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

% **Date of Order : 18th January, 2023**

\+ ARB.P. 1102/2022

\+ O.M.P. (I) (COMM.) 328/2022

SUNIL KUMAR CHANDRA ..... Petitioner

Through: Mr. S. D. Singh, Mr. Kamla Prasad, Mr. Jitender Singh, Mr. Kartikay Bhargava and Mr. Siddharth Singh, Advocates

versus

M/S SPIRE TECHPARK PVT LTD ..... Respondent

Through: Mr. Tarun Singla and Mr. Balasubramanian Ramesh Iyer, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

CHANDRA DHARI SINGH, J (Oral)

I.A. 15425/2022 *(Exemption)*

Exemption allowed subject to just exceptions.

The application stands disposed of.

ARB.P. 1102/2022

1. The present petition has been filed on behalf of the petitioner seeking the constitution of an Arbitral Tribunal under the provision of Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter as "**the Act**") *qua* the dispute arising out of the agreement dated 26th August, 2013 that was

executed between the parties and vide which the petitioner was allocated a lockable unit bearing Unit No. (office no.) 730, on 7th floor, admeasuring about 525 Sq. Feet in Tower T-02.

2. Learned counsel for the petitioner submitted that in the year 2012-2013, the respondent actively publicized its project, World Trade Center, inviting the general public to invest in the project and obtain an office/shop there. It is asserted that the aforementioned initiative was advertised via various channels, such as newspapers, brochures, billboards, etc. Desiring to settle one of his children, the petitioner, on 11th July, 2013 addressed the respondent for allotment of space in order to get a store in the aforementioned project.

3. It has further been submitted on behalf of the petitioner that the petitioner on the very same day deposited Rs. 9,50,000/- (Rupees nine lakhs fifty thousand) towards the booking amount, and the respondent issued a receipt no. 0232B dated 11th July, 2013 in response to the receipt of this payment. Subsequently, the respondent issued a demand letter for the Rs. 36,75,000/- (Rupees thirty six lakhs seventy five thousand) as a full and final consideration for the booked space in the aforementioned project, and consequently demanded Rs. 21,61,270/- (Rupees twenty one lakhs sixty one thousand two hundred and seventy) as the remaining balance amount.

4. It has been submitted on behalf of the petitioner that in pursuance of the demand letter dated 11th July, 2013, the petitioner credited the entire balance amount in the account of respondent. The respondent acknowledged the said deposit vide receipt dated 7th August, 2013.

5. It has been submitted on behalf of the petitioner that agreement dated

26th August, 2013 was executed between the parties according to which the petitioner was given a lockable unit bearing unit no. (office No.) 730, on 7th floor, admeasuring about 525 Sq. Ft. in a Tower called T-02. It is further asserted that according to the above-mentioned agreement, the respondent was required to transfer the ownership rights of the above-mentioned unit to the petitioner within 36 months, including a six-month grace period, or by August, 2017.

6. It is submitted on behalf of the petitioner that vide letter dated 22nd January, 2016, the respondent herein offered possession of the unit booked by the petitioner and demanded Rs. 5,78,643/- (Rupees five lakhs seventy eight thousand six hundred and forty three) be paid to the respondent towards different charges, after payment of which the respondent would give over the possession to the petitioner on 1st January, 2017. It is alleged that pursuant to the offer letter mentioned above, the petitioner approached the respondent and offered to pay the amount as demanded by the respondent in the said letter. However, the respondent herein began making excuses and offered the petitioner some other unit as the unit booked by the petitioner with the respondent was already leased to the Vivo company way back in August, 2016. Therefore, it is evident that the respondent herein acted in bad faith. It is contended by the petitioner that he never consented to any alternative unit presented and offered by the respondent, and that the petitioner was also willing to pay conversion fees specified above to the respondent.

7. It has been submitted on behalf of the petitioner that after the above-mentioned visit of petitioner, the respondent stopped making the assured

return payments to the petitioner as agreed between them vide agreement dated 26th August 2013. Aggrieved by such treatment by the respondent, the petitioner issued a legal notice on his behalf on 19th April, 2018, requiring the respondent to either handover possession of the unit booked by the petitioner with payment of unpaid assured returns or to return the total amount paid by the petitioner. The respondent on 7th September, 2018, issued a response letter to the above-mentioned legal notice, in which the respondent started blaming the petitioner for not making the payment of Rs. 5,78,643/- (Rupees five lakhs seventy eight thousand six hundred and forty three) as demanded and also admitted that the unit of the petitioner has been given on lease to the Vivo company. It is submitted that after receiving the aforementioned notice, the respondent issued few assured return payments in the months of June 2018 to November 2018.

8. It has further been submitted that according to arbitration clause 18.2 of the agreement dated 26th August 2013, the respondent has the power to choose an arbitrator to adjudicate conflicts between the parties, which is *per se* invalid and same has been determined by the Hon'ble Supreme Court vide its judgment titled as ***Perkins Eastman Architects DPC v. HSCC (India) Ltd;*** **(2020) 20 SCC 760**.

9. It has further been submitted on behalf of the petitioner that on failure of all efforts to resolve the dispute amicably, the petitioner was constrained to invoke the arbitration clause i.e. clause 18.2 of the agreement dated 26th August, 2013.

10. During the course of arguments as well as in corresponding petition filed by the petitioner under Section 9 of the Act titled as ***Sunil Kumar***

Chandra vs. M/S Spire Techpark Pvt. Ltd; **O.M.P. (I) (COMM.) 328/2022,** the petitioner has submitted that the courts of Gautam Buddha Nagar would not have any jurisdiction to decide the interim reliefs as pleaded by the respondents herein before the court in Gautam Buddha Nagar. It is further submitted that as per clause 18.2 of the agreement dated 26th August 2013, it has been decided mutually between the parties that any dispute arising out of the agreement would be adjudicated by way of arbitration in New Delhi and thus in the light of this clause, the following clause 18.3 of the agreement being ambiguous with respect to the jurisdiction of the Gautam Buddha Nagar Courts becomes invalid. Learned counsel for the petitioner also argued that an application under Section 9 of the Act should only be moved before the court competent to grant the relief before or during the pendency of arbitration proceedings and since, the arbitration has been agreed to be held in New Delhi, this court is the competent authority to weigh and decide the present petitions.

11. Learned counsel on behalf of the respondent vehemently opposed the averments made by learned counsel for the petitioner, and challenged the maintainability of the instant petition in this court on the ground of pecuniary jurisdiction. However, it is duly accepted by the respondent that the dispute in question is arbitrable in nature.

12. Heard learned counsel for both the parties and perused the records.

13. The law related to the jurisdiction of the court in the matters pertaining to arbitration is no longer *res integra*. It has been held in various pronouncements that all the matters arising out of an agreement/contract would be decided by the court in whose jurisdiction the seat of arbitration is

decided. In the case of ***BGS SGS SOMA JV v. NHPC;*** **(2020) 4 SCC 234**, a three-judge bench has pronounced as 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."*

14. The Hon'ble Supreme Court in the case of ***Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.;*** **(2017) 7 SCC 678** observed as under:

> *"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."*

15. The Court, on duly considering the clauses 18.2 and 18.3 of the agreement dated 26th August 2013, draws the inference that the latter clause was subject to the arbitration clause, i.e., clause 18.2 and no clear and unambiguous meaning was given as to disputes of what kind shall be referred to the court/forum in the Gautam Buddha Nagar. It is further construed by the expression *"in case of any disputes between the parties hereto (including their successors) concerning this agreement or matters arising therefrom, the same shall be adjudicated by way of arbitration……arbitration shall be at New Delhi"* that the parties while entering into agreement had an intent of resolving *any* dispute arising out of the agreement dated 26th August 2013 by way of Arbitration in New Delhi only. It has been held in a catena of judgments by the Hon'ble Supreme Court that where there exists any *iota* of inconsistency between two

provisions of a same instrument, the former clause shall prevail over the latter one. The instant petition has also drawn the attention of the court to reiterate the law of interpretation with respect to the two inconsistent clauses of a same instrument/document/deed.

16. In the case of ***Ramkishorelal v. Kamal Narayan;*** **1963 Supp (2) SCR 417 : AIR 1963 SC 890**, the Hon'ble Supreme Court has held as under:

> *"12. The golden Rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court had to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has to a trained conveyancer a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of convincing. It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible; it is only when this is not possible, e.g., where an absolute title is given is in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void."*

17. In the case of ***Shree Bhowani Cotton Mills vs Union Textile Traders***, **1965 SCC OnLine Cal 83**, the Calcutta High Court has held as under:

> *"4. the other contention on behalf of the petitioner was that it*

> *appeared from a clause of the agreement that the Courts at Calcutta would have jurisdiction, that it was open to the parties to come to a Court of law and therefore the agreement as to arbitration was vague. Settlement of dispute through the medium of arbitration and through recourse to Court of law are two different aspects. It may be that the parties envisaged disputes which are not covered by the arbitration clause and in such a case the parties might have recourse to a Court of law. That is why the parties stipulated that the Courts at Calcutta would have jurisdiction. I am unable to find any inconsistency between the provisions or to hold that there is any vagueness or uncertainty or that the clause providing for resort to Courts of law in Calcutta nullifies the arbitration agreement. Further, counsel, for the respondent rightly contended that in a document of this nature if there was any inconsistency the earlier clause would prevail unlike in a Will where the later clause would prevail. I make it quite clear that I do not hold that there is any inconsistency….."*

18. Thus, in light of the detailed discussions above, this court is inclined to hold that clause 18.2 shall have a prevailing effect over the latter clause 18.3 of the agreement dated 26th August 2013 with respect to the mode of dispute resolution. It is further observed that parties have agreed for the arbitration proceedings to take place in New Delhi which can be construed as the "seat" of the arbitration and therefore, this court has the jurisdiction to entertain the present petition.

19. The contention of the respondent challenging the maintainability of the petition on the ground of pecuniary jurisdiction of this court had already been dealt and rejected vide order dated 23rd November 2022 passed by the co-ordinate bench of this court in a corresponding petition titled as ***Sunil Kumar Chandra vs. M/S Spire Techpark Pvt. Ltd; O.M.P. (I) (COMM.)***

328/2022 and the same has not been challenged by the respondent. The relevant paragraph of the order dated 23rd November 2022 has been reproduced as hereunder:

> *"22. Perusal of the aforesaid order clearly shows that a coordinate bench of this court has already taken a view that where the claims of the petitioner in the arbitration would exceed the amount of the pecuniary jurisdiction of this court, then the contention with respect to this court not having any jurisdiction, will not hold any water. In view thereof, the said contention made on behalf of the respondent is rejected."*

20. Therefore, in view of the above facts and detailed discussion, this court is inclined to refer the dispute to arbitration by appointing the sole arbitrator. In view of the submissions made by the parties and to resolve the dispute arising out of the agreement dated 26th August, 2013, the parties are referred to arbitration before the Sole Arbitrator appointed by this Court. Hence, the following Order:

ORDER

(i) Mrs. Madhurima Mridul, Advocate is appointed as the sole arbitrator to adjudicate the disputes between the parties which have arisen under the agreement dated 26th August, 2013;

(ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;

(iii) The learned sole arbitrator shall be paid fees as prescribed under the Fourth Schedule of the Arbitration and Conciliation Act, 1996;

(iv) At the first instance, the parties shall appear before the learned

sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;

(v) All contentions of the parties are expressly kept open;

(vi) A copy of the order be forwarded to the learned sole arbitrator on the following address:

Mrs. Madhurima Mridul

15, Akbar Road

New Delhi – 110003

Mob: +91-9810175151, 23070764

E-mail Id - madhurima.mridul@gmail.com

21. The instant petition is disposed of in the aforesaid terms.

O.M.P. (I) (COMM.) 328/2022

1. The present petition has been filed by the petitioner under section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the "**the Act**") *inter-alia* praying for the following reliefs:

> *"a. issue directions to the respondent to remit the assured returns Rs. 36,075/- after deducting TDS Rs. 33,075/- PM in the bank account of the Petitioner details whereof is available with the respondent without any break till the possession of the office in question is handed over to the Petitioner with all facilities and fully furnished and further as provided in the agreement;*
>
> *b. issue directions to the respondent to remit the arrears in the form of assured returns amount being a sum of Rs. 33,075/- from February, 2022 till date in the bank account of the Petitioner;*
>
> *c. restrain the respondent from creating any third party interest in the Lockable Unit bearing Unit No. (office/office No) 730, on*

7th Floor, admeasuring to about 525 Sq. Ft in Tower named as T-02;

d. issue directions to respondent to hand over the possession of full furnished Lockable Unit bearing Unit No. (office No) 730, on 7th Floor, admeasuring 525 Sq. Ft in Tower named as T-02 to the Petitioner alongwith the car parking and all other facilities as agreed between the parties. ;

e. pass such further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. In the corresponding petition titled as ***Sunil Kumar Chandra vs. M/S Spire Techpark Pvt. Ltd; ARB. P. 1102/2022*** filed by the petitioner for the appointment of arbitrator, this Court has appointed Mrs. Madhurima Mridul, Advocate as the Sole Arbitrator to adjudicate the disputes between the parties.

3. Therefore, this Court, without adjudicating upon the merits of the present petition, finds it appropriate that the prayers made herein be pleaded in accordance with Section 17 of the Act before the sole arbitrator appointed by this Court.

4. The instant petition is disposed of in the aforesaid terms along with pending applications, if any.

The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JANUARY 18, 2023
gs/ug