



2026:DHC:439



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

Date of decision: 13th JANUARY, 2026

IN THE MATTER OF:

+ **O.M.P. (COMM) 26/2023 & I.A. 1261/2023**

THE CHIEF EXECUTIVE OFFICER J AND K ERA SRINAGAR
KASHMIR THROUGH AUTHORISED REPRESENTATIVE
ABDUL KHALIQ QURESHI PROJECT MANAGERPetitioner

Through: Mr. Praveen Chauhan, Mr. Parth
Awasthi and Mr. Sarthak Sawhney,
Advocates

versus

ABHIRAM INFRA PROJECTS PVT LTDRespondent

Through: *Appearance not given.*

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“A&C Act”] has been filed by the Petitioner challenging the Award dated 18.05.2022 and the Order dated 02.08.2022 (Impugned Award) passed by the Ld. Arbitral Tribunal, whereby the Ld. Arbitral Tribunal has partially allowed the claims made by the Respondent.

2. Shorn of unnecessary details, the facts leading to the filing of the present Petition are that disputes arose between the parties under an Agreement dated 01.09.2014 wherein the Respondent was awarded the work of “Providing, Laying, Jointing, Testing & Commissioning of Raw Water Pipeline from Higher Reaches of Doodhganga Nallah to Kralpora Water Treatment Plant at Srinagar”. The work commenced on 10.10.2014.

Signature Not Verified

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3. It is the case of the Respondent that the Respondent was not given encumbrance free/hurdle free land for carrying out the works, the construction drawings were issued belatedly, there were various instances of local interference and monies were also withheld.

4. It is stated that resultantly, the Agreement was terminated by the Respondent on 06.09.2018. Subsequent to the Respondent's termination of the Agreement, the Petitioner also terminated the Agreement on 12.10.2018.

5. Since disputes arose between the parties, the Respondent initiated the arbitration proceedings in terms of the arbitration clause in the Agreement. Clause 20.6 of the Agreement, which is an arbitration clause, by which the parties have decided to get their disputes adjudicated through arbitration, reads as under:

“20.6 Arbitration

"Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

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(b) if the contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The place of arbitration shall be the neutral location as specified in the contract data; and the arbitration shall be conducted in the language for communication defined in Sub-Clause 1.4 [Law and Language].





The arbitrators shall have full power to open up review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither party shall be limited in the proceedings before the arbitrator to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for the dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the works. The obligation of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the works.”

6. The Respondent raised total 19 claims amounting to Rs. 18,88,24,470/- and sought interest *pendente lite* as well as future interest post the arbitral proceedings.
7. The Ld. Tribunal vide the Impugned Award dated 18.05.2022 partially allowed 3 claims and wholly allowed 11 claims, thereby, awarding the Respondent a sum of Rs.14,39,38,839/-including *pendente-lite* interest and post-arbitral interest.
8. Paragraph (b) of Clause 20(6) read with Section – 8 i.e., Particular Conditions of Contract indicates that the Place of Arbitration shall be at Delhi, India.
9. Though detailed written submissions have been filed by the Petitioner





agitating several points on merits, however, the standalone point raised by the learned Counsel for the Petitioner before this Court during the course of hearing is that the Curial Law governing the Agreement would not be the A&C Act, but the Jammu and Kashmir Arbitration and Conciliation Act, 1997 [**“Act of 1997”**] and therefore, the arbitration proceedings conducted under A&C Act are void. The said issue was not raised before the Ld. Arbitral Tribunal. In fact, the only issue raised before the Ld. Arbitral Tribunal was regarding the seat and venue of the arbitration proceedings which was dealt with as under:-

“4.2 The Claimant is asserting that the use of words "Neutral Location" in Sub-Clause 20.6 is akin to the "seat of the arbitration proceedings". The Claimant has relied upon the judgment of the Indus Mobile Distribution (P) Ltd vs. Datawind Innovation (P) Ltd to submit that reference to seat implies that a neutral venue can be chosen by the parties and that an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction. Only the court where arbitration is seated shall have exclusive jurisdiction.

4.3 Claimant submits that jurisdiction will follow the seat and concept of territorial jurisdiction is immaterial in such a case. Reliance is placed on Brahmani River Pellets Ltd v. Kamachi Industries Ltd. wherein it was held that where parties have agreed to the venue of arbitration, it is the intention of the parties to exclude the jurisdiction of all other courts. Furthermore, reliance was placed on BGS SGS Soma JV v. NHPC Ltd. (2020) 4 SCC 234 to contend that choosing of a seat amounts to the choosing of exclusive jurisdiction of the courts at which the seat is located. Another reliance is placed on SP Singla Construction vs. Construction and Design Services to highlight that in the present arbitration agreement, there is no





existence of "other significant contrary indica" on which the Respondent can rely in order to state that Delhi is only a Venue and not the Seat.

4.4 On the other hand, Respondent contends that it is settled law that the "venue" of arbitration is different from the "seat" of arbitration. The Contract Data does not make any reference to any place or venue of Arbitration. Whereas GCC makes reference to "neutral place" which according to the Respondent is the venue of arbitration. The neutral place of arbitration agreed by the parties will not make the venue of the arbitration as seat of arbitration. The reliance is placed on the Judgment of Union of India vs Hardy Exploration and Productions (2019) 13 SCC 472 and Makastu Impex (P) Ltd. and Airvisual Ltd. (2020) 5 SCC 399.

4.5 The Respondent further contends that a bare perusal of the Sub-Clause 20.6(b) of the GCC provides that Arbitration shall be conducted in accordance with the laws of Employer's Country. Though it is admitted by the Respondent that the Employer's Country is India but, from conjoint reading of Sub-Clause 20.6(a) and 20.6(b) it is submitted that the reference to the Employer's country in said clause is to be read and interpreted as State of J&K. The State of J&K has its own J&K Arbitration and Conciliation Act 1997 whereas, in rest of the country, Arbitration and Conciliation Act 1996 is applicable. Therefore, the intention of the parties to contract was to conduct the arbitration proceedings as per the J&K. Arbitration and Conciliation Act 1997.

4.6 The tribunal takes note that the parties interpreted the expression "The Place of Arbitration shall be a neutral location specified in the Contract Data" differently. The Claimant submitted that the aforesaid expression refers to the seat of arbitration while the





Respondent contends it refers to venue of the arbitration only.

4.7 Tribunal observes that the seat of arbitration will determine as to which court(s) will exercise the supervisory or primary jurisdiction over the arbitration proceedings. The contention of the Respondent that neutral location of arbitration (venue) agreed to by the parties will not become the seat of arbitration came for consideration in Union of India is Hardy Exploration and Production (supra),

4.8 It true that in Union of India vs Hardy Exploration and Production (supra), it was held that the venue could become a seat of arbitration only if something else is added to it as a concomitant. The relevant extract of the judgment in para 35 is reproduced herein below:

"In the instant case, there has been no adjudication and expression of an opinion. Thus, the word "place" cannot be used as seat. To elaborate, a venue can become a seat if something else is added to it as a concomitant. But a place unlike seat, at least as is seen in the contract, can become a seat if one of the conditions precedents is satisfied. It does not ipso facto assume the status of seat. "

4.9 However, after considering Union of India vs Hardy Exploration and relying upon the five judges bench judgment in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., the Hon'ble Supreme Court of India in matter of the BGS SGS Soma JV vs NHPC Ltd. (Supra) held:

"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 the 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. "





4.10 On examination of the Sub-Clause 20.6 of GCC, this tribunal notes the expression in GCC i.e. "The place of arbitration shall be the neutral location specified in the Contract Data.....". The use of the word "Neutral Location" is referring to the physical location where the arbitration proceeding shall be conducted, which was decided by the parties to be "New Delhi" vide Procedural Order No.1 dated 24.12.2018. Further the 'Particular Conditions of the Contract' also states place of arbitration shall be "Delhi, India". Therefore, "New Delhi" as place of arbitration will become the "seat" of the arbitration in light of the law laid down by the Hon'ble Supreme Court of India in BGS Soma JV vs NHPC (supra) as there is no significant contrary indicia. It is also important to note that the finding of the BGS Soma JV vs. NHPC has been recently affirmed in M/s Inox Renewables Limited vs. Jayesh Electricals Ltd. 2021 SCC OnLine SC 448.

4.11 So far as judgment relied by the Respondent in matter of Makastu Impex (P) Ltd. vs Airvisual is concerned, the Hon'ble Supreme Court in the later judgement, i.e. M/s Inox Renewable (Supra) has after relying upon five judges bench follows the view taken in BGS Soma JV vs NHPC, which according to this tribunal holds the field.

4.12 Further the expression "arbitration with proceedings conducted in accordance with the laws of the Employer's country" does not indicate that the intention of parties was to conduct the arbitration as per the Jammu & Kashmir Arbitration Act, 1997. In fact, the expression denotes that the intention of the parties was to be governed by "law of the Employer's Country" i.e. Indian Arbitration & Conciliation Act, 1996. If the parties intended to be governed by the Jammu & Kashmir Arbitration Act, 1977, the same





could have been incorporated in Particular Conditions of the Contract.

4.13 The intention of the parties regarding the designation of seat was duly recorded at the time of the procedural hearing. The parties at the time of procedural hearing on 24.12.2018 recorded their consent to conduct the arbitration proceedings with seat at "New Delhi". The relevant extract of the Procedural Order No.1 dated 24.12.2018 is reproduced herein below:

"V. PLACE OF ARBITRATION AND LOCATION OF HEARINGS

The legal place (seat) of this arbitration shall be New Delhi."

4.14 The consent of the parties to conduct arbitration proceedings with seat at New Delhi made the Indian Arbitration & Conciliation Act, 1996 applicable to the proceedings. Therefore, it is not open to Respondent to contend that the intention of parties was to conduct the arbitration proceedings in accordance with the Jammu & Kashmir, Arbitration Act, 1997. The parties have also resolved to conduct the arbitration proceedings within the statutory guidelines of Section 29A of Indian Arbitration & Conciliation Act, 1996 which was also recorded in Order dated 15.04.2019. The relevant part of procedural order is reproduced herein below as:

"Present Arbitration Proceedings can be conducted within statutory time line as provided under Section 29A of Arbitration & Conciliation Act (as amended in 2015).

4.15 Tribunal also observes that the Claimant has filed the application under Section 29A of the Indian





Arbitration & Conciliation Act, 1996 for extending the timeline to conduct the arbitration proceedings before Hon'ble High Court of Delhi. The Respondent contested the said application on ground of lack of jurisdiction, meanwhile Hon'ble Supreme Court of India extended the timeline for conducting the arbitration proceedings under the Section 29A of Indian Arbitration & Conciliation Act, 1996 due to Covid-19 pandemic. The Respondent accepted the relief granted by the Apex Court under Indian Arbitration & Conciliation Act, 1996. The relief was granted by the Hon'ble Supreme Court of India to the proceedings under Arbitration & Conciliation Act, 1996, not Jammu & Kashmir Arbitration Act 1997. Therefore, the Indian Arbitration & Conciliation Act, 1996 will be applicable with seat at "New Delhi".

4.16 Since the tribunal has reached a finding to conduct the arbitration proceedings as per the Indian Arbitration & Conciliation Act, 1996 with seat at "New Delhi", the other contention of Claimant that Jammu & Kashmir Arbitration Act, 1997 is repealed does not merit adjudication."

10. A perusal of the above paragraphs shows that since the seat was Delhi, it was not open for the Petitioner to contend that the arbitration proceedings was to be conducted under the Act of 1997. It was also noted by the Ld. Arbitral Tribunal that the parties also resolved to conduct the arbitration proceedings within the statutory guidelines of Section 29A of the A&C Act which can be noted from Order dated 15.04.2019 passed by the Ld. Arbitral Tribunal. The Ld. Tribunal also noted that since an application under Section 29A of the A&C Act for extending the timeline to conduct the arbitration proceedings before this Court was filed by the Petitioner, it is not open for the Petitioner to now contend that A&C Act is not applicable.





11. This Court does not find any infirmity with the conclusion arrived at by the Ld. Arbitral Tribunal, that the place of arbitration is Delhi, there is no *contrary indicia* to show that the arbitration proceedings should be held at any other place other than Delhi and the filing of an application under Section 29A of the A & C Act before this Court precludes the Petitioner to now contend that conduct of arbitration proceedings under the A & C Act was invalid.

12. Even though the question as raised in the Court that the provisions of the A & C Act will not apply and the provisions of the Act of 1997 will apply was not raised before the Arbitrator and therefore, cannot be raised in the petition under Section 34 of the A & C Act, this Court in order to satisfy its conscience has gone through the provisions of the Act of 1997 to ascertain as to whether it is different from the provisions of the A & C Act or not.

13. This Court has gone through the Act of 1997, which is more or less *pari materia* with the A&C Act. Section 2(1)(e) and Section 20 of the Act of 1997 read as under:

“Section 2(1)(e) "Court" means the Principal Court of original jurisdiction in a district and includes 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, but does not include any Civil Court of a grade inferior to such principal Civil Court or any Court of Small Causes

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 parties, or for inspection of documents, goods or other property.”

14. In light of the above discussion, this Court deems it fit to advert to the law laid down by the Apex Court in BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234 has observed as under:-

“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





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.

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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.

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81. Most recently, in Brahmani River Pellets [Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 : 2019 SCC OnLine SC 929 at para 15] , this Court in a domestic arbitration considered Clause 18 — which was the arbitration agreement between the parties — and which stated that arbitration shall be under Indian Arbitration and Conciliation Act, 1996, and the venue of arbitration shall be Bhubaneswar. After citing several judgments of this Court and then referring to Indus Mobile Distribution [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] , the Court held : (Brahmani River Pellets case [Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 : 2019 SCC OnLine SC 929 at para 15] , SCC pp. 472-73, paras 18-19)

“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.

19. When the parties have agreed to the have the “venue” of arbitration at Bhubaneshwar, the Madras High Court erred





[Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127] in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order [Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127] is liable to be set aside.”

82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern





the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.

(emphasis supplied)

15. Further, the Apex Court in Arif Azim Co. Ltd. vs. Micromax Informatics FZE, **2024 SCC OnLine SC 3212** has observed as under:

“53. What can be discerned from the above decision of this Court in Enercon [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] is that for determining the seat of arbitration the closest connection test involves identifying the law with which the agreement to arbitrate has its closest and most real connection. Where the parties have expressly or impliedly provided the law governing the substantive contract, the arbitration agreement and the curial law, the law with which the agreement to arbitrate has its closest and most real connection would be the law of the seat of arbitration. Where the question before the courts involves ascertaining whether a particular place is the seat or venue of arbitration, the place with the closest connection with the law governing the arbitration agreement would be the seat of arbitration. Interestingly, although this Court deliberately did not address whether seat is to be determined based on the closest connection with the law governing the arbitration agreement or the curial law since in the facts of the said case both the law governing the contract and the curial law were the same, yet this Court approvingly referred to two other decisions in Roger Shashoua (1) v. Sharma [Roger Shashoua (1) v. Sharma, 2009 EWHC 957 (Comm)] and Sulamérica Cia Nacional de Seguros SA v. Enesa Engelharia SA [Sulamérica Cia Nacional de Seguros





SA v. Enesa Engelharia SA, (2013) 1 WLR 102 (CA)] wherein the seat of arbitration was construed on the basis of the curial law. The relevant observations read as under: (Enercon GmbH case [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , SCC pp. 46, 54 & 57-58, paras 105, 124, 131 & 133)

“105. We are also unable to accept the submission made by Dr Singhvi that in this case the venue should be understood as reference to place in the manner it finds mention in Section 20(1), as opposed to the manner it appears in Section 20(3) of the Indian Arbitration Act, 1996. Such a submission cannot be accepted since the parties have agreed that curial law would be the Indian Arbitration Act, 1996.

124. InShashoua [Roger Shashoua (1) v. Sharma, 2009 EWHC 957 (Comm)] , such an expression was understood as seat instead of venue, as the parties had agreed that the ICC Rules would apply to the arbitration proceedings. InShashoua [Roger Shashoua (1) v. Sharma, 2009 EWHC 957 (Comm)] , the ratio inNaviera [Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru, (1988) 1 Lloyd's Rep 116 (CA)] andBraesof Doune [Braes of Doune Wind Farm (Scotland) Ltd. v. Alfred McAlpine Business Services Ltd., 2008 Bus LR D 137 (QBD) : 2008 EWHC 426 (TCC)] has been followed. In that case, the Court was concerned with the construction of the shareholders' agreement between the parties, which provided that “the venue of the arbitration shall be London, United Kingdom”. It provided that the arbitration proceedings should be conducted in English in accordance with the ICC





Rules and that the governing law of the shareholders' agreement itself would be the law of India. The claimants made an application to the High Court in New Delhi seeking interim measures of protection under Section 9 of the Indian Arbitration Act, 1996, prior to the institution of arbitration proceedings. Following the commencement of the arbitration, the defendant and the joint venture company raised a challenge to the jurisdiction of the Arbitral Tribunal, which the panel heard as a preliminary issue. The Tribunal rejected the jurisdictional objection.

*131. Upon consideration of the entire matter, it was observed in *Sulamérica [Sulamérica Cia Nacional de Seguros SA v. Enesa Engelharia SA, (2013) 1 WLR 102 (CA)]* that “In these circumstances it is clear to me that the law with which the agreement to arbitrate has its closest and most real connection is the law of the seat of arbitration, namely, the law of England”. It was thereafter concluded by the High Court that the English law is the proper law of the agreement to arbitrate.*

133. We also do not find any merit in the submission of Dr Singhvi that the close and the most intimate connection test is wholly irrelevant in this case. It is true that the parties have specified all the three laws. But the Court in these proceedings is required to determine the seat of the arbitration, as the respondents have taken the plea that the term “venue” in the arbitration clause actually makes a reference to the “seat” of the arbitration.”

(emphasis in original and supplied)





54. Thus, with the decision of Enercon [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , the stage is now set to examine the decision of Roger Shashoua (1) [Roger Shashoua (1) v. Sharma, 2009 EWHC 957 (Comm)] to trace the evolution of the Shashoua Principle.

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(iv) Doctrine of forum non conveniens

71. The aforesaid may be looked at from one another angle, through the doctrine of forum non conveniens. The term “forum non conveniens” is a Latin term which means “an inconvenient forum” and provides that a court which otherwise might have jurisdiction may decline jurisdiction over a case if there is a more appropriate forum available to the parties, and is typically invoked in respect of cross-border subject-matters that are amenable to multiple concurrent jurisdictions. Depending upon the nature of the dispute, the subject-matter involves and the parties thereto, the courts by invoking this doctrine proceed to determine which one of the available forums may be more convenient and fair for entertaining and adjudicating the matter.”

16. It is further pertinent to note the observations of the Division Bench of this Court in Yassh Deep Builders LLP v. Sushil Kumar Singh, **2024 SCC OnLine Del 1547**, which has held 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.

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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.

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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.





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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.”

17. In view of the above judicial pronouncements and having already concluded that there is no *contrary indicia* in the Agreement to show that the A & C Act would have applicability to the disputes between the parties, coupled with the fact that no other grounds have been urged on behalf of the Petitioner, this Court is not inclined to entertain the present Petition. The Petitioner has not raised any arguments on the merits of the Award. It is pertinent to mention that the grounds on which the Award can be challenged in the Act of 1997 and the A & C Act are absolutely identical.

18. Accordingly, the Impugned Award is upheld, while the Petition is dismissed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

JANUARY 13, 2026

S. Zakir

