



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

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Reserved on: 28.08.2023
Pronounced on: 26.09.2023

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ARB. P. 628/2023 & I.A. 11633/2023

IN THE MATTERS OF:

G R BUILDERS THROUGH ITS PROP SANJEEV
KUMAR

..... Petitioner

Through: Ms. Amrit Kaur Oberoi, Ms. Pallavi Maurya and Mr. Aditya Kumar Hire, Advocates.

Versus

M/S METRO SPECIALITY HOSPITALS PVT. LTD.
& ORS.

..... Respondents

Through: Ms. Malviya Trivedi, Sr. Advocate with Mr. Deepak Gera, Mr. Sumit Kumar Dubey, Mr. Satender Adhana, Mr. Aditya Jai, Mr. Suchakshu Jain, Ms. Sujal Gupta and Mr. Nipun Katyal, Advocates.

AND

OMP (I) (COMM) 203/2023

G R BUILDERS THROUGH ITS PROP SANJEEV
KUMAR

..... Petitioner

Through: Ms. Amrit Kaur Oberoi, Ms. Pallavi Maurya and Mr. Aditya Kumar Hire, Advocates.

Versus



M/S METRO SPECIALITY HOSPITALS PVT. LTD.

& ORS.

..... Respondents

Through: Ms. Malviya Trivedi, Sr. Advocate with Mr. Deepak Gera, Mr. Sumit Kumar Dubey, Mr. Satender Adhana, Mr. Aditya Jai, Mr. Suchakshu Jain, Ms. Sujal Gupta and Mr. Nipun Katyal, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of ARB.P.628/2023 filed under Section 11(6) and (8) of the Arbitration and Conciliation Act, 1996 (hereafter, the '*A&C Act*'), the petitioner seeks appointment of an independent and impartial arbitrator as well as declaration to the effect that the respondent's nomination and appointment of the arbitrator is contrary to the procedure stipulated in the Letter of Intent executed between the parties.

Petitioner has also sought interim relief by way of OMP(I)(COMM) 203/2023 filed under Section 9 of the A&C Act, thereby seeking direction to the respondent to deposit the amount as per final bill dated 22.11.2022.

2. Facts in a nutshell are that on 19.03.2021, respondent issued Letter of Intent (hereafter, '*LOI*') to the petitioner to carry out '*Civil and Structure Works*' for its proposed '*Metro Cancer Building at Sector-16A, Faridabad, Haryana*'. The time for completion was 12 months from the date of the issuance of the LOI.

3. Petitioner claims that it had completed the project timely and to the satisfaction of the respondent however, it did not receive the entire payment



against the final RA Bill dated 22.11.2022 for a gross amount of Rs.12,99,04,110/- . It is claimed that an amount of Rs.3,40,07,068/- remains to be paid by the respondent, which include amounts due towards pending Bill Nos.20 and 21, security deposit, retention money etc.

4. It is contended that as per clause 5.2 of the LOI, payments were required to be released by the respondent within 90 days from the date of receipt of the Bill however, despite various meetings and reminders, the needful was not done.

5. Petitioner issued legal notice dated 07.04.2023, thereby demanding the balance amount, to which respondent sent its reply dated 05.06.2023, whereby petitioner was informed that respondent had appointed Mr. Justice S.N. Agarwal (Retd.) as the sole arbitrator. Petitioner objected to the appointment of the arbitrator vide rejoinder notice dated 12.06.2023, and also communicated its objection to the learned arbitrator.

6. In the aforesaid backdrop, petitioner contends that respondent's act of appointing the learned arbitrator is not as per the procedure stipulated in the LOI which, as per clause 31.14 provided that the sole arbitrator is to be appointed by the Management Review Committee in consultation with the petitioner/contractor.

7. Respondent has taken a preliminary objection to the maintainability of the present petition on the ground of territorial jurisdiction. It is contended that as per Clause 31.16 of the LOI, Faridabad was stated/decided as the place of arbitration, due to which the jurisdictional court for entertaining the Section 11 petition would be the High Court of P&H and not the Delhi High Court.

8. In response, learned counsel for the petitioner submitted that since LOI



was signed by it on Delhi, the learned arbitrator is based in Delhi, and the fact that preliminary hearing was held by the arbitrator in Delhi, this court shall have jurisdiction to entertain the petition. Further, respondent in its reply to the notice has not stated that Faridabad would be the place of arbitration. Learned counsel for the respondent while disputing the submissions made on behalf of the petitioner, contended that not only was the LOI signed and executed in Faridabad, but the project also is located in Faridabad.

9. Jurisdictional issue needs to be resolved first and foremost. Both the parties admit existence of the LOI and the arbitration clause in it. The LOI stipulates that in case of dispute, difference or question arising out of or in respect of the agreement, the same shall be resolved through arbitration. The relevant clauses being 31.14 and 31.16 read as under:-

“31.14: Sole arbitrator to be appointed by Management review committee in consultation with the contractor.

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31.16: All other terms and conditions shall remain strictly same as per the tender document except for only those mentioned above, In the event of any dispute, difference or question arising Out of or in respect of this agreement or the commission of any breach of any terms there of or any manner whatsoever in connection with it, the same shall be referred to the arbitrator duly appointed by the owner alone. The decision or award so given by arbitrator shall be binding on the parties here to. The place of arbitration shall be at Faridabad only You shall sign an agreement on non judicial stamp paper of Rs. 100/- (Rupees Hundred only) within Fifteen days from the date of this LOI as specified in the tender document.”

10. The parties have taken competing stands as to the place of the execution



of the LOI. While petitioner claims that it signed the instrument at Delhi, respondent contends that the instrument was signed in Faridabad. Admittedly, the respondent as well as the project is located in Faridabad.

11. Section 2(1)(e) of the A&C Act defines ‘Court’. An application under Section 11(6) of the A&C Act must be filed before a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act. Supreme Court in Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee¹ observed that both the aforesaid provisions have to be read harmoniously to determine the jurisdiction. It was held as under:-

“26. Of course, under Section 11(6), an application for appointment of an Arbitrator necessarily has to be moved in the High Court, irrespective of whether the High Court has the jurisdiction to decide a suit in respect of the subject matter of arbitration and irrespective of whether the High Court at all has original jurisdiction to entertain and decide suits. As such, the definition of Court in Section 2(1)(e) of the A&C Act would not be applicable in the case of a High Court exercising jurisdiction under Section 11(6) of the A&C Act to appoint an Arbitrator/Arbitral Tribunal.

27. At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial jurisdiction. Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act.

¹ 2022 SCC OnLine SC 568



28. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent.”

12. In Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.², it was held that once the seat of arbitration is fixed, the same would be in the nature of an exclusive jurisdiction clause binding the parties to a specific court which alone could exercise supervisory power over the arbitration. The observations were reiterated by the Supreme Court in Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. & Ors.³, Hindustan Construction Company Ltd. v. NHPC Ltd. & Anr.⁴ and BGS SGS Soma JV v. NHPC Ltd.⁵ The following passage of BGS SGS (Supra) is instructive on the subject:-

“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

² (2012) 9 SCC 552

³ (2017) 7 SCC 678

⁴ (2020) 4 SCC 310

⁵ (2020) 4 SCC 234



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.”

13. In view of the settled law discussed above, the accrual of cause of action at a place for pursuing a substantive legal action is not a consideration for determining jurisdiction for the purposes of Section 11. Location of seat of arbitration is what will be a relevant consideration. In the present case, as per clause 31.16, the place of arbitration is Faridabad (Haryana), which would be the chosen as the seat, since seat has not been separately named and there is no other contrary indicia to show that the place of arbitration was not intended to be the seat of arbitration.

14. The petitioner's reliance on decision in OK Play Auto Pvt. Ltd. v. Indian Commerce & Industries Co. Pvt. Ltd.⁶ is of no avail as in the said case the parties had failed to reach a consensus on the procedure/place of

⁶ 2018 SCC OnLine Del 8525



arbitration. In BBR (India) Pvt. Ltd. v. SP Singla Construction Pvt. Ltd.⁷, Supreme Court held that merely because proceedings were held in Delhi, it would not make Delhi as the jurisdictional seat. The relevant extract is reproduced hereinunder:-

“33. At this stage, we must also deal with the appellant's argument that substantive proceedings were held in Delhi and, therefore, it would be the “seat of arbitration”. The proceedings before the first arbitration at Panchkula, Haryana, were restricted to filing of pleadings and documents. On deeper consideration, this argument should be rejected for the reasons recorded above, as it will lead to confusion and uncertainty. The legal question raised in the present case must be answered objectively and not subjectively with reference to the facts of a particular case. Otherwise, there would be a lack of clarity and consequent mix-up about the courts that would exercise jurisdiction. There could be cases where the arbitration proceedings are held at different locations, but the “seat of arbitration”, as agreed by the parties or as determined by the arbitrator, may be different, and at that place – “the seat”, only a few hearings or initial proceedings may have been held. This would not matter and would not result in shifting of the jurisdictional “seat”. Arbitrators can fix the place of residence, place of work, or in case of recusal, arbitration proceedings may be held at two different places, as in the present case.

34. For clarity and certainty, which is required when the question of territorial jurisdiction arises, we would hold that the place or the venue fixed for arbitration proceedings, when subsection (2) of Section 20 applies, will be the jurisdictional “seat” and the courts having jurisdiction over the jurisdictional “seat” would have exclusive jurisdiction. This principle would have exception that would apply when by mutual consent the parties agree that the jurisdictional “seat” should be changed, and such

⁷ (2023) 1 SCC 693



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consent must be express and clearly understood and agreed by the parties.”

15. For the aforesaid reasons, this court lacks territorial jurisdiction to entertain the present petitions. The other contentions raised by the parties need not be gone into. Consequently, both the above-noted petitions are dismissed along with pending application.

16. However, the petitioner shall be at liberty to approach the concerned court in accordance with law.

**(MANOJ KUMAR OHRI)
JUDGE**

SEPTEMBER 26, 2023

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