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

Date of decision: 03rd MARCH, 2025

IN THE MATTER OF:

+ **O.M.P.(I) (COMM.) 429/2024, I.A. 2498/2025, I.A. 2499/2025**

M/S ZHEJIANG BONLY ELEVATOR GUIDE RAIL
MANUFACTURE CO. LTD.Petitioner

Through: Mr. Mudit Sharma, Ms. Nandini
Sharma and Mr. Abhishek Rathi,
Advocates.

versus

M/S JADE ELEVATOR COMPONENTS & ORS.Respondents

Through: Mr. Dayan Krishnan, Sr. Advocate
with Mr. Arunan Patnaik, Ms. Bhabna
Das, Ms. Aanchal Tikmani, Mr.
Nirbhay Nanda, Mr. Vishnu Kant,
Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. This is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996, post passing of the arbitral award dated 10.11.2024 by which the Petitioner has been awarded USD 10,28,727.90 along with interest @ 11 p.a. from the due date of payment till the date of award and further interest @ 9% p.a. from the date of the award till realization of the amount in terms of the award.



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2. Notice in the present Petition was issued on 20.12.2024. The Respondents have filed a Petition under Section 34 of the Arbitration and Conciliation Act, 1996, before the High Court of Gujarat at Ahmedabad challenging the award dated 10.11.2024 on 24.01.2025, which was after the Respondents were served with the notice in the present Petition under Section 9 of the Arbitration and Conciliation Act. Response has been filed and a preliminary objection has been raised by the Respondents in their counter, that this Court does not have the territorial jurisdiction to entertain the present Petition which is being adjudicated by the Court in the procedural order.

3. Shorn of unnecessary details, the facts in brief, leading to the present Petition are as under:

- a. The Petitioner herein is a company incorporated and registered under the laws of China and is engaged in the business of exporting and supplying high quality elevator guiderails, fish-plates, accessories and allied goods.
- b. The Respondent No.1 herein is a partnership firm having its office at Ahmedabad, Gujarat, and is an authorized distributor of the Petitioner's products in India.
- c. It is stated that the Petitioner and the Respondent No.1 entered into a Commission Processing Contract Dated 11.09.2014 for the purchase of the Petitioner's products by the Respondent No.1. Material on record indicates that the said contract was signed by the Petitioner in China, and by the Respondents in Ahmedabad. Under the said contract, the Petitioner's products were to be supplied to the Respondent No.1 at Ahmedabad. The



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said contract was for a period of two years. It is stated that disputes arose between the parties regarding payment of money for the materials supplied by the Petitioner to the Respondent No.1. It is stated that discussions between the representatives of the parties of the Petitioner and the Respondent No.1 took place in Ahemdabad in December, 2016, and as the disputes could not be resolved, arbitration was invoked. Since the present matter pertains to international commercial arbitration, the Petitioner knocked the doors of the Apex Court by filing Arbitration Petition (C) No. 22/2018 for appointment of an arbitrator to adjudicate the disputes which have arisen between them. The Apex Court vide Order dated 14.09.2018 appointed Hon'ble Justice P.P. Naolekar, a Former Judge of the Supreme Court of India, as the sole arbitrator to adjudicate the disputes between the parties.

- d. Clause 15 of the Contract, which contains the dispute resolution clause, reads as under:

"15. dispute handling

Commission processing contract disputes, the parties should be settled through consultation; consultation fails by treatment of to the arbitration body for arbitration or the court."

- e. The dispute handling clause does not prescribe either the seat or the venue of arbitration.
- f. It is stated that pursuant to the constitution of the Arbitral Tribunal, arbitration proceedings commenced and the first of



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the Orders was passed by the learned Arbitrator on 11.10.2018. Portion of the Order dated 11.10.2018, which is relevant to the present Petition, reads as under:

"(ii) When the sitting of the Arbitration Tribunal is at Delhi or at Ahemdabad, the sole arbitrator shall be provided with business class air fare. stay at Delhi or Ahemdabad in any Five Star Hotel and transportation facilities at the place of arbitrator and other necessary facilities for smooth conduction of the arbitration proceedings. The expenses of the conduct of arbitration proceedings at both the places shall be borne by both the parties half and half."

g. It is not in dispute that the learned Arbitrator conducted sixteen proceedings in Delhi, one proceeding in Ahemdabad and two proceedings were conducted through video conferencing. It is also not in dispute that the last of the proceedings when the award was reserved was in Delhi. The award was pronounced and delivered online.

4. In the backdrop of these facts, the question which is posed before this Court to answer is as to whether the Courts in Delhi will have the jurisdiction to entertain the present Petition or not.

5. Relevant provisions of the Arbitration and Conciliation Act, 1996, which are necessary to be considered to adjudicate the present Petition, reads as under:

"Section 2(1)(e)

(e) "Court" means—

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High



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Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

Section 20. Place of arbitration.

(1) The parties are free to agree on the place of arbitration.

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

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

Section 31. Form and contents of arbitral award.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.



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Section 42. Jurisdiction.

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

6. Learned Counsel appearing for the Petitioner states that since the majority of the proceedings took place in Delhi, the arbitration was anchored and conducted in Delhi, and therefore, Delhi would be the seat of arbitration. He states that since the Petitioner had already chosen to file the present Petition under Section 9 of the Arbitration Act in Delhi, and notice was issued by this Court in the present Petition on 20.12.2024, the Respondents ought to have filed their Petition under Section 34 of the Arbitration Act in Delhi. He states that by filing a Petition under Section 34 of the Arbitration Act before the Gujarat High Court at Ahemdabad on 24.01.2025, wherein after receiving notice in the present Petition, the Respondents have indulged in forum shopping. Learned Counsel for the Petitioner places reliance on Section 42 of the Arbitration Act to contend that where with respect to an arbitration agreement any application has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court. Learned Counsel for the Petitioner also places reliance on para (ii) of the Order dated 11.10.2018 to contend that the arbitration proceedings could have been held at Delhi or



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Ahemdabad and out of the 19 proceedings, 16 proceedings took place in Delhi, the venue of arbitration is Delhi which would give jurisdiction to this Court to entertain the petition under Section 9 of the Arbitration and Conciliation Act, 1996 and only this Court will have jurisdiction to adjudicate all the disputes arising between the parties. He further submits that since there is nothing on record to indicate to the contrary, the seat of arbitration would automatically be Delhi and the Courts in Delhi alone will have the jurisdiction to entertain the present Petition. Learned Counsel for the Petitioner draws the attention of this Court to Section 20 of the Arbitration Act and states that Section 20(2) of the Arbitration Act postulates that the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties. He reiterates that since out of 19 proceedings, 16 proceedings took place in Delhi; Delhi is deemed to be the place of arbitration. Learned Counsel for the Petitioner places reliance on the Judgment passed by a Co-ordinate Bench of this Court in Delhi Tourism & Transportation Development Corporation v. Satinder Mahajan, **2024 SCC OnLine Del 3206**. Relevant portions of the said Judgment reads as under:

"19. The question then arises as to whether the seat of the arbitration, in the present case, is Pathankot or Delhi. Mr. Tripathy submits that the cause of action arose entirely in Delhi, inasmuch as the work order was issued in Delhi, the Agreement was signed in Delhi, and the work was, in fact, done in Delhi as well. I am afraid that these contentions are not of much relevance, having regard to the settled law that the seat of the arbitration proceedings are to be determined on the basis of connection with the arbitral proceedings, and not with the cause of action for the underlying



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disputes. The “seat” of arbitration is the place where the arbitral proceedings are anchored¹⁷; the determination of jurisdiction under Sections 16 to 20 of the CPC for the purposes of filing a suit has no relevance¹⁸.

20. In BGS SOMA¹⁹, the Supreme Court has clearly held that in the absence of any significant contrary indicia, “the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding”²⁰. The aforesaid view has subsequently been followed by the Supreme Court inter alia in Inox Renewables Ltd. v. Jayesh Electricals Ltd.²¹

23. In the present case, the proceedings were admittedly conducted exclusively in Pathankot and the award was made there. There being no contrary indication, in the form of an exclusive jurisdiction clause or otherwise, to suggest that the seat of the arbitration was at any place other than the venue which was, even contractually, left to the learned Arbitrator to decide, I do not find any reason to depart from the general principle that, the seat of the arbitration was at the place where the arbitration was conducted, i.e., in Pathankot. "

7. Learned Counsel for the Petitioner also draws the attention of this Court to the Judgment of the Apex Court in BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd., (2023) 1 SCC 693, wherein the Apex Court has observed as under:

"15. Interpretation of the term “court”, as defined in clause (e) to sub-section (1) of Section 2 of the Act, had come up for consideration before a Constitutional Bench of five Judges in Balco v. Kaiser Aluminium Technical Services Inc. [Balco v. Kaiser Aluminium



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*Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , (for short “Balco case”) which decision had examined the distinction between “jurisdictional seat” and “venue” in the context of international arbitration, to hold that the expression “**seat of arbitration**” is the centre of gravity in arbitration. However, this does not mean that all arbitration proceedings must take place at “the seat”. The arbitrators at times hold meetings at more convenient locations. Regarding the expression “court”, it was observed that Section 2(2) of the Act does not make Part I applicable to arbitrations seated outside India. The expressions used in Section 2(2) [See para 20 below. By Act 3 of 2016 proviso to Section 2(2) of the Act has been inserted with retrospective effect from 23-10-2015, and the provision as substituted/amended by Act 33 of 2019 for clause (a), now reads—“(2) Scope.—This Part shall apply where the place of arbitration is in India: Provided that subject to an agreement to the contrary, the provisions of Sections 9, 27 and clause (b) of sub-section (1) and sub-section (3) of Section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.”] of the Act do not permit an interpretation to hold that Part I would also apply to arbitrations held outside the territory of India.” (emphasis supplied)*

8. He also places reliance on the Judgment of the Apex Court in BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234, wherein the Apex Court has observed as under:

"4. On 21-12-2017, the Special Commercial Court, Gurugram allowed the application of the petitioner, and returned the Section 34 petition for presentation to the proper court having jurisdiction in New Delhi. On



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15-2-2018, the respondent filed an appeal under Section 37 of the Arbitration Act, 1996 read with Section 13(1) of the Commercial Courts Act, 2015 before the High Court of Punjab and Haryana at Chandigarh. On 12-9-2018 [NHPC Ltd. v. Jaiparkash Associates Ltd., 2018 SCC OnLine P&H 1304 : (2019) 193 AIC 839] , the impugned judgment was delivered by the Punjab and Haryana High Court, in which it was held that the appeal filed under Section 37 of the Arbitration Act, 1996 was maintainable, and that Delhi being only a convenient venue where arbitral proceedings were held and not the seat of the arbitration proceedings, Faridabad would have jurisdiction on the basis of the cause of action having arisen in part in Faridabad. As a result, the appeal was allowed and the judgment of the Special Commercial Court, Gurugram was set aside.

59. Equally incorrect is the finding in Antrix Corpn. Ltd. [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non obstante clause, and then goes on to state “...where with respect to an arbitration agreement any application under this part has been made in a court...” It is obvious that the application made under this part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the court where the seat is located, and that court alone then has



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jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no “seat” is designated by agreement, or the so-called “seat” is only a convenient “venue”, then there may be several courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the “seat” of arbitration, and before such “seat” may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.

Tests for determination of “seat”

60. *The judgments of the English courts have examined the concept of the “juridical seat” of the arbitral proceedings, and have 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. The judgment of Cooke, J., in Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] , states:*

“34. London arbitration is a well-known phenomenon which is often chosen by foreign



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nationals with a different law, such as the law of New York, governing the substantive rights of the parties. This is because of the legislative framework and supervisory powers of the courts here which many parties are keen to adopt. When therefore there is an express designation of the arbitration venue as London 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, to my mind, that London is the juridical seat and English Law the curial law. In my judgment it is clear that either London has been designated by the parties to the arbitration agreement as the seat of the arbitration, or, having regard to the parties' agreement and all the relevant circumstances, it is the seat to be determined in accordance with the final fall back provision of Section 3 of the Arbitration Act.”

61. *It will thus be seen that wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.*

64. *The Court in Enercon GmbH [Enercon GmbH v. Enercon (India) Ltd., 2012 EWHC 689 (Comm) : (2012) 1 Lloyd's Rep 519] then held that although the word “venue” is 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*



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which no part of the cause of action arose. It was thus understood to be a neutral place in which the proceedings could be “anchored”. Secondly, the Court stressed on the expression “arbitration proceedings” in Clause 18.3, which the Court held to be an expression which included not just one or more individual hearings, but the arbitral proceedings as a whole, culminating in the making of an award. The Court held:

“63. Second, the language in Clause 18.3 refers to the “arbitration proceedings”. That is an expression which includes not just one or more individual or particular hearings but the arbitration proceedings as a whole including the making of an award. In other words the parties were anchoring the whole arbitration process in London right up to and including the making of an award. The place designated for the making of an award is a designation of seat. Moreover the language in Clause 18.3 does not refer to the venue of all hearings “taking place” in London. Clause 18.3 instead provides that the venue of the arbitration proceedings “shall be” London. This again suggests the parties intended to anchor the arbitration proceedings to and in London rather than simply physically locating the arbitration hearings in London. Indeed in a case where evidence might need to be taken or perhaps more likely inspected in India it would make no commercial sense to construe the provision as mandating all hearings to take place in a physical place as opposed to anchoring the arbitral process to and in a designated place. All agreements including an arbitration agreement should be construed to accord with business common sense. In my view, there is no business common sense to construe



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the arbitration agreement (as contended for by EIL) in a manner which would simply deprive the arbitrators of an important discretion that they possess to hear evidence in a convenient geographical location.

64. Third, Joseph QC submitted that the last sentence of Clause 18.3 can be reconciled with the choice of London as the seat. First, he submitted that it can be read as referring simply to Part II of the Indian 1996 Act i.e. the enforcement provisions. Edey QC's response was that if that is all the last sentence meant, then it would be superfluous. However, I do not consider that any such superfluity carries much, if any, weight. Alternatively, Joseph QC submitted that it can be read as referring only to those provisions of the Indian 1996 Act which were not inconsistent with the English 1996 Act.” (emphasis supplied)

69. *The Court in Process and Industrial Developments Ltd. [Process and Industrial Developments Ltd. v. Nigeria, 2019 EWHC 2241 (Comm)] then held that the gas supply agreement provided for the seat of the arbitration to be in London, inter alia, for the following reasons:*

“85. ... (1) It is significant that Clause 20 refers to the venue “of the arbitration” as being London. The arbitration would continue up to and including the final award. Clause 20 does not refer to London as being the venue for some or all of the hearings. It does not use the language used in Section 16(2) ACA of where the tribunal may “meet” or may “hear witnesses, experts or the parties”. I consider that the provision represented



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an anchoring of the entire arbitration to London rather than providing that the hearings should take place there.

(2) Clause 20 provides that the venue of the arbitration “shall be” London “or otherwise as agreed between the parties”. If the reference to venue was simply to where the hearings should take place, this would be an inconvenient provision and one which the parties are unlikely to have intended. It would mean that hearings had to take place in London, however inconvenient that might be for a particular hearing, unless the parties agreed otherwise. The question of where hearings should be conveniently held is, however, one which the arbitrators ordinarily have the power to decide, as indeed is envisaged in Section 16(2) ACA. That is likely to be a much more convenient arrangement. Clearly if the parties were in agreement as to where a particular hearing were to take place, that would be likely to be very influential on the Arbitral Tribunal. But if for whatever reason they were not in agreement, and it is not unknown for parties to arbitration to become at loggerheads about very many matters, then it is convenient for the arbitrators to be able to decide. If that arrangement was to be displaced it would, in my judgment, have to be spelled out clearly. Accordingly, the reference to the “venue” as being London or otherwise as agreed between the parties, is better read as providing that the seat of the arbitration is to be England, unless the parties agree to change it. This would still allow the arbitrators to decide where particular hearings should take place, while providing for an anchor to England for supervisory purposes, unless changed.”(emphasis supplied)



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97. Given the fact that if there were a dispute between NHPC Ltd. and a foreign contractor, Clause 67.3(vi) would have to be read as a clause designating the “seat” of arbitration, the same must follow even when sub-clause (vi) is to be read with sub-clause (i) of Clause 67.3, where the dispute between NHPC Ltd. would be with an Indian contractor. The arbitration clause in the present case states that “Arbitration proceedings shall be held at New Delhi/Faridabad, India...”, thereby signifying that all the hearings, including the making of the award, are to take place at one of the stated places. Negatively speaking, the clause does not state that the venue is so that some, or all, of the hearings take place at the venue; neither does it use language such as “the Tribunal may meet”, or “may hear witnesses, experts or parties”. The expression “shall be held” also indicates that the so-called “venue” is really the “seat” of the arbitral proceedings. The dispute is to be settled in accordance with the Arbitration Act, 1996 which, therefore, applies a national body of rules to the arbitration that is to be held either at New Delhi or Faridabad, given the fact that the present arbitration would be Indian and not international. It is clear, therefore, that even in such a scenario, New Delhi/Faridabad, India has been designated as the “seat” of the arbitration proceedings.

98. However, the fact that in all the three appeals before us the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, would lead to the conclusion that both parties have chosen New Delhi as the “seat” of arbitration under Section 20(1) of the Arbitration Act, 1996. This being the case, both parties have, therefore, chosen that the courts at New Delhi alone would have



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exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the “seat” has been chosen, which would then amount to an exclusive jurisdiction clause so far as courts of the “seat” are concerned.”

9. *Per contra*, learned Senior Counsel appearing for the Respondent draws the attention of this Court to Clause 15 of the Contract to contend that the said clause neither determines the seat nor the venue of arbitration. He also place reliance on portion (ii) of the Order dated 11.10.2018 to contend that the said order only stipulates that when the sitting of the Arbitration Tribunal is in Delhi or in Ahemdabad, the sole arbitrator shall be provided with business class air fare, stay in Delhi or Ahemdabad in any Five Star Hotel and transportation facilities at the place of the arbitrator and other necessary facilities for smooth conduction of the arbitration proceedings. He states that the Arbitrator does not reside in Delhi. He states that a reading of the abovementioned portion does not show that the Arbitrator had determined that the seat of arbitration would be Delhi. The Arbitrator could come to Delhi or Ahemdabad for the purpose of conducting Arbitration. He states that just because 16 out of 19 arbitration proceedings were conducted in Delhi would not make Delhi the determinable place of arbitration. He further states that the award was passed online and there is no mention that the award was passed in Delhi. He states that the Respondents stay in Ahemdabad, one copy of the Contract was signed in Ahemdabad by the Respondents, the goods were delivered in Ahemdabad, and therefore, the Court in Gujarat alone would have the jurisdiction to entertain any dispute arising out of arbitral proceedings. He states that since the Petition under



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Section 34 of the Arbitration and Conciliation Act has already been filed in the High Court of Gujarat at Ahemdabad, the present Petition under Section 9 of the Arbitration Act has become infructuous and it is for the High Court of Gujarat at Ahemdabad to decide as to whether the award would be stayed or enforced. Learned Senior Counsel appearing for the Respondent places reliance on the Judgment dated 24.12.2014, passed by the High Court of Judicature at Bombay in **ARB. P. 1162/2014**, titled as Karvy Financial Services Ltd. v. Progressive Construction Ltd. & Ors. Learned Senior Counsel appearing for the Respondents also places reliance on the Order dated 12.08.2024, passed by a co-ordinate Bench of this Court in **O.M.P.(I)(COMM) 121/2024**, titled as M/s Gail India Ltd. v. Gujarat State Fertilizers & Chemicals Ltd to support his contention. He states that the Petitioner must now file an enforcement Petition before the High Court of Gujarat and should not pursue the present Petition under Section 9 of the Arbitration Act.

10. Heard the learned Counsels for the Petitioner and the Respondents and perused the material on record.

11. The Arbitration Clause does not mention either the venue or the seat. In the Order dated 11.10.2018, the Arbitrator held that the arbitration proceedings would be held in Delhi or Ahemdabad. This Court is in agreement with the contention of the learned Senior Counsel for the Respondent that para (ii) of the Order dated 11.10.2018 only indicates that the proceedings can either be conducted in Delhi or Ahemdabad and that the parties had to make arrangements for the arbitrator's stay, transport, and other facilities at both the places.

12. In BBR (India) (P) Ltd. (*supra*) the dispute arose between the parties



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and were referred to arbitration and a Sole Arbitrator was appointed to adjudicate on the disputes between the parties. In that case, the first sitting was held on 05.08.2014 when the Sole Arbitrator held that the venue of the arbitral proceedings would be House No.292, Sector 6, Panchkula, Haryana. The said Arbitrator was later on recused, and a new Arbitrator was appointed. The new Arbitrator in the proceedings dated 13.01.2015 held that the arbitral proceedings would be conducted in Delhi. Majority of the proceedings were conducted in Delhi. In that background, the Apex Court in that case held as under:

"33. At this stage, we must also deal with the appellant's argument that substantive proceedings were held in Delhi and, therefore, it would be the "seat of arbitration". The proceedings before the first arbitration at Panchkula, Haryana, were restricted to filing of pleadings and documents. On deeper consideration, this argument should be rejected for the reasons recorded above, as it will lead to confusion and uncertainty. The legal question raised in the present case must be answered objectively and not subjectively with reference to the facts of a particular case. Otherwise, there would be a lack of clarity and consequent mix-up about the courts that would exercise jurisdiction. There could be cases where the arbitration proceedings are held at different locations, but the "seat of arbitration", as agreed by the parties or as determined by the arbitrator, may be different, and at that place — "the seat", only a few hearings or initial proceedings may have been held. This would not matter and would not result in shifting of the jurisdictional "seat". Arbitrators can fix the place of residence, place of work, or in case of recusal, arbitration proceedings may be held at two different places, as in the present case.



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34. For clarity and certainty, which is required when the question of territorial jurisdiction arises, we would hold that the place or the venue fixed for arbitration proceedings, when sub-section (2) of Section 20 applies, will be the jurisdictional “seat” and the courts having jurisdiction over the jurisdictional “seat” would have exclusive jurisdiction. This principle would have exception that would apply when by mutual consent the parties agree that the jurisdictional “seat” should be changed, and such consent must be express and clearly understood and agreed by the parties.

35. We have quoted Section 42 of the Act. Section 42 was also examined in BGS SGS Soma [BGS SGS Soma JV v. NHPC Ltd., (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] and the view expressed by the Delhi High Court in Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd. [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] was overruled observing that the Section 42 is meant to avoid conflicts of jurisdiction of courts by placing the supervisory jurisdiction over all arbitration proceedings in connection with the arbitration proceedings with one court exclusively. The aforesaid observation supports our reasoning that once the jurisdictional “seat” of arbitration is fixed in terms of sub-section (2) of Section 20 of the Act, then, without the express mutual consent of the parties to the arbitration, “the seat” cannot be changed. Therefore, the appointment of a new arbitrator who holds the arbitration proceedings at a different location would not change the jurisdictional “seat” already fixed by the earlier or first arbitrator. The place of arbitration in such an event should be treated as a venue where arbitration proceedings are held.

36. We would now reproduce para 59 of the judgment



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in BGS SGS Soma [BGS SGS Soma JV v. NHPC Ltd., (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] , which examines Section 42 of the Act and reads as under : (SCC pp. 288-89)

*“59. Equally incorrect is the finding in Antrix Corpn. [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non obstante clause, and then goes on to state ‘... where with respect to an arbitration agreement any application under this Part has been made in a court...’. **It is obvious that the application made under this Part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the court where the seat is located, and that court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no “seat” is designated by agreement, or the so-called “seat” is only a convenient “venue”, then there may be several courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the***



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cause of action arises in a case where parties have not agreed on the “seat” of arbitration, and before such “seat” may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay [Nivaran Solutions v. Aura Thia Spa Services (P) Ltd., 2016 SCC OnLine Bom 5062] , [Konkola Copper Mines v. Stewarts & Lloyds of India Ltd., 2013 SCC OnLine Bom 777] and Delhi [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] High Courts in this regard is incorrect and is overruled.” (emphasis in original)

37. We have already referred to the first few sentences of the aforementioned paragraph and explained the reasoning in the context of the present case. The paragraph in BGS SGS Soma [BGS SGS Soma JV v. NHPC Ltd., (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] also explains the non obstante effect as incorporated in Section 42 to hold that it is evident that the application made under Part I must be to a court which has a jurisdiction to decide such application. Where “the seat” is designated in the agreement, the courts of “the seat” alone will have the jurisdiction. Thus, all applications under Part I will be made in the court where “the seat” is located as that court would alone have jurisdiction over the arbitration proceedings and all subsequent proceedings arising out of the arbitration proceedings. The quotation also clarifies that when either no “seat” is designated by an agreement, or the so-called “seat” is only a convenient



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venue, then there may be several courts where a part of the cause of action arises that may have jurisdiction. An application under Section 9 of the Act may be preferred before the court in which a part of cause of action arises in the case where parties had not agreed on the “seat of arbitration”. This is possible in the absence of an agreement fixing “the seat”, as an application under Section 9 may be filed before “the seat” is determined by the Arbitral Tribunal under Section 20(2) of the Act. Consequently, in such situations, the court where the earliest application has been made, being the court in which a part or entire of the cause of action arises, would then be the exclusive court under Section 42 of the Act. Accordingly, such a court would have control over the arbitration proceedings. [We are not examining and are not required to decide the question— whether there is a difference between the expression “court” and the “Chief Justice or his nominee” in the present case.]

38. Section 42 is to no avail as it does not help the case propounded by the appellant, as in the present case the arbitrator had fixed the jurisdictional “seat” under Section 20(2) of the Act before any party had moved the court under the Act, being a court where a part or whole of the cause of action had arisen. The appellant had moved the Delhi High Court under Section 34 of the Act after the Arbitral Tribunal vide the order dated 5-8-2014 had fixed the jurisdictional “seat” at Panchkula in Haryana. Consequently, the appellant cannot, based on the fastest finger first principle, claim that the courts in Delhi get exclusive jurisdiction in view of Section 42 of the Act. The reason is simple that before the application under Section 34 was filed, the jurisdictional “seat” of arbitration had been determined and fixed under sub-section (2) of Section 20 and thereby, the courts having jurisdiction over Panchkula in Haryana, have exclusive jurisdiction. The



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courts in Delhi would not get jurisdiction as the jurisdictional “seat of arbitration” is Panchkula and not Delhi.”

13. Applying the said law to the facts of the present case, this Court is of the opinion that the fact that the Arbitrator found it more convenient for himself to conduct arbitral proceedings in Delhi without having fixed Delhi as the venue of arbitration in any of the Orders will not determine the seat of arbitration as Delhi. There is nothing on record to show that the learned Arbitrator has determined the place of arbitration. As stated above, the Order dated 11.10.2018 only indicates that the arbitration can be conducted in either Delhi or Ahemdabad. The fact that the Petitioner chose to file a Petition before this Court under Section 9 of the Arbitration and Conciliation Act, 1996 post passing of the award will not attract Section 42 of the Arbitration and Conciliation Act as this Court would not come within the definition of “court” under Section 2(1)(e) of the Arbitration and Conciliation Act and will not have the jurisdiction to entertain the present Petition.

14. The Respondents herein stay in Ahemdabad, the contract was signed in Ahemdabad by the Respondents, majority of the goods were delivered to the Respondents in Ahemdabad, and therefore, the cause of action has definitely arisen in Ahemdabad, thereby giving the Courts in Gujarat the jurisdiction to entertain the disputes between the parties under the contract. In the present case since the place of arbitration was not determined, principles under Section 20 of the CPC can be invoked to see where the proceedings can lie.

15. A co-ordinate Bench of this Court in Kings Chariot v. Tarun



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Wadhwa, **2024 SCC OnLine Del 4039**, has observed as under:

"30. There is thus, no confusion and law is explicit that for the purpose of Arbitration, even if no part of cause of action has arisen in a place, then too, the parties can agree on a seat of jurisdiction, which would then become the place for all litigation under the Arbitration Act. However, if the parties do not specify any seat/place of Arbitration, then the jurisdiction of the Court shall be determined in accordance with Section 16 to Section 20 of CPC

31. In the present case there is neither any place nor any venue determined by the parties, in the Arbitration Clause. Therefore, the territorial jurisdiction has to be determined in accordance with Section 16 to Section 20, CPC. "

16. Since the part of cause of action has arisen in Gujarat, this Court does not have the jurisdiction under Section 2(1)(e)(i) of the Arbitration and Conciliation Act, 1996 to entertain the petition under Section 9 of the Arbitration and Conciliation Act, 1996.

17. This Court is of the opinion that since the Arbitrator had not fixed the seat of arbitration at Delhi and the award not having been signed in Delhi and there being no other material to show that the arbitration was anchored at Delhi, this Court does not have the jurisdiction to entertain the present Petition. Merely stating that majority of arbitral proceedings took place in Delhi is not sufficient to designate Delhi as the seat of arbitration.

18. Accordingly, the Petition is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

MARCH 03, 2025/Rahul