



\$~1

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

+ ARB.P. 1891/2024

SOPHISTICATED INDUSTRIAL MATERIAL ANALYTIC LABS
PVT LTDPetitioner

Through: Adv. Palash S Singhai and Harshal
Sareen

versus

STEEL AUTHORITY OF INDIA LTD.Respondent
Through: Mr. Samaksh Goyal, Adv.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
04.03.2025

%

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('**A&C Act**') seeking appointment of the Sole Arbitrator for the adjudication of disputes between the parties arising out of the Contract dated 03rd October 2019 ('**the Contract**') executed between the parties.

2. It is stated that the arbitration agreement is in *Article 9* of the Contract and *Clause 6* of the General Conditions of Contract as applicable to the parties herein. It is stated that since there were disputes between the parties, the petitioner invoked arbitration agreement *vide* letter dated 03rd August 2024. It is stated that despite petitioner's request, respondent did not consent to constitute the Arbitral Tribunal as per the aforementioned terms.

3. An objection has been taken by the respondent's counsel pointing out to the agreement which is executed on 3rd October 2019 at Kolkata as also to the Special Conditions of Contract ('**SCC**'), *Clause 15* of which, gives



exclusive jurisdiction to the Court at Kolkata and therefore, contends that in this regard, as far as the seat of the arbitration is concerned, the same is at Kolkata.

4. Counsel for petitioner, however, points out that as per *Clause 1.2* and *Clause 1.3* of the Contract, the hierarchy of documents and order of precedence, is as under:

1.2 Contract Documents (Reference GCC Clause 2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and Appendices hereto
- (b) Special Conditions of Contract and Annexure hereto
- (c) Safety code for Contractors
- (d) General Conditions of Contract and Annexure hereto
- (e) Contract Technical Specifications
- (f) LOA issued by the Employer & accepted by the contractor.
- (g) Guidelines on banning of business dealings.

1.3 Order of Precedence (Reference GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.2 (Contract Documents) above.

5. He states that there is no arbitration clause in the SCC or the Contract. On the contrary, *Article 9* of the Contract refers to arbitration and points to *GCC Clause 6*. *GCC Clause 6.2* and *Clause 6.2.1* in turn provides as under:



Clause 6 of the General Conditions of Contract:

6.2 Arbitration

"The arbitration shall be governed in accordance with the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") of India. The language of Arbitration shall be English.

6.2.1 Subject to the stipulations made hereinabove, Arbitration shall be conducted as per forum specified below:

a. All Contracts, whose value is Indian Rs 5 crore and below (for both Indian and Foreign contractors), Arbitrator shall be appointed by the chief Executive Officer of the Plant or Unit (whatever designation he may be holding) and the Arbitration shall be held at respective Plant Unit location. The court of India (with exclusion of all other courts) shall have exclusive jurisdiction over all matters of disputes.

b. Arbitration of contracts, with Indian parties, where contract value is more than Indian Rs 5 crore and the contracts with foreign parties for value of more than Indian Rs 5 crore and up to Indian Rs 20 crore shall be governed by the Rules of Indian Council of Arbitration (ICA)/ SCOPE Forum of Conciliation and Arbitration (SCFA)/ Delhi High Court Arbitration Centre (DAC), as agreed by the party. The venue shall be New Delhi.

c. Arbitration with foreign contractor or in Consortium contracts (including foreign contractor), where the contract value is more than Indian Rs 20 crore shall be governed by the Rules of Arbitration of International Chamber of Commerce (ICC), Paris. The venue of the arbitral proceedings shall be New Delhi."

6. It is therefore, contended that not only is the venue of the arbitration proceeding New Delhi, but also reference is there to the forum of Delhi International Arbitration Centre ('DIAC'). Moreover, the anchoring of the said arbitration would be at Delhi, considering that parties have specifically agreed to this Clause, as governing them for the purpose of the resolution.

7. Reference by counsel for respondent to *para 82 in BGS SGS SOMA JV v. NHPC Ltd.* (2020) 4 SCC 234, which is extracted as under, would also not assist the respondents, considering the Supreme Court has



specifically referred to anchoring of proceedings, and venue in most cases would really be the seat of the arbitral proceedings.

“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 added)

8. This decision by the Supreme Court in **BGS SGS** (*supra*) and other relevant decisions have been usefully considered by a Coordinate Bench of this Court in **Reliance Infrastructure Limited v Madhyanchal Vidyut Vitran Nigam Ltd.** 2023 SCC OnLine Del 4894, in similar facts and



circumstances by the Court, relevant paragraphs of which are extracted as under:

“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 added)

9. Accordingly, the Court is not inclined to entertain the respondent’s objections. Besides, both petitioner and respondent have their offices at New Delhi, as evident from the memo of parties. Even that serves as an important *indica* for jurisdiction of Courts at New Delhi.

10. Notice invoking arbitration was sent on 3rd August 2024 and it was responded on 8th August 2024. As per notice of arbitration, the dues are in the range of about 40 lakhs.

11. In the opinion of this Court, various forums mentioned in Clause 6.2.1 the Arbitration would be usefully conducted at DIAC.

12. Accordingly, Mr. Sarad Kumar Sunny, Advocate (Mobile No. 9958178853) is appointed as the Sole Arbitrator. The Arbitration



proceedings shall take place under the aegis of the Delhi International Arbitration Centre ('DIAC'). The arbitration proceedings shall be conducted under the Rules of the DIAC. The fee of the Sole Arbitrator shall be as per the Fourth Schedule of the A&C Act, as amended by the DIAC Rules.

13. List before the DIAC 18th March 2025. Let a copy of the present order be emailed to Secretary, DIAC on the email iddelhiarbitrationcentre@gmail.com.

14. Copy of this order be communicated by the Registry to the respondent through email. Parties to appear before the DIAC, which shall also issue notice to the counsel for the respondent once again.

15. Petition is disposed of with all pending applications, if any.

16. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 4, 2025/sm/na