2025:DHC:8811-DB

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

% Judgment delivered on*: 06.10.2025*

\+ **FAO (COMM) 179/2022 & CM APPL No.51218/2022**

M/S KCA INFRASTRUCTURE & ANR .....Appellants

versus

HDB FINANCIAL SERVICES LIMITED .....Respondent

Advocates who appeared in this case

For the Appellant : Mr Manoj Kumar Sahu and Ms Anushree Priya, Advocates.

For the Respondent : Mr Amit Sinha, Mr S P M Triptathi, Mr Rahul Poonia and Mr Gaurav Tripahti, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO, J.

1. This appeal has been filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (the Act) against the impugned order dated 29.08.2022 passed by the learned District Judge (Commercial Courts)-01, Patiala House Courts, New Delhi (learned District Judge) in OMP (COMM) 88/2021, whereby the learned District Judge has dismissed the petition under Section 34 of the Act and allowed the application of the respondent under Order VII Rule 10 of the Code of

Civil Procedure, 1980 (hereinafter CPC) holding that the District Judge does not have the jurisdiction to entertain the same.

2. The respondent herein had invoked the arbitration clause and filed a claim which was allowed by the learned Sole Arbitrator vide award dated 30.10.2019, awarding a sum of Rs.30,92,780/- with interest @ 18% per annum from the date of the claim till payment/realization in favour of claimant/respondent. Further the appellants were directed to give possession of the vehicle/construction equipment to the claimant/ respondent, giving them an option to appropriate the sale proceeds of the same as per the award. The appellants have also been directed to pay the cost of the arbitration proceedings including the fee of the arbitrator and stamp duty to the respondent.

3. The brief facts as borne out from the appeal are that the appellant no.1 approached the respondent to avail credit / loan facility of Rs.54,90,000/- for the purchase of vehicle/construction equipment i.e. PC 210 HD LC-8 bearing No. N721419. The appellant no. 1 issued six undated blank security cheques in favour of the respondent on 29.11.2016. Thereafter, the appellant no.2 became the guarantor of the loan facility. On 30.11.2016, the appellants and the respondent entered into an agreement after the loan bearing No.2037523 was approved by the respondent.

4. Mr Manoj Kumar Sahu, learned counsel appearing for the appellants stated that a copy of the said agreement was never provided to the appellants. In furtherance of the terms and conditions of the agreement, the appellant no.1 agreed to pay the loan amount by way of 34 equal monthly instalments, each of Rs.1,94,653/-. He submitted that

appellant no.1 regularly made the payment of instalments and paid more than half of the amount to the respondent. As a matter of fact, by 04.09.2018, the appellant had paid an amount of Rs.35,03,754/-.

5. It is his submission that due to severe business loss, which occurred due to an association with Infrastructure Leasing and Financial Services (ILFS), which was ultimately declared insolvent on 15.10.2018 by the National Company Law Tribunal (NCLT). The projects of the appellant No. 1 were hampered and it failed to pay the instalments on the said loan amount to the respondent. It is also his submission that the appellants tried their best through telephonic conversation and emails with the officials of ILFS to revive the business again, indicating the intention of the appellants to repay the due amount to the respondent.

6. He also submitted that as the appellant no.1 discussed with the representative of the respondent about its financial constrains, upon which, the representative assured the appellant no.1 that the respondent's senior representative will hold a meeting wherein appellant no.1 can request for an extension of time for the repayment of the balance loan amount in due course.

7. He further stated that while the appellants were making arrangements to return the due loan amount, the appellant no.1, on 16.10.2018 received a loan recall notice sent by the respondent. The appellant no.1 was not only denied the extension of time to make the payment, he was also levelled with false allegations and demands claiming an amount of Rs.30,92,780/-, without being given any proper calculations thereof.

8. He further stated that neither any opportunity nor any time was

given by the respondent to the appellant no.1 to repay the loan despite sincere efforts. Subsequently, the appellant no.1. received a letter in its name by the respondent on 11.04.2019, arbitrarily appointing a sole arbitrator without involving the appellant no.1. He submitted that the respondent filled the six blank cheques given by the appellant no.1, and presented them without the knowledge of the appellants. These cheques were dishonoured, pursuant whereto a legal notice dated 17.05.2019 was sent to the appellant no.1. He also stated that the appellant no.1 was informed about the initiation of arbitral proceedings dated 11.04.2019 via a letter sent to him. This letter referred to the appointment of the Arbitrator. This was followed by a notice issued to the appellant no.1 on 23.08.2019 informing him to appear on 16.09.2019 before the learned Arbitrator in Chennai. However, this letter was dispatched on 04.09.2019 but was received by the appellant only on 16.09.2019, which made it impossible for him to be present at the arbitration venue.

9. Counsel for the appellants also submitted that the respondent had filed an application before the learned District Judge, Delhi under Section 9 of the Act being Arb. P. No.9226/2019 titled ***HDB Financial Services Limited v. KCA Infrastructure*** for the appointment of a receiver on the vehicle/machine i.e., PC 210 HD LC-8 bearing chassis number N721419 directing the respondent to take over the possession and custody of such vehicle / machine for the realisation of sale proceeds. The learned District Judge vide order dated 23.08.2019 appointed a receiver for the same. This petition was disposed of on 16.10.2019 since the arbitration proceedings had already been initiated by the respondent at Chennai. He submitted that the appellants made numerous attempts and requested the arbitrator to

supply them with the copy of the claim, but the learned Arbitrator outrightly denied it. The appellant no. 1, appearing for another matter before the learned Arbitrator and upon knowing that the dispute between the appellants and respondent has been collectively adjourned vide order dated 18.11.2019, the appellant no.1 tried to procure a copy of the same, however, was only allowed to click a picture thereof. An arbitral award dated 30.10.2019 was passed by the learned Arbitrator and dispatched to the appellant on 02.01.2020 but was received by the appellant only on 08.01.2020. With respect to this award, the learned counsel for the appellants stated that the arbitral award is patently illegal and bad in law since the appellant no.1 was not provided with a copy of claim, was not allowed to file a reply to the statement of claim, which is contrary to principles of natural justice. The appellant no. 1 was also not allowed to participate in the proceedings or lead any evidence in its favour. The learned Arbitrator failed to consider that the copy of loan agreement was not supplied to the appellant, causing prejudice to the appellant no. 1. These acts reflect the bias of the Arbitrator who neglected the rights of the appellants and maliciously passed the arbitral award. Hence, the award is erroneous, patently illegal and needs to be set aside. Aggrieved by the same, the appellants filed objections on 30.08.2021 before the learned District Judge under Section 34 of the Act challenging the award dated 30.10.2019 in case bearing no. ARC/HDB/VL/5380/2019.

10. Mr. Sahu further submitted that the respondent, in the above mentioned case, filed an application on 12.01.2022 before the learned District Judge, Patiala House Court under Order VII Rule 10 for return of petition for want of jurisdiction, which was allowed. He stated that it was

in fact the respondent who had filed the application under Section 9 before the learned District Judge for the appointment of the receiver, hence, acquiescing to the jurisdiction of the Court at Delhi and later dishonestly challenged the same.

11. Counsel for the appellants denied that any application filed under Part 1 of the Act shall lie where the arbitration is situated. If that is the position of law, he stated, the respondent himself has availed the benefit of the Section 9 application before the learned District Judge, Patiala House Court and acknowledged therein that the learned District Judge had the power to entertain the said application, for the reason being that the lending office of the respondent is situated within the jurisdiction of the said Court. He challenged the actions of the learned Arbitrator by reiterating that he did not get the notice of the arbitration proceeding before 16.09.2019 and further stated that only after appearing before the learned Arbitrator in some other matter, he got the intimation about the adjournment of the matter between the parties to 18.11.2019. The appellant no.1 had no knowledge about the passing of the impugned award dated 30.10.2019.

12. He also stated that as per his knowledge, the learned Arbitrator had been entertaining more than three cases of the respondent company and according to clause 22 of the Fifth Schedule of the amended Act, 2015, if an arbitrator within the past three years has been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties, it becomes sufficient ground to give rise to justifiable doubts as to the independence or impartiality of arbitrators.

13. He stated that it is a well settled provision of law stated under

Section 42 of the Act, which reads as: *"Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court".* It is also trite law that Section 42 of the Act applies on all the applications made under Part -I of the Act, irrespective of whether the said applications were made before or during arbitral proceedings or after an award has been pronounced. He stated that the respondent had conformed to the jurisdiction of the Court at Delhi and is now maliciously challenging the appeal under Section 34 by the respondent. However, the rule of estoppel dictates that he must not be allowed to do so. In light of these submissions, the order of the learned District Judge dated 29.08.2022, allowing the application of the respondent under Order VII Rule 10, being contrary to both facts and law deserves to be set aside. Similarly, the impugned order passed by the learned District Judge, dismissing the objections of the appellant under Section 34 of the Act is also unsustainable and needs to be set aside.

14. He stated that the case of ***BGS SGS SOMA JV v. NHPC Ltd. (2020) 4 sec 234***, upon which the counsel for the respondent has placed reliance is misplaced as only the principle of law has been laid down in the same. There was a duty cast upon the Trial Court to examine whether such principle as laid down in the case of ***BGS SGS SOMA JV (supra)*** was applicable to the peculiar facts of the present case, which was not done while passing the impugned order. He stated that the case of ***BGS***

SGS SOMA JV (supra) is distinguishable on facts and not applicable in the present case.

15. Counsel for the appellants has placed reliance on the following judgments:

i. ***State of West Bengal v. Associated Contractors (2014) 1 SCC 32***

ii. ***Naresh Kanayalal Rajwani and Ors. v. Kotak Mahindra Bank Ltd. and Ors. Arbitration Petition (L) No. 1444 of 2019***

iii. ***Texmaco Ltd. v. Tirupati Buildestates Pvt. Ltd. AIR 2011 Cal 158***

iv. ***Sneh Lata Gael v. Pushplata and Ors. (2019) 3 SCC 594***

v. ***Sohan Singh & Ors. v. General Manager, Ordinance Factory, Khamaria, Jabalpur & Ors. bearing Civil Appeal No. 914(NL) of 1972.***

16. Contesting the stand of the appellant, Mr. Amit Sinha, learned counsel for the respondent stated that the learned District Judge has rightly rejected the petition under Section 34 of the Act, in light of the settled legal position that has echoed through various judgments of the Supreme Court, holding that once the seat of arbitration is designated at Chennai in the agreement between the parties, the same operates as an exclusive jurisdiction clause. Hence, only the courts at Chennai, shall have the jurisdiction in the present matter to entertain the application under Section 34 of the Act, excluding all the other Court(s) including Delhi where the branch office of the respondent is located.

17. He stated that the dispute arose between the parties due to default in the payment of monthly instalments by the appellants as per clause 31 of the agreement dated 30.11.2016. The arbitration clause of the agreement

reads as under:

> *"31. Arbitration*
>
> *In case of any dispute or difference between the parties hereto arising out of or in connection with Agreement shall be amicably resolved by the Parties. In the event the parties fail to resolve such disputes amicably, such dispute or differences shall be referred to arbitration of a sole arbitrator to be appointed by HDBFs in accordance with the Arbitration and Conciliation Act 1996 and rules framed there under. The venue for conducting the arbitration proceedings shall be Chennai, India. The language of the arbitration shall be English. The decision of the arbitrator shall be final and binding on the parties."*

18. Mr. Sinha further stated that the loan agreement was provided to the appellants who made irregular payment of EMIs in furtherance of the same, which can be evidenced from the statement of account of the appellants no.1. He denied that the appellant paid the monthly instalments regularly. He denied that any assurance was given by the appellants for the repayment of the loan and further denied that the appellant approached the respondent for settlement/extension of time for repayment of the balanced loan amount. It is his submission that the loan recall notice was issued to the appellant no.1 as per the agreed terms and conditions of the loan agreement. Whatever payment was indeed made by the appellant no.1 was rightly adjusted towards its loan account, despite the existence of irregularities. He also submitted that the particulars of the security checks were filled by the appellant no.1 itself and denied the fact that the cheques were presented without the knowledge of the appellants.

19. He stated that the legal notice dated 17.05.2018 was rightly issued

to the appellants as the security cheques given in lieu of loan were dishonoured. Further the application under Section 9 of the Act was preferred by the respondent under a reasonable apprehension that the construction equipment/vehicle may be disposed of by the appellants. Hence, the application to appoint a receiver was to take interim custody of the equipment/vehicle to secure the hypothecated asset of the appellants.

20. He stated that the appellants, being well aware of the consequences of the dispute, being invocation of arbitration proceeding and even being served with arbitration proceeding notices, the same being an admitted fact in the arbitration proceeding, they cannot be allowed to take the excuse of there being no intimation about initiation of arbitration proceedings. He heavily relied on the fact that the appointment of the arbitrator was as per the terms and conditions of the agreement, clearly stated at clause 31, which bears the signature and stamp of the appellants. The arbitration was invoked only after exhausting all possible opportunities given to the appellants to settle the matter, which they wilfully neglected.

21. Contesting the submissions of the appellants, Mr. Sinha has relied upon the judgment in the case of ***Hindustan Construction Company Ltd. v. NHPC Ltd. & Anr, (2020) 4 SCC 310***, to state that in the said case the contract between the parties was executed at Faridabad, whereas New Delhi was the seat of arbitration. It was held that once the seat of arbitration is designated, such clause then becomes an exclusive jurisdiction clause, as a result of which only the courts where the seat is located would then have the jurisdiction, to the exclusion of all other courts, even court(s) where part of the cause of action may have arisen, to

entertain the application under Section 34 of the Act, for setting aside an arbitral award. Further, in ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt Ltd., (2017) 7 SCC 68,*** it was held that if the juridical seat of arbitration is chosen by parties in terms of arbitration agreement, such designated seat of arbitration is akin to an exclusive jurisdiction clause, as the Court has supervisory powers over the arbitration. It was held in the case that the Mumbai Courts alone had the jurisdiction to the exclusion of all other Courts in the country, as the juridical seat of arbitration was at Mumbai. However, in the present case, arbitration was conducted at Chennai with reference to arbitration clause 31 in the agreement dated 30.11.2016, whereby the venue of the arbitration is designated at Chennai. The arbitrator was appointed after giving adequate opportunities to the appellants.

22. Concluding his submissions, he stated that the respondent filed an application before the learned District Judge under Order VII Rule 10 of the CPC as the petition under Section 34 of the Act is outside the jurisdiction of learned District Judge (Comm)-01, Patiala House Courts, New Delhi as the award has been passed by the sole arbitrator at Chennai, Tamil Nadu. Therefore, he submitted that the present appeal must be dismissed.

23. Having heard the learned counsel for the parties and perused the record, the short issue which arises for consideration is whether the learned District Judge is justified in returning the petition under Section 34 of the Act by allowing the application of the respondent under Order VII Rule 10 of the CPC on the ground that the Court had no jurisdiction. The issue lies in a very narrow compass inasmuch as, though it is a

conceded position that the arbitral proceedings were held in Chennai, it is the case of the respondent herein that petition under Section 34 of the Act, shall lie before the Court of competent jurisdiction in Chennai and not in Delhi. The case of the appellant before the Court below in reply to application under Order VII Rule 10 CPC is that the respondent had initially filed an application under Section 9 of the Act before the learned District Judge at New Delhi and as such in view of the provision of Section 42 of the Act, it is the Court in Delhi, which shall have the jurisdiction even to entertain the petition under Section 34 of the Act. This is on the analogy that Section 42 of the Act contemplates that only one Court shall have control over the arbitral proceedings and all subsequent applications arising out of that agreement and the ensuing arbitral proceedings shall be made in that Court and in no other Court.

24. We agree with the said stand taken by the appellants before the Court below.

25. We find that this position of law is no longer *res integra* in view of the judgment of the Supreme Court in ***BGS SGS Soma (supra)***, which examines Section 42 of the Act and reads as under:

> *"59. Equally incorrect is the finding in Antrix Corpn. Ltd. 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."

26. At this juncture, we may refer to the decision of the Supreme Court in the case of ***Arif Azim Co. Ltd. v. Micromax Informatics FZE, Arbitration Petition No. 31 of 2024*** wherein the Court has culled out the "three-condition test" as to when 'venue' can be treated as 'seat', laid down in ***BGS SGS Soma (Supra)*** as under:

> *53. Thus, this Court in BGS SGS SOMA (supra) laid down a three-condition test as to when 'venue' can be construed as 'seat' of arbitration. The conditions that are required to be fulfilled are as under:*
>
> *i. The arbitration agreement or Clause in question should designate or mention only one place;*
>
> *ii. Such place must have anchored the arbitral proceedings i.e., the arbitral proceedings must have been fixed to that place alone without any scope of change;*
>
> *iii. There must be no other significant contrary indicia to show that the place designated is merely the venue and not the seat.*
>
> *Where the aforesaid conditions are fulfilled, then the place that has been designated as 'venue' can be construed as the 'seat' of arbitration."*
>
> *(emphasis supplied)*

27. No doubt, as per the loan agreement, the venue of arbitration was set out as Chennai. But the application under Section 9 of the Act was filed by the respondent herein, seeking a direction to appoint a receiver to take possession of the vehicle/equipment wherever it is found, by clearly stating in paragraph No.14 that the District Court in Delhi has the territorial jurisdiction to entertain the application/petition filed, inasmuch as the lending office of the respondent company being at Building No.59,

First/Second Floor, Panchkuian Road, Near R K Ashram Marg, Opposite Metro Pillar No.5, New Delhi – 110001 is situated within the territorial jurisdiction of the Court at Delhi. Thus, the respondent had acquiesced to the jurisdiction of the Court at Delhi to entertain the application under Section 9, which means, a part of the cause of action had arisen in Delhi.

28. In fact, we find that the agreement between the parties was executed in Delhi, as is clear from page no.23 wherein the stamp of the respondent is affixed as HDFC Financial Limited, New Delhi. The only connection of the parties with Chennai is in terms of Clause No.31 of the loan agreement, i.e., where it is specified that the venue for conducting the arbitral proceedings shall be Chennai, India. At the cost of repetition, we note that though Chennai has been designated as the venue, the parties have their offices in Delhi, the agreement was executed in Delhi and even the application under Section 9 of the Act was filed by the respondent in Delhi. Additionally, the only connection that Chennai has to the facts of this case is that the Arbitration proceedings were held in Chennai. This would, in our view, act as *contrary indicia* to hold that Chennai is the venue and not the seat. As such, the facts of this case do not meet the condition (iii) laid down in ***BGS SGS SOMA JV (Supra)*** and ***Arif Azim Co. Ltd. (Supra)*** reproduced above. Therefore, in view of our conclusion, the judgment in the case of ***BGS SGS SOMA JV (Supra)*** is indeed applicable to the facts in the present case, in as much as even the first application under Section 9 of the Act was filed by the respondent at the Court in Delhi.

29. The learned District Judge has failed to consider that the arbitration clause only denotes Chennai as the venue and not the seat, and hence

could not have held that the place or seat of arbitration was Chennai by referring to Clause 31 in paragraph no.7 of the impugned order. Such a conclusion is perverse. In fact, the reference to ***Hindustan Construction Company Ltd (supra)*** to hold that the Courts in Delhi would have the jurisdiction was because New Delhi was chosen as the seat of arbitration by the parties therein. Similar is the position in the case of ***Indus Mobile Distribution Pvt. Ltd. (supra).*** In the instant case, Chennai has not been chosen as the seat of arbitration.

30. In fact, we find in paragraph no.10, that though the learned District Judge had noted the fact that Chennai has been designated as the venue, but he has still relied upon the decisions in the case of ***BGS SGS Soma JV (supra); Hindustan Construction Company Limited (supra)*** and ***Indus Mobile Distribution Pvt. Ltd. (supra)***, to state that once the seat of arbitration is designated at Chennai in the agreement between the parties, the same operates as an exclusive jurisdiction clause. In fact, the learned District Judge, without delineating seat and venue, held seat to mean venue and venue to mean seat. Though the agreement specifies Chennai as the venue, the learned District Judge held it to be the seat, and by applying the law laid down by the Supreme Court, directed return of the petition under Order VII Rule 10 of the CPC, which is clearly erroneous and liable to be set aside. We order accordingly.

31. In view of the discussion above, the appeal is allowed. The order dated 29.08.2022 passed by the learned District Judge is set aside. The OMP (COMM) 88/2021 is restored on the file of the learned District Judge. The parties shall appear before the learned District Judge / Successor Court for further directions on 30.10.2025.

32. The pending application is disposed of, having become infructuous.

V. KAMESWAR RAO, J

VINOD KUMAR, J

OCTOBER 06, 2025
M