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

+ **ARB.P. 454/2024**

M/S SRINIVASA CONSTRUCTION CORPORATION PVT LTD

.....Petitioner

Through: Mr Vivek Narayan Sharma, Mr
Abhay Chitravanshi, Mrs Mahima
Bhardwaj Kalucha, Ms Shruti Priya
Mishra, Mr Dinesh Sharma, Adv.

versus

**IRRIGATION WORKS CIRCLE, THROUGH SUPERINTENDENT
ENGINEER DISTRICT, UTTAR PRADESH**

.....Respondent

Through: Mr Rajshekhar Rao, Sr. Adv. with Mr
Ruchir Ranjan Rai, Mr Zahid Laiq
Ahmed, Mr Tushar Tukas, Mr
Kamlendra Mishra and Mr Arjun S,
Adv.

**CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH**

ORDER

% **06.11.2024**

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“Act of 1996”) seeking appointment of the Sole Arbitrator for adjudication of disputes between the parties.
2. The brief facts are that the respondent floated a tender for rehabilitation of Rohini, Jamini and Sanjam Dam canal systems in District- Lalitpur, U.P. The petitioner participated in the same and the respondent accepted the bid of the petitioner. Thereafter on 15.11.2013, an Agreement was entered into between the petitioner and the respondent.
3. The arbitration clause is Clause 20.6 of the said Agreement which



reads as under:-

“20.6. Arbitration

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

(a)

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

The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language (or communications defined in Sub-Clause 1.4 [Law and Language].

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

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put



before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

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

(Emphasis added)

4. Since there were disputes between the parties, the petitioner invoked arbitration *vide* legal notice dated 04.01.2024. Thereafter, the present petition has been filed.

5. Mr Sharma, learned counsel appears for the petitioner and states that the Clause 20.6 contains the place of arbitration as “*neutral location*” specified in the contract data and the contract data itself does not provide any neutral location. The specific portion of the contract data is reproduced herein below:-

Conditions	Sub-Clause	Data
Rules of arbitration	20.6(a)	<p>A. In case of dispute arising between Employer and a domestic Contractor relating to any matter arising out or connects with this Contract, such disputes or differences shall be settled in accordance with the Arbitration & Conciliation Act 1996.</p> <p>B. In case of dispute arising between Employer and a Foreign Contractor the dispute shall be settled in accordance with UNCITRAL Arbitration Rules.]</p>



6. Mr Sharma, learned counsel draws my attention to the legal notice dated 04.01.2024 wherein the petitioner in para 29 proposed Delhi as the neutral location/seat. Para 29 of the said legal notice reads as under:-

“29. You, the Noticee is hereby requested to consent/confirm the appointment of the said arbitrator and inform us of the same within a period of 30 (thirty) days from the date of receipt of this Notice failing which our Client shall be constrained to file appropriate proceedings in this regard before the Hon’ble High Court of Delhi at New Delhi (being a neutral location for both the parties i.e. one registered in Nagpur, Maharashtra while other carrying on work out of District Lalitpur in the State of UP, in the absence of any mention or indication thereof in the Contract Data for appointment of Arbitrator in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996.”

(Emphasis added)

7. He further states that the same was not denied by the respondent and in terms of Section 7 of Act of 1996, ‘Delhi’ will be the neutral venue, seat of arbitration and hence, this Court will have the jurisdiction to entertain and try the present petition.

8. Mr Sharma, learned counsel for the petitioner strongly places reliance on the judgment of ***Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678*** and more particularly on para 9 which reads as under:-



“9. The concept of juridical seat has been evolved by the courts in England and has now been firmly embedded in our jurisprudence. Thus, the Constitution Bench in BALCO v. Kaiser Aluminium Technical Services Inc. [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] has adverted to “seat” in some detail. Para 96 is instructive and states as under : (SCC pp. 605-06)

“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 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)

9. *Per Contra*, Mr Rao, learned senior counsel for the respondent vehemently opposes the present petition by arguing that in the present case there is no neutral location. The cause of action in terms of Sections 16 to 20 of CPC has arisen within the jurisdiction of State of Uttar Pradesh and hence, this Court will not have jurisdiction at all.

10. He further states that in reply to the notice dated 04.01.2024 even though there is no specific denial to Delhi jurisdiction, the whole notice has been denied. He draws my attention to the opening part which reads as under:-

“On your instructions, the notice which has been sent by Enco Lawyers L.L.P. Viveknarayan Sharma Mahim Bhardwaj Kalucha Abhay Chitravanshi, New Delhi 17 dated 04.01.2024 u/s 21 Arbitration and Reconciliation Act, 1996, Section - 21; in reply to it, according to instructions from my client, Superintending Engineer, Engineering Works Division, Irrigation Department, Lalitpur, District



Lalitpur, this is to write that your notice is completely wrong and has been sent hiding the correct facts which is unfortunate and does not come under the purview of section 21 Arbitration and Reconciliation Act, 1996.”

11. I have heard learned counsel for the parties.

12. Admittedly, the venue of arbitration and seat of arbitration are different terms, having different meanings and application in the arbitration proceedings. The venue of arbitration is the place where the arbitration is to be conducted or held whereas the seat of arbitration decides the supervisory power/exclusive jurisdiction and the applicable laws. In other words, seat determines the judicial review over the entire arbitration proceedings and the arbitral award.

13. The Hon’ble Supreme Court in the said judgment i.e. ***Indus Mobile Distribution (P) Ltd. (supra)*** relied by the learned counsel for the petitioner has concluded as under:-

“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 of 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.”

14. A perusal of the same shows that in case ‘seat’ is specified in the Contract then that Court will have the exclusive jurisdiction for purposes of regulating arbitral proceedings. In case ‘seat’ is not specified, reliance have to be placed on Section 16 to 20 of CPC to determine the Court having jurisdiction.

15. In similar circumstances, a coordinate bench of this Court in *Simplex Infrastructures Ltd. v. Jammu & Kashmir Economic Reconstruction Agency, 2024 SCC OnLine Del 5128* and more particularly paras 10 to 13 has observed as under:-

“10. The issue, in my view, is elementary. The submission of Mr. Jha is predicated on a truncated reading of the relevant part of Clause 20.6 of the GCC. Clause 20.6, no doubt, designates a place of arbitration but requires that place of arbitration to be a “neutral location specified in the Contract Data”. Mr. Jha’s reading of this clause ends with the words “neutral location” and overlooks the words “specified in the Contract Data”, which follow. In effect, such an interpretation would render the words “specifi’d in the Contract Data” redundant. Clause 20.6 of the GCC



provides that, in the event of their existing of a neutral location specified in the Contract Data, that location would be the place of arbitration. Ergo, if there is no neutral location specified in the Contract Data, Clause 20.6 has no application. The Court cannot read the Clause 20.6 in a truncated fashion, as if the words “specified in the Contract Data” were not there.

11. Inasmuch as there is, admittedly, no neutral location specified in the contract data, this covenant in Clause 20.6 of the GCC has no application.

12. The result would be that the arbitration clause in the agreement between the parties does not provide for any place of arbitration.

13. The sequitur is that the jurisdiction of the Court to entertain the Section 11(6) petition would have to be decided on the basis of Section 20 of the CPC. Viewed in that background, no part of the cause of action has arisen within the territorial jurisdiction of this Court. The petitioner is located in Kolkata, the respondent is located in Srinagar and the contract has been executed in Srinagar. The work forming subject matter of dispute has also been undertaken at Srinagar.”

16. I am in complete agreement with the above observations and the said judgment squarely covers the present controversy raised by the petitioner. In the present case, merely because the petitioner suggested ‘Delhi’ as the neutral location in the notice under section 21 of Act of 1996 in the absence



of any specific location in the said Agreement and the same was not ‘specifically’ denied by the respondent (but the contents of the notice dated 04.01.2024 have been denied) would not give this Court the exclusive jurisdiction. Further, the work of the tender was executed in the District: Lalitpur, Uttar Pradesh, the office of the petitioner is located in Nagpur, Maharashtra and the respondent is the Government body of the State of Uttar Pradesh, this Court will not have the jurisdiction as there is no cause of action arisen within the territorial jurisdiction of this Court.

17. For the said reasons, the present petition is dismissed for lack of territorial jurisdiction. However, the petitioner is at liberty to file appropriate proceedings before the appropriate Court, if so advised.

JASMEET SINGH, J

NOVEMBER 6, 2024

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Click here to check corrigendum, if any