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

Date of decision: 25.03.2025

+ **ARB.P. 1135/2024 & I.A. 34796/2024**

MOONWALK INFRA PROJECTS PVT LTD

.....Petitioner

Through:

versus

S.R CONSTRUCTIONS & ORS.

.....Respondents

Through: Mr. Prashant Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties arising out of Purchase order dated 21.01.2023. The said purchase order is governed by Governing law mentioned in the Techno Commercial Offer.

2. The facts are that the respondents approached the petitioners to supply and build a Plug and Play Pre-engineered multi-story building in the industrial area of Begusarai, Bihar ("*project*"). On 21.01.2023, the petitioner submitted its techno commercial offer for phases 1 – 4, in accordance with the buildings' layout, overall dimensions and design load of the project. The said Techno Commercial offer contains an arbitration clause and the same reads as under:



“Governing Law

This Agreement shall be construed and enforced in accordance with and under the laws of the Government of India. Both parties agree that in case of any difference or dispute arising between the MOONWALK INFRAPROJECTS PVT LTD. and the BUYER will be resolved by mutual discussions and agreement. However, unresolved issues, if any, will be settled by arbitration as per the India Arbitration and Conciliation Act, and the venue of the arbitration will be Delhi, India.”

3. Pursuantly, the respondents issued purchase orders to the petitioner. At the top of the purchase orders, it is mentioned as *“all subject to Begusarai jurisdiction”*.
4. On 06.11.2023, the respondent terminated the contract on account of differences between the parties. Thereafter, the petitioner filed a petition being O.M.P (I) COMM. 16/2024, before this court.
5. Since there were disputes, the petitioner invoked arbitration vide Legal Notice dated 07.11.2023.
6. Hence, the present petition has been filed.
7. Mr. Kumar, learned counsel for the respondents states that in the present case, it will be the High Court at Patna, which will have the exclusive jurisdiction to entertain and try the present petition as the purchase orders categorically states *“all subject to Begusarai jurisdiction”*. In this regard, he relies upon the judgment passed by the Hon’ble Supreme Court of India in ***Ravi Ranjan Developer Vs. Aditya Kumar Chatterjee*** 2022 SC Online 568 and particularly paras 3, 15 and 46.



“3. The Appellant and the Respondent entered into a Development Agreement dated 15th June 2015 for development of property situated at Muzaffarpur in Bihar measuring about 12 Kaithas and 11 Dhurs, more fully described in the said Development Agreement, outside the jurisdiction of Calcutta High Court. The said Development Agreement executed and registered in Muzaffarpur in Bihar, contains an arbitration clause which is set out hereinbelow for convenience:

“37. That in case of any dispute or difference between the parties arising out of and relating to this development agreement, the same shall be settled by reference of the disputes or differences to the Arbitrators appointed by both the parties and such Arbitration shall be conducted under the provisions of the Indian Arbitration and Conciliation Act, 1996 as amended from time to time and the sitting of the said Arbitral Tribunal shall be at Kolkata.”

.....

15. The question before this Court is, whether the Calcutta High Court at all had jurisdiction to entertain the application filed by the Respondent and appoint an Arbitrator. Mr. Sanjay Ghosh, learned Senior Counsel appearing on behalf of the Respondent, argued with force, that the initial order of appointment of Arbitrator was passed by the Court by consent. The Appellant appeared in the arbitration proceedings. In other words, the Appellant acquiesced to the reference of the disputes to the Arbitrator appointed by the High Court.



....

46. *In this case, the Development Agreement provided that the sittings of the Arbitral Tribunal would be conducted in Kolkata. As observed above, the parties never agreed to submit to the jurisdiction of Calcutta High Court in respect of disputes, nor did the parties agree upon Kolkata as the seat of arbitration. Kolkata was only the venue for sittings of the Arbitral Tribunal.*”

8. The courts have time and again held that in the absence of a specified seat of arbitration in the agreement, the venue designated for arbitration proceedings shall be considered as the seat. In this regard, reliance is placed on the judgment passed by the Hon’ble Supreme Court in **BGS SGS Soma JV vs. NHPC Limited** (2020) 4 SCC 234 wherein the Hon’ble Supreme Court inter alia held as under:

“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.

(emphasis supplied)

9. In the present case, the arbitration clause contained in the Techno-Commercial Offer explicitly stipulates that the venue of arbitration shall be Delhi. Hence, the seat of the arbitration will also be Delhi. On the other hand, the Purchase Order merely states in general terms that “*all subject to Begusarai jurisdiction*” without any specific reference to arbitration proceedings. In this regard, a co-ordinate Bench of this Court in ***Reliance Infrastructure vs Madhyanchal Vidyut Vitran Nigam Limited*** 2023 SCC Online Delhi 4894 while dealing with ***Ravi Ranjan Developers*** (supra) has held that the contract containing an arbitration clause specifying a clear



venue would confer that court with the supervisory jurisdiction over the arbitral process. The same would supersede a generic clause conferring jurisdiction on another Court.

10. The operative portion reads as under:

“31. In Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee, the “arbitration clause” specified that the sitting of the arbitral tribunal shall be held in Kolkata. In the said decision the respondent himself approached the District Court at Muzaffarpur, and not a Court in Kolkata for interim protection under Section 9 of the Act. The Supreme Court held that the respondent having himself invoked the jurisdiction of the District Court at Muzaffarpur, is estopped from contending that the parties had agreed to confer exclusive jurisdiction to the Calcutta High Court to the exclusion of other Courts. It was further held that neither of the parties to the agreement construed the arbitration clause to designate Kolkata as the seat of arbitration. Therefore the petition under Section 11 of Act, was held to be not maintainable before the Calcutta High Court. The said decision is completely distinguishable from the facts of the present case.

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.”

(emphasis supplied)

11. I am in agreement with the observations made by the co-ordinate Bench in **Reliance Infrastructure** (supra) and I am bound by the law laid down by the Hon’ble Supreme Court of India in **BGS SGS** (supra) and hence, it is this Court which will have jurisdiction to entertain and try this petition in view of the venue of arbitration being “Delhi”.

12. For the said reasons, the petition is allowed and the following directions are issued:-

- i) Justice Rajiv Shakdher (Retd. Chief Justice of High Court of Himachal Pradesh) (Mob. No. 9717495004) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’).
- iii) The remuneration of the learned Arbitrator shall be in terms of



DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.
13. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 25, 2025/pk

Click here to check corrigendum, if any