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

Date of Decision: 18th January 2024

\+ ARB. P. 980/2023

M/S AXALTA COATING SYSTEMS INDIA PVT. LTD. ..... Petitioner

Through: Mr. Piyush Sharma and Mr. Armaan Verma and Mr. Ayushman Singh, Advocates.

versus

M/S MADHUBAN MOTORS PVT. LTD. ..... Respondents

Through: Mr. Adarsh Ramanujan, Advocate

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition filed under section 11(5) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner/M/s Axalta Coating Systems India Pvt. Ltd. seeks appointment of a sole arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent/M/s Madhuban Motors Pvt. Ltd. from Supply Agreement dated 10.08.2016 ('Supply Agreement').

2. Notice on this petition was issued on 21.09.2023; however, no reply has been filed thereto.

3. Learned counsel for the parties have however filed their respective written submissions.

4. As per the record, the petitioner first issued lawyer's notice dated

02.06.2022 raising upon the respondent a demand arising from the Supply Agreement; which demand was rejected by the respondent *vide* reply dated 20.06.2022.

5. Thereafter, the petitioner invoked arbitration *vide* Notice dated 27.07.2022; to which the respondent sent a reply dated 22.08.2022.

PETITIONER'S SUBMISSIONS

6. Mr. Piyush Sharma, learned counsel for the petitioner has drawn the attention of this court to clause 12 of the Supply Agreement, which comprises the arbitration agreement between the parties; and contemplates reference of disputes between them to arbitration in accordance with the A&C Act; with the 'venue' of arbitration proceedings to be at New Delhi.

7. For facility of reference, clause 12 of the Supply Agreement is extracted below :

> "***12. Governing law, Jurisdiction and Dispute Resolution***
>
> *12.1 This Agreement, its performance and any dispute or claim arising out of or in connection with it shall be governed by and construed in all respects in accordance with the laws of India.*
>
> *12.2 All Disputes or claims arising out of or relating to this Agreement shall be subject to the* ***exclusive jurisdiction of the courts at New Delhi, India to which the Parties irrevocably submit.***
>
> *12.3 All disputes or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this Agreement or the breach thereof shall be settled amicably. If, however, the Parties are not able to resolve them amicably within a period of thirty days or any longer period as agreed upon by the Parties from the date of commencement of such negotiation the same* ***would be resolved by arbitration****. The dispute may be referred to the arbitration by either Party after issuance of thirty days' notice in writing to other, clearly mentioning the nature*

> *of the dispute/differences.* ***<u>Such arbitration shall be conducted by a Sole Arbitrator</u>*** *to be appointed by Parties hereto by mutual consent.* ***<u>The Arbitration and Conciliation Act, 1996 or any statutory modification thereof shall apply to the arbitration proceedings and the venue for the arbitration proceedings shall be New Delhi, India.</u>*** *All the arbitration proceeding shall be carried out in English language.*"

(emphasis supplied)

8. It is submitted that, as is seen from the above extract, a separate territorial jurisdiction provision is also contained in the same clause, which also subjects the disputes between the parties to the jurisdiction of courts of law at New Delhi.

9. In order to bolster the submission that the parties have, in fact, agreed to the exclusive jurisdiction of New Delhi as the forum for arbitration, Mr. Sharma has also drawn the attention of this court to reply dated 22.08.2022 issued by the respondent, in which they have themselves sought to nominate New Delhi based lawyers as arbitrators in the present matter.

<u>RESPONDENT'S SUBMISSIONS</u>

10. On the other hand, the essential objection raised by Mr. Adarsh Ramanujan, learned counsel appearing for the respondent, is that this court has no territorial jurisdiction to entertain or decide the present petition.

11. In this regard, it is submitted on behalf of the respondent that in terms of clause 12.3 of the Supply Agreement, the parties have only designated a 'venue' for arbitration and the agreement is completely silent on the 'seat' of arbitration. It is accordingly contended, that

even though as per the clause, this court may have territorial jurisdiction over the 'venue' of arbitration, that does not give to this court territorial jurisdiction to entertain the present petition under section 11 of the A&C Act.

12. Furthermore, it is argued that in the absence of any 'seat' of arbitration having been designated in the agreement, the competent court to entertain a petition under section 11 of the A &C Act would be the court where the cause of action has arisen. In this context, the respondent points-out that the Supply Agreement was not signed in Delhi; nor does the respondent reside in Delhi; and therefore no part of the cause of action has arisen in Delhi. It is urged that all the above are/have taken place in Mumbai and therefore in the absence of a designated 'seat' of arbitration, as per section 2(1)(e) of the A&C Act, the court competent to entertain the present petition would be the concerned court in Mumbai.

13. It is argued that since the seat of arbitration has not been determined by the parties, the exclusive jurisdiction provision contained in clause 12.2 of the Supply Agreement also does not help the petitioner; and the seat of arbitration and the competent court to hear the present matter, is to be determined on the basis of section 20 (2) of the A&C Act.

14. Counsel further contends that the reply given by the respondents to invocation notice dated 22.08.2022 cannot be construed as an admission as regards the territorial jurisdiction of this court, explaining that the respondent's nomination of New Delhi based lawyers was only by reason of the fact that the venue of arbitration

was agreed to be in New Delhi.

15. To substantiate his contentions, counsel has placed reliance principally on three precedents in ***Ravi Ranjan Developers Pvt. Ltd. vs. Aditya Kumar Chatterjee***[1]; ***Essential Interiors Designs Pvt. Ltd. vs. Globe International Inc.***[2] and ***Aarka Sports Management Pvt. Ltd. vs. Kalsi Buildcon Pvt. Ltd.***[3] Though counsel has also made reference to a number of other decisions of Co-ordinate Benches, it is not considered necessary to delve into those decisions for the purposes of the present petition.

SUBMISSIONS IN REJOINDER

16. In response to the objections raised by the respondent, Mr. Sharma, learned counsel for the petitioner, has argued that in addition to the 'venue' of arbitration having been specified in clause 12.3, in clause 12.2 the Supply Agreement also subjects all disputes or claims arising from the Supply Agreement to the 'exclusive jurisdiction' of the courts at New Delhi, further stipulating that parties irrevocably submit to such jurisdiction. On the other hand however, no contrary provision is contained in the Supply Agreement as regards the 'seat' of arbitration. In such circumstances, it is submitted that the intention of the parties to the Supply Agreement is clear, namely that the neutral 'seat' as well as supervisory court for purposes of section 2(1)(e) was to be at New Delhi, even though the contract may have been signed

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[1] 2022 SCC OnLine SC 568 at para 26-28 and 36-42

[2] 2023 SCC OnLine Del 4054 at para 10 and 12

[3] 2020 SCC OnLine Del 2077 at para 4 and 28-33

and performed in Mumbai.

17. Counsel submits that where the arbitration agreement between the parties stipulates a specific 'venue' thereby anchoring the arbitral proceedings to such place, the 'venue' specified is also the 'seat' of arbitration.

18. To support the above proposition, counsel has relied upon the decisions in ***Reliance Infrastructure Ltd. vs. Madhyanchal Vidyut Vitran Nigam Ltd.***[4]; ***Sikka Motors Pvt Ltd vs. Hyundai Motor India Ltd***[5] and ***M/s. Hamdard Laboratories (India) vs. M/s. Sterling Electro Enterprises.***[6]

19. More importantly, it is pointed-out that while dealing with the *self-same arbitration agreement* as in clause 12 of the Supply Agreement, in proceedings concerning the same petitioner (but a different respondent) a Co-ordinate Bench of this court in ***Axalta Coating Systems India Pvt. Ltd. vs. Austin Hyundai Austin Distributors Pvt.***[7] has also held that the Delhi High Court has jurisdiction to decide the section 11 petition in that case.

DISCUSSION & CONCLUSIONS

20. The essence of the argument raised by the respondent is that if an arbitration agreement specifies a 'venue' but not a 'seat' for arbitral proceedings, the 'venue' so specified cannot be construed as also

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[4] 2023 SCC OnLine Del 4894 at para 32 and 33

[5] 2022 SCC OnLine Del 1187 at para 12 and 13

[6] 2020 SCC OnLine Del 2688 at para 16

[7] Order dated 02.03.2023 in ARB. P. No. 1451/2022

being the 'seat'; and jurisdiction under section 11(6) of A & C Act cannot be conferred thereby. The main judgment relied upon by the respondent is *Ravi Ranjan Developers* (supra),which holds that:

20.1. The mentioning of a 'place' in an arbitration clause does not *ipso-facto* result in that place becoming the 'seat' of arbitration.

20.2. Though parties can refer disputes to any one court which might otherwise have jurisdiction to decide their disputes to the exclusion of others, the reference has to be to a court in accordance with section 11(6) and 20(1) of the A&C Act. In effect therefore, parties cannot vest a court with jurisdiction, if at the outset it lacks jurisdiction.

20.3. Words and phrases used in a judgment cannot be interpreted as words and phrases in a statute; but must be construed in light of earlier judgments, as well as in the context of the facts and circumstances of a case.

21. To better appreciate the view articulated in *Ravi Ranjan Developers* (supra), it is beneficial to first recapitulate the legal position enunciated by a 03-Judge Bench of the Supreme Court in ***BGS SGS Soma vs. NHPC Ltd.***[8], where it has been held that in the absence of any other contrary indicia, the 'venue' mentioned in an arbitration clause would amount to the 'seat' of arbitral proceedings. The following paragraphs of the judgment may be noticed in this behalf :

> *"61. It will thus be seen that wherever there is an express designation of a "venue", and no designation of any alternative*

[8] (2020) 4 SCC 234

place as the "seat", combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.

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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 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)

22. Furthermore, this court would also be guided by the verdict in ***Mankastu Impex Pvt. Ltd. vs. Airvisual Ltd.***[9] in which the Supreme Court has held that the 'place of arbitration' by itself does not mean that it is the 'seat' of arbitration; but the determination of what the *parties intended* to be the 'seat' should be made "*from other clauses in the agreement and the conduct of the parties*".

> *"20. It is well settled that "seat of arbitration" and "venue of arbitration" cannot be used interchangeably. It has also been established that mere expression "place of arbitration" cannot be the basis to determine the intention of the parties that they have intended that place as the "seat" of arbitration. The intention of the parties as to the "seat" should be determined from other clauses in the agreement and the conduct of the parties."*
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> (emphasis supplied)

23. In the backdrop of the aforementioned precedents, it is noticed that in *Ravi Ranjan Developers* (supra) the court *did not find* any other clauses in the agreement to demonstrate the intention of the parties; nor was there any exclusive jurisdiction clause. The arbitration clause in *Ravi Ranjan Developers* read as follows:

> *"37. That in case of any dispute or difference between the parties arising out of and relating to this development agreement, the same shall be settled by reference of the disputes or differences to the Arbitrators appointed by both the parties and such Arbitration shall be conducted under the provisions of the Indian Arbitration and Conciliation Act, 1996 as amended from time to time and the sitting of the said Arbitral Tribunal shall be at Kolkata."*
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> (emphasis supplied)

[9] (2020) 5 SCC 399

24. In fact the position in *Ravi Ranjan Developers* (supra) has been distinguished by Co-ordinate Benches of this court in *Reliance Infrastructure Limited* (supra) as well as in *Sikka Motors Pvt Ltd* (supra), where it has been observed that in *Ravi Ranjan Developers* (supra) it was found that the petition under section 11 was not maintainable in Kolkata since the respondent in that case had approached the District Court at Muzzafarpur under section 9 of the A&C Act and was in any case estopped from conferring jurisdiction on the place of arbitration that had otherwise been agreed upon. Furthermore, the agreement in that case did not contain any 'exclusive jurisdiction' clause which would impute to the parties the intention of conferring Kolkata with jurisdiction over the disputes.

25. Also, the respondent's contention that *BGS SGS Soma* (supra) relates only to an international commercial arbitration is wholly unfounded, since the judgment itself has, at various points, referred specifically and separately to the *international context* and *national context.*[10]

26. Most importantly in *Austin Hyundai Austin Distributors* (supra), referred to by learned counsel for the petitioner, the self-same arbitration clause as in the present matter has been interpreted by a Co-ordinate Bench of this court, to conclude that this court has jurisdiction to decide the petition.

27. Upon a conspectus of the factual narrative obtaining in the matter, and after considering the submission made at the Bar, as assessed in light of the settled legal position, in the opinion of this court the following

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[10] cf. para 82 of *BGS SGS Soma* (supra)

inferences arise :

27.1. That the respondent does not dispute the existence of an arbitration agreement with the petitioner as contained in clause 12 of the Supply Agreement.

27.2. That clause 12.3 specifies that the 'venue' for the arbitral proceedings would be at New Delhi; and clause 12.2 vests exclusive jurisdiction in the courts of law at Delhi in relation to all disputes or claims arising from the Supply Agreement;

27.3. That the decision of the Supreme Court in *Ravi Ranjan Developers Pvt. Ltd.* (supra) proceeded on its own facts, in particular, the circumstance that the arbitration agreement in that matter was not supplemented by any provision relating to the general territorial jurisdiction of the courts over the subject matter of the agreement, which is not the case in the present matter.

27.4. On a conjoint reading of clauses 12.2 and 12.3 of the Supply Agreement in the present case, it is found that *firstly,* parties had subject all disputes arising from the agreement to the *exclusive jurisdiction* of the courts at New Delhi; and *secondly*, that they had agreed that the venue for the *arbitration proceedings* shall be New Delhi. This clearly evinces the intention of the parties that New Delhi was designated *not only* as the place for only some of the hearings (that is to say the venue of some of the hearings) but as the place where the arbitration proceedings would be conducted as a whole. As observed in *BGS SGS Soma* (supra), reference to 'venue' in

juxtaposition to the expression 'arbitration proceedings' was intended to *anchor the arbitral proceedings* to New Delhi, thereby signifying that the 'seat' of arbitral proceedings shall be at New Delhi.

27.5. That there are also no other *significant indicia* in the arbitration agreement to suggest that the 'venue' stipulated was merely a convenient place of meeting for purposes of the arbitration proceedings, all of which leads to the conclusion that the intention of the parties was that New Delhi would be the 'seat' of the arbitration proceedings.

27.6. That if any doubt was to remain in this regard, the aforesaid conclusion is supported by the view taken by a Co-ordinate Bench in *Austin Hyundai Austin Distributors* (supra), where an exactly similarly worded arbitration agreement has also been construed to mean that the 'seat' of arbitration would be New Delhi.

28. In view of the above, this court has territorial jurisdiction to entertain and decide the present petition.

29. Since the only substantive objection taken by the respondent was as to the territorial jurisdiction of this court to entertain the present petition, which stands decided as above, the petition is allowed.

30. Accordingly, **Mr. Namit Suri, Advocate (Cellphone No.: +91 9582410211)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties.

31. The learned Arbitrator may proceed with the arbitral proceedings subject to furnishing to the parties requisite disclosures as required

under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

32. The learned Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitrator.

33. Parties shall share the arbitrator's fee and arbitral costs, equally.

34. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

35. Parties are directed to approach the learned Arbitrator appointed within 10 days of release of this judgment.

36. A copy of this judgment be communicated by the Registry to the learned Sole Arbitrator.

37. The petition stands disposed-of in the above terms.

38. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 18, 2024
HMJ/ *V.Rawat*/ak

(Released on : 14th February 2024)