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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on: 14.08.2023

+ O.M.P.(MISC.)(COMM.) 161/2020 and IA No. 9377/2020

RELIANCE INFRASTRUCTURE LIMITED Petitioner
Through: Mr. Nikhil Chawla, Mr. Hasan
Murtaza and Mr. Aditya Panda, Advs.
versus

MADHYANCHAL VIDYUT VITRAN
NIGAM LIMITED Respondent
Through: Mr. Anurag Kishore and Ms. Ritika
Srivavastava, Advs.

**CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA**

JUDGMENT

SACHIN DATTA, J.

1. The present petition, under Section 29A (4) and (5) of the Arbitration and Conciliation Act, 1996 (the 'Act'), has been filed seeking extension of time for completion of arbitral proceedings and making of the arbitral award.
2. The respondent in its reply has raised two objections to the present petition. Firstly, it is contended that this court does not have the territorial jurisdiction to entertain the present petition. Secondly, it is contended the present petition is liable to be dismissed on the ground of delay and laches.



FACTUAL BACKGROUND

3. The respondent invited bids for Rural Electrification works in Pilibhit and Hardoi Districts, Uttar Pradesh under Government of India Scheme known as Rajiv Gandhi Gramin Vidyutikaran Yojana, vide tender issued on 02.04.2005. The petitioner submitted its proposals/bids for the said works on 10.05.2005 and 11.05.2005.

4. The applicable General Conditions of Contract (“GCC”) for the said works contemplates resolution of disputes as under:

“8.0 JURISDICTION OF CONTRACT

8.1 The laws applicable to the Contract shall be the laws in force in India. The Court of Delhi shall have exclusive jurisdiction in all matters arising under this Contract.”

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48.0 ARBITRATION

48.1 All disputes or differences in respect of which the decision, if any, of the Engineer has not become final or binding as aforesaid shall be settled by arbitration in the manner hereinafter provided.

48.1.1 The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and the Employer and the third to be appointed as an umpire by both the arbitrators in accordance with the Indian Arbitration Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration Clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.

*48.1.2 The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof. **The venue of arbitration shall be New Delhi.***

48.2 The decision of the majority of the arbitrators shall be final and binding upon the parties. The arbitrators may, from time to time with the consent of the parties enlarge the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.

48.3 The arbitrator shall have full powers to review and/or revise any



decision, opinion direction, certification or valuation of the Engineer in accordance with the arbitrators to the evidence or arguments put before the Engineer for the purpose of obtaining the said decision.

48.4 No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.

48.5 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the Contract.”

5. The petitioner was declared as a successful bidder by the respondent and consequently, the two Contracts were awarded to the petitioner. The Letter of Awards (“LOA”) dated 01.08.2005 that came to be issued, contained the following stipulation:

“21.0 SETTLEMENT OR DISPUTES AND ARBITRATION:

21.1 All the difference or disputes arising out of this Contract shall be settled through the process of “Settlement of Disputes” and “Arbitration” as per clause 49.0 Section-GCC. Conditions of Contract Vol-III of the bidding Documents/The provision of Arbitration & Reconciliation Act 1996 as amended from time to time, shall apply

21.2 The local court of Lucknow, high court of Allahabad & Supreme Court of Delhi along shall have the exclusive jurisdiction in all matters arising out of this contract.

21.3 This order is further subjected to the following, which are an integral part of the order.

- a) Specific Condition of the Contract.*
- b) Technical Specification.*
- c) General Terms of the Contract Form ‘A’*
- d) General Terms of the Contract Form ‘B’*
- e) General Conditions of Contract ‘GCC’*
- g) Quality Assurance Plan*
- h) Special Condition of Contract ‘SCC’.*

In case of any discrepancies between above document as mentioned in clause 1.1 of the order the version of MVVNL shall be final.”



6. The disputes between the parties have arisen in context of the aforesaid contracts. The petitioner invoked arbitration vide notice dated 31.01.2017. An Arbitral Tribunal consisting of three Arbitrators was constituted on 04.08.2017 to adjudicate the disputes between the parties; however, the mandate of the same was terminated with mutual consent of the parties. Subsequently, a Sole Arbitrator was mutually appointed by the parties on 13.08.2018 to adjudicate the disputes. The present petition has been filed seeking extension of time for making of the arbitral award by the learned Sole Arbitrator.

SUBMISSIONS ON BEHALF OF THE PETITIONER

7. Learned counsel for the petitioner contends that this Court has territorial jurisdiction to decide the present petition since the seat of the arbitration is Delhi. In support of the said contention the petitioner has urged as under:

- (i) It is submitted that in terms of Clause 21.3 of the LOA, the same has been specifically made “subjected to” the GCC. It is submitted that Clause 8 of the GCC conferring “Courts of Delhi” with exclusive jurisdiction will prevail over Clause 21.2 of the GCC conferring “local Courts at Lucknow” with exclusive jurisdiction.
- (ii) The phrase ‘Supreme Court of Delhi’ in Clause 21.2 of the LOA should be construed/read as ‘High Court of Delhi’ in as much as Clause 21.2 of the LOA is governed by Clause 8 of the GCC. It is submitted that this is warranted for the purpose of a harmonious reading of the Contract. It is further submitted that any ambiguity



should be resolved by applying the principles of *Contra Proferentem*.

- (iii) The LOA does not prescribe any seat of Arbitration; the only Clause from which the seat of Arbitration can be deduced is Clause 48.1.2 of the GCC;
- (iv) It is contended that, in view of the settled position of law, since under Clause 48.1.2 of the GCC the seat/venue of the arbitration is “New Delhi”, the courts situated at the seat/venue of the arbitration will have supervisory jurisdiction over the arbitral proceedings. It is submitted that even if the Agreement contains a separate exclusive jurisdiction clause, the seat Court would exclude the jurisdiction of the Court envisioned in the exclusive jurisdiction clause.
- (v) To support the aforesaid contentions, reliance has been placed on the judgments in *BGS SGS SOMA v. NHPC Ltd.*¹; *Ion Exchange v. Panasonic Electric Works Company Limited*²; *Ramandeep Singh Taneja v. Crown Realtech Private Limited*³; *Cinepolis India v. Celebration City Project*⁴; *NJ Construction v. Ayursundra Health Care Pvt. Ltd*⁵; *Global Credit Capital v. Krish Realty Nirman Pvt Ltd.*⁶; *Mayank Agrawal v. Jaiprakash Associates*⁷; *Henna Industries v. RPS Infrastructure*⁸;

¹ (2020) 4 SCC 234

² 2014 SCC Online Del 973

³ 2017 SCC Online Del 11966

⁴ 2020 SCC Online Del 301

⁵ 2018 SCC Online Del 7009

⁶ 2018 SCC Online Del 9178

⁷ 2021 SCC Online Del 4445

⁸ 2021 SCC Online Del 4282



*Commissioner of Central Excise v. Saurashtra Chemicals*⁹; and
Bank of India v. K. Mohandas.¹⁰

8. On the merits of the petition, it is contended by learned counsel for the petitioner that the learned Sole Arbitrator appointed by the parties entered reference on 13.08.2018 and that the time period in terms of Section 29A of the Act would thus commence on 13.08.2018. It is submitted that the arbitral proceedings are covered by Section 29A of the Act (as amended by Act No. 33 of 2019) and as per the said Section, the mandate of the Arbitral Tribunal expired on 13.02.2020. It is submitted that the respondent's argument that the Arbitral Tribunal's mandate expired on 03.02.2019 (since the earlier Arbitral Tribunal was constituted between the parties on 04.08.2017) is an afterthought as the respondent had agreed for the constitution of a new Tribunal on 13.08.2018, and did not raise any objections till 27.01.2020. It is submitted that even the learned Arbitrator vide its order dated 20.02.2020 has held that the mandate expired on 20.02.2020, which finding is binding on the respondent. It is therefore submitted that there is no delay in filing the present petition. It is also submitted that even otherwise there is sufficient reason to allow the present petition since the delay in completion of arbitration proceedings is on account of the respondent.

SUBMISSIONS ON BEHLF OF THE RESPONDENT

9. Learned counsel for the respondent contends that this Court does not have territorial jurisdiction to decide the present petition since the seat of

⁹ (2007) 10 SCC 352

¹⁰ (2009) 5 SCC 313



arbitration is Lucknow/Uttar Pradesh. In support of the said contention the respondent has submitted as under:

- (i) It is submitted that no part of cause of action has arisen within the jurisdiction of this Court. Further, both the parties have their offices/ head offices in the State of Uttar Pradesh, the contract was also performed within the area of State of Uttar Pradesh. It is submitted that the parties cannot confer jurisdiction by consent, if there is none.
- (ii) “New Delhi” is only a neutral venue of arbitration as per clause 48.1.2 of the GCC and not the seat of arbitration.
- (iii) Under Clause 21.2 of the LOA, the “local court of Lucknow” will have exclusive jurisdiction in all matters arising out of the contract, including the present petition. It is submitted that although Clause 8.1 of the GCC stipulates that “Courts of Delhi” will have exclusive jurisdiction, the same was superseded by the LOA which provided that the “local Courts at Lucknow” will have exclusive jurisdiction.
- (iv) It is submitted that reference to “Supreme Court of Delhi” in Clause 21.2 of the LOA cannot in manner be construed to mean the “High Court of Delhi”. In any case, the said argument has not been taken by the petitioner in the petition.
- (v) To support the aforesaid contentions, reliance has been placed on the judgments in *Emkay Global Financial Services Ltd. v. Girdhar Sondhi*,¹¹; *Virgo Softech Ltd. v.. National Institute of*

¹¹ AIR 2018 SC 3894: (2018) 9 SCC49



*Electronic and information Technology*¹²; *CVS Insurance And Investments v. Vipul It Infrasoft Pvt. Ltd*¹³; *M/S. Hamdard Laboratories (India) v. M/S. Sterling Electro*¹⁴; and *Enercon (India) Ltd & Ors. v. Enercon Gmbh and Anr.*¹⁵

10. On the merits of the petition, it is submitted by learned counsel for the respondent that appointment/ substitution of the learned Sole Arbitrator was in continuation of the arbitration proceedings which commenced w.e.f. 04.08.2017. It is submitted that the time period for making an award by learned Sole Arbitrator had expired on 03.02.2019 (i.e. 18 months w.e.f. 04.08.2017) and the present application has been moved on 06.03.2020 i.e. after substantial delay. It is also submitted that the amendments made to Section 29A of the Act, are prospective in nature and cannot be applied retrospectively.

ANALYSIS AND FINDING

11. On the contentions raised, two issues arise for consideration:
- (i) Whether this court has territorial jurisdiction to entertain the present petition?
 - (ii) Whether in the facts and circumstances, the present petition is suffers from delay and laches, and whether there is sufficient cause for allowing the present petition?

Re: Issue (i)

12. Elaborate arguments were addressed by learned counsel for the parties on the issue of territorial jurisdiction of this court to entertain the present

¹² 2018 SCC OnLine Del 12722 : 2018:DHC:7581

¹³ (2018) 167 DRJ 87 : 2017:DHC:7670

¹⁴ 2020:DHC:2323

¹⁵ (2014) 5 SCC 1



petition. This Court will necessarily have the territorial jurisdiction to entertain the present petition if Delhi is found to be the seat of arbitration in terms of the Contract. For this purpose, Clause 48 of the GCC and Clause 21.2 of the LOA, will have to be construed.

13. In **BGS SOMA** (supra), the Supreme Court has laid down the tests/parameters for determining the “seat” of Arbitration. In that case, the arbitration agreement between the parties specified that arbitration proceedings shall be held at Faridabad/Delhi. There was no separate exclusive jurisdiction clause. The Supreme Court held that even if a part of the cause of action had arisen at Faridabad, the same would not be relevant once the “seat” was chosen, which would then amount to an exclusive jurisdiction clause so far as courts of the “seat” are concerned. The court held that since the proceedings were held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, the same would lead to the conclusion that both parties have chosen New Delhi as the “seat” of arbitration under Section 20(1) of the Arbitration Act. The Supreme Court laid down “test for determination of seat” as under:

“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]

14. In *ION Exchange* (supra), a Division Bench of this court, on a reference made by the learned Single Judge in a petition under Section 9 of the Act, held that the Court at the seat or place of arbitration, which has supervisory jurisdiction of the arbitration proceedings, could entertain the said petition, irrespective of whether the cause of action arose elsewhere and/or the respondent resides elsewhere.

15. In *My Preferred Transformation And Hospitality* (supra), the “arbitration agreement” between the parties specified that the place of arbitration shall be New Delhi and that the courts at New Delhi shall have exclusive jurisdiction in all matters arising out of the agreement. However, by an addendum, courts at Bengaluru were conferred with exclusive jurisdiction in all matters arising out of the Agreement. The issue arose whether the seat of arbitration is New Delhi or Bengaluru for exercise of jurisdiction under Section 11 of the Act. This court held that mere vesting of exclusive jurisdiction in all matters arising out of the agreement, on Courts at Bengaluru, would not result in conferment of Section 11 jurisdiction on the High Court of Karnataka at Bengaluru, where no such “specific conferment” of Section 11 jurisdiction is found in the agreement. It was held that a “generalised exclusive jurisdiction” clause would not suffice to confer



Section 11 jurisdiction on Courts at Bengaluru. Therefore, New Delhi, although a venue, was held to be the seat of the arbitration. It was *inter alia* held as under:

“37. In the case of a domestic arbitration, therefore, I am of the opinion that the Court, having jurisdiction over the seat of arbitration, would be exclusively competent to entertain petitions under the 1996 Act, in exercise of its supervisory jurisdiction over the arbitral process, unless there is a separate clause conferring exclusive jurisdiction on a court in another territorial location, qua the particular provision which is in issue. If, in other words, in the present case, the MSA were to contain an exclusive jurisdiction clause, conferring exclusive section 11 jurisdiction on a court located elsewhere than at New Delhi, the situation may have been different. There is, however, no such specific exclusive jurisdiction clause; ergo, territorial jurisdiction, to entertain the present petition under Section 11 of the 1996 Act, thus, has to abide by the seat of arbitration which is, undisputedly, New Delhi.”

16. In ***Raman Deep Singh Taneja*** (supra), the “arbitration agreement” between the parties specified that the jurisdiction of all disputes will be at Delhi only; the venue for arbitration proceedings will be at Faridabad, Haryana. The respondent therein raised a preliminary objection with regard to the territorial jurisdiction of this Court. This court held that the venue of the arbitration is in the nature of conferring exclusive jurisdiction to the Court and the petition was dismissed as not maintainable. It was *inter alia* held as under:

“...The purported conflict between the two parts of Clause 24 quoted above can be resolved by holding that where the disputes are to be adjudicated without reference to the arbitration, Courts at Delhi would have exclusive jurisdiction, however, where they have to be resolved through arbitration, venue being at Faridabad, Haryana, the Courts at Faridabad, State of Haryana, would have exclusive jurisdiction.”

17. In ***Cinopolis India Pvt.*** (supra), the “arbitration agreement” between the parties specified that the courts in Ghaziabad shall have exclusive



jurisdiction over the subject matter of the agreement, while the place of the Arbitration shall be at New Delhi. This court held that the term “place” would be the “juridical seat” for the purpose of Section 2(2) of the Act; since the seat was designated at New Delhi, it was held that Delhi Courts will have jurisdiction to entertain the petition, even though cause of action may have arisen in Ghaziabad.

18. In *Global Credit Capital* (supra), the “arbitration agreement” between the parties specified that the venue of arbitration shall be at New Delhi. A separate exclusive jurisdiction clause specified that Courts at Gurgaon shall have the jurisdiction of all the matters concerning the Agreement between the parties. This Court held that the word “venue” has to be construed as the ‘seat’ of arbitration and held that the petition would be maintainable before this Court.

19. In *Mayank Agrawal* (supra), the “arbitration agreement” between the parties specified that the venue of the arbitration shall be New Delhi. A separate jurisdiction clause specified that courts at Gautam Budh Nagar, U.P., India shall have jurisdiction over all matters arising out of or relating to the agreement between the parties. This Court held that the venue of arbitration is to be treated as the seat of arbitration, therefore this court will have territorial jurisdiction over the venue/seat of arbitration. In this regard reference is made to the following paragraphs of the said judgement:

“14. Clause 10.9 specifically fixes the venue of arbitration as New Delhi. No separate clause, fixing the seat of arbitration at any place other than New Delhi, is contained in any agreement between the parties, i.e., either in the STC or in the Sub-lease Deed. In such circumstances, it is well settled that the venue of arbitration is to be treated as the seat of arbitration.

15. Clause 10.9 having overriding effect over Clause 10.6, following the law laid down by the Supreme Court in Mankastu Impex Pvt. Ltd. v. Airvisual Ltd



and of this Court in My Preferred Transformation and Hospitality Pvt Ltd v. Sumithra Inn , this court, having territorial jurisdiction over the venue/seat of arbitration, would also have jurisdiction to adjudicate disputes relating to the STC.”

20. In ***Henna Industries*** (supra), the “arbitration agreement” between the parties specified that the venue of Arbitration proceedings shall be at Faridabad. This court held that, in the absence of any exclusive jurisdiction clause conferring Section 9 jurisdiction on this Court, where a venue of arbitration is stipulated in the agreement between the parties, the petition under Section 9 would lie before the Court having territorial jurisdiction over such venue.

21. The above judgements indisputably support the submission of the petitioner that the choice of Delhi as the venue of arbitration vide GCC Clause 48.1.2 is demonstrative of the fact that the arbitral proceedings were intended to be anchored to Delhi, and in the absence of any contrary indicia, the inexorable conclusion is that Delhi is the seat of Arbitration.

22. The judgments cited on behalf of the respondent do not repel the above conclusion. In ***Emkay Global Financial Services Ltd*** (supra), the “arbitration agreement” between the parties did not specify the seat/venue of the arbitration; a separate jurisdiction clause contained in the agreement between the parties as well as in the bye-laws of the National Stock Exchange conferred Civil Courts in Mumbai with exclusive jurisdiction. The Supreme Court held that once Courts in Mumbai have exclusive jurisdiction in terms of the agreement between the parties, it is the Mumbai Courts alone, before whom a petition under Section 34 of the Act can be filed. This judgment is not relevant to present controversy since in that case, there was no clause specifying the venue of the arbitration.



23. In *Virgo Softech* (supra), the “arbitration agreement” between the parties specified that proceedings shall be held in New Delhi and that Courts in Chandigarh only shall have exclusive jurisdiction over disputes arising out of arbitration. The arbitration agreement therein reads as under:

“8.2 Arbitration

a) In the case of dispute arising upon or in relation to or in connection with the contract between the Purchaser and MSP-1, which has not been settled amicably, any party can refer the dispute for Arbitration under (Indian) Arbitration and Conciliation Act, 1996. Such disputes shall be referred to the sole arbitrator nominated by DIT.

b) Arbitration proceedings shall be held in New Delhi and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

The decision of the arbitrators shall be final and binding upon both parties. The expenses of the arbitrators as determined by the arbitrators shall be shared equally by the Purchaser and MSP-1. However, the expenses incurred by each party in connection with the preparation, presentation shall be borne by the party itself. All arbitration awards shall be in writing and shall state the reasons for the award. The courts in Chandigarh only shall have exclusive jurisdiction to try and entertain any dispute arising there from.”

[emphasis supplied]

This court held that the stipulation in the arbitration agreement that the arbitration proceedings shall be held at New Delhi, would make New Delhi only a “venue” of the arbitration and not the “seat” of the arbitration. The Courts only at Chandigarh would have exclusive jurisdiction to entertain a petition under Section 11. It is noticed that the concerned arbitration clause specifically conferred Courts in Chandigarh with jurisdiction over the arbitral process. As such, the contractual stipulations were substantially at variance with the stipulations in the present case.

24. In *CVS Insurance And Investments* (supra), the “arbitration agreement” between the parties specified that the venue of the proceeding



shall be Noida/New Delhi and that arbitration proceedings shall be subject to the exclusive jurisdiction of Courts at Noida. The arbitration agreement therein reads as under:

“ARTICLE 12 : ARBITRATION AND JURISDICTION

12.1 This Agreement shall be construed, interpreted and applied in accordance with and shall be governed by the laws of India.

12.2 Any dispute arising between the parties in relation to this Agreement and its schedules, annexures (if any) or the Maintenance Agreement or any other congruent Agreement, shall first be tried to be amicably resolved by the parties. Failing amicable resolution within 30 days of the commencement of negotiations, the dispute shall be referred to a Sole Arbitrator as appointed by the Company. The Intending Sub Lessee hereby agrees and confirms that it shall have no objection to such appointment. The Arbitration shall be conducted as per the Arbitration and Conciliation Act, 1996 or its statutory modifications, amendments or reenactments thereof. The Award of the Arbitrator shall be final and binding upon the parties. The venue of arbitration shall be Noida/New Delhi.

*12.3 It is agreed by and between the Parties hereto that the **arbitration proceedings and all other matters connected to arbitration** and any disputes, suits, complaints, litigation, claim or any other matter arising out of or in relation to this Agreement, **shall be subject to the exclusive jurisdiction of Courts at Noida.**”*

[emphasis supplied]

This court, in view of an exclusive jurisdiction clause in relation to arbitration proceedings, held that a petition under Section 11 of the Act would only lie before the High Court exercising jurisdiction over Noida, Uttar Pradesh and not Delhi, the latter being merely a ‘venue’ of arbitration. Crucially, in that case, the relevant clause specifically conferred courts at Noida with jurisdiction over the arbitral process, which led the Court to conclude that Delhi was merely the venue of Arbitration.

25. In *Hamdard Laboratories* (supra), the “arbitration agreement” between the parties specified that the courts of Delhi alone shall have the



jurisdiction. The respondent therein took a stand that the parties never agreed upon a seat of arbitration and that, therefore, only the Court, within whose jurisdiction the cause of action arose, would be a “Court” within the meaning of Section 2(1)(e) of the Act. This court held that, notwithstanding the fact that no part of the cause of action arose in Delhi, the stipulation in the arbitration agreement indicates that parties have chosen Delhi as a neutral seat of arbitration and therefore this court has jurisdiction. The said judgment also does not support the case of the respondent; on the contrary it reinforces that the parties can, by consent, agree upon a neutral seat of arbitration. Further, in the relevant clause which fell for consideration in that case, there was no clause specifying the ‘venue’ of the arbitration.

26. In *Enercon* (supra), the Supreme Court was dealing with an issue arising in the context of an international arbitration, and the same does not derogate from the aforesaid principles.

27. Further, in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*,¹⁶ the Constitution Bench of Supreme Court held as under:

“96. Section 2(1)(e) of the Arbitration Act, 1996 reads as under:

“2. **Definitions.**—(1) In this Part, unless the context otherwise requires—
 (a)-(d) * * * * *
 (e) ‘Court’ means 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;”

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

¹⁶ (2012) 9 SCC 552



*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 supplied]

28. In *Honey Bee Multitrading (P) Ltd. v. Ruchi Soya Industries Ltd*¹⁷, the Bombay High Court has held as under:

“92. In the light of the authoritative pronouncement by the Constitution Bench of the Hon’ble Apex Court, which is further reiterated in the case of BGS SGS Soma JV (supra), the position of law is crystallized to the effect that once the parties have agreed as to the venue of arbitration, unless indicated otherwise, amount to the ‘seat’ of arbitration.”

29. In *Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee*¹⁸, the “arbitration clause” specified that the sitting of the arbitral tribunal shall

¹⁷ 2023 SCC OnLine Bom 652

¹⁸ 2022 SCC OnLine SC 568



be held in Kolkata. In the said decision the respondent himself approached the District Court at Muzaffarpur, and not a Court in Kolkata for interim protection under Section 9 of the Act. The Supreme Court held that the respondent having himself invoked the jurisdiction of the District Court at Muzaffarpur, is estopped from contending that the parties had agreed to confer exclusive jurisdiction to the Calcutta High Court to the exclusion of other Courts. It was further held that neither of the parties to the agreement construed the arbitration clause to designate Kolkata as the seat of arbitration. Therefore the petition under Section 11 of Act, was held to be not maintainable before the Calcutta High Court. The said decision is completely distinguishable from the facts of the present case.

30. On a conspectus of the aforesaid judgments, the position of law that emerges is that when the contract contains an arbitration clause that specifies a “venue”, thereby anchoring the arbitral proceedings thereto, then the said “venue” is really the “seat” of arbitration. In such a situation the courts having supervisory jurisdiction over the said “seat” shall exercise supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to confer “exclusive jurisdiction” on a different court.

31. In the present case, the relevant clause in the LOA purporting to confer “exclusive jurisdiction” is a generic clause, and does not specifically refer to arbitration proceedings. For this reason, the same also does not serve as a “contrary indicia” to suggest that that Delhi is merely the “venue” and not the “seat” of Arbitration. As such, the same cannot be construed or applied so as to denude the jurisdiction of the Courts having jurisdiction over the “seat” of Arbitration.



32. The present petition is thus maintainable.

33. The additional aspect highlighted by learned counsel for the petitioner that the LOA has been specifically made “subjected to”¹⁹ the GCC, further reinforces the above conclusion. As noticed hereinabove, not only does Clause 48.1.2 of the GCC specifies Delhi to be the “venue” of Arbitration, Clause 8 of the GCC also specifically confers exclusive jurisdiction on the Courts of Delhi. The same will clearly prevail over the LOA.

Re: Issue (ii)

34. It is no longer *res integra* that amendments made to Section 29A of the Act, in the year 2019, shall be applicable to all pending arbitration proceedings commenced after coming into force of the Amendment Act of 2015²⁰. Admittedly, the arbitration in the present case has commenced after coming into force of the Amendment Act of 2015.

35. In the present case, it was vide letter dated 13.08.2018 that a learned Sole Arbitrator was appointed to adjudicate the dispute between the parties. Learned counsel for the petitioner contends that the time for making of the arbitral award by the learned Sole Arbitrator was to expire on 13.02.2020 i.e. 18 months from 13.08.2018.

36. It is also noticed that the petitioner and the respondent have by mutual consent, terminated the mandate of the existing Arbitral Tribunal (consisting of three arbitrators) and appointed a new Arbitral Tribunal (consisting of a Sole Arbitrator). Learned counsel for the petitioner contends that the time

¹⁹In *Black's Law Dictionary*, 6th Edn. at p. 1425 the expression “subject to” has been defined as under: “Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for. *Homan v. Employers Reinsurance Corpn.*, 345 Mo 650, 136 SW 2d 289, 302.”

²⁰ See: *Shapoorji Pallonji & Co. (P) Ltd. v. Jindal India Thermal Power Ltd.*, 2020 SCC OnLine Del 2611, *ONGC Petro Additions Ltd. v. Ferns Construction Co. Inc.*, 2020 SCC OnLine Del 2582



for making of the arbitral award would have to be calculated from the date the new/ substitute Sole Arbitrator entered reference.

37. In any event, in terms of Section 29A (4) and (5) of the Act, the mandate of the Arbitrator can be extended by the Court even after expiry of the time for making of the arbitral award on sufficient cause being shown by the party making the application. The order dated 20.02.2020, passed by the Arbitrator on the application filed by the respondent under Section 29A of the Act seeking termination of the mandate of the Arbitral Tribunal, *inter alia* records as under:

“After respective argument have been advanced the fact of the matter is that Arbitrator has entered into the reference and accepted to act as Arbitrator in the present proceedings on 13.08.2018. Claim Petition in question has been filed within the time frame and the record speaks for itself that after a 5 months delay Respondent finally filed its Statement of Defence. Record in question further reflects that the Respondent refused to conduct Admission and Denial of documents due to absence of originals. In view of the same Claimant had filed application for production of document and interrogatories. The said application was allowed on 29.08.2019. The said order was complied with on 02.11.2019. Issues thereafter, were framed on 13.12.2019 and 3 weeks time was accorded to Respondent file its evidence. On 08.01.2020 adjournment was sought on the ground that the witness is not available. On 27.01.2020 matter was listed for cross examination and then present application in question has been moved.”

38. In view of the aforesaid, it cannot be said that there has been any lack of expedition on the part of the learned Sole Arbitrator in completing the arbitral proceedings. Further, given that the matter is at the stage of recording of evidence, there is no impediment in granting suitable time extension for completing the arbitral proceedings and making the arbitral award.



39. The present petition is accordingly allowed; the time for completion of arbitration proceedings and making of the arbitral award is extended by a period of one year from today.

40. All pending applications also stand disposed of.

AUGUST 14, 2023
hg

SACHIN DATTA, J