IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Shekhar B. Saraf

A.P. No. 358 of 2020

HOMEVISTA DECOR AND FURNISHING PVT. LTD. & ANR.

VS

CONNECT RESIDUARY PRIVATE LIMITED

For the Petitioners : Mr. Krishnaraj Thaker, Adv
Ms. Saptarshi Banerjee, Adv.
Ms. Namrata Basu, Adv.
Ms. Sreenita Ghosh Thaker, Adv.

For the Respondent: : Mr. Sanjay Kumar Baid, Adv.
Mr. Rishab Karnani, Adv.

Last heard on: May 3, 2023
Judgement on: June 8, 2023

Shekhar B. Saraf J:

1. The instant application, being A.P. No. 358 of 2020, has been filed by the petitioner no. 1 under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of an arbitrator to resolve the disputes that have arisen between the parties.

Relevant Facts

2. The pertinent facts are mentioned below :-

a) The petitioner no. 1 is an online portal operating under the trade name and style of www.homelane.com and is carrying on the business of providing home owners with customised and efficient home designs. It has its registered office at 728, Grace Platina, 1st-3rd Floor, CMH Road, Indiranagar Bengaluru-560038.

b) The petitioner no. 2 sells pre-designed modular kitchens and wardrobes online for projects in India. It has its registered office at 728, Grace Platina, 1st Floor, CMH Road, Indiranagar Bengaluru-560038. The petitioner no. 2 entered into a scheme of demerger and amalgamation wherein the said company was demerged and amalgamated into the petitioner no. 1.

c) The respondent is a company providing office equipment and furniture on rental to corporates. It has its office at 103, B Wing, Satellite Gazebo, Andheri – Ghatkopar Link Road, Andheri East, Mumbai, Mumbai City, MH 400093 and 506, Inizio, Cardinal Gracious Road, Chakala, Andheri (East), Mumbai 400099.

d) The petitioner no. 2 had entered into a master rental agreement dated June 30, 2016 [hereinafter referred to as 'the MRA'] to take

office equipment and furniture on rent from the respondent. The petitioner no. 1, pursuant to the scheme of demerger and amalgamation continued to honour the Agreement. The petitioner no. 2 also issued a bank guarantee for a sum of Rs. 74,00,000 to the respondent through HDFC bank.

e) The respondent assigned the rents under the MRA to SREI and instructed the petitioner no. 2 to remit the rental amounts in part to SREI as specified in the invoices.

f) SREI requested HDFC to reduce the bank guarantee from Rs. 74,00,000 to Rs. 64,68,938, which was done by HDFC. Thereafter, the petitioner no. 1 requested the respondent and SREI to reduce the bank guarantee amount from Rs. 64,68,938 to Rs. 44,00,000. Accordingly, SREI issued a letter to HDFC, requesting them to reduce the bank guarantee amount from Rs. 64,68,938 to Rs. 44,00,000, but this was not ultimately executed.

g) The respondent invoked the bank guarantee to the tune of Rs. 64,68,938 despite requests from the petitioner to not encash the said bank guarantee and to reduce the same.

h) The petitioners sent a legal notice dated July 17, 2020 to the respondent which invoked the arbitration clause in the MRA. The respondent rebutted the petitioners' claim and refused to refer the

dispute to arbitration. The petitioner sent another notice dated September 10, 2020 re-iterating the arbitration clause. This time, the respondent did not respond. Thereafter, the petitioners have filed the instant application under Section 11 of the Act.

Rival Submissions

3. Mr. Krishnaraj Thaker, counsel appearing on behalf of the petitioners made the following submissions in seriatim :-

a) Exhibit 2 of the MRA provides a mechanism for settlement of disputes through arbitration. The said clause is reproduced below –

"Arbitration : Any question disputes or differences that arises between the parties hereto in relation to/concerning the Rental Schedule no.__ of the Master Rental Agreement (MRA) dated __ and/or the assignment of any rights there under or as to the rights, duties, liabilities of parties thereto, or any of them, either during the continuance of the agreement or after termination or purported termination hereof shall be referred to arbitration of a sole arbitrator to be appointed by mutual consent of the Renter and the Assignee. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, and the venue of such arbitration shall be in Kolkata'.

Ergo, the MRA between the parties has Kolkata as the venue of arbitration, the intention of the parties was to exclude all other courts, as far as arbitration and all proceedings related to arbitration is concerned. Reliance was placed on the Apex Court's judgement in ***Hindustan Construction Company Limited v. NHPC Limited and Another*** reported in ***[2020] 4 SCC 310*** for the above argument.

b) Mr. Thaker emphasised and placed reliance on paragraph 82 of the Apex Court's judgement in ***BGS SGS SOMA v. NHPC Limited*** reported in***[2020] 4 SCC 234*** to drive home the point that unless there is 'contrary indicia', 'venue' of arbitration should be considered as the 'seat'. According to him, the Specific Forum Selection Clause, that gives exclusive jurisdiction to courts in Mumbai, being Clause 25 cannot be considered as 'contrary indicia'. Therefore, Kolkata must be read to be seat of the arbitration in the instant case. Once seat is designated, Kolkata has jurisdiction over arbitration and related proceedings and the Section 11 application would lie therein. Reliance was also placed on the Apex Court's judgements in ***Brahmani River Pellets Limited v. Kamachi Industries Limited*** reported in ***[2020] 5 CC 462*** and ***Indus Mobile Distribution Pvt. Ltd. v. Data Wind Innovations Pvt. Ltd.*** reported in ***[2017] 7 SCC 678*** to buttress the above submission.

c) Mr. Thaker further submitted that there is a difference between having jurisdiction over subject matter of the agreement and subject matter of arbitration. In this case, while courts in Mumbai may have jurisdiction over subject matter of the agreement, Kolkata has jurisdiction over the arbitration proceedings. The judgements of the Calcutta High Court in ***M/S Height Insurance Services Limited v. Reliance Nippon Life Insurance Company Limited (Dated 20.04.2023 in A.P. No. 173 of 2023)***, the Madras High Court in ***Balapreetham Guest House Pvt. Ltd. v. My Preferred Transformation and Hospitality Pvt. Ltd.*** reported in ***[2021] 3 Mad LJ 181***, the Bombay High Court in ***Mukta Agriculture Ltd. v. Radhegovinda Developers Pvt. Ltd*** reported in ***2021 SCC OnLine Bom 12035,*** the Bombay High Court in ***Aniket SA Investments LLC v. Janapriya Engineers Syndicate Private Limited & Ors.*** reported in ***2021 SCC OnLine Bom 919,*** the Delhi High Court in ***My Preferred Transformation and Hospitality Pvt Lt v. Sumithra Inn*** reported in ***2021 SCC OnLine Del 1536*** were placed to substantiate the above argument.

d) The issue of wrongful invocation of bank guarantee falls under the scope of disputes referable to arbitration.

4. Mr. Sanjay Kumar Baid, counsel appearing on behalf of the respondent made the following submissions :-

a) This Hon'ble Court does not have jurisdiction to entertain and decide the instant application in view of the Specific Forum Selection Clause being Clause 25 contained in the MRA which confers exclusive jurisdiction on the courts in Mumbai in respect of any and all disputes arising out of the agreement.

b) In case of contradiction between two clauses in a contract wherein it is not possible to give effect to all the said clauses, the rule of construction suggests that the earlier clause must override the latter. Therefore, the Specific Forum Selection Clause being Clause 25 overrides the arbitration clause. Reliance was placed on the Apex Court's judgement in ***Radha Sundar Dutta v. Mohd. Jahadur Rahim & Ors.*** reported in ***AIR 1959 SC 24*** for the above proposition.

c) If the parties have chosen a specified court, which court would otherwise have jurisdiction over the subject matter of arbitration, then notwithstanding a seat of arbitration being prescribed, which is different to the forum selection clause, the courts selected by the parties would have jurisdiction in the case of domestic arbitration. The judgement of the Calcutta High Court in ***Commercial Division Bowlopedia Restaurant India Limited v. Debyani International Limited*** reported in ***2021[1] CLT 138***, was placed to bolster the said argument.

d) Clause 25 contained in the MRA which confers exclusive jurisdiction on the courts in Mumbai in respect of any and all disputes arising out of the agreement is a 'contrary indicia' that clearly prevents Kolkata being elevated from being merely a venue of arbitration to seat of arbitration. He reiterated as per the judgement in ***BGS SGS SOMA v. NHPC Limited (supra)***, 'venue' can be elevated to seat, unless there is contrary indicia, which does exist in this case. Reliance was further placed on the Delhi High Court's judgement in ***Kushraj Bhatia v. DLF Powers & Services Limited*** reported in ***2022 SCC Online Delhi 3309*** to lend credence to the said proposition.

e) The 'venue of arbitration' cannot be used interchangeably with the 'seat of arbitration'. The intention of the parties must be gauged from other clauses in the agreement and conduct of the parties, which in this case, owing to clause 25, indicates that Kolkata was merely a seat. Reliance was placed on paragraph 20 of the Apex Court's judgement in ***Mankastu Impex Private Limited v. Airvisual Limited*** reported in ***[2020] 5 SCC 399*** to emphasise on the above argument.

f) The parties had merely chosen Kolkata to be a venue for arbitration. This, combined with the fact that no part of the cause of action has arisen within the territorial jurisdiction of this Hon'ble High Court, validates the argument that an application under Section 11 of the

Act cannot be entertained by this court. Reliance was placed on the Apex Court's judgement in ***Ravi Ranjan Developers Private Limited v. Aditya Kumar Chatterjee*** reported in ***2022 SCC Online SC 568*** to lend weight to this contention.

g) The disputes are in relation to non-reduction of the purported bank guarantee issued by the petitioner to secure the respondent's interest and the subsequent invocation of bank guarantee. The said dispute is beyond the purview of the arbitration clause. The MRA does not contemplate issuance of any guarantee by the petitioners and the contract of guarantee is an independent contract having no arbitration clause therein.

Analysis

5. As is evident from the arguments placed before this court from both the parties, the issue in dispute is the jurisdiction of the court to entertain the application under Section 11 of the Act. I, therefore, shall decide on the preliminary issue as to the jurisdiction of this court to entertain the application under Section 11 of the Act, before delving into the aspect of whether the invocation of bank guarantee is within the purview of the arbitration clause.

6. The law on 'seat' versus 'venue' is a conundrum that has and still confounds courts to this very day. There is no crystal clear precedent

point of view that shifts away the clouds of uncertainty that mystify this issue. However, various courts have attempted to give clarity in the said arena that I too shall dive into to demystify the same.

7. The Apex court in ***Indus Mobile (supra)*** was deciding upon a situation wherein the arbitration was to be conducted at Mumbai and the courts of Mumbai were to have exclusive jurisdiction over disputes and differences that may arise between parties. The relevant extract is produced herein below :-

> *'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.'*

It would be noteworthy to underline the fact that in ***Indus Mobile (supra)***, there was no contradiction wherein one clause provided for a venue at one location and the exclusive jurisdiction of courts in a completely different location, as exists in the present case.

8. The Apex Court in ***BGS SGS SOMA (supra)*** was dealing with a situation wherein it was provided that arbitration proceedings shall be held at New Delhi/Faridabad. However, the arbitration sittings were eventually held and the award was passed in New Delhi. It was argued that since part of cause of action arose in Faridabad, a section 34 application under the Act would lie in the court having jurisdiction in Haryana and not Delhi. However, the Apex Court rejected such contentions and held Delhi to be the seat of arbitration. The Apex Court exhaustively dealt with the law relating to seat and venue of arbitration. A principle was laid down to determine the 'seat of arbitration'. The relevant extract is reproduced below :-

'*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 Added

9. In ***Mankastu Impex (supra)***, the Apex Court was deciding upon the seat in an international commercial arbitration. In this case, the MoU provided that the courts at New Delhi shall have jurisdiction. But, it also provided that in case of disputes arising out or relating to the MoU, the dispute shall be referred to and finally resolved by arbitration administered in Hong Kong. The Apex Court found Hong Kong to be the 'seat' of arbitration. The principle underlying the reasoning of the judgement is extracted below :-

'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****.'*

Emphasis Added

10. In ***BGS SGS SOMA (supra)***, the Apex was deciding upon a clause wherein two places were mentioned as the 'venue' of arbitration and the arbitration actually took place in one of those two places. In ***Mankastu Impex (supra)***, the Apex Court was dealing with an international commercial arbitration, wherein clause 17.1 gave exclusive jurisdiction

to courts in New Delhi, whereas clause 17.2 specifically stated arbitration to be finally resolved and administered in Hong Kong. The Apex Court read clause 17.1 to have been inserted for the purpose of enabling injunctive relief and held Hong Kong to be the 'seat'. Admittedly, the facts in both these cases were different from the instant application before us. However, the law that can be gathered from a reading of the above judgements renders an inference that a clause cannot be observed in isolation. If there is a standalone clause which states that 'arbitration' or 'arbitration proceedings' are to be held in a particular place, that place would be the seat of the arbitration. The seat would then have supervisory jurisdiction over arbitral proceedings and related applications. However, other clauses of the agreement are to be analysed to ascertain the intention of the parties. Furthermore, the idea of 'contrary indicia' is of particular import. A holistic understanding must be gathered by taking into consideration other clauses, if any, which may have a bearing on deciding the seat of arbitration. To put it simply, other clauses must be read to ascertain whether the 'venue' is actually the seat, or simpliciter a place of arbitration owing to there being 'contrary indicia' in the form of other clauses or conduct of parties.

11. In ***Hindustan Construction (supra)*** the facts before the Apex Court were such that learned Additional District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram had arrived at the conclusion that Delhi was the seat. This aspect was not contested. However, the

said Judge held that since both the courts in Faridabad and Delhi had jurisdiction and a prior Section 9 application was filed at Faridabad, Section 42 would apply and the Section 34 application would lie at the Special Commercial Court at Gurugram. The Apex Court set aside the Special Commercial Court at Gurugram's order after ruling that once seat is designated, prior applications under the Act made before other courts would be without jurisdiction and the bar under Section 42 of the Act would not apply. Ultimately, the Section 34 application was transferred to the Delhi High Court. In ***Brahmani River Pellets Limited (supra)***, Bhubaneswar was chosen as the venue of arbitration. The appeal was against a Madras High Court judgement which had stated that mere designation of 'seat' does not oust jurisdiction of other courts where cause of action may have arisen. The Apex Court set aside the order and observed that opting of Bhubaneswar as the 'venue' by itself excludes jurisdiction of all other courts. It is to be noted that in both these cases the facts were different and there were no contrary indicia which could indicate that the intention of the parties was otherwise. In the instant case, the primal factor to be determined is where lies the seat of the arbitration.

12. In ***Commercial Division Bowlopedia Restaurant India Limited (supra)***, a co-ordinate bench of this court decided upon the jurisdiction of the court to entertain an application under Section 11 of the Act in a situation wherein the parties had specifically selected a 'seat' which was in conflict with the court selected under the forum selection clause.

In the case before us, a seat has not been clearly designated. Therefore, this case is distinguishable on facts and does not assist this court in any manner. Similarly, in ***Aniket SA Investments LLC (supra)***, an earlier clause designated Mumbai as the 'seat' of arbitration and the courts of Hyderabad were selected as having jurisdiction to try and entertain disputes arising out of the agreement. The Bombay High Court held Mumbai to be the seat and have jurisdiction over the proceedings, also because of the reason that the exclusive jurisdiction clause was made subject to the clause designating Mumbai as the seat. This case is also accordingly distinguishable on facts.

13. In ***My Preferred Transformation and Hospitality Pvt. Ltd. (supra)***, the Delhi High Court had before itself two different clauses, one stating that place of arbitration shall be New Delhi and another opting courts at Bengaluru to have exclusive jurisdiction in the matter. The court placed reliance upon the Apex Court's judgement in ***Mankastu Impex (supra)*** to hold that the seat was Delhi and it had jurisdiction over the arbitral proceedings. With great humility, I would disagree with the ratio laid down in this judgement. Firstly, it did not examine whether the clause opting courts at Bengaluru to have exclusive jurisdiction can be seen as a 'contrary indicia'. Secondly, the reliance on Apex Court's judgement in ***Mankastu Impex (supra)*** was misplaced as in ***Mankastu Impex (supra)***, the Apex Court was dealing with an international commercial arbitration wherein the courts at New Delhi were stated to have jurisdiction, but disputes were to be resolved by arbitration

administered in Hong Kong. There was an additional clause which provided that a party may seek injunctive relief from a court having jurisdiction. The Apex Court held that since it was a foreign seated arbitration, the inclusion of clause giving courts at New Delhi jurisdiction was only for the purpose of enabling injunctive relief and reading the contract in a wholesome manner would indicate that the seat was actually Hong Kong. Such is not the case in a domestic seated arbitration. Therefore, a clause designating another court to have exclusive jurisdiction has to be considered while appreciating if there is a 'contrary indicia'.

14. In ***Balapreetham Guest House (supra)***, the Madras High Court was dealing with a situation wherein the place of arbitration was stated to be New Delhi and courts at Chennai were selected to have exclusive jurisdiction. Relevant portions of the judgement are extracted below :-

'30. Considering the apparent conflict in respect of these 2 clauses the two have to be harmoniously constructed to give meaning to both. The rule of harmonious construction is to harmonise and not to destroy and while interpreting the clauses Courts have to presume that the parties had inserted every clause thereof for a purpose and therefore attempt to give effect to both. A reading of the 2 clauses would indicate that the parties had agreed that in case of a cause of action arising from out of the agreement then the Courts at Chennai alone will have jurisdiction, if parties abandon their right to arbitrate the dispute and file a civil suit.

31. However, the latter clause viz; 10.2 and 10.3 relates to disputes between the parties arising out of or in connection with the agreement and parties have agreed to resolve their disputes through Arbitration and have agreed that the seat of such Arbitral

proceedings will be New Delhi. Therefore, the two clauses can be harmoniously constructed without one doing violence to the other.

32. Even if we were to assume that the two clauses are in conflict with each other the same can be resolved by considering the law laid down by the Supreme Court. The Hon'ble Supreme Court has in the judgements referred above placed importance on the juridical seat to confer jurisdiction on Courts in the case of Arbitration Proceedings. In the Judgement in BGS Soma the learned Judges had held that the very fact that parties have chosen a place to be the seat necessarily implies that both parties have agreed that the Courts at the seat would have jurisdiction over the entire arbitral process. Therefore, on account of a conspectus of the above judgements of the Hon'ble Supreme Court, wherein emphasis and importance has been given to the juridical seat, in the instant case the Court having supervisory jurisdiction is the Courts where parties have agreed would be the place of arbitration.'

In my respectful view, the above contractual interpretation runs afoul of the law which mandates that intention of the parties is to be gauged from a holistic understanding of the various clauses in an agreement. It imposes an understanding that the parties themselves may not have agreed to. The clause designating a venue, namely clause 10.3, which states New Delhi to be the place of arbitration is seen in isolation to suggest that the intention was to give it the status of a seat, when there is clearly a different court (courts in Chennai) which has been granted exclusive jurisdiction, in clause 10.1. The latter is a clear 'contrary indicia' that should prevent the term 'venue' to be exalted to the position of 'seat'.

15. In ***Mukta Agriculture (supra)***, the Bombay High Court was deciding upon a case where the arbitration was to be held at Mumbai whereas another clause conferred exclusive jurisdiction on the courts at

Chittorgarh. The court, relying upon ***BGS SGS SOMA (supra)*** held that the expression 'shall be referred to arbitration to be held at Mumbai' does not include just one or more individual hearings, but the arbitration proceedings as a whole. Therefore, Mumbai was not merely the venue, but the seat and had jurisdiction over the arbitration proceedings. The court held that the clause conferring exclusive jurisdiction on the courts at Chittorgarh was not a 'contrary indicia'. However, the Bombay High Court failed to elaborate upon why the clause conferring exclusive jurisdiction on the courts at Chittorgarh cannot be seen as 'contrary indicia'. I am unable to agree with the said view. Such a clause cannot be ignored and considered irrelevant for the purposes of ascertaining the intention of the parties.

16. In ***Kushraj Bhatia (supra),*** the facts before the Delhi High Court were that the arbitration proceedings were to be held in New Delhi whereas the civil courts at Gurgaon and High Court at Chandigarh alone were to have jurisdiction. Upon a careful perusal of the precedents in the cases of ***Isgec Heavy Engineering. Ltd. v. Indian Oil Corporation Ltd. (Dated 21.10.2021 in Arbitration Petition 164/2001)*** and ***Cravants Media Pvt. Ltd. v. Jharkhand State Cooperative Milk Food Federation Pvt. Ltd. (Dated 06.12.2021 in Arbitration Petition 915/2021)*** of the Delhi High Court, the Court came to the following conclusion :-

'28. Having discussed the distinct concepts of 'Seat' and 'Venue', it may be examined how these two concepts have been interpreted and applied in various situations. In Isgec Heavy Engineering. Ltd. v. Indian Oil Corporation Ltd. Arbitration Petition No. 164/2001 decided on 21.10.2021 by the Coordinate Bench of this Court, similar Clause came up for interpretation. ***The parties have agreed for venue of arbitration to be New Delhi, but in the other Clause, they had agreed that all actions and proceedings arising out of/related to the Contract shall lie in the Courts of competent jurisdiction at Guwahati. The Court held that since the Clauses of the Agreement expressly provided that the Courts at Guwahati would have exclusive jurisdiction, it was a contrary indicator coming within the exception as held by the Supreme Court in the case of DSG SGS Souma (supra).***

* * *

29. Similarly, in Cravants Media Pvt. Ltd. v. Jharkhand State Cooperative Milk Food Federation Pvt. Ltd. Arbitration petition 915/2021 decided on 06.12.2021 by the Coordinate Bench, ***the Dispute Resolution Clause provided that the venue of arbitration shall be Ranchi, but any disputes arising out of this agreement shall be subject to the sole and exclusive jurisdiction of Courts in Delhi. It was held that the intention of the parties was clear that the seat would be in New Delhi and the Court at New Delhi was held to have the jurisdiction.***

* * *

*31****. It is quite evident that there is a contraindication in the registered Agreement that while the venue of arbitration may be New Delhi, but the seat of arbitration shall be Gurgaon and High Court at Chandigarh. In the circumstances, it has to be held that this Court has no jurisdiction and it is the Courts at Gurgaon/High Court of Chandigarh which have the exclusive jurisdiction for entertaining the disputes arising out of the registered Lease Agreement****.'*

Emphasis Added

I find myself in consonance with the above view. In circumstances where a place is designated merely as a 'venue' and courts of another place have been granted the exclusive jurisdiction, the latter is a clear 'contrary indicia'. It can be inferred from a comprehensive reading of such clauses, that the 'venue' is a convenient place of arbitration and not the seat.

17. The Calcutta High Court's judgement in ***M/S Height Insurance Services Limited (supra)*** has been stayed by the same judge who passed the judgement and is therefore not required to be dealt by me.

Conclusion

18. Contractual interpretation necessitates taking into consideration all clauses and relevant factors to propound the proper intention between the parties. The rule of harmonious construction must be applied so that a panoramic meaning can be given to any agreement. The law with respect to arbitration clauses, as laid down in ***BGS SGS SOMA (supra)*** and ***Mankastu Impex (supra)***, is not alien to such interpretive principles. In light of the Apex Court's decisions in these two judgements, other clauses have to be scrutinized, when a location has been mentioned as 'venue' or 'place', to fathom if such a location can be dignified with the status of 'seat'. In my opinion, a clause opting a place as 'venue' or 'place' read with another clause which mentions courts of another location to have jurisdiction over disputes that may arise, inhibits the promotion of such 'venue' to 'seat'. The intention that emerges from an aggregate understanding of such clauses is that the 'venue' or 'place' was to be a convenient location for holding of arbitration seatings. The courts of the place selected as having exclusive jurisdiction over disputes should be considered as 'seat' and having jurisdiction to entertain applications under the Act.

19. In the facts of this case, Exhibit 2 of the MRA mentions that the arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, and the venue of such arbitration shall be in Kolkata. However, it cannot be analysed in seclusion of the other clauses. Due regard must be paid to other clauses, if any, which may act as a 'contrary indicia' to suggest that the parties intended the venue to not be seat of the arbitral proceedings. It is clear that Clause 25 contained in the MRA which confers exclusive jurisdiction on the courts in Mumbai in respect of any and all disputes arising out of the agreement, is a 'contrary indicia' and shall proscribe the upgradation of 'Kolkata' from being a mere 'venue' to that of 'seat'. The courts at Mumbai, in my opinion, possess the jurisdiction to entertain the instant petition and other applications under the Act. Correspondingly, this court does not have jurisdiction to entertain the instant petition.

20. Since I have held that this court does not have jurisdiction, it is not required to go into the issue as to whether the invocation of bank guarantee is within the purview of the arbitration clause. This question must be gone into by the court having jurisdiction.

21. Accordingly, A.P. No. 358 of 2020 is dismissed without costs.

22. Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)