Delhi’*. As per the mandate

laid down in the above-cited judgments, the said “venue” is to be designated as the “seat” of the arbitral proceedings. Therefore, as per the first part, the Delhi Court has only jurisdiction to deal with the matters pertaining to the arbitration proceedings, and as per the second part, the arbitrator may decide the place of the Arbitration. The question in respect of second part does not arise as no arbitrator has been appointed to decide the place of the arbitral proceedings and, therefore, as per the first part, the Delhi Court can be termed as a seat designated for conducting the arbitral proceedings and, the Delhi Court is empowered to deal with any application under the Arbitration Act instead of the Nagpur Courts. Similarly, Clause 8 deals with the agreement **shall be governed by the laws of India and *shall be subject to the exclusive jurisdiction of the Courts at Delhi***. Besides, in view of the mandate laid down in *M/s. Activitas Management Advisor Private Limited and Arif Azim Co. Ltd.* (supra), it can be inferred that in absence of the use of expression ‘seat of arbitration’ and specifying the exclusive jurisdiction of a particular court, this exclusive jurisdiction clause, without explicit using the term ‘seat’ must be understood in the context of the arbitration for dispute resolution thereby specified the location as the seat of the arbitration is Delhi only and it ousts the jurisdiction of the other Court.

28. Apart from this, a careful perusal of those clauses, it is apparent that the parties have agreed that “*the only Delhi Courts have jurisdiction to deal with the dispute between them in respect of the arbitral proceedings or under the Act as the word used in the said clauses are ‘alone’ and ‘exclusive’, which itself indicates that the parties have intention to exclude other courts’ jurisdiction and in such circumstances, the terms and conditions in the agreement of the contract would binds the parties*”. In such an eventuality, I do not find substance in the argument advanced by the learned Advocate for the appellant that the District Court, Nagpur, has the jurisdiction to try and entertain the application under Section 9 of the Act.

29. Furthermore, the learned Advocate for the appellant by filing the written notes of argument tried to distinguish the judgments relied on by learned Advocate for respondent No.1 and also emphasized that the ratio laid down in *Arif Azim Co. Ltd.* (supra) directly supports the case of the appellant instead of respondent No.1. As discussed in detailed above, the ratio laid down in *Arif Azim Co. Ltd.* and the facts in the said case, I do not find any substance in his argument. On the contrary, it emerges that the ratio laid down in the said case supports the contentions made by respondent No. 1. He has also tried to distinguish other judgments. It is worth noting that while discussing the *BGS SGS*

Soma JV and *Arif Azim Co. Ltd.* (supra), I have already observed that the Hon'ble Apex Court, after considering the judgment in *BALCO, Indus Mobile Distribution Private Limited* (supra), has laid down the ratio in *BGS SGS Soma JV* and after considering that judgment, the Hon'ble Apex Court has laid down the law in *Arif Azim Co. Ltd.* and, therefore, the contention of the learned Advocate for the appellant that "he has distinguished the judgments relied upon by respondent No. 1 and those are not helpful to respondent No. 1", is baseless and fustian.

30. The learned Advocate for the appellant further contends that the cause of action arose at Nagpur. In those circumstances also, as per the law laid down in the case of *BGS SGS Soma JV* and *Arif Azim Co. Ltd.* (supra), if any dispute arises pertaining to the arbitration, in those circumstances, the Delhi Courts have 'alone and exclusive' jurisdiction and not the Courts at Nagpur. Therefore, I do not find any substance in his contention in that regard. Thus, I have no hesitation to hold that "*any dispute arising under the Arbitration Act or Civil Procedure Court, the Courts at Delhi have 'alone' the exclusive jurisdiction to deal with the matter and not the Courts at Nagpur,*" hence I answer the question accordingly.

31. Perused the impugned order. In paragraph No. 7, the learned Judge observed that the parties to the agreement agreed that in any

arbitration proceedings the venue of the arbitration proceedings shall be the office of the PGM, WS, MTNL, New Delhi or such other places as the Arbitrator may decide, and therefore, held that “*the said agreement disclosed the seat of arbitration is at New Delhi*”. Even as argued by the learned Advocate for the appellant that the learned District Judge has not recorded the reasons that how the ‘venue’ is converted into the ‘seat’ or without adjudicating the substance of ‘seat’ or ‘venue’ or without recording the reasons, has held that the seat of arbitration is at New Delhi, it is pertinent to note that I have discussed in detail how the ‘venue’ can be termed as ‘seat’ of arbitral proceedings as well as how the Delhi Court has exclusive jurisdiction in thoroughly and as per the law laid down in *BGS SGS Soma JV*, *Arif Azim Co. Ltd.* and *M/s. Activitas Management Advisor Private Limited* (supra). I have no hesitation to hold that “*wherever there is an express designation of a ‘venue’, and no designation of any alternative place as the ‘seat’, combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia the inexorable conclusion in that the stated venue is actually the judicial seat of the arbitral proceedings*” and, therefore, the said finding recorded by the learned District Judge will not affect the rights of the parties though it has not recorded the detailed reasoning.

32. The learned Advocate for the appellant also relied upon the judgments in *Rudranee Infrastructure Ltd., Gurumahima Heights Co-operative Housing Society Ltd.* and *Manmohan Kapani* (supra). However, in view of the mandate laid down in *BGS SGS Soma JV* and *Arif Azim Co. Ltd.* (supra), the observations made in the said judgments are hardly of any assistance to the appellant in support of its contentions.

33. The upshot of the above discussion is that the intention of the parties can be culled out from the use and expression of the terms and conditions of the agreements, and it can be gathered which Court has jurisdiction to deal with the arbitral proceedings. A bare perusal of the clauses of the agreements indicates that the Delhi Court has '*alone*', *exclusive* jurisdiction to try and entertain the proceedings in respect of the Arbitration Act as well as the Civil Procedure Code. As such, the order passed by the learned District Judge is just and proper and no interference is required in it in the appellate jurisdiction. Hence, *I answer the point in the negative.*

34. As a result, the appeal, being bereft of merit, stands dismissed. No order as to Costs.

(ABHAY J. MANTRI, J.)

At this stage, the learned Advocate for the appellant urged to stay the execution of the bank guarantees for a period of three weeks, as in this appeal, the court has not dealt with the merits of the matter, for which the learned Advocate for respondent No. 1 strongly objected. However, considering the fact that the matter has not been dealt with on merit and only on the point of jurisdiction, the appeal is dismissed; therefore, in my view, it would be appropriate to grant an opportunity to the appellant to contest the matter on merit. If the stay is not granted, its rights will become infructuous as respondent No. 1 might have encashed the bank guarantees by invoking them. Therefore, stay is granted to invoke the bank guarantees till 06-10-2025. It is made clear that no further time will be extended as the learned District Judge had already granted an opportunity to the appellant to approach the Delhi Court, but instead of approaching the said Court, the appellant has filed this appeal. It is made clear that the bank guarantees shall be kept in abeyance till 06-10-2025. It is further made clear that the appellant is not entitled to withdraw the bank guarantees till redressal of the dispute.

(ABHAY J. MANTRI, J.)