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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 25th, August, 2025***+ **CM(M) 1591/2025 & CM APPL. 52496-52498/2025****SANWAR AGARWAL**

.....Petitioner

Through: Mr. Deepnath Roy Chowdhary with
Mr. Bhaskar Dwivedi, Mr. Pinaki,
Advocates.

versus

DORA MEDICAL TRADING (INDIA) PVT. LTD,Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Petitioner is defending Arbitral proceedings and during the pendency of the arbitral proceedings, an issue with respect to *seat* and *venue* of the Arbitration arose.

2. Admittedly, there was an “*Import Agent Service Agreement*” dated 16.09.2019 between the parties. Clause 15 of said agreement, as agreed between the parties, was to the following effect:-

“All disputes arising from the execution of or in connection with this agreement shall be settled through friendly consultation between the parties. If no settlement can be reached through consultation within forty-five (45) days after either party has given written notice to the other party of the existence of a dispute under this article. The dispute shall be submitted to arbitration with Indian Council of Arbitration (ICA) in India according to its arbitration rules enforce at that point of time”

3. According to learned counsel for petitioner/non-claimant, Rule 42 of (ICA) Rules of Domestic Commercial Arbitration, as was informed to them, was as under:-

“The place or venue of arbitration shall be India. The Arbitration proceedings shall be held at such place or places in India as the Arbitral Tribunal may determine having regard to the convenience of the Arbitrators and the parties.”



4. Thus, according to him, as per the abovesaid Rule, clearly, the arbitral proceedings were to be held at such place in India as the Arbitral Tribunal may determine having regard to the convenience of the Arbitrator and parties.

5. It, however, seems that the abovesaid rule sent to them due to oversight and it was a draft version and not the correct version. Rule 42 of the actual Rules was as under:-

“The parties may agree on the place of arbitration to be held anywhere in India. Failing such an agreement, the place of arbitration shall be Delhi, and the venue shall preferably be the Federation House, Tansen Marg, New Delhi, unless otherwise agreed upon by the parties.”

6. The contention of the petitioner is two-fold.

7. Firstly, the copy of the Rules, which was provided to them and which is now labeled as Draft Rule, was clearly conspicuous with respect to the fact that *if there was no agreement between the parties as regard the place of Arbitration, the venue shall be Delhi*. According to them, they were never given any opportunity to explain about the alleged distinction between ‘draft rule’ and ‘final rule’.

8. Secondly, according to them, the Rules cannot overwrite a statutory provision and in this regard, he strongly, relies upon Section 20 of Arbitration and Conciliation Act, 1996, which reads as under:-

“Section 20 Place of Arbitration –

(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.



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(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.”

9. Petitioner also places reliance upon *Aarka Sports Management Pvt. vs. Kalsi Buildcon Pvt. Ltd.:2020 SCC OnLine Del 2077*, *Kings Chariot vs. Tarun Wadhwa: 2024 SCC OnLine Del 4039*, *Achutananda Baidya vs. Prafulla Kumar Gayen & Ors.: AIR 1997 SC 2077*, *Surender Kumar Singhal vs. Arun Kumar Bhalotia:2021 SCC OnLine Del 3708*.

10. The Court has gone through the impugned order dated 29.04.2025 whereby learned Sole Arbitrator has observed that whichever way, the discretion, eventually, vested with the Arbitral Tribunal and, therefore, it has decided the seat of the Arbitration to be in Delhi and the venue at Federation House, Tansen Marg, New Delhi. It also took note of the averments appearing in the pleadings and in order to have ample clarification in this regard, learned Arbitrator, even, sought response from ICA official who, in no uncertain terms, provided the requisite clarity to the learned Arbitrator and apprised that the final Rules provided that the parties may chose place of Arbitration anywhere in India, failing which the place of Arbitration shall be Delhi and the value shall be ICA, Federation House, Tansen Marg, New Delhi, unless otherwise agreed by the parties and the same was confirmed by ICA *vide* its letter dated 10.03.2025.

11. The communication dated 10.03.2025 sent by ICA reads as under:-

“With reference to the captioned matter, we would like to bring to your attention that, in accordance with the Claimant's Notice of Request for Arbitration dated 10.01.2024, the captioned matter was duly registered with the Indian Council of Arbitration (ICA) on 23.02.2024, upon receipt of the requisite registration fee from the Claimant on the same date. Accordingly, ICA Rules of Domestic Commercial Arbitration &



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Conciliation, 01.10.2022 (ICA Rules of Arbitration) will be applicable and govern the captioned matter.

Subsequently, after completion of procedural formalities, ICA notified the parties about the constitution of the Tribunal with Mr. Suresh Chandra as the Sole Arbitrator vide our communication dated 22.10.2024. However, we regret to inform you that while we had prepared and intended to send the correct version of the ICA Rules of Arbitration, instead, the draft version of ICA Rules of Arbitration, which contained certain clerical errors, was mistakenly attached in the aforementioned communication dated 22.10.2024. Though the draft version of the said Rule was withdrawn and rectified from our end, unfortunately, due to oversight, we could not retract this version at that time. We sincerely apologize for the inconvenience caused by this unintentional oversight.

In view of the aforesaid, we are forwarding herewith the correct version of the ICA Domestic Commercial Arbitration & Conciliation, 01.10.2022, which are applicable to the captioned matter for kind information and record please.

However, we would also like to confirm that, while sending our initial first notices, the correct version of ICA Domestic Commercial Arbitration & Conciliation Rules, 01.10.2022 was duly provided to both parties, which will govern the captioned matter. Copies of mails enclosed for ready reference please.”

12. Fact, however, remains that as per Rule 42 be it Draft Rules or Actual Rule, the ultimate discretion is with the learned Arbitral Tribunal only who has to take decision *qua* the place of arbitration, if the parties are not *ad idem*. As per Section 20 of Arbitration and Conciliation Act, 1996, also, the parties are free to agree on a place of Arbitration and failing such agreement, the place of arbitration shall be determined by the Arbitral Tribunal having regard to the circumstances of the case, including the convenience of the parties.

13. In the case in hand, the non-claimant wants the seat and venue to be in Kolkata.



14. However, after giving due regard to the averments appearing in the pleadings i.e. *statement of claim and statement of defence* and after going through the arbitration agreement as well as applicable rules, the learned Tribunal has come to a specific opinion that the eventual discretion vested with the Arbitral Tribunal and, therefore, it decided that the seat of the arbitration venue would be in New Delhi.

15. It is no longer *res intergra* that judicial interference in such type of matter is very limited.

16. This Court in *Kelvin Air Conditioning & Ventilation System (P) Ltd. v. Triumph Reality (P) Ltd.*, 2024 SCC OnLine Del 7137 made following observations with respect to the scope of interference under Article 227 of Constitution of India:-

“9. This Court is conscious of the fact that the petitioner has invoked jurisdiction of this Court by filing a petition under Article 227 of Constitution of India. Judicial inference in such type of matters has to be minimal and recourse to Article 227 of the Constitution of India has to be under exceptional circumstances when it is shown that such order is absolutely perverse.

10. Reference be made to IDFC First Bank Limited Vs. Hitachi MGRM Net Limited: 2023 SCC OnLine Del 4052 whereby Co-ordinate Bench of this Court has enumerated certain circumstances wherein such type of petition can be entertained. Though, in that case, the challenge was in context of dismissal of application filed under Section 16 of Arbitration and Conciliation Act but the observations are equally important in the present context. Relevant portion of aforesaid judgment reads as under: -

“24. While there is no doubt that a remedy under Articles 226 and 227 are available against the orders passed by the Arbitral Tribunal, such challenges are not to be entertained in each and every case and the court has to be “extremely circumspect”.

25. Recently, in Surender Kumar Singhal v. Arun Kumar Bhalotia [Surender Kumar Singhal v. Arun Kumar



Bhalotia, 2021 SCC OnLine Del 3708], this Court, after considering all the decisions, of the Supreme Court [Deep Industries Ltd. v. ONGC Ltd., (2020) 15 SCC 706; Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374; Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd., (2020) 17 SCC 93 : (2021) 4 SCC (Civ) 341; Virtual Perception OPC (P) Ltd. v. Panasonic India (P) Ltd., 2022 SCC OnLine Del 566 and Ambience Projects & Infrastructure (P) Ltd. v. Neeraj Bindal, 2021 SCC OnLine Del 4023] has laid down circumstances in which such petitions ought to be entertained. The relevant portion of the said judgment reads as under:

"24. A perusal of the abovementioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:

(i) An Arbitral Tribunal is a tribunal against which a petition under Articles 226/227 would be maintainable.

(ii) The non obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.

(iii) For interference under Articles 226/227, there have to be exceptional circumstances.

(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.

(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Articles 226/227.

(ix) The power should be exercised in "exceptional rarity" or if there is, "bad faith" which is shown.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."



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26. *A perusal of the above would show that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained.”*
17. The impugned order does not suggest any bad faith or gross perversity or any exceptional rarity, necessitating any interference by this Court while invoking supervisory powers under Article 227 of Constitution of India.
18. Viewed thus, the present petition is hereby dismissed. Pending applications also disposed of in aforesaid terms.
19. The next date before the learned Arbitral Tribunal is 28th instant and the learned counsel for petitioner/non-claimant submits that he would be seeking a short accommodation on that day as he could not prepare the matter further in view of the fact that the present petition was advised to be filed. The petitioner is at liberty to make appropriate request in this regard before the learned Arbitral Tribunal.

(MANOJ JAIN)
JUDGE

AUGUST 25, 2025/sw/SHS