



2026:DHC:404



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

Date of decision: 13<sup>th</sup> JANUARY, 2026

IN THE MATTER OF:

+ **ARB.P. 1806/2025**

**JINDAL COKE LIMITED**

..... Petitioner

Through: Mr. Anirudh Krishan Gandhi, Ms.  
Megha Khandelwal, Mr. Abhishek  
Kurian and Mr. Hussain, Advocates

versus

**HIMADRI SPECIALITY CHEMICALS LIMITED .....Respondent**

Through: Ms. Anju Thomas, Mr. Amit Nag,  
Mr. Himanshu and Mr. Partha  
Banerjee, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "Arbitration Act"*) by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under a Memorandum of Understanding for Coal Tar dated 18.12.2024 (*hereinafter referred to as "Agreement"*).

2. Shorn of unnecessary details, the facts leading to the filing of the present petition are as under:

- a) The Petitioner is a company engaged in manufacturing coke and coke products with facilities in Jajpur and Odisha. Whereas, the Respondent is a company involved in manufacturing of carbon



2026:DHC:404



materials and chemicals. The parties entered into an Agreement whereby the Respondent agreed to purchase Coal Tar from the Petitioner's Coke Oven Plant located at Jajpur, Odisha.

- b) It is the case of the Petitioner that under the Agreement, the Respondent was contractually obligated to lift 1,200 metric tonnes ( $\pm$  20% at the Seller's discretion) of Crude Coal Tar per month from Jajpur for the period from 01.01.2025 to 30.12.2025, with pricing determined by a specific formula. It is the case of the Petitioner that the Respondent failed to issue the requisite purchase order as stipulated in the Agreement. It is the case of the Petitioner that the Respondent, for the first time on 31.01.2025, disputed the binding nature of the Agreement, contending that it was executed only on the mutual understanding that a definitive long-term purchase and sale Agreement would be subsequently executed. The Petitioner categorically refuted these assertions, emphasizing that the Agreement constitutes a valid, binding, and enforceable contract expressly provided in Clause 19 which reads as under:-

***“19. Entire Agreement:***

*This Agreement contains the entire agreement between the Buyer and the Seller with respect to the subject matter herein and supersedes all previous writings, understandings, negotiations, representations or agreements with respect thereto, except where provided otherwise.”*

- c) Clause 14 of the Agreement, which is an arbitration clause, reads as under:

***“14. Arbitration***



*Both parties agree to use their best efforts to amicably resolve any claims, controversies, and disputes arising out of this contract.*

*Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or breach thereof, which cannot be resolved through negotiations within a period of 45 days of the notification of such claims, disputes and controversies shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996 to a sole arbitrator as per the mutual decision of the parties. The award rendered by the arbitrator shall be final and binding upon both the parties concerned. Language of the arbitration would be English and venue of Arbitration will be New Delhi.”*

- d) It is pertinent to note that Clause 13 of the Agreement is the Governing law which reads as under:

***“13. Governing Law***

*This Agreement shall be governed by and construed in accordance with Indian Law, and the courts at Jaipur shall have the exclusive jurisdiction to adjudicate upon or otherwise deal with any matter under or relating to this Agreement.”*

- e) The Petitioner, thereafter, issued various demand notices to the Respondent and the last of the demand notice is dated 03.06.2025 seeking cumulative payment of Rs.1,72,29,838/-. The Respondent replied to the said demand notice on 10.06.2025, stating that there is no definitive long-term Agreement. On 08.07.2025, the Petitioner sent a notice to the Respondent for negotiation in terms of Clause 14 of the



2026:DHC:404



Agreement. The Respondent replied to the said notice on 31.07.2025 denying the enforceability of the Agreement and alleging that it was never accepted or acted upon. The Petitioner was also informed by the Respondent regarding a Civil Suit filed by the Respondent in the City Civil Court of Calcutta seeking a declaration that the Agreement was not executed.

- f) The Petitioner has, thereafter, approached this Court by filing the present petition seeking appointment of an Arbitrator to adjudicate upon the disputes between the parties under the Agreement.
3. Notice was issued in the present petition on 31.10.2025.
4. The principal contention of the learned Counsel for the Respondent is that Clause 13 of the Agreement states that the courts at Jajpur shall have the exclusive jurisdiction to adjudicate upon disputes and, therefore, this Court has no jurisdiction to entertain the present petition. Reliance has been placed by the Respondent on a Judgment passed by a Co-ordinate Bench of this Court in Cravants Media (P) Ltd. v. Jharkhand State Co. Operative Milk Producers Federation Ltd., **2021 SCC OnLine Del 5350**.
5. It is further stated by the learned Counsel for the Respondent that the Respondent has filed a Suit in Jajpur and, therefore, this Court should not entertain the present petition.
6. Heard learned Counsel appearing for the Parties and perused the material on record.
7. A perusal of Clause 14 of the Agreement, which is an arbitration clause, clearly indicates that the parties have decided that the venue of the arbitration shall be at New Delhi. However, Clause 13 of the Agreement, which is a Governing Clause, gives the courts at Jajpur the exclusive



2026:DHC:404



jurisdiction to adjudicate upon the disputes.

8. The question as to where will be the seat of the arbitration in case of inconsistency between the jurisdiction clause and the arbitration clause is now well settled. A Division Bench of this Court in Yassh Deep Builders LLP v. Sushil Kumar Singh, **2024 SCC OnLine Del 1547** confronted with the similar situation as in the present case. It would be apposite to reproduce the jurisdiction clause and the arbitration clause involved in the said case and the same reads as under:

*“12. It would be expedient to refer to the respective clauses in the collaboration agreement dated 15-5-2018 entered into between appellant and Respondent 1. The respective Clauses 19 and 23 read as under:*

***“19.Jurisdiction.—***

*19.1. All matters concerning these presents and the development of the scheduled property shall be subject to the jurisdiction of courts at Gurugram/Haryana alone.*

***23.Arbitration.—***

*23.1. In the event any 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, such dispute shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 to be decided by a sole arbitrator appointed mutually by the parties hereto. In case of any difference between the parties on appointment of a sole arbitrator, the Arbitration Tribunal shall consist of*



*three arbitrators. The second party shall appoint one arbitrator and the first party shall appoint the second arbitrator. The third arbitrator shall be appointed by the two selected arbitrators failing which such appointment shall be done by the Arbitration Council of India, New Delhi. The decision taken by the majority of arbitrators shall be final and binding on the parties hereto. **The venue of the arbitration shall be at Delhi, India.***

*23.1.1. All proceedings in any such arbitration shall be conducted in English.*

*23.1.2. Each party agrees to bear its own costs of arbitration.*

*23.1.3. The arbitration award made by the arbitrators shall be final and binding on the parties and the parties agree to be bound thereby and to act accordingly.*

*23.1.4. The award shall be in writing.*

*23.1.5. The provisions of this clause shall survive the termination of this agreement.”*

(emphasis supplied)

9. The Division Bench interpreted the aforesaid clauses in Yassh Deep Builders LLP (supra) and held as under:

*“43. Coming back to the facts of the present case, reference has been made by the parties to two different clauses of the collaboration agreement. One is Clause 19 (jurisdiction) which stipulates that all matters concerning the agreement and the development of the scheduled property shall be subject to the jurisdiction of courts at Gurugram, Haryana alone. The other being Clause 23 (arbitration) stipulating that “in the event any 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, such dispute shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 to be decided by a sole arbitrator appointed mutually by the parties hereto. In case of any difference between the parties on appointment of a sole arbitrator, the Arbitration Tribunal shall consist of three arbitrators. The second party shall appoint one arbitrator and the first party shall appoint the second arbitrator. The third arbitrator shall be appointed by the two selected arbitrators failing which such appointment shall be done by the Arbitration Council of India, New Delhi. The decision taken by the majority of arbitrators shall be final and binding on the parties hereto. The venue of the arbitration shall be at Delhi, India.*

*44. Clause 23 is the arbitration clause and it is distinct from Clause 19. The arbitration contract is contained in Clause 23 and it is a complete contract between the parties relating to arbitration. When Clause 23 is read, it clearly establishes that the parties agreed that the venue of the entire arbitration proceedings would be Delhi, India. Even in case of a disagreement between the two selected arbitrators, the appointment of the third arbitrator is to be done by the Arbitration Council of India, New Delhi, Clause 23.1.5, which is under the main Clause 23 pertaining to arbitration stipulates that the provisions of the clause shall survive the termination of the agreement. This clearly shows that Clause 23 pertaining to arbitration is distinct from the collaboration agreement and is to survive even the termination of the agreement.*

*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.*

*46. On the other hand Clause 19 provides that all matters concerning these presents and the development of the scheduled property shall be subject to the jurisdiction of courts at Gurugram, Haryana.*

*47. Arbitration is stipulated by Clause 23 which is distinct from Clause 19 providing for jurisdiction. Clause 19 being a general provision would be applicable to proceedings that may take place, other than arbitration proceedings and would cover all matters that are not subject-matter of arbitration.*

*48. Accordingly, the courts at Delhi would have the exclusive jurisdiction to entertain all proceedings covered by Clause 23 i.e. the arbitration clause.*

10. In another judgment, a Division Bench of Allahabad High Court in Samiah International Builders Ltd. vs. Green View-II Sahkari Awas Samiti Ltd., **2025:AHC:70118-DB** again confronted with the similar situation as in the present case. It would be apposite to reproduce the jurisdiction clause



2026:DHC:404



and the arbitration clause involved in the said case and the same reads as under:

*“13. The amended contract agreement dated 11.11.2013 under Section X pertaining to settlement of disputes and arbitration, inter alia, provided as under:*

*“ix. It is also a term of the contract that the arbitration board shall be deemed to have entered on the reference on the date it issues to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be Uttar Pradesh and language of arbitration shall be English.”*

*14. In the same agreement, Section XII pertaining to law governing the contract reads as under:*

*“The Indian Laws shall govern this contract for the time being in force. All disputes arising out of or any way connected to this agreement shall be deemed to have arisen in Noida and the courts of Gautam Budh Nagar/ High court of Allahabad shall have jurisdiction to determine the same.”*

11. After quoting the aforesaid two clauses, the Division Bench of Allahabad High Court in the aforesaid judgment has observed as under:

*“15. The two clauses quoted hereinabove at the relevant time clearly provided that the venue of arbitration shall be Uttar Pradesh and that the Courts of Gautam Buddha Nagar/High Court of Allahabad shall have jurisdiction to determine all disputes arising out of or any way connected to the agreement. It would be seen from the clause pertaining to governing laws and jurisdiction that the same did not make any reference to arbitration proceedings.*



2026:DHC:404



16. On account of the subsequent events, as noticed hereinbefore, a novation agreement dated 15.03.2020 was entered into between the appellant and the respondent. The said novation agreement, inter alia, contained clauses pertaining to effect of the novation agreement and governing law and jurisdiction as under:

***“Effect of this Novation Agreement***

*Except so far as amended by Clause 2 of this Agreement and save to the extent it is inconsistent herewith, the Business Agreements remain in full force and every reference therein to the Business Agreements shall be construed as a reference to such Business Agreements as novated and amended by this Novation Agreement. This Novation Agreement is supplemental to the Business Agreements.”*

***“Governing Law and Jurisdiction***

*This Novation Agreement shall be governed by, and construed in accordance with laws of India. The courts of New Delhi shall have the exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Novation Agreement.”*

17. A perusal of above clauses of the novation agreement would reveal that while the clause governing the law and jurisdiction, which in the agreement dated 11.11.2013 was Section XII, had a change, whereby instead of Courts at Gautam Buddha Nagar/High Court at Allahabad, the same was substituted with the Courts at New Delhi, the clause pertaining to the ‘settlement of disputes and



*arbitration' containing venue of arbitration was not altered. Once the venue of arbitration, as contained in the amended construction agreement dated 11.11.2013 remained unaltered, in view of the judgment of Hon'ble Supreme Court in BGS SGS Soma JV Vs. NHPC Ltd. : (2020) 4 SCC 234 the arbitral venue, as identified in the agreement, would be deemed to be the arbitral seat, in absence of any other identified arbitral seat.*

*18. Once the arbitral seat stands fixed in the State of Uttar Pradesh, the law laid down by Hon'ble Supreme Court pertaining to exclusive jurisdiction for the purpose of regulating arbitral proceedings arising out of the agreement between the parties, as laid down in the case of Indus Mobile Distribution Private Limited (supra) would kick in, which reads as under:*

*“20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction – that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement*



*between the parties.”*

*19. The issue pertaining to clauses providing for exclusive jurisdiction and a clause designating a different seat/venue of arbitration has been dealt with by various Courts. In Cable Corporation of India Ltd. Vs. Jay Pee Sports International Ltd. : 2018 SCC OnLine Del 10340, wherein the dispute resolution and arbitration clause stipulated the venue of arbitration as New Delhi but the governing laws and jurisdiction clause stipulated that District Court of Gautam Buddha Nagar and High Court of Judicature at Allahabad shall have exclusive jurisdiction over all matters arising out of or relating to the said contract. It was laid down, referring to the decision in the case of Indus Mobile Distribution Private Limited (supra), that the clause pertaining to the governing laws and jurisdiction did not deal with the arbitration clause and as the arbitration proceeding were to be held in Delhi, the Court in Delhi would exercise jurisdiction over the arbitration process and the seat of arbitration would be at Delhi and clause pertaining to governing laws and jurisdiction, being a general provision, would be applicable to proceedings that may take place other than arbitration proceedings.*

*20. Recently, in the case of Yassh Deep Builders LLP Vs. Sushil Kumar Singh (supra), a Division Bench of Delhi High Court in similar circumstances laid down as under:*

*“57. Even, if the objection of jurisdiction could be raised before the appellate court, since the venue has been held to be the juridical seat of arbitration in terms of the arbitration agreement Clause 23, the Courts at Delhi had the territorial jurisdiction to entertain the petition under Section 9 of the Arbitration Act.*



*Clause 23 expressly designates Delhi at the venue for arbitration and there is no designation of an alternative place as the “seat” the inexorable conclusion is that the stated venue i.e. Delhi is the juridical seat of the arbitral proceedings. Clause 19 would be relevant only if by an agreement both parties decided not to settle their disputes through arbitration but by approaching a Court of law, in which case the exclusive jurisdiction would be of the Courts at Gurugram, Haryana.”*

*21. In view of the above factual and legal position, it cannot be said that in relation to the arbitral proceedings including proceedings under Section 9, 11 and 34, the jurisdiction would lie before the Courts at New Delhi and in those circumstances, the impugned determination made by the Commercial Court cannot be sustained.”*

12. The Apex Court in Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 has observed as under:

*“10. As per Section 2(2) of the Act, arbitrations which take place in India are governed by Part I of the Act. The “court” which will have jurisdiction to decide the questions forming the subject-matter of arbitration is the “court” as defined by Section 2(1)(e) of the Act which reads as under:*

*“2. Definitions.—(1) In this Part, unless the context otherwise requires,—*

*\*\*\**

*(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 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 decree or courts subordinate to that High Court.”*

**11.** *As per Section 2(2) of the Act, Part I would apply to all arbitration where the place of arbitration is in India. Section 2(1)(e) of the Act defines “court” with reference to Part I of the Act and would govern the place of arbitration.*

**12.** *In BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , the issue that arose before the Constitution Bench was as to whether in international commercial arbitrations whose juridical or legal seat of arbitration was outside India whether the provisions of Part I of the Act would be applicable for grant of relief as held in Bhatia International v. Bulk Trading S.A. [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] The Constitution Bench in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] held that : (SCC p. 553)*

*“if the legal or juridical seat of arbitration is outside India, then Part I of the Arbitration and Conciliation*



*Act, 1996 shall be inapplicable to such arbitrations; and even in case a clause in the arbitration agreement purports to apply Part I of the 1996 Act to an arbitration where the juridical seat of arbitration is outside India, Part I shall be inapplicable to the extent inconsistent with the arbitration law of the seat of arbitration.”*

**13. In BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810]**, the Court highlighted the distinction between the “seat” and “venue” in the context of Section 20(3) of the Act. Section 20(3) of the Act allows the parties to hold meetings, proceedings and hearings at any place agreed by the parties. In BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810], the Court has held that in an international commercial arbitration “seated” in India, parties may by mutual agreement, hold arbitral proceedings outside India. This, however, would not have the effect of changing the seat of arbitration which would continue to remain in India. The Court then envisages a situation where the arbitration agreement designates a foreign seat and also selects the Arbitration Act, 1996 as the law applicable to the conduct of arbitration proceedings and in such circumstances, hearing of the arbitration conducted at the venue fixed by the parties would not have the effect of changing the seat of arbitration which would remain in India. In para 100, the Supreme Court held as under : (SCC pp. 607-08)

*“100. True, that in an international commercial arbitration, having a seat in India, hearings may be necessitated outside India. In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but it would not have the effect of changing the seat of arbitration which*



would remain in India. The legal position in this regard is summed up by Redfern and Hunter, *The Law and Practice of International Commercial Arbitration* (1986) at p. 69 in the following passage under the heading “The Place of Arbitration”:

\*\*\*

*This, in our view, is the correct depiction of the practical considerations and the distinction between “seat” [Sections 20(1) and 20(2)] and “venue” [Section 20(3)]. We may point out here that the distinction between “seat” and “venue” would be quite crucial in the event, the arbitration agreement designates a foreign country as the “seat”/“place” of the arbitration and also selects the Arbitration Act, 1996 as the curial law/law governing the arbitration proceedings. It would be a matter of construction of the individual agreement to decide whether:*

*(i) the designated foreign “seat” would be read as in fact only providing for a “venue”/“place” where the hearings would be held, in view of the choice of the Arbitration Act, 1996 as being the curial law, OR*

*(ii) the specific designation of a foreign seat, necessarily carrying with it the choice of that country's arbitration/curial law, would prevail over and subsume the conflicting selection choice by the parties of the Arbitration Act, 1996.*

*Only if the agreement of the parties is construed to provide for the “seat”/“place” of arbitration being in India — would Part I of the Arbitration Act, 1996 be applicable. If the agreement is held to provide for a “seat”/“place” outside India, Part I would be inapplicable to the extent inconsistent with the arbitration law of the seat, even if the agreement purports to provide that the Arbitration Act, 1996 shall govern the arbitration proceedings.”*



(emphasis in original)

**14.** As pointed out earlier, Section 2(1)(e) of the Act defines the “court” with reference to the term “subject-matter of the suit”. As per Section 2(1)(e) of the Act, if the “subject-matter of the suit” is situated within the arbitral jurisdiction of two or more courts, the parties can agree to confine the jurisdiction in one of the competent courts. In para 96 of BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , the Supreme Court held that the term “subject-matter” in Section 2(1)(e) of the Act is to identify the court having supervisory control over the arbitral proceedings. The Supreme Court held that the provisions in Section 2(1)(e) of the Act have to be read in conjunction with Section 20 of the Act which give recognition to the autonomy of the parties as to “place of arbitration”. The observations in para 96 in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] pertaining to arbitrations governed by Part I of the Act i.e. where the “place of arbitration” in India read as under : (SCC pp. 605-06)

**“96. ... We are of the opinion, the term “subject-matter of the arbitration” cannot be confused with “subject-matter of the suit”. The term “subject-matter” in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned**



*counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located.”*

*(emphasis in original)*

*The above observations in para 96 in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] are in the context that on many occasions, agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. In such circumstances, it was*



*observed that the two courts would have jurisdiction that is the court within whose jurisdiction “subject-matter” of the suit is situated and the court within the jurisdiction of which the dispute resolution i.e. the “venue” of arbitration is located.*

*15. As per Section 20 of the Act, parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court which has jurisdiction out of two or more competent courts having jurisdiction. This has been made clear in the three-Judge Bench decision in Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157]*

*15.1. In the said case, respondent Indian Oil Corporation Ltd. appointed M/s Swastik Gases (P) Ltd. situated at Jaipur, Rajasthan as their consignment agent. The dispute arose between the parties as huge quantity of stock of lubricants could not be sold by the applicant and they could not be resolved amicably. In the said matter, Clause 18 of the agreement between the parties provided that the agreement shall be subject to the jurisdiction of the courts at Kolkata.*

*15.2. The appellant Swastik invoked Clause 18 — arbitration clause and filed application under Section 11(6) of the Act before the Rajasthan High Court for appointment of arbitrator. The respondent contested the application made by Swastik inter alia by raising the plea of lack of territorial jurisdiction of the Rajasthan High Court in the matter. The plea of Indian Oil Corporation was that the agreement has been made subject to jurisdiction of the courts at Kolkata and the Rajasthan High Court lacks the territorial*



*jurisdiction in dealing with the application under Section 11(6) of the Act.*

**15.3.** *The Designated Judge held [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., 2011 SCC OnLine Raj 2758 : (2012) 3 RLW 2241] that the Rajasthan High Court did not have territorial jurisdiction to entertain the application under Section 11(6) of the Act and gave liberty to Swastik to file the arbitration application in the Calcutta High Court which order came to be challenged before the Supreme Court.*

**15.4.** *Pointing out that the words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have not been used in the agreement and use of such words is not decisive and non-use of such words does not make any material difference as to the intention of the parties by having Clause 18 of the agreement that the courts at Kolkata shall have the jurisdiction, the Supreme Court held as under : [Swastik Gases (P) Ltd. case [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , SCC pp. 47-48, paras 31-33]*

*“31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What the appellant says is that part of cause of action has also arisen in Jaipur and, therefore, the Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of Clause 18 of the agreement have*



*agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of Clause 18 of the agreement, the jurisdiction of the Chief Justice of the Rajasthan High Court has been excluded?*

*32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement— is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.*



33. The above view finds support from the decisions of this Court in *Hakam Singh v. Gammon (India) Ltd.* [*Hakam Singh v. Gammon (India) Ltd.*, (1971) 1 SCC 286] , *A.B.C. Laminart (P) Ltd. v. A.P. Agencies* [*A.B.C. Laminart (P) Ltd. v. A.P. Agencies*, (1989) 2 SCC 163] , *R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd.* [*R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd.*, (1993) 2 SCC 130] , *Angile Insulations v. Davy Ashmore (India) Ltd.* [*Angile Insulations v. Davy Ashmore (India) Ltd.*, (1995) 4 SCC 153] , *Shriram City Union Finance Corpn. Ltd. v. Rama Mishra* [*Shriram City Union Finance Corpn. Ltd. v. Rama Mishra*, (2002) 9 SCC 613] , *Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd.* [*Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd.*, (2004) 4 SCC 671] and *Balaji Coke Industry (P) Ltd. v. Maa Bhagwati Coke Gujarat (P) Ltd.* [*Balaji Coke Industry (P) Ltd. v. Maa Bhagwati Coke Gujarat (P) Ltd.*, (2009) 9 SCC 403 : (2009) 3 SCC (Civ) 770] .”

(emphasis supplied)

16. In *Swastik* [*Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , the Supreme Court held that clause like Clause 18 of the agreement will not be hit by Section 23 of the Contract Act and it is not forbidden by law nor it is against public policy. It was so held that as per Section 20 of the Act, parties are free to choose the place of arbitration. This “party autonomy” has to be construed in the context of choosing a court out of two or more courts having competent jurisdiction under Section 2(1)(e) of the Act.

17. The interplay between “seat” and “place of arbitration” came up for consideration in *Indus Mobile Distribution (P) Ltd. v. Datawind Innovations*



*(P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] After referring to Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] and Reliance Industries Ltd. v. Union of India [Reliance Industries Ltd. v. Union of India, (2014) 7 SCC 603 : (2014) 3 SCC (Civ) 737] and also amendment to the Act pursuant to the Law Commission Report, speaking for the Bench Nariman, J. held as under : [Indus Mobile Distribution (P) Ltd. case [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] , SCC pp. 692-93, paras 18-20]*

*“18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] judgment in no uncertain terms has referred to “place” as “juridical seat” for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word “place” is used, refers to “juridical seat”, whereas in Section 20(3), the word “place” is equivalent to “venue”. This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.*

*19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes*



*it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.*

*20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. [B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744 : (2016) 158 DRJ 391] is set aside.”*

*(emphasis supplied)*



***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 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 have the “venue” of arbitration at Bhubaneswar, 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.***

***20. In the result, the impugned order of the Madras High Court in Kamchi Industries Ltd. v. Brahmin River Pellets Ltd. [Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127] dated 2-11-2018 is set aside and this appeal is allowed. The parties are at liberty to approach the Orissa High Court seeking for appointment of the arbitrator.***

(emphasis supplied)

13. In view of the aforesaid law laid down by the Apex Court and the



2026:DHC:404



Division Bench of the High Court of Judicature at Allahabad, with which this Court is also in agreement, this Court is of the opinion that this Court has the jurisdiction to entertain the present petition.

14. In view of the fact that disputes have arisen between the parties and the Agreement contains an arbitration clause, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

15. Accordingly, Ms. V. Mohana, Senior Advocate (Mob. No: 9868110575) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

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

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

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

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

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

**SUBRAMONIUM PRASAD, J**

**JANUARY 13, 2026**

*S. Zakir*