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

% *Date of decision: 22nd May, 2025*

+ ARB.P. 51/2025

SURJIT SINGH AND BROSPetitioner

Through: Mr. Akshay Gandotra, Advocate.

versus

AFCONS INFRASTRUCTURE LIMITEDRespondent

Through: Ms. Himangini Mehta and Mr. Raheel Kohli, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This petition is filed by the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of a Sole Arbitrator.

2. Petitioner and Respondent entered into a Work Contract on 16.10.2020 for construction of Nallah Protection Works at Bridge (Br.)-85 and 87 Sangaldan. The contract contains clause 51 for settlement of disputes and invoking the same, Petitioner sent a notice on 22.02.2024 proposing the name of its nominee Arbitrator and calling upon the Respondent to nominate its nominee Arbitrator but there was no response.

3. Reply is filed on behalf of the Respondent, in which preliminary objection is taken to the maintainability of this petition on the ground that this Court lacks territorial jurisdiction to entertain this petition. Relying on the reply, counsel for the Respondent argues that Clause 51 is in two parts. The first part is in nature of exclusive jurisdiction clause providing that any



party may refer a dispute to the Courts at Mumbai for appointment of three Arbitrators, one by each party and the third by the two appointed Arbitrators. The second part deals with the seat of arbitration being at Mumbai and Delhi, alternatively. A holistic reading of the clause indicates that jurisdiction for appointment of the Arbitral Tribunal has been conferred on the Courts at Mumbai and therefore a petition under Section 11(6) of the 1996 Act seeking appointment of the Arbitral Tribunal can only be filed before the competent Court in Mumbai irrespective of the seat of arbitration being at Mumbai and Delhi alternatively and in support of this plea, reliance is placed on the judgment of this Court in ***Cars24 Services Pvt. Ltd. v. Cyber Approach Workspace LLP***, 2020 SCC OnLine Del 1720.

4. Learned counsel for the Petitioner, on the other hand, submits that clause 51 which is a Dispute Resolution Clause is in the nature of an escalation clause. It refers to “disputes” between the parties having arisen out of the contract i.e. subject-matter disputes. The said disputes are to be first referred for direct negotiations between the parties, failing which they are to be referred to Courts at Mumbai and it is clear from plain language of the clause that the ‘disputes’ would be only those disputes which pertain to claims notified by the Claimant to the Respondent and therefore, this part of the clause is no more than a regular exclusive jurisdiction clause and cannot oust the jurisdiction of this Court, when the agreed seat of arbitration is Delhi in alternate to Mumbai. Emphasis of the Respondent on the words ‘*three Arbitrators- one appointed by each party and the third appointed by the other two Arbitrators*’ in clause 51 is misplaced as this part of the clause cannot imply that the parties intended to confer jurisdiction on Mumbai Courts for the appointment of the Arbitral Tribunal.



5. It is further argued that the judgment in *Cars24 (supra)*, is inapplicable to the present case. In the said case, the Court had clearly observed that the arbitration clause therein was different inasmuch as the exclusive jurisdiction conferred by the arbitration agreement was not in respect of the subject matter of the suit but specifically for appointment of an Arbitrator. Even otherwise, this Court would have jurisdiction since the jurisdiction clause does not use the expressions ‘exclusive’, ‘alone’ or ‘only’. It is a settled law that seat of arbitration is akin to exclusive jurisdiction clause for all arbitration proceedings including under Section 11(6) of the 1996 Act and once the parties agreed that Delhi will be an alternate seat of arbitration, no objection can be taken to the jurisdiction of this Court. Rule of harmonious construction mandates that Courts must give effect to all parts of the contract or contractual clauses, without treating any part to be superfluous.

6. It is further argued that in *Cars24 (supra)*, the Court has also held the inevitable consequence of enforcing the jurisdiction clause pertaining to appointment of Arbitrator would be that Section 34 challenge would also have to be preferred at the same place, which would imply that supervisory jurisdiction over all arbitral proceedings would then be vested in the Courts at Mumbai making the seat of arbitration a redundant concept. Courts must adopt a pragmatic approach and not a technical approach by deciding the jurisdiction, moreover, when parties intended to adopt Delhi as a neutral venue and consciously added the ‘seat’ clause. In this light, it is prayed that this petition be entertained as both Courts at Delhi and Mumbai have concurrent jurisdiction. Reliance is placed on the judgment of another Co-ordinate Bench of this Court in *Arjun Sethi v. All About Outdoor Pvt. Ltd.*,



2021 SCC OnLine Del 5343 and Manmohan Kapani v. Kapani Resorts Pvt. Ltd. and Others, 2023 SCC OnLine Del 1618.

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

8. The short issue that arises for consideration is whether this Court lacks the jurisdiction to entertain this petition and consequently appoint an Arbitrator to adjudicate the disputes between the parties arising out of a Work Order dated 16.10.2020. Before proceeding further, Clause 51, which is the bone of contention between the parties, is extracted hereunder, for ready reference:-

“51.0 SETTLEMENT OF DISPUTES:

This Subcontract shall be governed by and is construed in accordance with the laws of India.

In the event that any Dispute arises between the Parties, the Parties shall first use their reasonable efforts to reach an amicable solution of any Dispute by means of direct negotiation within fifteen (15) days from the date that a Party notifies the Dispute, failing which any Party may refer such Dispute to the Courts of Mumbai Jurisdiction (three arbitrators-one appointed by each party and the third appointed by the other two arbitrators). The seat of the arbitration shall be Mumbai & Delhi alternatively and the language shall be English. Each party shall bear its own cost of arbitration.”

9. Broadly understood, contention of the Petitioner is that the seat of arbitration being alternatively at Delhi and Mumbai, the same will take precedence over the general exclusive jurisdiction part of Clause 51 and this Court will have jurisdiction, while Respondent contends that the exclusive jurisdiction part of Clause 51 is not a general clause but is a specific clause conferring Section 11(6) jurisdiction on Courts at Mumbai and will take pre-eminence over the seat. A similar situation came for consideration before this Court in ***Cars24 (supra)***, where the seat of arbitration was Delhi but



parties by the same clause had agreed to approach the Court of competent jurisdiction at Haryana for appointment of the Sole Arbitrator.

10. Conscious of the fact that the Supreme Court in various judgments including the judgment of the Constitution Bench in ***Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc, (2012) 9 SCC 552***, has held that a clause fixing the seat of arbitration is akin to an exclusive jurisdiction clause and Courts having the jurisdiction over the seat by agreement between the parties would possess the jurisdiction over the arbitral proceedings in entirety, the Court went on to deal with the arbitration clause which was peculiar in nature. It was observed that no decision either of the Supreme Court or of this Court was brought to the notice of the Court in which arbitration agreement specifically conferred the jurisdiction to appoint the Arbitrator i.e. Section 11 jurisdiction, on Courts in a particular territorial location and the seat in a different territory. Deciding the interplay between the seat Court on one hand and specifically a Section 11 Court on the other hand, the Court held as follows:-

“34. We proceed, next, to BGS SGS Soma JV v. NHPC Ltd.

35. This case dealt with a project, located in the State of Assam and Arunachal Pradesh. The agreement provided for reference of any dispute, to arbitration to be held at New Delhi/Faridabad. The arbitral proceedings took place at New Delhi, and the award was also delivered at New Delhi.

36. The award was sought to be challenged under Section 34 of the 1996 Act, before the learned District and Sessions Judge, Faridabad, from whom it was later transferred to the Special Commercial Court, Gurugram. The Gurugram court returned the application to the petitioner for presentation before the appropriate court having jurisdiction in New Delhi.

37. NHPC, i.e. the respondent before the Supreme Court, challenged the decision by-way of an appeal under Section 34 of the 1996 Act, before the High Court of Punjab and Haryana. The High Court held that Delhi was only a convenient venue, for holding of the arbitral proceedings and could



not be regarded as the “seat” of the arbitration. Part of the cause of action having, therefore, arisen in Faridabad, the High Court invoked Section 2(1)(e) of the 1996 Act, to hold that the District Judge at Faridabad possessed jurisdiction to decide the petition of NHPC.

38. BGS SGS Soma appealed to the Supreme Court. Relying on its earlier decisions, the Supreme Court held that, as the arbitral proceedings, per contract, were conducted at New Delhi and Faridabad, both New Delhi and Faridabad constituted “seats” of arbitration. Nevertheless, it was held, towards the conclusion of the judgment that, as the proceedings had been held at New Delhi and the award had also been thus signed at New Delhi, the parties had consciously chosen New Delhi as the “seat” of arbitration under Section 20(1) of the 1996 Act. In view thereof, it was held that courts at New Delhi alone would have exclusive jurisdiction to deal with the challenge to the award and, consequently, the Section 34 petition was directed to be presented before the competent courts at New Delhi.

39. A detailed analysis of all the above decisions is to be found in the recent judgment of this Court in Big Charter Pvt. Ltd. v. Ezen Aviation Pty. Ltd.

40. A reading of the aforesaid decisions, no doubt, reveals that preeminence has been accorded by the Supreme Court to the contractually determined “seat of arbitration”, while deciding the issue of the court which would be possessed of territorial jurisdiction to deal with petitions relating to the arbitral proceedings, whether preferred under Section 9, 11 or 34. As already noticed hereinabove, however, none of these decisions involved a case in which the contract contained an exclusive jurisdiction clause and a separate seat of arbitration clause, and the two clauses conferred jurisdiction on courts located at different territorial locations.

41. In the present case, the situation is more involved, as the exclusive jurisdiction clause specifically confers Section 11 jurisdiction on courts of competent jurisdiction at Haryana, as per the 1996 Act - which, therefore, would mean the High Court of Punjab and Haryana.

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47. The submission, of Mr. Srivastava, that this would conflict with the seat of arbitration dispensation in the lease deed, may not be correct, in view of the separate exclusive jurisdiction clause, conferring jurisdiction on Courts located elsewhere than at the seat of arbitration.

48. At the cost of reiteration, it may be mentioned that none of the decisions cited hereinabove, deal with the situation in which the seat of arbitration is fixed at place A, and courts at place B are conferred exclusive jurisdiction to deal with disputes under the contract. The view that the “seat of arbitration clause” has to be treated as akin to an



exclusive jurisdiction clause, has been expressed, by the Supreme Court, in cases in which there is no separate exclusive jurisdiction clause, conferring exclusive jurisdiction on courts located elsewhere. Where such a separate exclusive jurisdiction clause, conferring exclusive jurisdiction on courts other than the court having jurisdiction over the contractual seat of arbitration, exists, it may not be proper, in my view, to grant pride of place, to the seat of arbitration clause, over the exclusive jurisdiction clause. None of the decisions of the Supreme Court, cited hereinabove and to which my attention was invited, so directs. This position would stand underscored in a situation, such as the present - which appears to be sui generis - in which the exclusive jurisdiction clause is not generally worded, qua all disputes under the agreement, but is specific with respect to appointment of the arbitrator, i.e. specific with respect to Section 11 jurisdiction. Adhering to the said contractual dispensation would not, therefore, in my view, militate against the opinion expressed by the Supreme Court in the aforesaid decisions, as was sought to be suggested by Mr. Srivastava.

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*56. As already observed hereinabove, I am not inclined to agree with this submission. Once the agreement between the parties specifically confers Section 11 jurisdiction, for appointment of an arbitrator, on courts at Haryana, this Court, in my view, would be doing violence to the contractual covenant, if it were to exercise such jurisdiction. There is no judgment of the Supreme Court, to which my attention has been invited, which permits a Court to exercise jurisdiction contrary to the exclusive jurisdiction clause in the agreement between the parties. Rather, the decisions in *Swastik Gases Pvt. Ltd. and Brahmani River Pellets Ltd.*¹⁸ - both of which have been approvingly cited in *BGS SGS Soma JV*¹⁵ - emphasised the need to adhere to the exclusive jurisdiction clause. At the cost of repetition yet again, all decisions, which decide the question of territorial jurisdiction on the basis of the seat of arbitration as delineated in the agreement, deal with contracts in which there is no separate exclusive jurisdiction clause, fixing jurisdiction elsewhere. Where such a clause exists, and, especially, where such a clause fixes Section 11 jurisdiction with courts located elsewhere, I am not inclined to hold that this Court can, contrary to the explicit words and intent of said clause, exercise Section 11 jurisdiction and appoint an arbitrator.*

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59. Where, therefore, the seat of arbitration is at place X, and exclusive jurisdiction over the subject matter of the suit is conferred on courts at place Y, a petition under Section 11 would unquestionably lie before the courts at place X. The present case, however, is different, as the exclusive jurisdiction conferred by the arbitration agreement is not in respect of the



subject matter of the suit but specifically for appointment of an arbitrator. It would be doing violence to the said clause, therefore, if this Court were to treat the exclusive jurisdiction clause as limited to the subject matter of the suit, and exercise Section 11 jurisdiction contrary to the mandate thereof.

60. It is trite that a court cannot re-write a contract between the parties. Where the contract between the parties, as in the present case, confers exclusive jurisdiction, for appointment of an arbitrator, on courts at Haryana, any petition, under Section 11, would have to be preferred before the High Court of Punjab and Haryana, and not before this Court. There is no decision, to which my attention has been invited, which persuades me to take a different view.”

11. In fact, it is pertinent to note that in **Cars24 (supra)**, counsel for the Petitioner besides emphasising on the pre-eminence accorded to the seat of the arbitration, as fixed by the contract between the parties, placed particular reliance on Section 42 raising an apprehension that in view of the said provision, jurisdiction in respect of all proceedings relating to arbitration agreement would then be conferred on the High Court of Punjab and Haryana, once a petition under Section 11 was entertained there. This, according to the counsel, was directly in conflict with the concept of ‘seat’ in arbitration. Recording this contention, the Court observed as under:-

“42. Mr. Yash Srivastava, learned Counsel for the petitioner, besides emphasising the fact that pre-eminence has been accorded by the Supreme Court, to the seat of arbitration, as fixed by the contract between the parties, and on Courts having territorial jurisdiction over such seat, also places particular reliance on Section 42 of the 1996 Act, which reads as under:

*“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 subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”*

43. Mr. Srivastava devises, from this provision, an involved argument. He



contends that, in view of Section 42, all proceedings, relating to the arbitration agreement, would have to be preferred before one Court. If Section 11 jurisdiction, in the present case, is to be conferred on the High Court of Punjab and Haryana, he submits a peculiar and anomalous situation would result, as Section 42 would then come into play, and require all subsequent proceedings, relating to the arbitration, to be preferred before the competent Courts at Haryana. This, then, he submits would directly be in conflict with the fixation of the seat of arbitration, by the present contract, at New Delhi. As such, he submits there is an apparent conflict between the exclusive jurisdiction clause and the seat of arbitration clause, in the present case. This conflict according to Mr. Srivastava, has to be reconciled by harmonising the two clauses keeping in view Section 42 of the 1996 Act. The only way of doing this, he submits, would be to confer Section 11 jurisdiction on this Court. Conferment of such jurisdiction, he points out, would result in Section 34 jurisdiction also vesting with this Court (by operation of Section 42), which would be entirely in accord with the fixing of the seat of arbitration at New Delhi.

44. I may, immediately, deal with this argument, before proceeding further. The argument, though undoubtedly attractive at first blush, fails, on a deeper analysis, to pass muster. The submission of Mr. Srivastava proceeds on the premise that, were an arbitral award to be passed, and were such award to be challenged, that challenge would also have to be preferred before the Courts at Haryana, in view of Section 42 of the 1996 Act - if Section 11 jurisdiction is to be conferred, by this Court, on the High Court of Punjab and Haryana. According to Mr. Srivastava, this would conflict with the seat of arbitration clause in the agreement.

45. In the first place, it would be premature for me to enter into such a controversy, seized, as I am, with the issue of fixation of determining the situs of the Court which could exercise Section 11 jurisdiction and appoint the arbitrator. *Stricto sensu*, therefore, I am not required to consider which Court would have jurisdiction to entertain a Section 34 challenge, assuming an arbitral award is passed, with which one, or the other, party is aggrieved.

46. Be that as it may, the submission, of Mr. Srivastava, that, if Section 34 jurisdiction is to be conferred on Courts at Haryana (which, according to him would be the inevitable consequence of granting Section 11 jurisdiction to courts at Haryana, in view of the mandate of Section 42), an anomalous situation would arise, in view of the fixation of the seat of arbitration at New Delhi, may not be entirely correct. As already noted hereinabove, the decisions of the Supreme Court, conferring jurisdiction over the arbitral proceedings, on courts having territorial jurisdiction over the contractually fixed seat of arbitration, do not deal with situations in which there was a separate exclusive jurisdiction clause, conferring jurisdiction on courts located elsewhere. Even if Section 34 jurisdiction



were, therefore, to be conferred on courts at Haryana, that may not necessarily conflict with the legal position as enunciated in the decisions cited hereinabove. Hypothetically, it may be possible to argue that, as Section 11 jurisdiction has been conferred on the High Court of Punjab and Haryana, the mandate of Section 42 would necessarily require any challenge to the award, under Section 34, to be also preferred before Courts at Haryana.

47. The submission, of Mr. Srivastava, that this would conflict with the seat of arbitration dispensation in the lease deed, may not be correct, in view of the separate exclusive jurisdiction clause, conferring jurisdiction on Courts located elsewhere than at the seat of arbitration.

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49. Having so observed, I hasten to clarify that I am not proposing to venture any final opinion on the appropriate forum, before which any challenge, to the arbitral award that would come to be passed, under Section 34 of the 1996 Act, would have to be laid. This aspect, strictly speaking, does not arise for consideration before me and would have to be examined by the courts which is seized with the Section 34 challenge, if and when such a challenge is laid.”

12. In this context, I may also refer to an earlier decision of the same Court in **Hunch Circle Private Limited v. Futuretimes Technology India Pvt. Ltd., 2022 SCC OnLine Del 361**, where a same view was taken to decide an interplay between a specific clause as a part of the arbitration clause conferring Section 11 jurisdiction on one Court and the seat of arbitration being in the territorial jurisdiction of another Court. A reading of clause 51 in the present case leaves no doubt that parties intended that for appointment of an Arbitrator the Courts at Mumbai will have jurisdiction under Section 11(6). The words ‘*three Arbitrators- one appointed by each party and the third appointed by the other two Arbitrators*’ qualifying reference of dispute to the Courts at Mumbai are not without any meaning and show the intent of the parties. There can be no dispute on the settled law that in the arbitration law regime, pre-eminence has always been given to the



seat of arbitration for the purpose of territorial jurisdiction of the Court, however, as noted in *Cars24 (supra)*, in the present case, the exclusive jurisdiction clause is not generally worded but is specific to appointment of the Arbitrator i.e. specific with respect to Section 11 jurisdiction. The judgment relied upon by counsel for the Petitioner in the case of *Arjun Sethi (supra)* is of no avail as in fact it decides contrary to the submission made by the Petitioner. This is evident from a plain reading of paragraph 9 of the judgment where the Court held that when parties agreed upon venue of arbitration to be Gurugram but at the same time specifically conferred jurisdiction for appointment of the Sole Arbitrator to the High Court at Delhi, the Court at Delhi will have jurisdiction to entertain the petition. In light of the fact that in terms of the agreement between the parties, the jurisdiction to appoint an Arbitrator lies with the Court at Mumbai, this Court lacks the territorial jurisdiction to entertain this petition.

13. Accordingly, this petition is dismissed noting that Court has not entered into the merits of the case. Needless to state that this order will not prevent the Petitioner from moving the appropriate Court for appointment of an Arbitrator.

JYOTI SINGH, J

MAY 22, 2025/RW/Shivam