



2025:DHC:7553



\$~73

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

%

Date of Decision: 21st August, 2025

+

ARB.P. 478/2025

PVR INOX LIMITED

.....Petitioner

Through: Mr. Dhanesh Relan, Mr. Divyanshu Bhandari, Ms. Brinda Batra and Mr. Jatin Bhatia, Advocates.

versus

SHIPRA HOTELS LTD.

.....Respondent

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Mr. Rahul Sharma and Ms. Nandini Singh Randhawa, Advocates.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition is filed on behalf of the Petitioner under Section 11(6) of Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. To the extent necessary, case of the Petitioner is that Respondent approached INOX Leisure Limited (INOX) to enter into a lease with respect to area ad measuring 41,000 sq. feet with carpet area of 32,800 sq. feet, consisting of a multiplex with auditoriums, cinema lobby and projection rooms with provisions of 3 screens and seating capacity of 1150 approximately located within 'Shipra Mall', Plot No. 9, Vaibhav Khand, Indirapuram, Ghaziabad.
3. INOX entered into a Binding Term Sheet with the Respondent on 26.09.2017, whereby INOX agreed to take the proposed multiplex area on lease for a period of 20 years. INOX deposited Rs. 1,50,31,250/- with the



Respondent as interest-free security deposit on 10.10.2017. Kotak Mahindra Bank issued No Objection Certificate on 06.12.2017 in favour of the Respondent approving Respondent's commitment towards INOX in terms of the Binding Term Sheet to lease out the multiplex area. Respondent entered into a Lease Deed with INOX on 18.12.2017, whereby INOX took the multiplex area on lease for three years till 18.12.2020. On 01.04.2022, INOX and the Respondent executed another Lease Deed in which terms of earlier Lease Deed were reiterated and interest free security made on 01.03.2018 was also adjusted.

4. It is averred that by order dated 12.01.2023, NCLT, Mumbai Bench approved the amalgamation Scheme between INOX and PVR Limited, whereby the two merged. On 20.04.2023, PVR Limited's name was formally changed to PVR INOX Limited. On 14.06.2023, M/s. Himri Real Estate Pvt. Ltd. issued an e-mail to the Petitioner informing that Himri had purchased all rights, title and interest in the subject property by virtue of Sale Certificate registered with office of Sub-Registrar, Ghaziabad, on 12.05.2023. On 17.01.2024, Petitioner issued a letter to the Respondent for return of IFSDs but there was no response. Disputes having arisen between the parties, Petitioner invoked arbitration since both the Binding Term Sheet and the Lease Deed contain arbitration clauses and sent notice dated 26.12.2024 to acknowledge its claims and honour them, failing which consent be given to the names proposed by the Petitioner for appointment of Arbitrator. However, despite receipt of notice on 28.12.2024, Respondent failed to act.

5. Learned counsel for the Respondent raises two-fold objections to the maintainability of this petition: (a) this Court does not have territorial



jurisdiction to entertain the petition; and (b) the Lease Deed is unregistered and unstamped and is required to be compulsorily registered under Section 17(1)(d) of the Registration Act, 1908 ('Registration Act').

6. Elaborating the first contention, it is argued that Lease Deed contains Clause 24 which provides that Courts at Ghaziabad, Uttar Pradesh shall have exclusive jurisdiction to deal with the matter arising out of the Deed. It was a conscious decision of the parties to refer any or all disputes arising out of the Lease Deed for adjudication by Ghaziabad Courts and hence, this Court lacks the territorial jurisdiction to make a reference to arbitration. No doubt, Clause 23 is an arbitration clause which provides that venue of arbitration shall be at Delhi, however, the exclusive jurisdiction Clause 24 will have an overriding effect, inasmuch as the arbitration clause does not designate a seat but only a venue and both clauses have different legal connotations in arbitration law. Reliance is placed on the judgment of this Court in ***Isgec Heavy Engineering Ltd. v. Indian Oil Corporation Limited*, 2021 SCC OnLine Del 4748**, where a similar arbitration agreement was interpreted and petition under Section 11 was dismissed for want of territorial jurisdiction. Reliance is also placed on the judgments of Co-ordinate Benches in ***Kush Raj Bhatia v. DLF Power and Services Limited, through its Director*, 2022 SCC OnLine Del 3309** and ***Meenakshi Nehra Bhat and Another v. Wave Megacity Centre Private Limited*, 2022 SCC OnLine Del 3744**. Moreover, the multiplex, which is subject matter of dispute in the present petition is located within Shipra Mall which in turn is located in Ghaziabad, U.P. and therefore, even applying Section 20 CPC, this Court lacks the territorial jurisdiction.

7. On the second contention, it is urged that non-registration of Lease



Deed dated 01.04.2022, which is a compulsorily registerable document under Section 17(1)(d) of Registration Act goes to the root of validity of the document. Since the document itself becomes unenforceable by virtue of Section 23 the Indian Contract Act, 1872, any arbitration clause incorporated therein ceases to have legal and binding force. Reliance is placed on the judgment of the Supreme Court in ***Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1***, more particularly, paragraph 154.4, wherein the Supreme Court has observed that rarely as a demurrer, the Court may interfere at Sections 8 or 11 stage, when it is manifestly and *ex facie* certain that arbitration agreement is non-existent, invalid or disputes are non-arbitrable, though nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. Restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably ‘non-arbitrable’ and to cut off the deadwood. Reliance is also placed on the judgment of ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re, (2024) 6 SCC 1***, emphasising on the observations in paragraphs 185 and 224(c).

8. Mr. Relan, learned counsel for the Petitioner, on the other hand, disputes that this Court does not have the territorial jurisdiction to entertain the petition. He submits that arbitration Clause 23 designates the venue at New Delhi and in the absence of any contrary *indicia* in the arbitration clause, the venue will be the juridical seat and in this context relies on the judgment of the Co-ordinate Bench of this Court in ***Global Credit Capital Ltd. v. Krrish Realty Nirman Pvt. Ltd., 2018 SCC OnLine Del 9178***. It is urged that the exclusive jurisdiction clause 24 relied on by the Respondent is



a general jurisdiction clause and cannot override the arbitration clause when the question is of reference of disputes to arbitration as a dispute resolution mechanism.

9. Insofar as the second objection with regard to Lease Deed being unregistered and unstamped is concerned, it is submitted that the Supreme Court in ***Re: Interplay (supra)*** has crystalized this issue ruling that an objection as to stamping will not fall for determination under Sections 8 or 11 of the 1996 Act and any objection on this aspect will fall within the ambit of the Arbitral Tribunal.

10. Heard learned counsels for the parties and examined their rival submissions.

11. Insofar as the territorial jurisdiction of this Court to entertain this petition is concerned, in my considered opinion, the preliminary objection is devoid of merit. To decide this issue, it will be pertinent to examine the two clauses in the Lease Deed dated 01.04.2022 i.e. one being general jurisdiction clause and other being the arbitration clause and for ready reference, both are extracted hereunder:-

Binding Term Sheet:

“23. ARBITRATION:

All dispute or difference arising between the Parties touching or concerning this Deed or the construction or meaning or effect thereof or any clause herein contained or as to the rights and liabilities of the Parties under this Deed or otherwise touching the subject matter of this Deed or the implementation thereof shall be referred to arbitration of a sole arbitrator to be appointed by the Parties mutually. The arbitration shall be in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The Arbitrator shall give reasons for the award, which shall be final and binding upon the Parties. The venue of such Arbitration shall be Delhi and such arbitration shall be conducted in English Language.

**24. JURISDICTION:**

This Deed shall be construed and enforced pursuant to the Laws of India and the Court at Ghaziabad, Uttar Pradesh shall have exclusive jurisdiction to deal with the matter arising out of this Deed.”

12. From a reading of the aforesaid clauses, it is clear that there are two different clauses in the Lease Deed. Clause 24 is the jurisdiction clause as per which exclusive jurisdiction to deal with matters arising out of the Lease Deed lies with Courts at Ghaziabad while Clause 23 is the arbitration clause envisaging reference of disputes and differences arising out of the Lease Deed to a sole Arbitrator and stipulates that venue of the arbitration shall be Delhi. Clause 23 is a complete contract between the parties pertaining to arbitration and evidences a clear intent of the parties that arbitration proceedings will be held at Delhi and is distinct from Clause 24. There is no contrary *indicia* in the arbitration clause and therefore in terms of the judgment of the Supreme Court in **BGS SGS SOMA JV v. NHPC Limited, (2020) 4 SCC 234**, the venue will be the juridical seat of arbitration and Courts at Delhi will have jurisdiction over the arbitral process. Pertinently, Respondent does not object that venue agreed between the parties is Delhi.

13. A similar arose before a Division Bench of this Court in **Yassh Deep Builders LLP v. Sushil Kumar Singh and Another, 2024 SCC OnLine Del 1547**, where Clause 19 was the jurisdiction clause stipulating jurisdiction of Courts at Gurugram, Haryana alone and Clause 23 was an arbitration clause designating the venue at Delhi. Examining the issue of territorial jurisdiction of this clause, the Division Bench rejected the preliminary objection and held that Clause 23 providing for venue of arbitration at Delhi is indicative of the intention of the parties that arbitral proceedings will be anchored at Delhi. Relevant passages from the judgment are as follows:-



“12. It would be expedient to refer to the respective clauses in the collaboration agreement dated 15-5-2018 entered into between appellant and Respondent 1. The respective Clauses 19 and 23 read as under:

“19. Jurisdiction.—

19.1. All matters concerning these presents and the development of the scheduled property shall be subject to the jurisdiction of courts at Gurugram/Haryana alone.

23. Arbitration.—

23.1. 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....”

xxx

xxx

xxx

15. Mr Amit Sibal, the learned Senior Counsel on behalf of the appellant submits that the usage of the expression “venue” in the arbitration clause by the parties was intended to be seat for arbitration, and not mere convenient place. Thus, the parties were ad idem on New Delhi being the seat of arbitration.

xxx

xxx

xxx

19. Learned Senior Counsel appearing for the respondent submits that the appeal is not maintainable, in the backdrop of the collaboration agreement, which contains a jurisdiction clause and arbitration clause. He submits that upon bare perusal of Clause 19.1 it is evident that the collaboration agreement vests jurisdiction exclusively with courts of Gurugram/Haryana ousting the jurisdiction of other courts. The usage of word “alone” in the said clause makes it abundantly clear that the intention of parties was to confer “exclusive jurisdiction” upon the courts of Gurugram/Haryana only.

xxx

xxx

xxx



21. He further submits that Clause 23 pertaining to “arbitration” refers only to the “venue” and not the “seat” and cannot be read as the seat in view of the exception carved out by the Supreme Court in *BGS SGS SOMA JV v. NHPC Ltd.* [BGS SGS SOMA JV v. NHPC Ltd., (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606]

xxx

xxx

xxx

26. The Supreme Court in *BGS SGS SOMA JV case* [BGS SGS SOMA JV v. NHPC Ltd., (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606], referring to *Bharat Aluminium Co. case* [Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810], held that where parties had selected the seat of arbitration in their agreement, such selection would amount to an exclusive jurisdiction clause, as the parties had indicated that the courts at the “seat” would alone have jurisdiction to entertain challenges against the arbitral award which have been made at the seat. Further, if 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 all proceedings would lie only to the courts of the seat which are the courts having supervisory control, or jurisdiction, over the arbitration proceedings. It held that if concurrent jurisdiction were to be the order of the day, despite the seat having been located and specifically chosen by the parties, party autonomy would suffer, which as per the Supreme Court in *Bharat Aluminium Co. case* [Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] specifically stated could not be the case.

27. The Supreme Court further held that the very fact that parties had chosen a place to be the seat would necessarily carry with it the decision of both parties that the courts at the seat would exclusively have jurisdiction over the entire arbitral process. Once the seat of arbitration is chosen, it amounted to an exclusive jurisdiction clause, insofar as the courts at that seat are concerned.

28. Referring to *Shashoua v. Sharma* [Shashoua v. Sharma, (2009) 2 All ER (Comm.) 477 : 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376], the Supreme Court in *BGS SGS SOMA JV case* [BGS SGS SOMA JV v. NHPC Ltd., (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] held that not only was there agreement to the curial law of the seat, but also to the courts of the seat having supervisory jurisdiction over the arbitration, so that, by agreeing to the seat, the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of the arbitration. It further held that although, “venue” was not synonymous with “seat”, in an arbitration clause which provided for arbitration to be conducted in accordance with the Rules of the ICC in Paris (a supranational body of rules), a provision that “the



venue of arbitration shall be London, United Kingdom” did amount to the designation of a juridical seat....

29. The Supreme Court held that the judgments of the English courts had examined the concept of the “juridical seat” of the arbitral proceedings, and laid down several important tests in order to determine whether the “seat” of the arbitral proceedings has, in fact, been indicated in the agreement between the parties.

30. Referring to Shashoua v. Sharma [Shashoua v. Sharma, (2009) 2 All ER (Comm.) 477 : 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] it was held 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 is that the stated venue is actually the juridical seat of the arbitral proceeding.

31. The Supreme Court also referred to The Conflict of Laws, Dicey, Morris & Collins, 14th Edn. at 16-35 and noted that seat was in most cases was sufficiently indicated by the country chosen as the place of the arbitration. For such a choice of place not to be given effect as a choice of seat, there would need to be clear evidence that the parties agreed to choose another seat for the arbitration.

32. The Supreme Court referred to Enercon GmbH case [Enercon GmbH v. Enercon (India) Ltd., 2012 SCC OnLine CLB 99 : 2012 EWHC 689 (Comm) : (2012) 1 Lloyd's Rep 519] and noted that the court had held that although the word “venue” was not synonymous with “seat”, on the facts of that case, London though described as the “venue” was really the “seat” of the arbitration. This was for the reason that London was a neutral place in which neither party worked for gain, and in which no part of the cause of action arose.

33. It noted that parties were anchoring the whole arbitration process in London right up to and including the making of an award and held that the place designated for the making of an award is a designation of seat. It held that the language in Clause 18.3 did not refer to the venue of all hearings “taking place” in London instead provided that the venue of the arbitration proceedings “shall be” London. This suggested that the parties intended to anchor the arbitration proceedings to and in London rather than simply physically locating the arbitration hearings in London.

34. After considering various Indian and English judgments, the Supreme Court 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. 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.

35. Similar view has been expressed by several judicial pronouncements rendered by learned Single Judges of this Court. Reference may be had to some of such judgments.

36. In *Dholi Spintex (P) Ltd. v. Louis Dreyfus Co. India (P) Ltd.* [Dholi Spintex (P) Ltd. v. Louis Dreyfus Co. India (P) Ltd., 2020 SCC OnLine Del 1476] considering the term “venue” used in Clause 6 of the agreement learned Single Judge held that by agreeing to conduct the arbitration through International Cotton Association (“ICA” for short), parties had agreed that the seat of arbitration would be London and not Delhi even though by Clause 7 the substantive law of the contract was Indian law and parties had agreed to exclusive jurisdiction of the courts at Delhi. It was held that per Clause 6, parties had specifically agreed that any dispute arising out of the contract shall be resolved through arbitration in accordance with International Cotton Association Rules and arbitration procedure, the parties had thus agreed to abide by the rules and bye-laws of the ICA which provided that the seat of arbitration is in London and the law of England and Wales shall apply to every arbitration and/or appeal under these bye laws. The court held that Clause 7 entered into between the parties would be relevant if by an agreement both parties decide not to settle their disputes through arbitration but by approaching the court of law, in which case the exclusive jurisdiction would be of the courts at New Delhi.

37. In *Cable Corpn. of India Ltd. v. Jay Pee Sports International Ltd.* [Cable Corpn. of India Ltd. v. Jay Pee Sports International Ltd., 2018 SCC OnLine Del 10340] , where the dispute resolution and arbitration clause stipulated the venue of arbitration as New Delhi but the governing laws and jurisdiction clause stipulating that the District Courts of Gautam Budh Nagar and High Court of judicature at Allahabad shall have exclusive jurisdiction over all matters arising out of or related to this contract, a learned Single Judge of this Court referring to the decision of the Supreme Court in *Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.* [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] and *Enercon (India) Ltd. v. Enercon GmbH* [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] and noted that like in the present case, the arbitration clause was distinct from the jurisdiction clause and noted that the arbitration clause in that case was Clause 31 with the heading “disputes resolution and arbitration”. Clause 31.2 clearly stipulated that the venue of arbitration shall be New



Delhi. Clause 38 had a heading “governing laws and jurisdiction”. It was not dealing with arbitration. Clause 31 was a provision dealing only in arbitration and would apply in relation to arbitration proceedings. As the arbitration proceedings are to be held in Delhi, the courts in Delhi would exercise jurisdiction over the arbitration process and the seat of arbitration would be Delhi. Clause 38 being a general provision would be applicable to proceedings that may take place other than the arbitration proceedings. This would be the appropriate harmonious interpretation of the two clauses of the agreement between the parties.

38. In *Gauri Dwivedi v. Direct News (P) Ltd.* [*Gauri Dwivedi v. Direct News (P) Ltd.*, 2023 SCC OnLine Del 2367] , the learned Single Judge held that the juridical or legal seat of arbitration once designated or determined exclusively determines which courts will have jurisdiction over the arbitration, as opposed to the place where whole or part of the cause of action arises. Thus, once the seat of arbitration is designated or determined, the same operates as an exclusive jurisdiction clause as a result of which only the courts where the seat is located would have jurisdiction over the arbitration, to the exclusion of all other courts, even courts where part of the cause of action may have arisen. The test for determination of juridical seat wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat” is the *shashoua* principle which states that wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding, to the exclusion of all other courts, even courts where part of the cause of action may have arisen.

39. The learned Judge further held 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 ‘arbitration proceedings’ 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. Further, the fact that the arbitral proceedings ‘shall be held’ at a particular venue would also indicate that the parties intend 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, to the exclusion of all other courts, even courts where part of the cause of action may have arisen.”

40. Similar view if expressed in *Cinepolis (India) (P) Ltd. v. Celebration City Projects (P) Ltd.* [*Cinepolis (India) (P) Ltd. v. Celebration City*



Projects (P) Ltd., 2020 SCC OnLine Del 301] , wherein the court referring to the clauses of the agreement noted that parties by agreement had conferred exclusive jurisdiction on the subject-matter of the agreement on the courts in Ghaziabad, while the place of the arbitration was New Delhi. Learned Judge held that while it was true that the arbitration clause did not specifically use the word “seat” but it was no longer res integra that the term “place” would be the “juridical seat” for the purpose of Section 2(2) of the Act and the word “place” was equivalent to “venue”.

41. *In Raman Deep Singh Taneja v. Crown Realtech (P) Ltd. [Raman Deep Singh Taneja v. Crown Realtech (P) Ltd., 2017 SCC OnLine Del 11966]* , referring to *Bharat Aluminium Co. case [Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]* , it was held that a distinction is to be drawn between “subject-matter of the arbitration” and “subject-matter of the suit”. For the purposes of identifying the court, which shall have supervisory control over the arbitral proceedings, it would be the court where the “subject-matter of arbitration” is situated that would have precedence over the court where the “subject-matter of the suit” is situated. Therefore, the exclusive jurisdiction conferred due to venue of arbitration would take precedence over the exclusive jurisdiction vested over the subject-matter of the suit and the court having jurisdiction over the arbitration proceedings would have precedence over the court which has jurisdiction over the subject-matter of the suit or where the cause of action has arisen. The court held that the purported conflict between the two parts could be resolved by holding that where the disputes are to be adjudicated without reference to the arbitration, courts at Delhi would have exclusive jurisdiction, however, where they have to be resolved through arbitration, venue being at Faridabad, Haryana, the courts at Faridabad, State of Haryana, would have exclusive jurisdiction.

42. *In Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd. [Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd., 2023 SCC OnLine Del 4894]* , 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.

45. Clause 23 provides for venue of the arbitration and thus in terms of the judgment of the Supreme Court in BGS SGS SOMA JV case [BGS SGS SOMA JV v. NHPC Ltd., (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] and Bharat Aluminium Co. case [Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] would amount to the juridical seat of arbitration and thus the courts at Delhi would have the exclusive jurisdiction over the entire arbitral process. The arbitration clause provides that all 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 are to be settled through



arbitration. There are no contra indicia in the instant case to indicate otherwise.

46. On the other hand Clause 19 provides that all matters concerning these presents and the development of the scheduled property shall be subject to the jurisdiction of courts at Gurugram, Haryana.

47. Arbitration is stipulated by Clause 23 which is distinct from Clause 19 providing for jurisdiction. Clause 19 being a general provision would be applicable to proceedings that may take place, other than arbitration proceedings and would cover all matters that are not subject-matter of arbitration.

48. Accordingly, the courts at Delhi would have the exclusive jurisdiction to entertain all proceedings covered by Clause 23 i.e. the arbitration clause.

49. Looked at from another angle, it may be noted that respondent did not object to the assertion of the appellant, that the venue agreed between the parties being Delhi, the courts at Delhi would have the territorial jurisdiction.

50. Appellants in their petition under Section 9 of the Arbitration and Conciliation Act, 1996 stated as under:

“55. The petitioner submits that this Hon'ble Court has the territorial jurisdiction to try and entertain the present petition inasmuch as the venue of arbitration under Clause 23.1 of the Collaboration Agreement is New Delhi and therefore this Hon'ble Court is exercising supervisory jurisdiction over the arbitration proceedings to be initiated. The petitioner submits that the collaboration agreement does not provide for any other 'seat' of arbitration and also provides that the arbitrator shall be appointed by the Arbitration Council of India, New Delhi in the event of failure of any of the parties to appoint an arbitrator. Accordingly, New Delhi is deemed to be the seat of arbitration and in view of the judgment of the Hon'ble Supreme Court in BGS SGS SOMA JV v. NHPC Ltd. [BGS SGS SOMA JV v. NHPC Ltd., (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] , the courts at New Delhi have the exclusive jurisdiction to deal in respect of any matters arising out of the arbitration clause. The petitioner submits that Clause 19 of the Collaboration Agreement providing for jurisdiction of courts at Gurugram is irrelevant and would only apply in relation to matters outside of the arbitration agreement.”

51. In the reply filed by Respondent 1 on 23-1-2013 before the learned Single Judge no denial was made to the above assertion by the appellant. Similarly, in the reply filed by Respondent 2 on 30-1-2023 before the learned Single Judge no denial was made to the above assertion by the appellant, about the territorial jurisdiction of the courts at Delhi and the



venue being the seat.

52. Respondent before the learned Single Judge have not denied the assertion of the appellant that venue being in Delhi is the seat of arbitration and thus the courts at Delhi have the jurisdiction to entertain all proceedings under the Arbitration Act.

53. Reference may be had to the judgment of the Supreme Court in *S.N. Prasad v. Monnet Finance Ltd.* [*S.N. Prasad v. Monnet Finance Ltd.*, (2011) 1 SCC 320 : (2011) 1 SCC (Civ) 141] wherein the Supreme Court has held that the words, “statements of claim and defence” occurring in Section 7(4)(c) of the Act, are not restricted to the statements of claim and defence filed before the arbitrator. If there is an assertion of existence of an arbitration agreement in any suit, petition or application filed before any court, and if there is no denial thereof in the defence/counter/written statement thereto filed by the other party to such suit, petition or application, then it can be said that there is an “exchange of statements of claim and defence” for the purposes of Section 7(4)(c) of the Act. It follows that if in the application filed under Section 11 of the Act, the applicant asserts the existence of an arbitration agreement with each of the respondents and if the respondents do not deny the said assertion, in their statement of defence, the court can proceed on the basis that there is an arbitration agreement in writing between the parties.

54. In *K.P. Ranga Rao v. K.V. Venkatesham* [*K.P. Ranga Rao v. K.V. Venkatesham*, (2015) 13 SCC 514 : (2016) 1 SCC (Civ) 748], the Supreme Court referring to Section 21 of the Code of Civil Procedure and the judgment in *Pathumma v. Kuntalan Kutty* [*Pathumma v. Kuntalan Kutty*, (1981) 3 SCC 589] held that *Pathumma* case [*Pathumma v. Kuntalan Kutty*, (1981) 3 SCC 589] really concludes the matter and in order that an objection to the place of suing may be entertained by an appellate or Revisional Court, the fulfilment of the following three conditions is essential: (1) the objection was taken in the court of first instance; (2) it was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement; and (3) there has been a consequent failure of justice. The Supreme Court held that all these three conditions must coexist.

55. The Supreme Court further held that the appellate court or Revisional Court shall not allow an objection to the place of suing unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement. What follows is important. An objection as to place of suing cannot be allowed unless there has been a consequent failure of justice.

56. As noticed above, the assertion of the appellants of the Delhi Courts having jurisdiction has not been denied before the learned Single Judge and as such the respondents are precluded from raising the same in



appeal.

57. Even, if the objection of jurisdiction could be raised before the appellate court, since the venue has been held to be the juridical seat of arbitration in terms of the arbitration agreement Clause 23, the courts at Delhi had the territorial jurisdiction to entertain the petition under Section 9 of the Arbitration Act. Clause 23 expressly designates Delhi as the venue for arbitration and there is no designation of an alternative place as the “seat”, the inexorable conclusion is that the stated venue i.e. Delhi is the juridical seat of the arbitral proceedings. Clause 19 would be relevant only if by an agreement both parties decided not to settle their disputes through arbitration but by approaching a court of law, in which case the exclusive jurisdiction would be of the courts at Gurugram, Haryana.

58. Reliance placed by learned Senior Counsel for the respondent on Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] is misplaced. In the said case, the Supreme Court found that the seat of arbitration was fixed in India but the venue was in London. The Supreme Court held that as the parties had agreed that the governing law would be the law of India and the provision of Arbitration and Conciliation Act, 1996 was to apply, the seat was fixed in India. In the present case there is no separate stipulation which could fix the seat for the purposes of the Arbitration Act at a place different from the venue. As held hereinabove the venue being Delhi also fixed the seat for the purposes of arbitration at Delhi.

59. Further, reliance placed on the judgment in Mankastu Impex (P) Ltd. v. Airvisual Ltd. [Mankastu Impex (P) Ltd. v. Airvisual Ltd., (2020) 5 SCC 399 : (2020) 3 SCC (Civ) 278] is also misplaced. Rather the said judgment supports the case of the appellants. In the said case, the contract stipulated that the MoU was governed by laws of India and courts at New Delhi shall have the jurisdiction but with regard to arbitration it stipulated that any dispute shall be referred to and finally resolved by arbitration administered in Hong Kong and the place of arbitration shall be Hong Kong. The Supreme Court held that reference to Hong Kong as “place of arbitration” is not a simple reference as the “venue” for the arbitral proceedings; but a reference to Hong Kong was for final resolution by arbitration administered in Hong Kong. The words “arbitration administered in Hong Kong” is indicia that the seat of arbitration is at Hong Kong. Once parties had chosen “Hong Kong” as the place of arbitration to be administered in Hong Kong, the laws of Hong Kong would govern the arbitration. The Indian courts have no jurisdiction for appointment of the arbitrator.

60. The judgment in Kush Raj Bhatia v. DLF Power & Services Ltd. [Kush Raj Bhatia v. DLF Power & Services Ltd., 2022 SCC OnLine Del 3309] is not applicable to the facts of the present case for the reason that in the



said case, the same clause stipulated that the place of holding arbitration proceedings and that the civil courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction. The court thus held the seat to be in Gurgaon.

61. *Meenakshi Nehra Bhat v. Wave Megacity Centre (P) Ltd.* [Meenakshi Nehra Bhat v. Wave Megacity Centre (P) Ltd., 2022 SCC OnLine Del 3744] does not further the case of the respondent for the reason that the arbitration clause in that case stipulated that the “arbitration proceedings shall be held at New Delhi and the courts at Gautam Budh Nagar, Uttar Pradesh shall to the exclusion of all other courts, alone have the exclusive jurisdiction in all matters arising out of/or concerning the application form/this arrangement, regardless of the place of execution of this arrangement. This will be without prejudice to the territorial and statutory jurisdiction of Allahabad High Court”. The stipulation that the courts at Gautam Budh Nagar, Uttar Pradesh shall have exclusive jurisdiction was also part of the arbitration clause unlike the present case where the clauses are different and the arbitration clause not containing a contradictory stipulation.

62. *Reliance placed by learned counsel for the respondent on the judgment in BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd.* [BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd., (2023) 1 SCC 693 : (2023) 1 SCC (Civ) 323] does not further the case of the respondent for the reason that the issue in the said case was as to whether conducting arbitration proceedings at Delhi owing to appointment of a new arbitrator would shift the jurisdictional seat of arbitration from Panchkula in Haryana, the place fixed by the first arbitrator for the arbitration proceedings. The court noticed that the Arbitral Tribunal had fixed the seat at Panchkula and thus by mere change of arbitrator and holding subsequent sittings at New Delhi and publishing of the award in Delhi would not change the seat of arbitration, where it was initially fixed in Panchkula to Delhi.

63. *In view of the above, the objection of territorial jurisdiction raised by the respondents is accordingly decided in favour of the appellant and against the respondents. It is held that Clause 23 of the Collaboration Agreement providing for venue of arbitration at Delhi is indicative of the fact that the arbitral proceedings are intended to be anchored to Delhi and Delhi being the seat of arbitration, the courts at Delhi would have the territorial jurisdiction to entertain all proceedings under the Arbitration Act pertaining to disputes and differences arising out of or in connection with the interpretation or implementation of the collaboration agreement, or out of or in connection with the breach, or alleged breach of the collaboration agreement.*

64. *List the appeal for directions before the Roster Bench on 20-3-2024.”*



14. In *Global Credit (supra)*, this Court was examining an interplay between arbitration clause with venue of arbitration at New Delhi and jurisdiction clause 31 providing that Courts at Gurgaon shall have jurisdiction over all matters concerning the Collaboration Agreement. Following the judgment of the Supreme Court in *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited, (2017) 7 SCC 678* as also the judgment of this Court in *Raman Deep Singh Taneja v. Crown Realtech Private Limited, 2017 SCC OnLine Del 11966*, Court took a view that the arbitration clause will prevail and Delhi Courts will have jurisdiction in the matter.

15. In this context, I may also allude to the judgment of another Co-ordinate Bench of this Court in *My Preferred Transformation and Hospitality Pvt. Ltd. v. Sumithra Inn, 2021 SCC OnLine Del 1536*, where it was held as follows:-

“38. This brings the present case, to a large extent, at par with Mankastu Impex Pvt. Ltd.⁷, insofar as the issue in controversy was concerned. As in the present case, the “seat of arbitration” clause, in the contract, vested jurisdiction in courts at Place A (in Mankastu Impex Pvt. Ltd.⁷, Hong Kong; in the present case, New Delhi), whereas the “exclusive jurisdiction” clause vested jurisdiction in courts at Place B (in Mankastu Impex Pvt. Ltd.⁷, New Delhi; in the present case, Bengaluru). Mankastu contended that, by virtue of the “exclusive jurisdiction” clause, that courts at New Delhi were exclusively invested with jurisdiction to decide the Section 11 petition; parallelly, the respondent before me contends, through Mr. Prabhakar, that, by virtue of the “exclusive jurisdiction” clause in the MSA, courts at Bengaluru were exclusively invested with Section 11 jurisdiction. Airvisual contended, before the Supreme Court, per contra, that, as the seat of arbitration was Hong Kong, courts at Hong Kong would possess exclusive jurisdiction to appoint the arbitrator; parallelly, the petitioner before me contends, through Mr. Mehta, that, by virtue of the seat of arbitration, in the present case, being New Delhi, this Court would possess exclusive jurisdiction to appoint the arbitrator. At a plain glance, therefore, the issue in controversy in the present case bears stark similarity to that in Mankastu Impex Pvt. Ltd.⁷



39. The Supreme Court upheld the contention of Airvisual, and repelled the contention of Mankastu. The fixation of the seat of arbitration as Hong Kong, held the Supreme Court, resulted in the vesting of exclusive jurisdiction, to entertain the petition for appointment of the arbitrator, with courts at Hong Kong, and divested all other courts of jurisdiction in the matter. By analogy, in the present case, the fixation of the seat of arbitration as New Delhi would result in vesting of exclusive jurisdiction, to entertain the present petition for appointment of the arbitrator, with this Court, and in the divestiture, of all other courts in the country, of the said jurisdiction.

40. Adverting to the “exclusive jurisdiction” clause, on which Mankastu relied (as does Mr. Prabhakar before me), the Supreme Court held that, in order for Section 11 jurisdiction to be conferred, on this Court by such an “exclusive jurisdiction” clause, the clause had to specifically confer exclusive Section 11 jurisdiction on this Court. A generalised “exclusive jurisdiction” clause, in the opinion of the Supreme Court, would not suffice. Rather, pointed out the Supreme Court, Clause 17.3 in the agreement between Mankastu and Airvisual specifically conferred Section 9 jurisdiction on “the court having jurisdiction”, i.e. courts at New Delhi. No such conferment, of Section 11 jurisdiction, on courts at New Delhi was, it was observed, forthcoming from the agreement. Parallely, in the present case, the mere vesting of “exclusive jurisdiction in all matters arising out of the MSA”, on courts at Bengaluru, would not result in conferment of Section 11 jurisdiction on the High Court of Karnataka at Bengaluru, where no such specific conferment of Section 11 jurisdiction is to be found in the MSA. Had the “exclusive jurisdiction” clause specifically conferred Section 11 jurisdiction on the High Court at Bengaluru, the situation would have been different - as was the position which obtained in *Cars24 Services Pvt. Ltd.*². Where, however, the “exclusive jurisdiction” clause does not specifically confer Section 11 jurisdiction on the High Court at Bengaluru and, on the other hand, the separate “seat of arbitration” clause fixes the seat of arbitration at New Delhi, applying the law laid down in *Mankastu Impex Pvt. Ltd.*⁷, Section 11 jurisdiction would vested in this Court, and not in the High Court of Karnataka at Bengaluru.

41. *Big Charter Pvt. Ltd.*⁸, which was decided by me and which was cited by both sides, I may note, does not really apply to the case at hand as, in that case, this Court was dealing with an international commercial arbitration, and with a petition preferred under Section 9 of the 1996 Act. The proviso to Section 2(2), therefore, directly came in for application, and the issue addressed by the Court was whether there was any “agreement to the contrary”, as would derogate from the applicability of the said proviso. The controversy in that case, and in the case before me today are, therefore, as alike as chalk and cheese.



42. In the case of a domestic arbitration, therefore, I am of the opinion that the Court, having jurisdiction over the seat of arbitration, would be exclusively competent to entertain petitions under the 1996 Act, in exercise of its supervisory jurisdiction over the arbitral process, unless there is a separate clause conferring exclusive jurisdiction on a court in another territorial location, qua the particular provision which is in issue. If, in other words, in the present case, the MSA were to contain an exclusive jurisdiction clause, conferring exclusive section 11 jurisdiction on a court located elsewhere than at New Delhi, the situation may have been different. There is, however, no such specific exclusive jurisdiction clause; ergo, territorial jurisdiction, to entertain the present petition under Section 11 of the 1996 Act, thus, has to abide by the seat of arbitration which is, undisputedly, New Delhi.”

16. It would be useful to refer to the judgment of this Court in ***Reliance Infrastructure Limited v. Madhyanchal Vidyut Vitran Nigam Limited***, **2023 SCC OnLine Del 4894**, where the question for determination was the territorial jurisdiction of this Court in light of an exclusive jurisdiction clause in the Letter of Award providing for jurisdiction in a Court outside Delhi and an arbitration clause stipulating that venue of arbitration shall be New Delhi. The Court significantly observed that the clause in Letter of Award purporting to confer exclusive jurisdiction was a generic clause and did not specifically refer to arbitration proceedings and therefore cannot serve as a ‘contrary indicia’ to suggest that Delhi was merely the ‘venue’ and not the ‘seat’ of arbitration. Relevant paragraphs are as follows:-

“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.

34. The present petition is thus maintainable.”

17. Coming to the present case, clause 24 is a generic jurisdiction clause with no reference to arbitral proceedings while clause 23 provides for arbitration and designates the venue at Delhi. There being no contrary indicia to the venue in the arbitration clause, the venue will be the juridical seat and this Court has the territorial jurisdiction to entertain the petition. The objection is therefore overruled. Insofar as the judgment in ***Isgec Heavy Engineering Ltd. (supra)*** relied upon by the Respondent is concerned, in the said case, the arbitration clause provided that the venue of arbitration shall be at New Delhi provided that the Arbitrators may with the consent of the parties agree upon any other venue. The Court analysed this clause and came to a conclusion that the venue provided in the arbitration clause could be changed by the Arbitrators with the consent of the parties which suggested that the venue was not the seat but was a mere geographically convenient place where Arbitral Tribunal could hold meetings, which is not the case here.

18. Coming to the second objection with respect to the Lease Deed being unstamped and unregistered, learned counsel for the Petitioner is correct in his submission that this issue is within the ambit and domain of the Arbitrator and cannot be decided in the present petition by a referral Court. This position is no longer *res integra*. In ***Re: Interplay (supra)***, the Supreme Court has concluded that: (a) agreements which are not stamped or inadequately stamped are inadmissible in evidence under Section 35 of the



Stamp Act, 1899 but are not rendered void or void ab initio or unenforceable; (b) non-stamping or inadequate stamping is a curable defect; (c) an objection as to stamping does not fall for determination under Sections 8 or 11 of the 1996 Act as the concerned Court must examine whether arbitration agreement *prima facie* exists; and (d) any objection in relation to stamping of agreement falls within the ambit of the Arbitral Tribunal. In fact, in paragraph 185 of the judgment, which is heavily relied upon by the Respondent's counsel, the Supreme Court has observed that the nature of objections to the jurisdiction of an Arbitral Tribunal on the basis that stamp duty has not been paid or is inadequate is such that it cannot be decided on *prima facie* basis. Objections of this kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as facts. Obliging the Court to decide issues of stamping at the stage of Section 8 or Section 11 of the 1996 Act will defeat the legislative intent underlying the Arbitration Act. Further, in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, the Supreme Court has held that the jurisdiction of a referral Court at the stage of appointment of Arbitrator, in light of the judgment in ***Re: Interplay (supra)***, is limited to scrutiny of existence of arbitration agreement and nothing else. All other aspects such as *ex facie* time barred claims, accord and satisfaction etc. have to be left for adjudication by the Arbitral Tribunal. While so observing the Supreme Court also took note of the judgment in ***Vidya Drolia (supra)*** and clarified that in light of the judgment of the seven-Judge Bench in ***Re: Interplay (supra)***, the scope of referral Court was limited and the scope of inquiry was to see the existence of arbitration agreement and whether the petition under Section 11(6) was barred by limitation. Consequently, the



2025:DHC:7553



second objection is also bereft of merit and untenable in law.

19. Accordingly, this petition is allowed, appointing Ms. Justice Asha Menon, former Judge of this Court, (Mobile No. 9910384664) as the Sole Arbitrator to adjudicate the disputes between the parties. Fee of the Arbitrator shall be fixed as per Fourth Schedule of 1996 Act.

20. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

21. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open. It is left open to the Respondent to raise both the objections raised herein before the learned Arbitrator, in accordance with law.

22. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 21, 2025

S.Sharma/shivam