



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

Reserved on: 16th November, 2023
Pronounced on: 08th January, 2024

+ **ARB.P. 1164/2022**

SANJAY KUMAR VERMA Petitioner

Through: Mr. Roop Singh, Advocate.

versus

PLANNING AND INFRASTRUCTURAL DEVELOPMENT
CONSULTANTS PVT. LTD. Respondent

Through: Mr. Shekhar Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. The Petitioner has invoked the jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act, 1996 [*hereinafter*, “*Arbitration Act*”] for appointment of a Sole Arbitrator to adjudicate disputes pertaining to the Letter of Appointment dated 01st July, 2020 issued to him, by the Respondent [*hereinafter*, “*LoA*”]. The existence of LoA, which contains the arbitration agreement, is not in dispute; however, the Respondent objects to the maintainability of the petition on the ground of lack of territorial jurisdiction of this Court.

FACTUAL BACKGROUND

2. The facts presented by the Petitioner are as follows:

2.1. Through the LoA, Petitioner was appointed as a Team Leader by



Respondent for their Project titled “*Consultancy Services of Authority’s Engineer for supervision of Rehabilitation and up-gradation of Nh-730 from Km. 484.00 to Km. 505.120 (Ramnagar to Siswa Babu to two lane with paved shoulders (Rural Area) & two lane paved shoulder with service road (Urban Area) under EPC Mode in the state of Uttar Pradesh)*”, for a fixed remuneration of Rs. 2,00,000/- per month.

2.2. The Petitioner’s tenure concluded on 28th February, 2021, but he was not paid salary for the months of December 2020, January 2021, and February 2021, despite completing all relieving formalities and submitting the site attendance sheets for the said months. However, as the Project was complete and Petitioner had not received any communication from Respondent requesting him to continue at the Project site, he left the site after due intimation to the concerned Superintendent of Work. Subsequently, on 15th March, 2021 and 07th April, 2021, the Respondent issued baseless e-mail communication and legal notice to Petitioner, asserting that it was the Petitioner’s duty to pursue the Respondent for payment of his dues. Petitioner, in turn, addressed a legal notice dated 17th April, 2021 to Respondent, demanding immediate release of his salary. This prompted the exchange of a series of correspondences between the parties’ respective lawyers, culminating in the filing of a civil suit by Petitioner before the Principal District and Sessions Judge, Patiala House Court, New Delhi for recovery of Rs. 6,00,000/- along with accumulated interest, against the Respondent.¹

2.3. In the afore-noted suit, Respondent filed an application under Section 8 of Arbitration Act seeking reference of disputes to arbitration. The said



application was allowed on 04th June, 2022, the plaint was rejected, and parties were relegated to arbitration proceedings in terms of Clause 13 of the LoA, which reads as under:

“13. Any disputes arising between the Management and yourself during the tenure of assignment shall be mutually settled, failing which the dispute will be referred to a recognized Arbitrator of company's choice whose decision shall be binding on both the parties, the same are subject to Patna jurisdiction;”

2.4. In the above background, the Petitioner has sought appointment of an Arbitrator through this Court.

THE CONTROVERSY

3. The Respondent's intention to resort to arbitration mechanism is evident from their application under Section 8 of the Arbitration Act before the District Court. However, their objection concerns this Court's competence to appoint the Arbitrator, given that Clause 13 of the LoA stipulates “*subject to Patna jurisdiction*”. Reliance was placed on *Swastik Gases Private Limited v. Indian Oil Corporation Limited*.²

4. The Petitioner, on the other hand, contends that this conferment of Patna jurisdiction does not amount to determination of the ‘seat of arbitration’ by mutual consent. It was argued that parties have not determined the seat of arbitration and thus, this Court is the competent court in terms of Section 2(1)(e) of Arbitration Act. The Court must apply the principles entailed in the Code Civil Procedure [“CPC”] to determine the territorial jurisdiction. To this end, the Petitioner has specifically invoked Section 20 of the CPC, contending that the cause of action arose in Delhi,

¹ Bearing C.S. No. 317/21.

² (2013) 9 SCC 32.



and that Respondent carries on business through their corporate/ subordinate office in Delhi. Further, relying upon Section 42 of the Arbitration Act, Petitioner argues that as earlier, an application under Section 8 of the said Act was filed before the courts in Delhi, this Court alone would have jurisdiction to entertain a petition under Section 11(6) of the Arbitration Act. Furthermore, the Petitioner argues that parties, through mutual consent, cannot bestow jurisdiction upon a court that inherently lacks the jurisdiction. In support, reference was made to the judgments in *Aarka Sports Management Pvt. Ltd. v. Kalsi Buildcon Pvt. Ltd.*,³ *M/s Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee*,⁴ and *A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem*.⁵

ANALYSIS AND FINDINGS

5. Section 20 of the Arbitration Act recognizes the parties' autonomy to mutually ascertain the place of arbitration, failing which, the Arbitral Tribunal is endowed with the power to decide the same. While the Act does not mention the term 'seat of arbitration', its import and significance have been outlined through various judicial pronouncements. Determination of the seat vests exclusive jurisdiction upon the courts located at the designated seat to supervise the arbitration proceedings, and precludes other courts from exercising their authority.⁶ The arbitration clause contained in the LoA stipulates that the arbitration proceedings would be subject to the jurisdiction of Patna, Bihar. Thus, the question that emerges for

³ 2020 SCC OnLine Del 2077.

⁴ 2022 SCC OnLine SC 568.

⁵ (1989) 2 SCC 163.

⁶ See: *BGS SGS Soma JV v. NHPC Limited*, (2020) 4 SCC 234 and *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited*, (2017) 7 SCC 678.



consideration is whether the parties have, through Clause 13 of the LoA, designated Patna as the seat of arbitral proceedings. If this clause is interpreted as an agreement designating Patna as the juridical seat of arbitration, then this Court would lack the requisite competence to adjudicate the instant petition.

6. In the case at hand, the arbitration clause specifies that “...*dispute will be referred to a recognized Arbitrator of company’s choice whose decision shall be binding on the parties, the same are subject to Patna jurisdiction*”. The language of the clause points to a mutual agreement, placing the arbitration proceedings squarely within the jurisdiction of Patna. The wording unambiguously indicates the parties’ intent to establish Patna as the place or seat of arbitration. Consequently, the Court finds itself at odds with the Petitioner’s interpretation suggesting that the seat of arbitration has not been definitively determined. The absence of the explicit term ‘seat’ in Clause 13 does not diminish the clarity of the agreement that Patna is the designated place of arbitration. Interpreting this clause otherwise would undermine the principle of party autonomy, as embodied in Section 20 of the Arbitration Act, negating the parties’ evident consensus on this matter. The parties have mutually and explicitly agreed to place the arbitration under the exclusive jurisdiction of the courts in Patna. This agreement effectively establishes Patna as the seat of arbitration. Consequently, it is the court in Patna that holds the jurisdiction to appoint an Arbitrator under Section 11(6) of the Arbitration Act.

7. The counsel for Petitioner strenuously relied on the legal principle that jurisdiction cannot be conferred by agreement upon a court which inherently lacks the authority to adjudicate the dispute. He contended that



the pre-contract negotiations with Respondent occurred in Delhi, where Respondent's corporate office is located, the LoA was issued in Delhi, Petitioner was posted in Gorakhpur, Uttar Pradesh and thus, *ex-facie*, no cause of action arose in Patna, which would entitle the courts in Patna to exercise jurisdiction. Although the Court recognizes the principle cited by the Petitioner's counsel, it does not apply to the specific circumstances of this case. The parties' right to select a neutral seat of arbitration, irrespective of whether cause of action arose or the obligations were performed at such place, is well-recognized.⁷ The agreement between the parties in relation to place of arbitration assumes pivotal significance, and precludes other courts from exercising their jurisdiction in respect of matters pertaining to arbitration. For this reason, the Petitioner's reliance upon the judgment in *Ravi Ranjan Developers (Supra)*, does not advance his case. In the cited decision, the Supreme Court acknowledged the principle that designation of the seat serves as an exclusive jurisdiction clause, however, since the agreement in that case did not define the seat, the Court applied the principles of CPC in ascertaining jurisdiction.

8. The Petitioner emphatically argued that, given the similarity in the factual context, this Court should adhere to the precedent established in the *Aarka Sports (Supra)* decision. In the said case, Clause 15.1 of the arbitration agreement subjected the agreement to the jurisdiction of courts in Delhi, however, Clause 15.3, which specifically dealt with the arbitration mechanism, provided that the Arbitrator shall be appointed by the "court of proper jurisdiction". The Court held that this stipulation cannot be construed

⁷ Refer: *Indus Mobile Distribution (Supra)* and *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.



as fixation of seat at Delhi and in such circumstances, applied the provisions of Sections 16 to 20 of the CPC, and held that High Court of Delhi is not competent to entertain the petition. The jurisdiction clause (Clause 15.1) in *Aarka Sports (Supra)* did not confer exclusive jurisdiction, but accorded a general supervisory role to the courts in Delhi. In contrast, the arbitration clause in the present case explicitly designates Patna as the place of arbitration. Based on this clear distinction, the Court finds no merit in the Petitioner's contention that the seat of arbitration has not been specifically identified in the LoA.

9. Similarly, the decision in *ABC Laminart (Supra)* is also inapplicable to the facts of present case.

10. The argument that Section 42 of Arbitration Act would apply to present petition as Respondent filed an application under Section 8 of the said Act in the suit filed before District Court in Delhi, is entirely misconceived. Section 8 application is filed to oust the jurisdiction of the civil court which is dealing with an arbitration agreement. Thus, subsequent applications under Section 42 cannot possibly be filed in the said court.

11. In view of the foregoing discussion, since the LoA defines Patna as the seat of arbitration, this Court is precluded from exercising its jurisdiction to appoint an Arbitrator under Section 11(6) of the Arbitration Act.

12. The petition is accordingly dismissed.

SANJEEV NARULA, J

JANUARY 08, 2024

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