



\$~7

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

+ **ARB.P. 1292/2024**

PAISALO DIGITAL LIMITED

.....Petitioner

Through: Mr. Apratim Animesh Thakur, Mr.
Lakshya Sachdeva, Ms. Ankita
Rawat, Ms. Varnika Manral,
Advocates.

versus

SH. SUMMER SINGH & ORS.

.....Respondents

Through: Mr. Dinesh Chandra Tripathi,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

29.01.2025

%

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Agreement dated 01.07.2016 under which the Respondent No.1 was appointed as a Field Manager and the Respondent No.1 agreed to identify the eligible borrowers for loans to be granted by the Petitioner.

2. It is stated that Respondent No.1 agreed to recover the disbursed loans along with the interest in monthly or periodic installments from the borrowers.

3. Since the Respondent No.1 has defaulted in repayment of the disbursed amounts, the Petitioner issued a notice dated 14.01.2019 to the



Respondent No.1 under Section 21 of the Arbitration and Conciliation Act, 1996 invoking Arbitration. Vide Order dated 16.01.2019, Mr. Ravi Raj, Advocate, was appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties. On 22.02.2019, the Sole Arbitrator resigned due to some unavoidable circumstances. Thereafter on 07.03.2019, Mr. Ravi Dagar, Advocate, was appointed as the substituted Sole Arbitrator for the arbitration proceedings and an Award dated 07.11.2020 was passed in favour of the Petitioner. The said Award was challenged by Respondent No.1 by filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 before the Commercial Court. Vide Order dated 01.09.2023, the Commercial Court set aside the Award dated 07.11.2020 on the ground of unilateral appointment of the Sole Arbitrator. It is stated that, thereafter, the Petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 before the Commercial Court. Vide Order dated 03.02.2024, the Commercial Court allowed the petition filed by the Petitioner and granted status quo on the properties of the Respondents No.1 and 2. It is stated that the said status quo was vacated by the Commercial Court due to non-compliance of certain directions passed in the Order dated 03.02.2024. Therefore, the Petitioner has filed the instant petition before this Court for appointment of an Arbitrator.

4. Notice in the petition was issued on 22.08.2024. The Respondents No.1 and 2 has been served. Respondent No.3 has been served through publication. The affidavit of service has been filed.

5. Learned Counsel appearing for Respondents No.1 and 2 states that this Court has no territorial jurisdiction to entertain the instant petition.

6. Learned Counsel appearing for the Petitioner draws attention of this



Court towards Clause 13 of the Agreement dated 01.07.2016 which states that the venue of Arbitration shall be at Delhi and also to Clause 11 of the Agreement which states that the Courts at New Delhi shall have the jurisdiction to entertain all disputes arising out of and/or relating to this Agreement.

7. Clause 11 of the Agreement stipulates the governing law and jurisdiction and Clause 13 of the Agreement contains the arbitration clause which read as under:

“11. Governing law and jurisdiction:

The agreement shall be governed by and construed in accordance with laws of India and the courts at Delhi shall have exclusive jurisdiction in all disputes arising out of and/or relating to this agreement.

13. Dispute Settlement:

All disputes, differences or disagreement arising out of, in connection with or in relation to this agreement shall be mutually discussed and settled amicably between the parties. If they are not settled amicably, the same shall be referred to the sole arbitrator to be appointed by financier and such arbitration shall be conducted in accordance with the provisions of Arbitration & Conciliation act, 1996. The venue of arbitration shall be Delhi. The language of arbitration shall be in English.”

8. A perusal of Clauses 11 and 13 shows that the parties have agreed that Courts at Delhi will have the exclusive jurisdiction and venue of the arbitration shall be at Delhi.

9. Dispute regarding the seat and venue of the arbitration is no longer res



integra and has been settled in a number of Judgments. The Apex Court in Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 has observed as under:

“18. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and 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 [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , non-use of words like “exclusive jurisdiction”, “only”, “exclusive”, “alone” is not decisive and does not make any material difference.”

10. The Apex Court in Arif Azim Co. Ltd. vs. Micromax Informatics FZE, 2024 SCC OnLine SC 3212 has observed 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 law 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 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 stipulations 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', there 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 Conveniens, 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.*

11. The Division Bench of this Court in Yassh Deep Builders Llp v. Sushil Kumar Singh, **2024 SCC OnLine Del 1547** has observed as under:

“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.

xxx

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.

xxx

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.

xxx

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.”

12. Applying the aforesaid law in the present case, this Court is of the opinion that the arbitral proceedings are intended to be anchored at Delhi by the Parties being the seat of arbitration and the Courts at Delhi will have the jurisdiction to entertain the disputes under the Agreement.

13. Since the earlier Award dated 07.11.2020 has been set aside on the ground that the Arbitrator has appointed unilaterally, the claims have yet not been adjudicated upon. Since the claims have yet not been adjudicated upon, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the Parties.

14. Accordingly, Ms. Prabhsahay Kaur, Advocate (Mob No.9810158581) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.

15. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

16. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

17. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

18. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.



19. The present petition stands disposed of in the above terms, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 29, 2025

S. Zakir