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

\+ O.M.P. (COMM) 15/2023 and I.A. 643/2023, 644/2023 and 35297/2024

UNION OF INDIA .....Petitioner

Through: Ms. Arunima Dwivedi, CGSC with Mr. Amit Dutta, Ms. Swati Jhunjhunwala, Ms. Pinky Pawar, Mr. Aakash Pathak and Mr. Akash Banerjee, Advocates

versus

ARSH CONSTRUCTIONS .....Respondent

Through: Mr. Sahil Garg, Advocate

\+ OMP (ENF.) (COMM.) 85/2024 and EX.APPL.(OS) 601/2024

M/S ARSH CONTRUCTIONS .....Decree Holder

Through: Mr. Sahil Garg, Advocate

versus

UNION OF INDIA .....Judgment Debtor

Through: Mr. Rohan Jaitly, CGSC with Mr. Hussain Taqvi, Mr. Dev Pratap Shahi, Ms. Ranjana Jetly and Mr. Yogya Bhatia, Advocates

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

O R D E R (ORAL)

% 05.09.2024

O.M.P. (COMM) 15/2023 and I.A. 35297/2024

1. Notice is yet to issue in this petition preferred by the petitioner/Union of India under Section 34 of the Arbitration and Conciliation Act 1996[1]. The petitioner assails an arbitral award dated 8 August 2022.

2. Mr. Sahil Garg, learned counsel for the respondent advanced a preliminary objection to the maintainability of this petition before this Court. This order decides that objection.

3. As initially advanced, the objection of Mr. Garg was predicated on the following observations contained in the impugned award dated 8 August 2022 :

> "**Seat of Arbitration**
>
> 4. It has gone undisputed between the parties that Gurgaon is the seat of arbitration with the Hon'ble High Court of Punjab and Haryana having supervisory jurisdiction over these arbitral proceedings."

4. Mr. Garg's contention is that, as the learned Arbitrator has, in para 4 of the impugned award dated 8 August 2022, held that Gurgaon is the undisputed seat of arbitration, applying the principles laid down by the Supreme Court in ***BGS SGS Soma JV v NHPC Ltd***[2] and ***BBR (India) Pvt Ltd v S P Singla Constructions Pvt Ltd***[3]**,** this petition would have to be preferred before a Court having jurisdiction over Gurgaon. This Court would not have jurisdiction to deal with the

[1] "the 1996 Act", hereinafter
[2] **(2020) 4 SCC 234**
[3] **(2023) 1 SCC 693**

matter.

5. Mr. Garg also emphasises the fact that the finding of the Arbitrator that it had gone undisputed between the parties that Gurgaon was the arbitral seat has not been specifically traversed in the present Section 34 petition. It has, therefore, he submits, to be treated as admitted. If Gurgaon is the arbitral seat, this Court has no territorial jurisdiction.

6. I may note, at the very outset, that if Gurgaon is the arbitral seat, there is no question of this Court having any territorial jurisdiction to deal with the matter as the Supreme Court has, in ***BGS SGS Soma*** and ***BBR India*** clearly held that a Section 34 petition would have to be filed before a Court having territorial jurisdiction over the seat of arbitration. On that aspect of the matter, there can be no cavil.

7. The question then is, whether Gurgaon is the arbitral seat in the present case.

8. There is equally no doubt about the fact that the learned Arbitrator has recorded in the impugned award that it had gone undisputed between the parties that Gurgaon was the arbitral seat. It is also correct that there is no specific ground taken in the present Section 34 petition to the effect that this finding is wrong, though Ms. Dwivedi, learned counsel for the petitioner, has vehemently sought to so contend. The petitioner has also in his written submissions, filed in

the present proceedings, stated that the finding of the learned Arbitrator to the effect that it was undisputed that Gurgaon was the arbitral seat is incorrect as there is no such undisputed position.

9. The ancillary issue that arises for consideration is therefore whether this Court is bound to proceed on the premise that Gurgaon is the arbitral seat because of what is recorded in para 4 of the arbitral award and because there is no specific traversal of that finding in the present petition.

10. Before adverting to these aspects, it is necessary to note what Ms. Dwivedi has argued in Court today. She has placed on record the orders passed in the arbitral proceedings. She points out that there is no order in which the petitioner has ever agreed to Gurgaon being the arbitral seat. She further submits that no such agreement is contained in any pleading filed by the petitioner before the Arbitral Tribunal and that no such acquiescence by the petitioner to the effect that Gurgaon is the arbitral seat is to be found in any of the orders or record or proceedings in the arbitration.

11. Mr. Garg is not in a position to dispute this submission of Mr. Dwivedi. He too is unable to point out any concession or acquiescence on the part of the petitioner to Gurgaon being treated as the arbitral seat or any such submission to be found either in the contract between the parties, or in the order appointing the Arbitrator, or in the proceedings before the Arbitrator, or in any other document in writing which is before the Arbitrator. Nor is there any such submission by

the petitioner recorded in the arbitral proceedings at any point of time.

12. It is necessary to carefully read what the Arbitrator has recorded in para 4 of the impugned award. In para 4, the learned Arbitrator notes that "*it has gone undisputed between the parties*" that Gurgaon is the seat of the arbitration. It is obvious that the learned Arbitrator was proceeding on a premise that the issue of Gurgaon being the arbitral seat had been taken up at some point of time and had not been disputed by either party. The implication of the words, "*it has gone undisputed*" cannot be ignored. For a proposition, whether of fact or law, to have "gone undisputed", the occasion to dispute the point must be taken to have arisen at some point. The issue of Gurgaon being the arbitral seat, therefore, must have figured at some point in the proceedings before the Arbitral Tribunal. There must be something on record to indicate that the issue of Gurgaon being the arbitral seat must have been raised at some point of time whether by either of the parties and by the Arbitrator himself and that neither party had disputed this position.

13. This is especially so as the agreement between the parties *does not fix Gurgaon as the arbitral seat*, and the High Court of Punjab and Haryana, in fact, fixes Delhi as the arbitral venue. There is, therefore, not even a suggestion, either in the contract or the Section 11 order of the High Court, that Gurgaon was the arbitral seat.

14. An arbitration is to proceed on the basis of the record. That record has to be found either in (i) the contract between the parties, or

(ii) pleadings or submissions placed in writing in the arbitral proceedings by one party or the other, or (iii) oral submissions by one party or the other *reduced to writing in the form of the record of proceedings of that day(s)*, or (iv) the orders passed by the High Court or other Courts interlinked with the arbitral proceedings.

15. In the present case, there is nothing either in the contract between the parties or in the orders passed by the High Court of Punjab and Haryana appointing the Arbitrator, or in any of the pleadings or written submissions filed in the arbitration or in any of the orders recorded by the Arbitrator during the course of arbitration, indicating that the issue of Gurgaon being the seat of arbitration was ever even mooted or taken up, much less of there having been no dispute on that score. It is obvious that there is no question of an issue which never arose during the arbitral proceedings being treated as undisputed. For something to be undisputed, there must be a possibility of a dispute. In the absence of anything to indicate that fixation of the arbitral seat as Gurgaon was ever even contemplated at any point of the proceedings till the passing of the final award, it is obvious that the learned Arbitrator has proceeded on a mistaken, though possibly *bona fide*, belief that, at some point of time, the parties had acquiesced to fixing Gurgaon as the arbitral seat.

16. It is open to the parties in an arbitration to agree to the arbitral seat at a neutral value, distinct from the place where the contract was drawn up, or the work was performed, or the venue of the arbitral proceedings where they take place. That decision must, however,

firstly be by consensus *ad idem*, and, secondly, be documented in some form or the other, whether by being specifically agreed to in writing or recorded by the Arbitrator or the Court in the form of an order. If there is no such agreement to be found anywhere, the only sequitur can be that the learned Arbitrator, in the present case, erred in presuming that there it "had gone undisputed between the parties" that Gurgaon was the arbitral seat.

17. Clearly, therefore, the observation of the learned Arbitrator that it was undisputed between the parties that Gurgaon is the seat of arbitration is incorrect. That position is apparent from the arbitral record. There is no need for it to be pleaded. The Court is always competent to take cognizance of a position which is apparent from the record even if it is not specifically pleaded.

18. Moreover, the issue of territorial jurisdiction has been raised by the respondent in opposition to the present petition. The petitioner has therefore necessarily to meet the objection. The objection of the respondent is predicated on para 4 of the impugned arbitral award. It is always open to the petitioner, therefore, while meeting the objection raised by the respondent, to submit that the finding in the observations in para 4 that it was undisputed between the parties that Gurgaon is the seat of arbitration is factually incorrect and that there is in fact no such undisputed position forthcoming from the record. That is precisely what Ms. Dwivedi has attempted – and attempted successfully - to do.

19. In meeting the objection of the respondent, the petitioner is

entitled to draw the attention of the Court to the record of the arbitration. Ms. Dwivedi has drawn the attention of the Court to the record of arbitration and has placed the orders passed by the learned Arbitrator on record. As I have already noted, it is not even Mr. Garg's contention that there is anything on the record prior to the impugned award indicating that there was an undisputed agreement between the parties to Gurgaon being the seat of arbitration. In that view of the matter, the finding of the learned Arbitrator that it was undisputed between the parties that Gurgaon is the seat of arbitration as contained in para 4 of the impugned award has necessarily to be set aside.

20. Faced with this position, Mr. Garg sought to raise certain intricate arguments to get over it. He drew my attention to the arbitration clause contained in the agreement between the parties. To the extent relevant, the arbitration clause reads thus :

> "25. ….It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. *The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion.* The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid."
>
> (Emphasis supplied)

21. Mr. Garg's contention is that therefore, the arbitration agreement between the parties states that the venue of arbitration shall

be at such place as may be fixed by the Arbitrator in his sole discretion. The Arbitrator was, therefore, contractually empowered to fix the venue of arbitration. He then relies on the judgment of the Supreme Court in ***BGS SGS Soma*** to contend that, where the contract refers to the venue of arbitration and does not identify any other place as the arbitral seat, the venue has to be treated as the seat of arbitration. Thus, he submits, the Arbitrator was contractually empowered to fix the seat of arbitration. At the very least, he submits that in para 4 of the impugned award, the Arbitrator has fixed the seat of arbitration as Gurgaon. In doing so, therefore, the Arbitrator only exercised the power vested in him by the arbitration agreement between the parties. In that view of the matter, he submits that the fixation of Gurgaon as the arbitral seat cannot be found fault with and if that is the position, this Court has no jurisdiction.

22. It is straightaway possible to reject this submission for the sole reason that the arbitrator in para 4 of the impugned award fixed the seat as Gurgaon not in independent exercise of any discretion vested in him but on the basis of a plainly erroneous premise that the parties had undisputedly agreed to Gurgaon being the seat of arbitration. The finding in para 4 cannot be said to have been returned in exercise of the discretion vested in the Arbitrator by the arbitration agreement between the parties.

23. Even otherwise, legally, the submission is unsound in the facts of the present case. The discretion that the arbitration agreement between the parties vested in the arbitrator was the discretion to fix the

venue of the arbitration. There is legally a distinction between the venue of arbitration and the seat of arbitration. This distinction has been emphasized by the Supreme Court both in ***BGS SGS Soma*** and ***BBR (India)***. In both these decisions, it has been pointed out that sub-sections (1) and (2) of Section 20[4] of the 1996 Act deal with the seat of arbitration whereas sub-section (3) of Section 20 of the 1996 Act deals with the venue of the arbitration.

24. It is correct that in ***BGS SGS Soma***, the Supreme Court has held that, in the absence of any other fixed arbitral seat, where the venue of arbitration is fixed, the reference to the venue of arbitration may be treated as a reference to the seat of the arbitration.

25. Unfortunately, for the respondent, there is no occasion, in the facts of the present case, to apply that principle at all.

26. The submission of Mr. Garg ignores the fact that, while appointing the Arbitrator, by order dated 4 June 2020, the High Court of Punjab & Haryana specifically observed thus:

> "For the sake of the convenience of the parties, as also of the Arbitrator, the venue of the Arbitration shall be at Delhi Arbitration Centre, Delhi or at any other place convenient to all concerned."

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[4] **20. Place of arbitration**. –
(1) The parties are free to agree on the place of arbitration.
(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

27. Thus, while appointing the arbitrator, the High Court of Punjab & Haryana has fixed the venue of arbitration as the Delhi Arbitration Centre, Delhi or any other place convenient to all concerned. As such, unless the parties between themselves had fixed the venue as a place other than the Delhi Arbitration Centre, Delhi, the Arbitrator had no jurisdiction whatsoever to change the venue. The arbitrator is a creature of the order passed by the High Court and is bound by the said order. Besides, the order dated 4 June 2020 passed by the High Court of Punjab & Haryana, was never challenged and attained finality. As such, the venue of the arbitration was fixed by the order of the High Court of Punjab & Haryana at Delhi.

28. A careful reading of para 4 of the impugned award indicates that, in fact, the learned arbitrator was conscious of this fact. He has not chosen to tinker with the venue of arbitration as fixed by the High Court of Punjab & Haryana. Rather, as already observed, he has proceeded on an erroneous premise that there was an undisputed agreement between the parties that the seat of arbitration would be Gurgaon.

29. The reliance by Mr. Garg on the discretion vested in the arbitrator by the arbitration agreement between the parties to fix the venue of arbitration cannot, therefore, support the case that he seeks to canvass. Undisputedly, the arbitrator was conferred discretion, but to fix the venue of arbitration. The principle that in the absence of any reference to any other arbitral seat, the reference to a venue of arbitration in the contract has to be regarded as a reference to the

arbitral seat, has no application in the present case, *inter alia* for the reason that in fact there is in fact no reference to the venue of arbitration in the contract at all. This is not, therefore, a case in which the contract between the parties envisaged the venue of arbitration to be Gurgaon, or any place outside Delhi, and there was no other stipulation regarding the seat of arbitration. The contract between the parties did not envisage any venue of arbitration. It merely clothed the arbitrator with the discretion to determine the venue of arbitration. The arbitrator has not done so. There is not a single line in the impugned award fixing the venue of arbitration as any place other than Delhi. Rather, the venue of arbitration has been fixed as Delhi by the High Court of Punjab and Haryana in its order dated 4 June 2020, while appointing the Arbitrator.

30. Mr. Garg also sought to place reliance on the judgment of the Supreme Court in ***Inox Renewables Ltd v Jayesh Electricals Ltd***[5], specifically drawing attention to the following passages from the said decision :

> 10. What is clear, therefore, as per this paragraph is that by mutual agreement, parties have specifically shifted the venue/place of arbitration from Jaipur to Ahmedabad. This being so, is it not possible to accede to the argument made by the learned counsel for the respondent that this could only have been done by written agreement and that the arbitrator's finding would really have reference to a convenient venue and not the seat of arbitration.
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> 11. In ***BGS SGS***, this Court, after an exhaustive review of the entire case law, concluded thus : (SCC pp. 268, 281, 284, 301-02 & 309, paras 32, 48-49, 53, 82 & 98)
>
> "32. It can thus be seen that given the new concept of

[5] **(2023) 3 SCC 733**

"juridical seat" of the arbitral proceedings, and the importance given by the Arbitration Act, 1996 to this "seat", the arbitral award is now not only to state its date, but also the place of arbitration as determined in accordance with Section 20. However, the definition of "court" contained in Section 2(1)(*c*) of the Arbitration Act, 1940, continued as such in the Arbitration Act, 1996, though narrowed to mean only Principal Civil Court and the High Court in exercise of their original ordinary civil jurisdiction. Thus, the concept of juridical seat of the arbitral proceedings and its relationship to the jurisdiction of courts which are then to look into matters relating to the arbitral proceedings — including challenges to arbitral awards — was unclear, and had to be developed in accordance with international practice on a case-by-case basis by this Court.

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48. The aforesaid amendment carried out in the definition of "Court" is also a step showing the right direction, namely, that in international commercial arbitrations held in India, the High Court alone is to exercise jurisdiction over such proceedings, even where no part of the cause of action may have arisen within the jurisdiction of such High Court, such High Court not having ordinary original jurisdiction. In such cases, the "place" where the award is delivered alone is looked at, and the High Court given jurisdiction to supervise the arbitration proceedings, on the footing of its jurisdiction to hear appeals from decrees of courts subordinate to it, which is only on the basis of territorial jurisdiction which in turn relates to the "place" where the award is made. In the light of this important change in the law, Section 2(1)(*e*)(*i*) of the Arbitration Act, 1996 must also be construed in the manner indicated by this judgment.

49. Take the consequence of the opposite conclusion, in the light of the facts of a given example, as follows. New Delhi is specifically designated to be the seat of the arbitration in the arbitration clause between the parties. Part of the cause of action, however, arises in several places, including where the contract is partially to be performed, let us say, in a remote part of Uttarakhand. If concurrent jurisdiction were to be the order of the day, despite the seat having been located and specifically chosen by the parties, party autonomy would suffer, which ***Balco***[6] specifically states cannot be the case. Thus, if an application is made to a District Court in a remote corner of the Uttarakhand hills,

[6] **Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810**

which then becomes the court for the purposes of Section 42 of the Arbitration Act, 1996 where even Section 34 applications have then to be made, the result would be contrary to the stated intention of the parties — as even though the parties have contemplated that a neutral place be chosen as the seat so that the courts of that place alone would have jurisdiction, yet, any one of five other courts in which a part of the cause of action arises, including courts in remote corners of the country, would also be clothed with jurisdiction. This obviously cannot be the case. If, therefore, the conflicting portion of the judgment of ***Balco*** in para 96 is kept aside for a moment, the very fact that parties have chosen a place to be the seat would necessarily carry with it the decision of both parties that the courts at the seat would exclusively have jurisdiction over the entire arbitral process.

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53. In ***Indus Mobile Distribution (P) Ltd.***[7] , after clearing the air on the meaning of Section 20 of the Arbitration Act, 1996, the Court in para 19 (which has already been set out hereinabove) made it clear that the moment a seat is designated by agreement between the parties, it is akin to an exclusive jurisdiction clause, which would then vest the courts at the "seat" with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

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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

[7] **Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760**

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.

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98. However, the fact that in all the three appeals before us the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, 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, 1996. This being the case, both parties have, therefore, chosen that the courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the "seat" has been chosen, which would then amount to an exclusive jurisdiction clause so far as Courts of the "seat" are concerned."

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16. The reliance placed by the learned counsel for the respondent on ***Indus Mobile***, and in particular, on paras 18 and 19 thereof, would also support the appellant's case, inasmuch as the "venue" being shifted from Jaipur to Ahmedabad is really a shifting of the venue/place of arbitration with reference to Section 20(1), and not with reference to Section 20(3) of the Arbitration and Conciliation Act, 1996, as it has been made clear that Jaipur does not continue to be the seat of arbitration and Ahmedabad is now the seat designated by the parties, and not a venue to hold meetings. The learned arbitrator has recorded that by mutual agreement, Jaipur as a "venue" has gone and has been replaced by Ahmedabad. As Clause 8.5 of the purchase order must be read as a whole, it is not possible to accept the submission of Shri Malkan that the jurisdiction of courts in Rajasthan is independent of the venue being at Jaipur. The two clauses must be read together as the courts

> in Rajasthan have been vested with jurisdiction only because the seat of arbitration was to be at Jaipur. Once the seat of arbitration is replaced by mutual agreement to be at Ahmedabad, the courts at Rajasthan are no longer vested with jurisdiction as exclusive jurisdiction is now vested in the courts at Ahmedabad, given the change in the seat of arbitration."

31. Predicated on the aforesaid paragraphs, Mr. Garg contends that, though the High Court of Punjab and Haryana had fixed the venue of arbitration as Delhi, the parties had, by agreement between themselves, shifted the venue or the seat, as the case may be, to Gurgaon. On facts, this argument cannot sustain, as there is no such shifting of venue or shifting of seat as noted in ***Inox Renewables.*** The venue was fixed by the High Court of Punjab and Haryana as Delhi and there is no contrary decision by the Arbitrator. Neither of the parties at any point of time sought a change of venue from Delhi to any other place.

32. In so far as the seat of arbitration is concerned, as already noted, for the first time, in the impugned award, the Arbitrator proceeded on a premise that it was undisputed between the parties that Gurgaon was the arbitral seat. This finding is erroneous from the record. It cannot therefore sustain.

33. Mr. Garg also referred me to the judgment of a Division Bench of this Court in ***Delhi Tourism and Transportation Development Corporation Ltd v Sunehari Bagh Construction Pvt Ltd***[8] specifically citing paras 3 to 7, which read thus :

[8] **2024 SCC Online Del 378**, hereinafter referred to as **"DTTDC"**

"3. The learned Commercial Court had held it had no jurisdiction to entertain the appellant's application for setting aside the impugned award on the ground that it lacked the territorial jurisdiction. The said finding was premised on the basis that the learned Arbitral Tribunal had conducted the proceedings at Ghaziabad, Uttar Pradesh and the impugned award is also signed by him at Ghaziabad, Uttar Pradesh. The learned Commercial Court noted the Arbitration Clause (Clause No. 25 of the GCC as applicable to the contract) provided that the venue of the arbitration would be at such place as may be fixed by the learned Arbitrator. The Court held since the Arbitration Clause did not specify the seat of arbitration and it was left to be decided by the learned Arbitrator, the seat of the arbitration was Indirapuram, Ghaziabad, Uttar Pradesh. This conclusion was also premised on the ground that the learned Sole Arbitrator had conducted the proceedings through video conference from his residence at Indirapuram, Ghaziabad, UP.

4. The appellant has drawn the attention of this Court to the procedural order dated 29.10.2020 passed by the learned Arbitral Tribunal wherein it is clearly held that the place of arbitration under Section 20 of the A&C Act, would be Delhi.

5. This order also indicates the same was passed with the consent of parties. The relevant portion of the order dated 29.10.2020 is extracted below:—

> "7. With the consent of both the parties it was decided that:
>
> (a) Place of Arbitration in terms of Section 20 of the Arbitration and Conciliation Act, 1996 will be DELHI."

6. It is apparent the learned Commercial Court has ignored the said order.

7. The learned counsel for the respondent fairly states that the order dated 29.10.2020 was not brought to the notice of the learned Commercial Court."

34. On a plain reading, the decision in ***DTTDC*** cannot apply to the facts of the present case. In that case too, the arbitration agreement between the parties stipulated that the venue of arbitration would be

the place fixed by the Arbitrator. In para 3 of the report, the Division Bench notes that as the arbitration clause did not specify the seat of arbitration and that, as it was left to be decided by the Arbitrator, the seat of arbitration was fixed as Indirapuram, Ghaziabad, Uttar Pradesh. That, therefore, was a case in which no venue of arbitration had been fixed and where, in exercise of the discretion contractually conferred on him in that regard, the Arbitrator fixed the seat of arbitration as Indirapuram. In the present case, the venue of arbitration stands fixed by the High Court of Punjab and Haryana in its order dated 4 June 2020 as Delhi and that position has not changed at any point of time thereafter.

35. Still more significantly, *the decision of the Division Bench in* ***DTTDC*** *makes reference to a Procedural Order dated 29 October 2020 passed by the Arbitral Tribunal, clearly holding that the place of arbitration under Section 20 of the 1996 Act would be Delhi. In the present case, there is no such procedural order.* This in fact is the precise argument of Ms. Dwivedi. Had there been a procedural order during the arbitration proceedings in which the parties had undisputedly agreed to Gurgaon being the seat of arbitration, the submission of Mr. Garg might have been acceptable. *Unlike the position which obtained in* ***DTTDC****, in the present case, there is no procedural order in the arbitral proceedings, fixing the seat of arbitration as Gurgaon. It is for the first time in the impugned arbitral award such an observation finds place.*

36. From a bare reading, it is clear that the learned Arbitrator has

proceeded on a factually erroneous premise, not borne out from the record, that it *had gone undisputed between the parties* that Gurgaon was the arbitral seat. No such undisputed position is reflected anywhere in the record prior to the passing of the impugned award. Such an undisputed position has to emerge from the record. There is nothing in the record to indicate any such undisputed fixation of the arbitral seat as Gurgaon.

37. The issue being one which can be resolved from the record, and having been urged by Ms. Dwivedi in response to an objection taken by the respondent, the absence of any specific pleading in the present petition, to the effect that para 4 of the impugned Arbitral Award was factually incorrect, cannot be of much relevance.

38. Mr. Garg relies on the observations of the Supreme Court in ***Inox Renewables*** that the finding that there was a mutual agreement between the parties to shift the venue from Jaipur to Ahmedabad was never challenged.

39. As I have already observed, in the present case, this issue arose in view of the objection taken by the respondent. Unlike the position which obtained in ***Inox Renewables***, a reading of para 4 indicates that the Arbitrator was not acting independently or as per his own discretion in observing that Gurgaon was seat of arbitration. The Arbitrator was proceeding on a premise that it had gone undisputed between the parties that Gurgaon was the arbitral seat. There being nothing to indicate that any such undisputed position existed. The

objection in para 4 has necessarily to be set aside.

40. In that view of the matter, the Court is unable to agree with the submission of Mr. Garg that the present petition has to be rejected as not being maintainable before this Court, or that this Court has no territorial jurisdiction to deal with the matter. The objection is accordingly rejected.

41. Issue notice to the respondent, returnable on 26 November 2024.

42. Reply be filed within four weeks with an advance copy to learned counsel for the petitioner, who may file rejoinder thereto, if any, within four weeks thereof.

IA 644/2023 (stay)

43. The impugned award is in the nature of a money decree, which awards to the respondent an amount of ₹ 2,56,27,440/- along with interest. The Supreme Court has in its orders in ***Manish v. Godawari Marathawada Irrigation Development Corporation***[9]***, Toyo Engineering Corporation v. IOCL***[10] and ***Sepco Electric Power Construction Corporation vs. Power Mech Projects Ltd.***[11] held that in the case of money awards, ordinarily stay should be granted only subject to the deposit of the awarded amount in Court. It has also been

[9] **2018 SCC OnLine SC 3863**
[10] **2021 SCC OnLine SC 3455**
[11] **2022 SCC Online SC 1243**

held by the Supreme Court that the successful litigant before the Arbitral Tribunal should be permitted to withdraw the amount deposited, on furnishing the security to the satisfaction of the Court.

44. The amount in question is only ₹ 2,56,27,440/- along with interest thereon.

45. Accordingly, subject to the petitioner depositing the entire awarded amount along with interest with the Registry of this Court within a period of eight weeks from today, the execution of the award shall stand stayed. The amount, as and when deposited, may be withdrawn by the respondent on the respondent furnishing an irrevocable and unconditional Bank Guarantee drawn on a Nationalized Bank for an equivalent amount to the satisfaction of the Registry.

46. The application stands disposed of, accordingly.

OMP (ENF.) (COMM.) 85/2024

47. Reply be filed within four weeks with an advance copy to learned counsel for the petitioner, who may file rejoinder thereto, if any, within four weeks thereof.

48. Renotify on 26 November 2024.

C. HARI SHANKAR, J.

SEPTEMBER 5, 2024/yg

Click here to check corrigendum, if any