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

+ ARB.P. 722/2023

MR. NITIN KWATRA ..... Petitioner  
Through: Mr. Pawan Kawrani, Adv. (Thro. VC)

versus

STADHAWK SERVICES PVT. LTD. & ORS. .... Respondents  
Through: Ms. Preeti Sharma, Adv. for R2  
(through VC).

**CORAM:**  
**HON'BLE MR. JUSTICE SACHIN DATTA**

**ORDER**  
**21.12.2023**

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1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the 'A&C Act') has been filed seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in context of a Business Associate Agreement dated 01.12.2020, executed between the petitioner and respondent no.1. The respondent nos. 2 and 3 are stated to be the directors of the respondent no.1. Certain disputes have arisen between the parties in terms of the said agreement pertaining to monetary entitlement thereunder.
3. The Business Associate Agreement contains an arbitration clause as under:

***“XXIV. APPLICABLE LAW AND SETTLEMENT OF DISPUTES***

*A. This Agreement and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with Indian Substantive and Procedural law, applicable to Agreements made and to be performed entirely therein.*



*B. The Parties shall attempt in good faith to resolve any dispute, difference or claim arising out of or in relation to this Agreement through mutual discussion. In case it is not resolved within Thirty (30) Days from receipt of the written notice (setting out the dispute or claim) by the other party, the complaining party may issue a notice of reference, invoking settlement of such dispute through Arbitration.*

*C. All disputes between parties shall be subject to exclusive Jurisdiction of the courts at Gurugram only.*

*D. Arbitration: Any and all disputes ("Disputes") arising out of or in relation to or in connection with this Agreement between the Parties or relating to the performance or non-performance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof shall be referred for arbitration at New Delhi, India in accordance with the terms of Indian Arbitration and Conciliation Act, 1996 or any amendments thereof. The place of arbitration shall be Delhi. The language used in the arbitral proceedings shall be English. Arbitration shall be conducted by a sole arbitrator, who shall be appointed by the STADHAWK only. The arbitral award shall be in writing and shall be final and binding on each party and shall be enforceable in any court of competent jurisdiction."*

4. Disputes having arisen between the parties on account on alleged non-payment to the petitioner under the concerned agreement, the petitioner invoked the arbitration clause vide notice dated 08.04.2023. However, no reply thereto was sent by the respondents.

5. Notice in present petition was issued on 27.05.2022; however no reply has been filed on behalf of the respondents till date.

6. A perusal of the arbitration clause reveals that the venue and place of arbitration is Delhi. In terms of the settled legal position, venue of arbitration has to be treated as akin to seat, in the absence of any contrary indicia, and hence, this Court would have jurisdiction to appoint an arbitrator to adjudicate the disputes between the parties. The fact that the agreement contains a generic clause stating that "all disputes arising in connection with the concerned agreement shall be subject to the jurisdiction of the Courts of Gurugram" shall not affect the jurisdiction of this Court.



This position has been categorically reiterated in a catena of judgments. Reference may be made to a judgment of this court in ***Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd.***, 2023 SCC OnLine Del 4894, wherein it has been held as under:

*“13. In BGS SOMA (supra), the Supreme Court has laid down the tests/parameters for determining the “seat” of Arbitration. In that case, the arbitration agreement between the parties specified that arbitration proceedings shall be held at Faridabad/Delhi. There was no separate exclusive jurisdiction clause. The Supreme Court held that even if a part of the cause of action had arisen at Faridabad, the same would not be relevant once the “seat” was chosen, which would then amount to an exclusive jurisdiction clause so far as courts of the “seat” are concerned. The court held that since the proceedings were held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, the same 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. The Supreme Court laid down “test for determination of seat” as under:*

*“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.”

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29. Further, in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* the Constitution Bench of Supreme Court held as under:

“96. Section 2(1)(e) of the Arbitration Act, 1996 reads as under:

“2. Definitions.—(1) In this Part, unless the context otherwise requires—

(a)-(d) \* \* \*

(e) ‘Court’ means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;”

We are of the opinion, the term “subject-matter of the arbitration” cannot be confused with “subject-matter of the suit”. The term “subject-matter” in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata,



and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located.”

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32. On a conspectus of the aforesaid judgments, the position of law that emerges is that when the contract contains an arbitration clause that specifies a “venue”, thereby anchoring the arbitral proceedings thereto, then the said “venue” is really the “seat” of arbitration. In such a situation the courts having supervisory jurisdiction over the said “seat” shall exercise supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to confer “exclusive jurisdiction” on a different court.

33. In the present case, the relevant clause in the LOA purporting to confer “exclusive jurisdiction” is a generic clause, and does not specifically refer to arbitration proceedings. For this reason, the same also does not serve as a “contrary indicia” to suggest that that Delhi is merely the “venue” and not the “seat” of Arbitration. As such, the same cannot be construed or applied so as to denude the jurisdiction of the Courts having jurisdiction over the “seat” of Arbitration.”

7. The existence of the arbitration agreement between the petitioner and respondent no.1 is evident from a perusal of the Business Associate Agreement dated 01.12.2020.
8. In the circumstances, there is no impediment to appointing an independent sole arbitrator to adjudicate the disputes between the petitioner and respondent no.1, as mandated in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***, (2020) 20 SCC 760.
9. The respondent no(s). 2 & 3 have been impleaded in this petition on the basis that they are Directors of respondent no.1. However, they have not signed/entered into any arbitration agreement with the petitioner in their individual capacity. As such, they need not be parties to the proposed arbitration.



10. Accordingly, Mr. Praveen Pahuja, Advocate (Mob. No.: - +91 9871270660) is appointed as the Sole Arbitrator to adjudicate the disputes between the petitioner and respondent no.1.
11. The respondent no.1 shall be entitled to raise preliminary objections as regards arbitrability/jurisdiction which shall be decided by the arbitrator, in accordance with law.
12. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.
13. The learned Sole Arbitrator shall be entitled to fee in accordance with fourth schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
14. Parties shall share the arbitrator's fee and arbitral costs, equally.
15. 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.
16. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.
17. The present petition stands disposed of in the above terms.

**SACHIN DATTA, J**

**DECEMBER 21, 2023/AT**