



\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 8th April, 2024
+ **ARB.P. 1329/2023**

ANJU JAIN & ANR. Petitioners
Through: Mr Manan Aggarwal & Ms Ananya
Kumar, Advs. (M- 9999507749)

versus

M/S. WTC NOIDA DEVELOPMENT COMPANY PRIVATE
LIMITED Respondent
Through: Mr. Shunak Kashyap, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioners- Anju Jain and Ankit Saggi, under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter, '1996 Act'*) in respect of a Unit Buyer Agreement executed between the parties dated 17th October, 2023, by which the Petitioner had booked a flat in World Trade Center, Noida for a consideration of Rs.24,78,336/-.
3. *Per* Article 11.5 of the said Agreement, the Respondent- M/s. WTC NOIDA Development paid rent/returns to the Petitioners from April 2019 to April 2022. However, payments ceased afterwards. According to the Petitioner, repeated emails, including email dated 12th July, 2022 did not evince any reply.
4. The Petitioner's case is that despite the payment of full consideration, the rent has not been paid. Consequently, a notice was issued under Section



21 of the 1996 Act, on 26th August, 2023. It is stated that no reply was received to this notice. Hence, the present petition.

5. In the present petition, notice was issued on 15th December, 2023. The Respondent entered appearance on 2nd February, 2024, but no reply has been filed. Today, it is submitted on behalf of the Respondent, that the present petition is not maintainable in view of the fact that the seat of arbitration is Noida. Ld. Counsel for the Respondent places reliance on Clauses 17.2 and 17.3 of the said Agreement. The said clauses are set out below:

*“17.2 In case of any dispute between the parties hereto (including their successors) concerning this agreement or matters arising there from, the same shall be adjudicated by way of arbitration, which shall be conducted by an arbitrator nominated/appointed by developer. Arbitration shall be conducted in accordance with Indian Arbitration and Conciliation Act, 1996. **Arbitration shall be held at New Delhi.**”*

17.3 Subject to arbitration clause, for all legal matters between the developer and allottee Courts/Tribunals/Forums at Noida, Gautam Budh Nagar shall have the exclusive Jurisdiction.”

6. Heard. Upon a perusal of the above clauses, it is observed that Clause 17.3 of the said Agreement is subject to the arbitration clause, i.e., Clause 17.2 of the said Agreement. Clearly in the arbitration clause, the arbitration proceedings are to be held at Delhi. The seat and venue dichotomy, which is sought to be raised in the present case, has no applicability. The stipulation is clear:



- if the matter is not to be referred to arbitration, or if there are other disputes which have to be entertained by Civil Courts and other Tribunals, then courts in Noida- i.e. Gautam Budh Nagar, would have the exclusive jurisdiction.
- Insofar as arbitration is concerned, clearly, the seat is in New Delhi. The use of the word ‘seat’ is not compulsory in a particular clause, the Court has to decipher the intention of the parties. The Respondent has its registered office in Delhi. Further, the said Agreement has been executed in Delhi, both the parties are located within the territorial jurisdiction of this Court. Therefore, there is no impediment in appointing an arbitrator in the present matter.

7. A Id. Single Judge of this Court in *Cinopolis India Pvt. Ltd. v. Celebration City Projects Pvt. Ltd. (2020:DHC:410)*, was considering a dispute involving an arbitration clause that specified the “place” of arbitration as New Delhi. However, another clause within the same agreement stated that the courts in Ghaziabad would have ‘exclusive jurisdiction’ over the subject matter of the said agreement. Holding that this Court would have the jurisdiction to entertain the present arbitration petition, this Court went on to observe as follows:

“29. What emerges therefore by reading of the various judgments referred to above is that it is really the seat of arbitration which is akin to an exclusive jurisdiction clause. Where there are no contrary provisions in the agreement, the place would be the juridical seat which would determine the territorial jurisdiction of a Court. Where the words in the arbitration clause are neither seat nor place and the arbitration clause only refers to words such as „venue” or “held in” the



intent of the parties would have to be seen from the agreement. When (sic.) the parties intend that the arbitration proceedings are to be held as a whole at that particular venue then the venue also becomes a juridical seat. It is also clear from the now well settled law that it is the seat or the juridical seat which will be the guiding factor for a Court to determine its jurisdiction while examining a petition under Section 11 of the Act.

The Court relied upon the judgment of the Supreme Court in *Indus Mobile Distribution Private Limited (supra)* and held that the agreement records that the seat of Arbitration shall be at Delhi and thus the Delhi Courts will have exclusive jurisdiction to adjudicate the disputes between the parties.

...

33. Thus, applying the law laid down the arbitration clause in the present case is clearly referring to a juridical seat of arbitration and since the seat is designated at New Delhi, this Court would have jurisdiction to entertain the present petition, even though cause of action may have arisen in Ghaziabad.”

8. The above view taken by the Id. Single Judge has been recently affirmed by the Id. Division Bench in *Yassh Deep Builders LLP v. Sushil Kumar Singh (2024:DHC:1812-DB)*. In the said decision, the jurisdiction clause of the Collaboration Agreement provided that the subject matter arising out of the said Agreement would be subject to Gurgaon courts, however, the arbitration clause provided that the venue of the arbitration would be Delhi. The Id. Division Bench held as follows:



“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.**

...

40. Similar view if expressed in *Cinopolis India Pvt. Ltd. v. Celebration City Projects Pvt. Ltd.* 2020 SCC Online Del 301 wherein the court referring to the clauses of the agreement noted that parties by agreement had conferred exclusive jurisdiction on the subject matter of the agreement on the courts in Ghaziabad, **while the place of the arbitration was New Delhi. Learned judge held that while it was true that the arbitration clause did not specifically use the word “seat” but it was no longer res integra that the term “place” would be the “juridical seat” for the purpose of Section 2(2) of the Act and the word “place” was equivalent to “venue”.**

...

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.

9. Accordingly, the objection raised by the Respondent in relation to the territorial jurisdiction is rejected. **Mr. Devashish Bharuka, Senior Advocate (M:9810517287)** is appointed as the Id. Sole Arbitrator in this matter.

10. The arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre (*hereinafter, DIAC*). The arbitration proceedings shall be conducted under the Rules of DIAC. The fee of the Id. Sole Arbitrator shall be as per the Fourth Schedule of the 1996 Act, as amended by the DIAC.

11. List before the DIAC on 21st April, 2024. Let a copy of the present order be emailed to Secretary, DIAC on email [id-delhiarbitrationcentre@gmail.com](mailto:delhiarbitrationcentre@gmail.com).

12. The petition is accordingly disposed of. All pending applications are disposed of.

PRATHIBA M. SINGH, J

APRIL 8, 2024

Rahul/dn