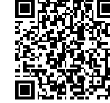

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 17.04.2026

\+ O.M.P. (COMM) 305/2024, I.A. 34423/2024 (For Stay)

GOVERNMENT OF INDIA THROUGH MINISTRY OF ROAD TRANSPORT AND HIGHWAYS .....Petitioner

Through: Mr. A. P. Singh, Mr. Naman Saraswat and Mr. Vikas Soni, Advocates

versus

QINGDAO CONSTRUCTION ENGINEERING GROUP COMPANY LTD .....Respondent

Through: Mr. Challa Kodanda Ram, Senior Advocate with Mr. Angad Mehta and Mr. Ram Babu, Advocates

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

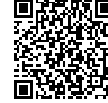
I.A. 34425/2024

1. The present Application, filed under Section 5 of the Limitation Act, 1963 read with Section 151 of the Civil Procedure Code, 1908, seeks condonation of delay of 17 days in re-filing the present Petition.

2. For the sufficient reasons stated in the Application, the delay is condoned. Application stands disposed of.

I.A. 34422/2024

3. The present Application, filed under Section 151 of the Civil Procedure Code, 1908 read with Section 5 of the Limitation Act,



1963, seeks condonation of delay of 29 days in filing the present Petition.

4. Learned counsel appearing on behalf of Petitioner submits that the Petition is filed within a period of three months and 30 days, which is within the statutory limit provided under the Arbitration and Conciliation Act, 1996 and therefore, the said delay may be condoned.

5. Learned Senior counsel appearing on behalf of Respondent fairly submits that he has no objection if the delay in filing the Petition is condoned, since the Petition has been filed within the condonable period.

6. In view of the above, the delay is condoned. Application stands disposed of.

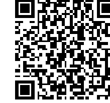
I.A. 10542/2025 (U/O VII Rule 11 R/W Section 151 CPC)

7. The present Application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908, has been filed seeking the rejection of the captioned Petition under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], on the ground of lack of territorial jurisdiction.

8. At the very outset, the learned counsel appearing on behalf of Petitioner submits that the Courts in New Delhi will have jurisdiction to entertain the present Petition and the same is maintainable before this Court since the arbitration proceedings were conducted at New Delhi.

9. It is further submitted that a Petition under Section 11 of the A&C Act came to be filed by the Respondent before the High Court of Bombay at Goa, which was rejected on the ground that the Petition

[1] A&C Act



was premature and the stage for invocation of the arbitration clause had not arisen.

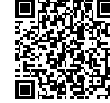
10. He also submits that the Petition was rejected on the ground that the disputes in respect of the Section 11 Petition pertained to the bidding stage, and the **Request for Proposal document dated 23.12.2016**[2] specifically provided that any challenge that pertained to the bidding stage would be entertained only by the Courts of Delhi.

11. The said Judgment of the High Court of Bombay at Goa came to be challenged by the Respondent before the Apex Court by way of a Special Leave Petition being SLP (C) 3167/2021.

12. The Hon'ble Supreme Court *vide* Order dated 28.07.2023 set aside the Judgment passed by the High Court of Bombay at Goa. The relevant portion of the observations made by the Hon'ble Supreme Court reads as follows:

> "8. As earlier noted, the RFP document is deemed to be an integral part of this contract. Moreover, this is not a matter at the stage of calling for tenders, and in fact, the work order has already been issued after the execution of the agreement. Therefore, the dispute sought to be raised by the appellant ought to be categorised as differences which were in relation to the contract. On consideration of the materials on record it must be said that the reach of the Arbitration Agreement would also cover those differences which are "in relation to" the contract and the difference arose out of the appellant's financial bid and the letter of Award.
>
> 9. Here the appellant had unconditionally accepted the work order as per communication dated 23.3.2018. Once it is established that there was a concluded contract, there can be no difficulty in referring the parties to arbitration. In the petition filed under Section 11(6) of the Arbitration Act,1996, the learned Judge should have only considered prima facie whether the arbitration agreement exists. In this regard, it would be apposite to refer to Mayavati Trading(P) Ltd. v. Pradyut Deb Burman (2019) 8 SCC 714 where the three-judge bench of this Court observed that "Section 11(6A) is confined to the examination of the existence of an arbitration

[2] RFP



agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera, SA [Duro Felguera, SA v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764]" As noted in Duro Felguera(supra), a Section 11 judge has to only see "whether an arbitration agreement exists-nothing more, nothing less".

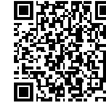
10. As can be gathered, the controversy in the present case pertains to the "14.3.2007 letter comprising the financial bid", the 6.10.2017 "letter of Award" and clause 19.1 of the EPC contract, all of which by the force of Recital F would construe an integral part of the same contract. This being the situation, considering the principle of party autonomy, the resolution of the dispute through arbitration under clause 26.3 would be appropriate and justified. In any case, even if the cause of action can be said to be at a stage prior to the execution of EPC contract, for a difference relating to the contract price, it could not be divorced from the EPC contract and more particularly from clause 19.1. The learned judge in the context should have given the widest interpretation of the words "arising out of" or "in relation to" in clause 26.1.1. of the Contract, to order for appointment of an arbitrator. Under clause 26.3.1, the dispute in relation to the contract is to be resolved by arbitration by a board of three arbitrators. The arbitration venue shall be New Delhi. As the delegate judge in the High Court has failed to nominate the arbitrator in the section 11(6) application filed by the appellant, we should remand the matter back to the Court for appointing the arbitrator.

11. In order to avoid any further delay, with the consent of the learned Counsel appearing for the contesting parties, we deem it appropriate to appoint a single arbitrator instead of a board of arbitrators, in the present matter. Since the parties have agreed to the appointment of a former judge of the Supreme Court, we nominate Delhi-based Justice (Retd.) Hemant Gupta, as the sole arbitrator for the present dispute. The learned arbitrator should fix his fees in consultation with contesting parties. Both parties are to equally share the fees payable to the appointed arbitrator."

13. He further relies upon the **EPC Agreement executed between the parties dated 07.05.2018**[3] and, in particular, Clause 26.3.1 thereof, which reads as under:

"26.3.1. Any Dispute which is not resolved amicably by

[3] Agreement



conciliation, as provided in Clause 26.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 26.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [NEW DELHI], and the language of arbitration proceedings shall be English."

14. Learned counsel for Petitioner on the strength of the said clause submits that the Agreement prescribes the 'venue' to be New Delhi.

15. He further submits that this be read along with the Order dated 28.07.2023 of the Hon'ble Supreme Court, in which the Apex Court has directed that the arbitration was to be held in New Delhi and there being a conscious consensus as between the parties that Delhi would be the place of arbitration, New Delhi would, therefore, acquire the character of the seat of the arbitration as opposed being merely the venue of the arbitration.

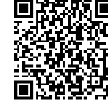
16. He further refers to the Clause 27.1 of the Agreement which reads as follows:

"27.1 Governing law and jurisdiction

*****

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at [Panaji) (Goa) shall have exclusive jurisdiction over matters arising out of or relating to this Agreement."

17. Learned counsel for Petitioner, while referring to the aforementioned clause, submits that the said clause is a generic clause which only determines the governing law and the jurisdiction for matters which do not pertain to the arbitration. He, thus, submits that the present Application is not maintainable and this Court is the Court



of competent jurisdiction to entertain the present Section 34 Petition.

18. ***Per Contra,*** learned Senior counsel for the Respondent submits that the 'venue' is distinct from 'seat' and the nomination of a place or location as the 'venue' would not confer upon it the status of being the 'seat'. He relies upon the Judgment of the Hon'ble Supreme Court in ***M/s Ravi Ranjan Developers Pvt. Ltd vs Aditya Kumar Chatterjee***[4] and ***BGS SGS SOMA JV vs NHPC LTD.***[5] to further buttress his argument.

19. He, on the strength of these judgments, further submits that venue has to be construed distinct from the seat until and unless the nomination of a particular geographical location as the venue is read in conjunction with an additional criteria *inter alia* a body of rules which would govern the arbitration, and that a geographical location which is mentioned as 'venue' cannot be elevated to the status of the 'seat' of arbitration.

20. He further relies upon the very clauses which are enumerated hereinabove, i.e., Clauses 26.3.1 and 27.1, to contend that, as is apparent, Clause 26.3.1 only designates New Delhi as the venue and not as the seat of arbitration.

21. He further submits that in view of the fact that there is a clear *contrary indicia* in Clause 27.1 to the effect that the Courts in Panaji, Goa, would have exclusive jurisdiction over matters arising out of and relating to the Agreement, the Courts at Panaji, Goa will be the court of competent jurisdiction to adjudicate the present matter.

22. This Court has heard the learned counsel for the parties and with their able assistance, had the opportunity to go through the papers

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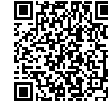
[4] 2022 SCC 568
[5] 2020 4 SCC 234



as also various judgments that have been relied upon.

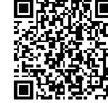
23. This Court, during the course of the hearing, went back and forth and in literal terms 'see-sawed' as to what should be the final and possible conclusion pertaining to the correct jurisdiction to entertain the present Petition.

24. This Court takes note of the arbitration clause which has already been set out hereinabove. A reading of the same is pertinent. The relevant portion of the said clause reads as follows:

> "….
>
> Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [NEW DELHI]
>
> …."

25. For the sake of completeness, this Court deems it appropriate to read the said clause in conjunction with the conclusion of the Judgment passed by the Hon'ble Supreme Court in the case of ***BGS SGS SOMA JV (supra).*** The relevant paragraphs of ***BGS SGS SOMA JV (supra)*** reads as follows:

> "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



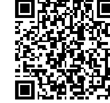
> particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause 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."

26. A perusal of the same would clearly indicate that in order to determine the seat, the wording as employed in the clause would attain significance. The use of the phrase "shall be" has been held to be pertinent.

27. Furthermore, the fact that the word "venue" has been employed in respect of arbitration is also an indication that the venue having been stipulated at New Delhi would in fact have to be read as New Delhi being the seat.

28. Though learned Senior counsel for the Respondent submits that the paragraph 82 provides that these aspects would need to be considered with the aspect as to whether there is any *contrary indicia,* which according to him exists in Clause 27.1 which provides that Courts in Panaji, Goa would have exclusive jurisdiction over matters arising out of and relating to this Agreement and, therefore, the New Delhi would not be construed to be the seat, this Court disagrees with the contention since this Court is also cognizant of the fact that various judgments of this Court, *inter alia,* passed by the learned Co-ordinate Bench of this Court in ***Moonwalk Infra projects Pvt. Ltd. vs. S.R. Constructions & Ors***[6] and in particular paragraph 9 thereof, would clearly steer this Court to hold that the Dispute Resolution

[6] 2025 SCC OnLine Del 2797



Clause, Clause 26.3.1, as set out in the present case would commend itself to be interpreted in a manner such as to hold that the venue as indicated herein would have to be construed to the seat. This Court also takes note of the Judgment of the learned Division Bench of this Court in the case of ***Yassh Deep Builders LLP v Sushil Kumar Singh and Anr***[7]**,** and in which, a similar set of facts and similar clauses were examined by this Court. Relevant extract of ***Moonwalk Infra projects Pvt. Ltd.(supra)*** reads as under:

> "9. In the present case, the arbitration clause contained in the Techno-Commercial Offer explicitly stipulates that the venue of arbitration shall be Delhi. Hence, the seat of the arbitration will also be Delhi. On the other hand, the Purchase Order merely states in general terms that "all subject to Begusarai jurisdiction" without any specific reference to arbitration proceedings. In this regard, a co-ordinate Bench of this Court in Reliance Infrastructure v. Madhyanchal Vidyut Vitran Nigam Limited, 2023 SCC OnLine Del 4894 while dealing with Ravi Ranjan Developers (supra) has held that the contract containing an arbitration clause specifying a clear venue would confer that court with the supervisory jurisdiction over the arbitral process. The same would supersede a generic clause conferring jurisdiction on another Court."
>
> ***(emphasis supplied)***

29. The relevant extract of ***Yassh Deep Builders LLP*** *(supra)* reads as under:

> "34. After considering various Indian and English judgments, the Supreme Court 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. 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

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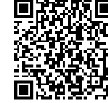
[7] 2024 SCC OnLine Del 1547



proceedings."

30. This Court is also guided by the Judgement of the Hon'ble Supreme Court in ***J&K Economic Reconstruction Agency v. Rash Builders India (P) Ltd.***[8], wherein the Apex Court has held as follows:

> "**18.** Thus, the principles governing the distinction between the seat and venue of the arbitration, and the jurisdictional consequences that follow, may be summarised as under:—
>
> (i) The seat of arbitration constitutes the juridical home or legal place of arbitration. It determines the curial law governing the arbitral process and identifies the Court having supervisory control over the arbitration.
>
> (ii) Once the seat is designated by agreement of the parties, the courts of that place alone have exclusive jurisdiction to entertain all proceedings arising out of the arbitration, including challenges to the award. The designation of the seat operates akin to an exclusive jurisdiction clause, excluding all other courts - even those where the cause of action may have arisen.
>
> (iii) The *venue* is merely a geographical location chosen for convenience for holding hearings, examination of witnesses, or meetings of the arbitral tribunal. It does not confer jurisdiction and does not, by itself, alter or determine the seat. The arbitral tribunal is free to conduct proceedings at locations different from the seat without affecting the juridical seat.
>
> (iv) The mere fact that arbitral proceedings are conducted or the award is rendered at a particular place does not confer jurisdiction on courts of that place if it is different from the designated seat. The seat remains fixed unless expressly altered by agreement of the parties.
>
> (v) Where the seat is not expressly designated, courts determine it by applying:
>
> (a) the closest and most intimate connection test, identifying the place most closely connected with the arbitration (based on the Naviera Amazonica principle); and

[8] 2026 SCC OnLine SC 596

> (b) in appropriate cases, construing the venue as the seat where the agreement and surrounding circumstances indicate such intention (as reflected in the Shashoua principle[9]).
>
> (vi) The intention of the parties, as discerned from the arbitration agreement and surrounding circumstances, is the paramount factor in determining the seat. Once such intention is expressed-either expressly or by necessary implication-it must be given full effect by Courts."

31. The sum and substance of the discussion in both the aforementioned judgments is that, in cases where there is a specific arbitration clause which is contained and which sets out that the venue shall be Delhi, read in conjunction with the other aspects, the venue would have to be construed as the seat. Furthermore, these judgments have held that where there is a generic clause which is set out separately and sets out the governing law and jurisdiction, the same cannot be construed to overpower or supersede the arbitration clause, which would have to be considered and contemplated upon separately.

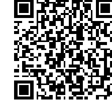
32. Given the conspectus of the facts, as arise in the present matter and the law as has been elaborated hereinabove, this Court is of the view that the present Petition is maintainable before this Court. The preliminary challenge as sought to be raised by the Respondent is rejected.

33. In view thereof, the present Application shall stand dismissed and disposed of in the aforesaid terms.

O.M.P. (COMM) 305/2024 & I.A. 34423/2024 (For Stay)

34. Since the preliminary objection pertaining to the territorial jurisdiction has been decided to be in the favour of the Petitioner herein, the matter is directed to be listed for hearing on merits.

35. The parties are directed to file their written submissions in



consonance with the practice directions issued by this Court within a period of 3 weeks from today.

36. Registry is also directed to requisition the entire Arbitral record, which shall be indexed and bookmarked including documents consisting thereof, and be placed in the Court's record, before the next date of hearing.

37. List on 27.07.2026.

HARISH VAIDYANATHAN SHANKAR, J

APRIL 17, 2026/rk/va/kv