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

% *Date of Decision: 9th July, 2025*

\+ O.M.P.(MISC.)(COMM.) 191/2025 & I.A. 5294/2025

M/S. BVG INDIA LTD. .....Petitioner

Through: Mr. Akhil Sibal, Senior Advocate with Mr. Sandeep S. Ladda, Mr. Soumik Ghosal, Mr. Akshat Malpani and Ms. Jahnavi Sindhu, Advocates.

versus

NAGAR NIGAM JAIPUR GREATER & ANR. .....Respondents

Through: Mr. Vigyan Shah, AAG with Mr. Amit Agrawal, Mr. Rahul Kukreja, Ms. Sana Jain, Mr. Sankalp Vijay, Mr. Saubendra Singh and Mr. Anupam Agrawal, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This petition is filed on behalf of the Petitioner under Section 29A(4) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking extension of the mandate of the learned Sole Arbitrator till 23.08.2026.

2. Petitioner is stated to be one of the largest integrated Facility Management Services company in India and is *inter alia* engaged in execution of several projects, such as, Electrification Projects, Emergency Response Services and Facility Management Services. Respondents No.1 and 2 are incorporated under the Rajasthan Municipalities Act, 1959. Nagar Nigam, Jaipur was the erstwhile Municipal Corporation, which by a Notification dated 18.10.2019 was divided into Respondents No.1 and 2.

3. Disputes arose between the parties under the terms of Agreement dated 24.03.2017, originally executed between the Petitioner and Nagar Nigam, Jaipur and continued by Respondents No.1 and 2, read with Supplementary Agreement dated 20.04.2021, executed with Respondent No.2 pertaining to '*Door to Door Collection, Segregation, Secondary Storage and Transportation of Waste (C&T)',* under the guidelines of Swachh Bharat Mission for Nagar Nigam, Jaipur. Under the said Agreements, Petitioner was required to undertake the task of primary and secondary collection and transportation of Municipal Solid Waste from all houses, institutions, offices and commercial establishments, roadside litter bins/bins/open secondary collection points in the areas covered by the Agreements and unload the same at the designated place at the waste disposal site, on terms and conditions provided in the Agreements. Parties agreed to refer the disputes to arbitration in terms of the arbitration clause and Sole Arbitrator was appointed on 13.07.2022 under Section 11(6) of 1996 Act by the High Court of Rajasthan in AA No.110/2021.

4. It is averred in the petition that on 15.09.2023 pleadings were completed before the learned Arbitrator and when the proceedings were at the stage of cross-examination of Claimant's witness No.2, by consent of the parties, mandate of the Arbitrator was extended by six months upto 13.03.2025. On 16.12.2024, learned Arbitrator convened a hearing for scheduling further dates for cross-examination, considering the technical and voluminous nature of the matter and the fact that the cross-examination was taking considerable time. When this petition was filed in February, 2025, the proceedings were at the stage of cross-examination of Respondents' witness No.2 and seven witnesses were remaining to be cross-examined by the

Petitioner. Since the mandate of the learned Arbitrator was expiring on 13.03.2025, Petitioner filed the present petition for extension of the mandate, to enable the Arbitrator to conclude the proceedings and pass the arbitral award.

5. Reply was filed on behalf of the Respondents taking a preliminary objection to the maintainability of this petition on the ground that this Court lacks the territorial jurisdiction to entertain the petition. Learned AAG for the Respondents argued as follows:-

(A). Agreement dated 24.03.2017 executed between the parties incorporates Clause 7.3 whereby parties agreed to confer exclusive jurisdiction over all matters arising out of or relating to the Agreement on the Courts at Jaipur. This Clause operates as an exclusive jurisdiction clause and parties were *ad idem* that only the Courts at Jaipur will have jurisdiction to adjudicate the disputes restricted not only to proceedings being subject matter of the suit but also arbitral proceedings. The arbitration clause is silent on seat, place or venue of arbitration and thus there is no contrary *indicia* to the general exclusive jurisdiction clause in the Agreement. By invoking the jurisdiction of this Court, Petitioner is attempting to re-write the terms of the Agreement and the arbitration clause, which is impermissible.

(B). It is trite that where there is a designated seat of arbitration, Courts having territorial jurisdiction over the seat alone will have jurisdiction to deal with all matters relating to arbitral proceedings but when no seat is designated and only venue or a place of arbitration is mentioned in the arbitration clause, in the absence of a contrary *indicia,* the venue or the place will be the juridical seat and in such

situations, the exclusive jurisdiction clause may be irrelevant, but where the parties have consciously incorporated an exclusive jurisdiction clause in the contract excluding jurisdiction of all other Courts, save and except, the Court specified in the contract and there is no mention of seat, place or venue in the arbitration clause, the former shall hold the field. Reliance was placed on the judgments of the Supreme Court in ***B.E. Simoese Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited, (2015) 12 SCC 225;*** and ***Emkay Global Financial Services Limited v. Girdhar Sondhi, (2018) 9 SCC 49***.

(C). Parties consciously agreed that the Courts at Jaipur will have jurisdiction in respect of all disputes arising from the agreement and this was after due deliberation of all the extenuating factors i.e. tender was issued in Jaipur; purchase orders were issued from Jaipur office; agreements were executed at Jaipur; and the entire work under the agreement was supervised and controlled from the registered office of the Respondents situated in Jaipur. Moreover, the disputes referred for arbitration also stem from the decisions and actions of the Respondents taken in Jaipur. No part of cause of action has admittedly arisen in Delhi. Therefore, in the absence of designation of seat/place/ venue by the parties, provisions of Sections 16 to 20 CPC would be attracted and Jaipur being the place where the entire cause of action has arisen, this Court will have no jurisdiction to entertain the present petition. Reliance was placed on the judgments in ***Swastik Gases Private Limited v. Indian Oil Corporation Limited, (2013) 9 SCC 32; Rajasthan State Electricity Board v. Universal Petrol Chemicals***

Ltd., (2009) 3 SCC 107; BGS SGS SOMA JV v. NHPC Limited, (2020) 4 SCC 234; Zhejiang Bonly Elevator Guide Rail Manufacture Co. Ltd. v. Jade Elevator Components and Others, 2025 SCC OnLine Del 1407; Kings Chariot Through its Sole Proprietor Mrs. Neelima Suri v. Tarun Wadhwa, 2024 SCC OnLine Del 4039; and ***Faith Constructions v. N.W.G.E.L Church, 2025 SCC OnLine Del 1746.***

(D). It is trite that Courts must enforce and give effect to the 'intent of the parties', reflected from the contractual clauses. By incorporating Clause 7.3 in the Agreement, parties clearly intended that the exclusive jurisdiction clause must be enforced and thus entertaining this petition for extension of mandate of the Arbitrator, will be in the teeth of the agreement between and intent of the parties. ***[Ref.: Enercon (India) Limited and Others v. Enercon Gmbh and Another, (2014) 5 SCC 1; Harmony Innovation Shipping Limited v. Gupta Coal India Limited and Another, (2015) 9 SCC 172; Eitzen Bulk A/S v. Ashapura Minechem Limited and Another, (2016) 11 SCC 508;*** and ***Roger Shashoua and Others v. Mukesh Sharma and Others, (2017) 14 SCC 722.]***

(E). Before filing the present petition, Petitioner had approached the Rajasthan High Court under Section 11(6) of 1996 Act for appointment of the Arbitrator, correctly understanding the import of the exclusive jurisdiction Clause 7.3 and rightly submitting to the jurisdiction of the said Court. Therefore, by virtue of Section 42 of 1996 Act, the arbitration was anchored therein and any further proceedings pertaining to the present arbitration can only be filed

before the Rajasthan High Court. No subsequent circumstance has either arisen or is pleaded by the Petitioner to take away the jurisdiction of the Courts at Jaipur. [***Ref.: Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee, 2022 SCC OnLine SC 568***].

(F). Petitioner has essentially filed this petition predicating its case on Procedural Order No.14 dated 19.04.2024, wherein the Arbitrator observed that there was no agreement between the parties designating the seat of the present arbitration and both counsels agreed as of now that the venue of arbitration for the purpose of cross-examination of the witnesses be kept at Delhi. In the said order, the Arbitrator has also recorded the consent of the parties that the Arbitrator may join the proceedings virtually but the witnesses, Advocates and representatives of the parties shall be available in Delhi, at the venue arranged by the Claimant. Placing reliance on this order for conferring jurisdiction on this Court is legally flawed. As the order would indicate, holding proceedings at Delhi for cross-examining the witnesses was a temporary measure and cannot be construed as a consent of the parties agreeing to the seat, place or venue being Delhi. In ***BGS SGS SOMA JV (supra)***, the Supreme Court held that whenever there is designation of a place of arbitration in an arbitration clause as being the venue of the arbitration proceedings, venue is really the 'seat', as the expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of the 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 that other things being equal, the venue so stated is not the 'seat' of arbitral proceedings, but only a convenient place of meeting. Therefore, merely because the Arbitrator decided to hold proceedings at Delhi, limited to cross-examination of witnesses on certain dates, this can neither be regarded as an agreement of parties under Section 20(1) of 1996 Act nor determination by the Arbitral Tribunal under Section 20(2) of 1996 Act.

(G). Further, in ***BBR (India) Private Limited v. S.P. Singla Constructions Private Limited, (2023) 1 SCC 693***, the Supreme Court held that exercise of supervisory jurisdiction by the Courts where arbitration proceedings are being conducted is a relevant consideration, but not a conclusive and determinative factor when the venue is not the seat. There would be situations where venue of the arbitration in terms of Section 20(3) of 1996 Act would be different from the jurisdictional seat and it is equally possible that majority or most of the hearings may have taken place at a different venue but the seat will determine the jurisdiction. It was also observed that aspect of certainty as to Court's jurisdiction must be given and accorded priority over the contention that supervisory Courts located at the place akin to the venue, where arbitration proceedings were conducted or substantially conducted, should be preferred.

6. Mr. Akhil Sibal, learned Senior counsel appearing on behalf of the Petitioner canvassed the following arguments:-

(A). There is no merit in the preliminary objection that this Court has no territorial jurisdiction to entertain this petition. It is true that the

agreement executed between the parties contains Clause 7.3 which stipulates that Courts at Jaipur shall have jurisdiction over all matters arising out of and/or relating to the Agreement. However, this is only a general jurisdiction clause not pertaining to arbitral disputes and does not indicate any agreement between the parties as to the seat of arbitration. '*Procedure for Disputes & Arbitration'* is separately provided in Clause 73 of the Agreement and therefore, Clause 7.3 can have no relevance in determining the Court having jurisdiction to decide the questions forming subject matter of arbitration under Section 2(1)(e) of 1996 Act. Therefore, Clause 7.3 cannot be invoked by the Respondents to question the jurisdiction of this Court in light of the judgments in ***Yassh Deep Builders Llp v. Sushil Kumar Singh and Another, (2024) 2 HCC (Del) 99; Reliance Infrastructure Limited v. Madhyanchal Vidyut Vitran Nigam Limited, 2023 SCC OnLine Del 4894; Kings Chariot (supra); Cinepolis India Pvt. Ltd. v. Celebration City Projects Pvt. Ltd. and Another, 2020 SCC OnLine Del 301;*** and ***Precitech Enclosures Systems Private Limited v. Rudrapur Precision Industries and Another, 2025 SCC OnLine Del 1609.***

(B). Seat/place of arbitration is fixed either under Section 20(1) or 20(2) of 1996 Act, as contrasted with Section 20(3), which is an enabling provision allowing the Arbitral Tribunal to conduct sittings at its convenience at any venue other than the seat. [***Ref.: BGS SGS SOMA JV (supra)*** and ***BBR (India) (supra)***]. In the instant case, admittedly, parties did not designate any seat or place in terms of Section 20(1) of 1996 Act, which fact also finds mention in the

Procedural Order No.14 dated 19.04.2024. In the absence of any agreement under Section 20(1), the place where the Arbitral Tribunal holds the arbitral proceedings would by default be the venue of arbitration and consequently, the juridical seat, as held by the Supreme Court in ***BBR (India) (supra)***. Indisputably, with the consent of the parties, witnesses were directed to remain present in Delhi for cross-examination by the Arbitrator and therefore, in the absence of an agreement under Section 20(1), the arbitral proceedings will be subject to jurisdiction of this Court as it is the most likely to be connected Court with the arbitral proceedings. This is significant in light of the fact that not only the procedural orders/communication of the Arbitrator indicates that the Arbitrator resides at Delhi and is holding proceedings from Delhi but also the fact that all pleadings, applications and documents are required to be filed in hardcopies at the Arbitrator's address at Delhi.

(C). It is trite that Section 2(1)(e) of 1996 Act has to be construed keeping in view the provisions of Section 20 of 1996 Act, which gives recognition to party autonomy. In ***Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and Others, (2017) 7 SCC 678,*** it was held by the Supreme Court that Legislature has intentionally given jurisdiction to two Courts i.e. the Court which would have jurisdiction where cause of action is located and 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, Courts where the arbitration takes place would be required to exercise

supervisory control over the arbitral process and this would be irrespective of the fact that the obligations to be performed under the contract were to be performed at another place. There is no Agreement between the parties under Section 20(1) designating seat/place/venue of arbitration and therefore, once the Arbitrator has fixed the place of arbitration under Section 20(2), by a conjoint reading of Sections 20(2) and 2(1)(e), this Court within whose jurisdiction arbitral proceedings are being conducted will have jurisdiction, in light of observations of the Supreme Court in ***Indus Mobile (supra).*** Significantly, Respondents do not canvass any place of arbitration under Section 20(2), other than Delhi.

(D). Stand of the Respondents that Courts at Jaipur will have exclusive jurisdiction to entertain petitions pertaining to the present arbitration including petition under Section 29A(4) and (5) of 1996 Act, basis Section 42 thereof, is wholly misconceived. This argument is predicated on a petition filed by the Petitioner under Section 11(6) of 1996 Act before the High Court of Rajasthan. Significantly, these proceedings were prior to the constitution of the Arbitral Tribunal, at which stage no seat can be designated in terms of Section 20(1) and thus there could be no determination by the Arbitral Tribunal under Section 20(2), as the same was yet to be constituted at that stage. It is only post the proceedings before the Rajasthan High Court and post the constitution of the Arbitral Tribunal that place of arbitration has crystalized under Section 20(2). While Section 42 would have application prior to any determination of seat/place either under Section 20(1) or 20(2), upon such determination, Section 42 would

have to yield to Section 20 and any contrary interpretation would negate and nullify the determination of seat/place under Section 20(2), as held in ***BGS SGS SOMA JV (supra).*** While the interpretation placed by the Petitioner will give effect to both Section 42 and Section 20 and harmonize the two provisions, the interpretation sought to be canvassed by the Respondents would lead to a precarious position in law where notwithstanding determination of seat/place under Section 20(2), by mere application of Section 42 exclusive jurisdiction will not vest in the Courts within whose jurisdiction the seat of arbitration is located.

7. Heard learned Senior counsel for the Petitioner and learned AAG for the Respondents.

8. The short issue that arises for consideration before the Court is whether this Court has territorial jurisdiction to entertain the present petition and before proceeding to decide this issue, it would be relevant to have a close look at the Clauses in the Agreement, which are extracted hereunder, for the ease of reference:-

> *"7.3 The language of this Contract Document is English and the law, which applies to this Contract, shall be the Law of the Republic of India. The Courts at Jaipur shall have jurisdiction all over matters, arising out of relating to Agreement under this Contract."*
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> ***xxx xxx xxx***
>
> ***"73.0 Procedure for Disputes & Arbitration***
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> ***73.1 Competent Authority's Decision***
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> *If a dispute(s) of any kind whatsoever arises between the Contractor and the Competent Authority's Representative, the same shall be referred to the Competent Authority for his decision with detailed justification. Such reference shall be stated that it is in pursuance to this clause and is for reviewing and giving decisions by the Competent Authority. The Competent Authority shall give its decision within fifteen (15) days of*

receipt of notice. If Contractor is not satisfied with the decision of the Competent Authority or the Competent Authority fails to give the decision within the period of fifteen (15) days from the date of receipt of notice under this clause, such a dispute may be referred to arbitration as per Arbitration and Conciliation Act, 1996.

73.2 Sole Arbitration

Except where, otherwise provided for in this Contract, all questions and disputes relating to the meaning of instruction hear in before mentioned or as to any other question, claim, right, matter of handing whatsoever, if any arising out of relating to this, specification, estimates, instructions, orders or these conditions or otherwise concerning the operations, or the execution or failure to execute the same where arising during the progress of the operations or after completion or abandonment thereof of any matter directly or indirectly connected with this Contract shall be referred to the sole arbitration of the Commissioner, Nagar Nigam Jaipur and if the Municipal Commissioner is unable or unwilling to act as such, then the matter in dispute shall be referred to sole arbitration or such other person appointed by the Commissioner, Nagar Nigam Jaipur, Jaipur who is willing to act as such Arbitrator. In case, the Arbitrator so appointed is unable to act for any reasons, the Commissioner, Nagar Nigam Jaipur, Jaipur in the event of such inability, shall appoint another person to act as Arbitrator in accordance with the terms of the Contract. Such person shall be entitled to proceed with the reference from the point at which its predecessors left it. It is also a term of this Contract that no Person other than a person appointed by the Nagar Nigam Jaipur as aforesaid should act as an Arbitrator."

9. It is evident that Clause 73 pertaining to *'Procedure for Disputes & Arbitration'* does not designate either the seat or place or venue of arbitration. Clause 7.3, on the other hand, confers exclusive jurisdiction on the Courts at Jaipur over all matters, arising out of or in relation to the Agreement dated 24.03.2017. Petitioner contends that in the absence of any agreement with respect to seat, place or venue between the parties under Section 20(1) of 1996 Act, in light of procedural order of the Arbitrator recording the consent of the parties to cross-examine the witnesses at Delhi, by default Delhi becomes the venue of the arbitration and consequently the seat and thus as per settled law, this Court, where the seat is located, will

have exclusive jurisdiction. Pithily put, the argument is that Section 2(1)(e) of 1996 Act will have to be read in light of Section 20 as held by the Supreme Court in ***Indus Mobile (supra).*** Respondents, on the other hand, contend that the arbitration clause does not designate seat/place/venue and therefore, the exclusive jurisdiction clause will hold the field and Courts at Jaipur alone will have jurisdiction. It is also urged that the entire cause of action, if any, has arisen within the territorial limits of the Courts at Jaipur and applying the principles of Sections 16 to 20 CPC, which come into play in the present case, no part of cause of action having arisen in Delhi, this Court lacks the territorial jurisdiction to extend the mandate of the learned Arbitrator. Rival contentions of the parties essentially revolve around the following provisions of the 1996 Act:-

> *"**2. Definitions.—**(1) In this Part, unless the context otherwise requires,—*
>
> *xxx xxx xxx*
>
> *[(e) "Court" means— (i) in the case of an arbitration other than international commercial arbitration, 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;*
>
> *(ii) in the case of international commercial arbitration, 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, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]*
>
> *xxx xxx xxx*
>
> ***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.

(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.

xxx xxx xxx

***42. Jurisdiction**.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."*

10. Coming to the law laid down by the Supreme Court having bearing on the issues raised by the parties, I may first allude to the judgment in ***Indus Mobile (supra),*** where the Supreme Court examined the interplay between Section 2(1)(e) and Section 20 of 1996 Act as also referred to the Law Commission's Report, 2014 and held that the moment a seat is designated, it is akin to exclusive jurisdiction clause. It was also held that under the Arbitration Law, unlike CPC which applies to suits, reference to a seat is a concept by which parties choose a neutral venue, which may not in the classic sense be a place where cause of action, in whole or part, may have arisen attracting provisions of Sections 16 to 20 CPC. The term 'subject matter' in Section 2(1)(e) has a connection with the process of dispute resolution and the purpose is to identify the Courts having supervisory control over arbitration proceedings and hence, it refers to a Court which would essentially be a Court of the seat of the arbitration process. Section 2(1)(e) of 1996 Act has to be construed keeping in view provisions of Section 20 thereof, which gives recognition to party autonomy. Legislature

intended giving jurisdiction to two Courts, one which has jurisdiction where cause of action is located and second where arbitration takes place.

11. It was further held that under Section 20(1) of 1996 Act, parties are free to agree to any seat or place within India but in the absence of any such agreement, Section 20(2) authorizes the Arbitral Tribunal to determine the place/seat of such arbitration. Section 20(3) enables the Arbitral Tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations amongst its members, for hearing witnesses, experts etc. Relevant passages from the judgment are as follows:-

> *"9. The concept of juridical seat has been evolved by the courts in England and has now been firmly embedded in our jurisprudence. Thus, the Constitution Bench in BALCO v. Kaiser Aluminium Technical Services Inc. has adverted to "seat" in some detail. Paragraph 96 is instructive and states 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."

[emphasis in original]

xxxx xxxx xxxx

11. In an instructive passage, this Court stated that an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause as follows:

(Bharat Aluminium case, SCC p. 621, para 123)

> *"123. Thus, it is clear that the regulation of conduct of arbitration and challenge to an award would have to be done by the courts of the country in which the arbitration is being conducted. Such a court is then the supervisory court possessed of the power to annul the award. This is in keeping with the scheme of the international instruments, such as the Geneva Convention and the New York Convention as well as the UNCITRAL Model Law. It also recognises the territorial principle which gives effect to the sovereign right of a country to regulate, through its national courts, an adjudicatory duty being performed in its own country. By way of a comparative example, we may reiterate the observations made by the Court of Appeal, England in C v. D wherein it is observed that: (Bus LR p. 851G, para 17)*
>
> > *'17. It follows from this that a choice of seat for the arbitration must be a choice of forum for remedies seeking to attack the award.'*
>
> *In the aforesaid case, the Court of Appeal had approved the observations made in A v. B wherein it is observed that:*

'... an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause. Any claim for a remedy ... as to the validity of an existing interim or final award is agreed to be made only in the courts of the place designated as the seat of arbitration."

(emphasis supplied)

xxxx xxxx xxxx

13. This Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration. (See para 138.)

xxxx xxxx xxxx

18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO judgment in no uncertain terms has referred to "place" as "juridical seat" for the purpose of Section 2(2) of the Act. It further made it clear that Section 20(1) and 20 (2) where the word "place" is used, refers to "juridical seat", whereas in Section 20 (3), the word "place" is equivalent to "venue". This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

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 Section 16 to 21 of the 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."

12. Significantly, in the same judgment, it was also held that where more than one Court has jurisdiction, it is open for the parties to exclude all other Courts and in this context, reference was made to the judgments of the Supreme Court in ***Swastik Gases Private Limited (supra)*** and ***B.E. Simoese***

Von Staraburg Niedenthal (supra). Relevant paragraph is as follows:-

> *"20. It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.. This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly."*

13. In ***BGS SGS SOMA JV (supra),*** the Dispute Resolution Clause provided that the arbitration proceeding shall be held at New Delhi/ Faridabad and the Supreme Court after a detailed analysis of the provisions of 1996 Act and the earlier judgments of the Supreme Court held that both parties had chosen New Delhi as the seat of arbitration under Section 20(1) and therefore, the Courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings and the fact that part of cause of action may have arisen at Faridabad would be irrelevant. The Supreme Court while examining the issue once again looked at the interplay between Section 2(1)(e) and Section 20 as also the concept of seat/place/venue under the Arbitration regime. Some of the significant observations in this regard by the Supreme Court can be summarised as follows:-

(a) Once the seat of arbitration is designated or determined, the same operates as an exclusive jurisdiction clause as a result of which only the Courts where the seat is located would have jurisdiction over the arbitration, to the exclusion of all other Courts, even Courts where part of cause of action may have arisen;

(b) Where it is found on facts of a particular case that either no seat is designated in the arbitration agreement or has been determined by the Arbitral Tribunal or the so called seat is only a convenient venue, then there may be several Courts where part of cause of action arises, that may have jurisdiction over the arbitration;

(c) Wherever there is an express designation of a venue and no designation of an alternative place as seat and the same is combined with a supranational body of rules governing the arbitration and there are no significant contrary *indicia*, the stated venue is actually the juridical seat of the arbitral proceedings, to the exclusion of all other Courts, even Courts where part of cause of action may have arisen;

(d) Whenever there is 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 the seat, as the 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 also indicates that the parties intended to anchor arbitral proceedings to a particular place signifying thereby, that the said 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, would then conclusively show that such a clause designates a seat. Relevant passages from the judgment are as follows:-

> *"**46.** This Court in Indus Mobile Distribution (P) Ltd., after referring to Sections 2(1)(e) and 20 of the Arbitration Act, 1996, and various judgments distinguishing between the "seat" of an arbitral proceeding and "venue" of such proceeding, referred to the Law Commission Report, 2014 and the recommendations made therein as follows: (SCC pp. 692-93, paras 17-20)*
>
> > *"17. In amendments to be made to the Act, the Law Commission recommended the following:*
> >
> > *'Amendment of Section 20*
> >
> > ***12.** In Section 20, delete the word "place" and add the words "seat and venue" before the words "of arbitration".*
> >
> > *(i) In sub-section (1), after the words "agree on the" delete the word "place" and add words "seat and venue".*
> >
> > *(ii) In sub-section (3), after the words "meet at any" delete the word "place" and add word "venue". [Note.-The departure from the existing phrase "place" of arbitration is proposed to make the wording of the Act consistent with the international usage of the concept of a "seat" of arbitration, to denote the legal home of the arbitration. The amendment further legislatively distinguishes between the "[legal] seat" from a "[mere] venue" of arbitration.]*
> >
> > * * *
> >
> > *Amendment of Section 31*
> >
> > ***17.** In Section 31*
> >
> > *(i) In sub-section (4), after the words "its date and the" delete the word "place" and add the word "seat".'*
>
> *18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO judgment in no uncertain terms has referred to "place" as "juridical seat" for the purpose of b Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word "place" is used, refers to "juridical seat", whereas in Section 20(3), the word "place" is equivalent to "venue". This being the settled law, it was found*

unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

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 the Code of Civil Procedure 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.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly."

This judgment has recently been followed in Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.

xxxx xxxx xxxx

***51**. The Court in Enercon then concluded: (SCC p. 60, para 138)*

"138. Once the seat of arbitration has been fixed in India, it would be in the nature of exclusive jurisdiction to exercise the supervisory powers over the arbitration."

(emphasis in original)

***52**. In Reliance Industries Ltd., this Court held: (SCC pp. 627, 630-31, paras 45, 55-56)*

> *"45. In our opinion, it is too late in the day to contend that the seat of arbitration is not analogous to an exclusive jurisdiction clause. This view of ours will find support from numerous judgments of this Court. Once the parties had consciously agreed that the juridical seat of the arbitration would be London and that the arbitration agreement will be governed by the laws of England, it was no longer open to them to contend that the provisions of Part I of the Arbitration Act would also be applicable to the arbitration agreement. This Court in Videocon Industries Ltd. v. Union of India has clearly held as follows: (SCC p. 178, para 33)*
>
> > *'33. In the present case also, the parties had agreed that notwithstanding Article 33.1, the arbitration agreement contained in Article 34 shall be governed by laws of England. This necessarily implies that the parties had agreed to exclude the provisions of Part I of the Act. As a corollary to the above conclusion, we hold that the Delhi High Court did not have the jurisdiction to entertain the petition filed by the respondents under Section 9 of the Act and the mere fact that the appellant had earlier filed similar petitions was not sufficient to clothe that High Court with the jurisdiction to entertain the petition filed by the respondents.'*
>
> * * *
>
> *55. The effect of choice of seat of arbitration was considered by the Court of Appeal in C v. D. This judgment has been specifically approved by this Court in Balco and reiterated in Enercon (India) Ltd. v. Enercon Gmbh. In C v. D, the Court of Appeal has observed: (C case, Bus LR p. 851,para 16)*
>
> > *'Primary conclusion*
> >
> > *16. I shall deal with Mr Hirst's arguments in due course but, in my judgment, they fail to grapple with the central point at issue which is whether or not, by choosing London as the seat of the arbitration, the parties must be taken to have agreed that proceedings on the award should be only those permitted by English law. In my view they must be taken to have so agreed for the reasons given by the Judge. The whole purpose of the balance achieved by the Bermuda form (English arbitration but applying New York law to issues arising under the policy) is that judicial remedies in respect of the award should be those permitted by English law and only those so permitted. Mr Hirst could not say (and did not say) that English judicial remedies*

for lack of jurisdiction on procedural irregularities under Sections 67 and 68 of the 1996 Act were not permitted; he was reduced to saying that New York judicial remedies were also permitted. That, however, would be a recipe for litigation and (what is worse) confusion which cannot have been intended by the parties. No doubt New York Law has its own judicial remedies for want of jurisdiction and serious irregularity but it could scarcely be supposed that a party aggrieved by one part of an award could proceed in one jurisdiction and a party aggrieved by another part of an award could proceed in another jurisdiction. Similarly, in the case of a single complaint about an award, it could not be supposed that the aggrieved party could complain in one jurisdiction and the satisfied party be entitled to ask the other jurisdiction to declare its satisfaction with the award. There would be a serious risk of parties rushing to get the first judgment or of conflicting decisions which the parties cannot have contemplated.'

56. The aforesaid observations in C v. D were subsequently followed by the High Court of Justice, Queen's Bench Division, Commercial Court (England) in Sulamerica Cia Nacional de Seguros SA v. Enesa Engelharia SA. In laying down the same proposition, the High Court noticed that the issue in that case depended upon the weight to be given to the provision in Condition 12 of the insurance policy that "the seat of the arbitration shall be London, England". It was observed that this necessarily carried with it the English Court's supervisory jurisdiction over the arbitration process. It was observed that:

'this follows from the express terms of the Arbitration Act, 1996 and, in particular, the provisions of Section 2 which provide that Part I of the Arbitration Act, 1996 applies where the seat of the arbitration is in England and Wales or Northern Ireland. This immediately establishes a strong connection between the arbitration agreement itself and the law of England. It is for this reason that recent authorities have laid stress upon the locations of the seat of the arbitration as an important factor in determining the proper law of the arbitration agreement.' "

(emphasis in original)

***53.** In Indus Mobile Distribution (P) Ltd., after clearing the air on the meaning of Section 20 of the Arbitration Act, 1996, the Court in para 19 (which has already been set out hereinabove) made it clear that the moment a seat is designated by agreement between the parties, it is akin to an exclusive jurisdiction clause, which would then vest the courts at the "seat" with exclusive jurisdiction for purposes of*

regulating arbitral proceedings arising out of the agreement between the parties.

xxxx xxxx xxxx

***58**. Equally, the ratio of the judgment in Indus Mobile Distribution (P) Ltd., is contained in paras 19 and 20. Two separate and distinct reasons are given in Indus Mobile Distribution (P) Ltd. for arriving at the conclusion that the courts at Mumbai alone would have jurisdiction. The first reason, which is independent of the second, is that as the seat of the arbitration was designated as Mumbai, it would carry with it the fact that courts at Mumbai alone would have jurisdiction over the arbitration process. The second reason given was that in any case, following the Hakam Singh principle, where more than one court can be said to have jurisdiction, the agreement itself designated the Mumbai courts as having exclusive jurisdiction. It is thus wholly incorrect to state that Indus Mobile Distribution (P) Ltd. has a limited ratio decidendi contained in para 20 alone, and that para 19, if read by itself, would run contrary to the 5-Judge Bench decision in BALCO.*

xxxx xxxx xxxx

***64.** The Court in Enercon GmbH then held that although the word "venue" is not synonymous with "seat", on the facts of that case, London -though described as the "venue" - was really the "seat" of the arbitration. This was for the reason that London was a neutral place in which neither party worked for gain, and in which no part of the cause of action arose. It was thus understood to be a neutral place in which the proceedings could be "anchored". Secondly, the Court stressed on the expression "arbitration proceedings" in Clause 18.3, which the Court held to be an expression which included not just one or more individual hearings, but the arbitral proceedings as a whole, culminating in the making of an award. The Court held:*

> *"63. Second, the language in Clause 18.3 refers to the "arbitration proceedings". That is an expression which includes not just one or more individual or particular hearings but the arbitration proceedings as a whole including the making of an award. In other words the parties were anchoring the whole arbitration process in London right up to and including the making of an award. The place designated for the making of an award is a designation of seat. Moreover the language in Clause 18.3 does not refer to the venue of all hearings "taking place" in London. Clause 18.3 instead provides that the venue of the arbitration proceedings "shall be" London. This again suggests the parties intended to anchor the arbitration proceedings to and in London rather than simply physically locating the arbitration hearings in London.*

Indeed in a case where evidence might need to be taken or perhaps more likely inspected in India it would make no commercial sense to construe the provision as mandating all hearings to take place in a physical place as opposed to anchoring the arbitral process to and in a designated place. All agreements including an arbitration agreement should be construed to accord with business common sense. In my view, there is no business common sense to construe the arbitration agreement (as contended for by EIL) in a manner which would simply deprive the arbitrators of an important discretion that they possess to hear evidence in a convenient geographical location.

64. Third, Joseph QC submitted that the last sentence of Clause 18.3 can be reconciled with the choice of London as the seat. First, he submitted that it can be read as referring simply to Part II of the Indian 1996 Act i.e. the enforcement provisions. Edey QC' s response was that if that is all the last sentence meant, then it would be superfluous. However, I do not consider that any such superfluity carries much, if any, weight. Alternatively, Joseph QC submitted that it can be read as referring only to those provisions of the Indian 1996 Act which were not inconsistent with the English 1996 Act."

(emphasis supplied)

xxxx xxxx xxxx

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 a of arbitration.*
>
> *xxxx xxxx xxxx*
>
> ***98.** However, the fact that in all the three appeals before us the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, 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, 1996. This being the case, both parties have, therefore, chosen that the courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the "seat" has been chosen, which would then amount to an exclusive jurisdiction clause so far as courts of the "seat" are concerned."*

14. In ***BBR (India) (supra),*** the arbitration clause was silent and did not stipulate seat or venue of arbitration. The Letter of Intent and the contract were executed at Panchkula, Haryana and the Corporate Office of the Respondent was also located at Panchkula. After the Sole Arbitrator was appointed, in the first sitting held on 05.08.2014, the Arbitral Tribunal determined that the venue of the proceedings would be at the given address at Panchkula. Neither party objected to the place of arbitration and the proceedings continued till the stage of framing of issues. In the proceeding held on 29.05.2015, the Sole Arbitrator recused for personal reasons and the substitute Arbitrator held that the proceedings shall be conducted in Delhi. In fact, majority of the proceedings were then conducted in Delhi, including examination of witnesses and final arguments and the award was also pronounced at Delhi.

15. The question that arose for determination before the Supreme Court was whether conduct of the arbitral proceedings in Delhi would shift the jurisdictional seat of arbitration from Panchkula to Delhi. Appellant in the said case had filed an application under Section 34 before this Court while Respondent later filed a petition under Section 9 before the Additional District Judge, Panchkula, which was dismissed on ground of lack of territorial jurisdiction. This order was challenged by the Respondent before the High Court of Punjab and Haryana and was set aside with a finding that Courts of Delhi did not have jurisdiction to entertain the Section 34 petition on the ground that the agreement was silent on the seat of arbitration and the second Arbitrator had not determined Delhi to be the seat. It is this order which was challenged before the Supreme Court.

16. Referring to the judgment of the Constitution Bench in ***Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552,*** as also the judgments in ***BGS SGS SOMA JV (supra)*** and ***Indus Mobile (supra),*** the Supreme Court held that on the facts of the case, if the arbitration proceedings were held throughout in Panchkula, there would have been no difficulty in holding that Delhi was not the jurisdictional seat. However, on the recusal of the first Arbitrator and post appointment of the second, proceedings were held in Delhi and the new Arbitrator passed an order fixing the venue at Delhi, which cannot be regarded as a change or relocation of jurisdictional seat from the one fixed initially by the first Arbitrator as this would lead to uncertainty and confusion, resulting in avoidable esoteric and hermetic litigation as to the jurisdictional seat of the arbitration. The seat once fixed by the Arbitral Tribunal under Section 20(2) should remain static and fixed whereas the

venue can change. It was, therefore, held that the Courts at Panchkula will have exclusive jurisdiction while Courts at Delhi would not get jurisdiction as the jurisdictional seat of arbitration was Panchkula and not Delhi.

17. Coming home to the facts of the present case, one finds that the arbitration clause is silent on the seat/place/venue of arbitration. Parties consciously agreed to confer exclusive jurisdiction on the Courts at Jaipur by incorporating Clause 7.3 in respect of all disputes arising in relation to the agreement in question. Insofar as the conduct of arbitral proceedings is concerned, the procedural orders appended by the parties to the pleadings indicate that all hearings took place virtually. Procedural Order No. 14, which really is foundation of Petitioner's case records that it was agreed between the parties that for the limited purpose of cross-examination of witnesses, the proceedings be kept at Delhi and while the Arbitrator may join virtually, witnesses, parties and their representatives would remain present at the venue, arranged by the Claimant at Delhi. To my mind, this order cannot be construed as consent of the parties to designate Delhi as seat/place/venue in the classic sense and the only indication is that the Arbitrator intended the claimant to choose a venue for the purpose and convenience of cross-examining the witnesses with the Arbitrator conducting the proceedings virtually. *Sans* designation of seat or venue under Section 20(1) or determination under Section 20(2), the question is what factors would determine the territorial jurisdiction of this Court and the answer is not far to seek as this issue is settled by the Supreme Court.

18. In ***Swastik Gases Private Limited (supra),*** the short question before the Supreme Court was whether the Calcutta High Court had exclusive jurisdiction in respect of a petition under Section 11 of 1996 Act. Clause 18

of the Agreement provided that the agreement shall be subject to jurisdiction of the Courts at Kolkata. There was no clause designating seat or venue. Contention of the Appellant was that even though Clause 18 conferred jurisdiction on the Courts at Kolkata, it did not specifically bar jurisdiction of Courts at Jaipur, where also part of cause of action had arisen. On the other hand, it was contended on behalf of the Respondent that parties clearly intended to exclude jurisdiction of all Courts other than Kolkata by incorporating Clause 18. Examining the rival submissions, the Supreme Court held as follows:-

> ***"11.*** *Hakam Singh [Hakam Singh v. Gammon (India) Ltd., (1971) 1 SCC 286] is one of the earlier cases of this Court wherein this Court highlighted that where two courts have territorial jurisdiction to try the dispute between the parties and the parties have agreed that dispute should be tried by only one of them, the court mentioned in the agreement shall have jurisdiction. This principle has been followed in many subsequent decisions.*
>
> ***12.*** *In Globe Transport [Globe Transport Corpn. v. Triveni Engg. Works, (1983) 4 SCC 707] while dealing with the jurisdiction clause which read, "the court in Jaipur City alone shall have jurisdiction in respect of all claims and matters arising (sic) under the consignment or of the goods entrusted for transportation", this Court held that the jurisdiction clause in the agreement was valid and effective and the courts at Jaipur only had jurisdiction and not the courts at Allahabad which had jurisdiction over Naini where goods were to be delivered and were in fact delivered.*
>
> ***13.*** *In A.B.C. Laminart [A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163] , this Court was concerned with Clause 11 in the agreement which read, "any dispute arising out of this sale shall be subject to Kaira jurisdiction". The disputes having arisen out of the contract between the parties, the respondents therein filed a suit for recovery of amount against the appellants therein and also claimed damages in the Court of the Subordinate Judge at Salem. The appellants, inter alia, raised the preliminary objection that the Subordinate Judge at Salem had no jurisdiction to entertain the suit as parties by express contract had agreed to confer exclusive jurisdiction in regard to all disputes arising out of the contract on the Civil Court at Kaira. When the matter reached this Court, one of the questions for consideration was whether the Court at Salem had jurisdiction to entertain or try the suit.*

While dealing with this question, it was stated by this Court that the jurisdiction of the court in the matter of contract would depend on the situs of the contract and the cause of action arising through connecting factors. The Court referred to Sections 23 and 28 of the Contract Act, 1872 (for short "the Contract Act") and Section 20(c) of the Civil Procedure Code (for short "the Code") and also referred to Hakam Singh [Hakam Singh v. Gammon (India) Ltd., (1971) 1 SCC 286] and in para 21 of the Report held as under: (A.B.C. Laminart case [A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163] , SCC pp. 175-76)

> *"21. ... When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like 'alone', 'only', 'exclusive' and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim expressio unius est exclusio alterius—expression of one is the exclusion of another—may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed."*

xxxx xxxx xxxx

17. *Likewise, in Shriram City [Shriram City Union Finance Corpn. Ltd. v. Rama Mishra, (2002) 9 SCC 613] , the legal position stated in Hakam Singh [Hakam Singh v. Gammon (India) Ltd., (1971) 1 SCC 286] was reiterated. In that case, Clause 34 of the lease agreement read, "subject to the provisions of Clause 32 above it is expressly agreed by and between the parties hereinabove that any suit, application and/or any other legal proceedings with regard to any matter, claims, differences and for disputes arising out of this agreement shall be filed and referred to the courts in Calcutta for the purpose of jurisdiction". This Court held that Clause 34 left no room for doubt that the parties had expressly agreed between themselves that any suit, application or any other legal proceedings with regard to any matter, claim, differences and disputes arising out of this claim shall only be filed in the courts in Calcutta. Whilst drawing difference between inherent lack of jurisdiction of a court on account of some statute and the other where parties through agreement bind themselves to have their dispute decided by any one of the courts having jurisdiction, the Court said: (Shriram City case [Shriram City Union Finance Corpn. Ltd. v. Rama Mishra, (2002) 9 SCC 613] , SCC pp. 616-17, para 9)*

> *"9. ... It is open for a party for his convenience to fix the jurisdiction*

of any competent court to have their dispute adjudicated by that court alone. In other words, if one or more courts have the jurisdiction to try any suit, it is open for the parties to choose any one of the two competent courts to decide their disputes. In case parties under their own agreement expressly agree that their dispute shall be tried by only one of them then the parties can only file the suit in that court alone to which they have so agreed. In the present case, as we have said, through Clause 34 of the agreement, the parties have bound themselves that in any matter arising between them under the said contract, it is the courts in Calcutta alone which will have jurisdiction. Once parties bound themselves as such it is not open for them to choose a different jurisdiction as in the present case by filing the suit at Bhubaneshwar. Such a suit would be in violation of the said agreement."

xxxx xxxx xxxx

27. *In a comparatively recent decision in A.V.M. Sales [A.V.M. Sales Corpn. v. Anuradha Chemicals (P) Ltd., (2012) 2 SCC 315 : (2012) 1 SCC (Civ) 809] , the terms of the agreement contained the clause, "any dispute arising out of this agreement will be subject to Calcutta jurisdiction only". The respondent before this Court had filed a suit at Vijayawada for recovery of dues from the petitioner while the petitioner had filed a suit for recovery of its alleged dues from the respondent in Calcutta High Court. One of the questions under consideration before this Court was whether the court at Vijayawada had no jurisdiction to entertain the suit on account of exclusion clause in the agreement. Having regard to the facts obtaining in the case, this Court first held that both the courts within the jurisdiction of Calcutta and Vijayawada had jurisdiction to try the suit. Then it was held that in view of the exclusion clause in the agreement, the jurisdiction of courts at Vijayawada would stand ousted.*

28. *Section 11(12)(b) of the 1996 Act provides that where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an arbitration other than the international commercial arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the Principal Civil Court referred to in Section 2(1)(e) is situate, and where the High Court itself is the court referred to in clause (e) of sub-section (1) of Section 2, to the Chief Justice of that High Court. Clause (e) of sub-section (1) of Section 2 defines "court" which means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary 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.*

29. *When it comes to the question of territorial jurisdiction relating to the application under Section 11, besides the above legislative provisions, Section 20 of the Code is relevant. Section 20 of the Code states that subject to the limitations provided in Sections 15 to 19, every suit shall be instituted in a court within the local limits of whose jurisdiction:*

> *(a) the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or*
>
> *(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or*
>
> *(c) the cause of action, wholly or in part arises.*

30. *The Explanation appended to Section 20 clarifies that a corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.*

31. *In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, the Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of Clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of Clause 18 of the agreement, the jurisdiction of the Chief Justice of the Rajasthan High Court has been excluded?*

32. *For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement—is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have*

jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner."

19. In ***Ravi Ranjan Developers Pvt. Ltd. (supra),*** the arbitration clause provided that sitting of the Arbitral Tribunal shall be at Kolkata. Petition was filed for appointment of the Arbitrator before Calcutta High Court and the question before the Supreme Court was whether the said Court had territorial jurisdiction. The Supreme Court held that Section 11(6) has to be harmoniously read with Section 2(1)(e) and construed to mean a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e). It was observed that the agreement was executed and registered outside the jurisdiction of the Calcutta High Court and the property in question was also located outside the jurisdiction and therefore, no part of cause of action had arisen within the jurisdiction of the Calcutta High Court. Parties had never agreed to refer their disputes to the jurisdiction of Kolkata Courts or that Kolkata should be the seat of arbitration and it was merely intended to be the venue for arbitration sittings. Following this judgment, this Court in ***Kings Chariot (supra),*** while dealing with the case where the arbitration clause was silent on seat/venue and the agreement only incorporated a clause providing that '*all disputes subject to Delhi jurisdiction only',* held that there is no confusion that for purpose of

arbitration, even if no part of cause of action has arisen in a place, parties can agree on a seat of jurisdiction. However, if parties do not so specify, then the jurisdiction of the Court is determined in accordance with Sections 16 to 20 CPC. In the said case, the entire cause of action had arisen in Madhya Pradesh and in the absence of seat or venue of arbitration, the Court held that it had no jurisdiction to entertain the petition.

20. The judgement of the Supreme Court in ***B.E. Simoese Von Staraburg Niedenthal (supra),*** where Clause 13 of the Agreement provided *'the Courts at Goa shall have exclusive jurisdiction',* highlights the importance of parties agreeing to the exclusive jurisdiction of the Court at one place and ousting the jurisdiction of all other Courts, where several Courts may have jurisdiction based on cause of action. Respondent therein did not dispute the jurisdiction of the Courts at Goa but pleaded that Raipur Court would also have jurisdiction since the company's business was in Raipur and the cause of action also arose at the said place. Referring to the judgment in ***Swastik Gases Private Limited (supra)*** and other judgments on the issue, the Supreme Court held that in light of Clause 13, jurisdiction of the District Judge, Raipur was ousted and the only competent Court of jurisdiction was Goa, since parties clearly intended to exclude jurisdiction of all other Courts.

21. In ***Emkay Global Financial Services Limited (supra),*** the arbitration clause was silent on seat/venue and the jurisdiction clause in the agreement provided exclusive jurisdiction of the Courts in Mumbai. The arbitral proceedings were conducted at Delhi. The Supreme Court held that in view of the exclusive jurisdiction in the Agreement, only Mumbai Courts will have jurisdiction to entertain the Section 34 petition and place in Delhi where arbitration proceedings were conducted, was only a convenient venue.

Recently, in ***Zhejiang Bonly Elevator Guide Rail Manufacture Co. Ltd. (supra),*** in a petition filed by the Petitioner under Section 9 of 1996 Act, relying on the judgments of the Supreme Court in ***BBR (India) (supra)*** and ***BGS SGS SOMA JV (supra),*** this Court held that Delhi High Court did not have the jurisdiction under Section 2(1)(e)(i) of 1996 Act to entertain the petition. In the said case, arbitration clause was silent on venue or seat. In one of the procedural orders, the Arbitrator had observed that the arbitral proceedings would be held in Delhi or Ahmedabad. As a matter of record, 16 out of 19 proceedings were conducted at Delhi while the award was pronounced online. Respondent contended that Clause 15 of the Contract neither determined the seat nor the venue and the procedural order when read plainly did not make Delhi the determinable place of arbitration. Petitioner, on the other hand, contended that majority of proceedings were held at Delhi and thus the venue became the juridical seat of arbitration. It was also urged that Section 2(1)(e) will have to be read in light of Section 20(2) which postulates that place of arbitration shall be determined by the Arbitral Tribunal having regard to the circumstances of the case and convenience of the parties and in the absence of any agreement under Section 20(1), the decision of the Arbitral Tribunal to hold proceedings in Delhi under Section 20(2) would confer jurisdiction on the Courts at Delhi.

22. After examining these submissions, the Court held that the Arbitrator only found it more convenient for himself to conduct arbitration proceedings in Delhi without fixing Delhi as a venue of arbitration in any of the orders and thus venue was not the seat of arbitration. Moreover, since Respondent was staying in Ahmedabad; contract was signed at Ahmedabad; and majority of the goods were also delivered to the Respondent in Ahmedabad,

cause of action had arisen in Ahmedabad and in the absence of designation of seat/place/venue of arbitration, principles under Sections 16 to 20 CPC will be attracted and Delhi Courts will have no jurisdiction.

23. In the present case, admittedly there is no designation of seat/place/venue in the arbitration clause. Parties have consciously agreed to confer exclusive jurisdiction on the Courts at Jaipur on significant and extenuating factors such as issuance of tender and purchase orders in question at Jaipur; execution of the agreements at Jaipur; supervision and control of the entire work from the registered office of the Respondents situated in Jaipur. Moreover, the disputes referred to arbitration have emanated from decisions taken at Jaipur. Therefore, the entire cause of action has arisen at Jaipur and there is no contrary *indicia* to the exclusive jurisdiction clause. Parties consciously incorporated the exclusive jurisdiction clause conferring jurisdiction on the Courts at Jaipur in respect of all disputes emanating from the Agreement in question, thereby ousting the jurisdiction of all other Courts. Applying the principles laid down by the Supreme Court in ***Swastik Gases Private Limited (supra),*** the jurisdiction will thus be determined by applying the provisions of Sections 16 to 20 CPC and so applied, there can be no doubt that this Court will have no territorial jurisdiction to entertain this petition.

24. Insofar as the argument of the Petitioner that Section 20(2) will be attracted in the present case conferring jurisdiction on this Court in the absence of any agreement between the parties under Section 20(1) of 1996 Act is concerned, I am of the view that the argument cannot be accepted. As noted above, the Tribunal has only recorded the agreement of the parties to conduct the proceedings in Delhi for the limited purpose of cross-

examination of witnesses *'for now'*. This cannot be construed as determining seat or venue at Delhi. Therefore, there being no agreement under Section 20(1) and no determination under Section 20(2), as also in light of the exclusive jurisdiction Clause 7.3 and Sections 16 to 20 CPC, this Court lacks the territorial jurisdiction to entertain this petition.

25. Accordingly, this petition is dismissed with liberty to the Petitioner to take recourse to appropriate remedies before the Court of competent jurisdiction. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the parties are left open. Pending application also stands disposed of.

JYOTI SINGH, J

JULY 09, 2025/ *Shivam/S.Sharma*