



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 01st March 2024

+ FAO(OS) (COMM) 48/2023 & CM APPL. 12477/2023

YASSH DEEP BUILDERS LLP Appellant

versus

SUSHIL KUMAR SINGH&ANR. Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Amit Sibal and Mr. Jayant K. Mehta, Senior Advocates with Mr. Rishi Agrawala, Mr. Karan Luthra, Ms. Aarushi Tikku, Mr. Shravan Niranjana, Mr. Rishab Sharma and Mr. Satyam Agarwal, Advocates.

For the Respondents: Mr. Neeraj Malhotra, Senior Advocate with Mr. Rajiv Kr. Virmani, Mr. Rohan Jaitley, Mr. Arun Baali, Mr. Nimish Kumar, Mr. Siddharth Singh Yadav, Ms. Arisha Ahmad, Mr. Tushar Mehta, Mr. Gaurav Jain, Mr. Amit Kumar, and Ms. Reda Tayyaba, Mr. Akshay Sharma, Mr. Dev Pratap Shahi for respondent No.1.

Mr. Rajshekhar Rao, Senior Advocate Mr. Hariharan, Senior Advocate, Mr. Kamal Nijhawan, Senior Advocate, with Mr. Areeb Amanullah, Ms. M. Anand, Mr. Rajarshi Roy, Ms. Radhika Bishwajit and Mr. Naman Saraswat, Advocates for respondent No.2.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEVSACHDEVA, J.



1. Appellant impugns order dated 14.03.2023 (hereinafter referred to as “*Impugned order*”), whereby the Learned Single Judge dismissed the petition under Section 9 of Arbitration and Conciliation Act, 1966 (hereinafter referred to as the Arbitration Act) seeking to restrain the Respondents from selling, alienating or transferring the land subject matter of a Collaboration Agreement dated 15.05.2018, entered into between Appellant and Respondent No.1.

2. Appellant, a limited liability Partnership, of which Respondent No. 2 is the erstwhile partner entered into a Collaboration Agreement on 15.05.2018 with Respondent No. 1 the owner of the land admeasuring 94 Kanal & 7 Marla, or 11.79375 acres, situated in the Revenue Estate of Village Dhunela, Tehsil Sohna, Gurugram, Haryana-122001 for the purposes of the development of the said land (hereinafter referred to as the Collaboration Property).

3. As per the Appellant, under the Collaboration Agreement, Appellant was to develop the Collaboration Property at its own cost and was entitled to sell the developed land. A portion of the developed land was earmarked as consideration for the Respondent No.1. Besides the said earmarked portion, a sum of Rs. 4.21 Cr. was paid to Respondent No. 1.



4. As per the Appellant, Respondent No. 1 in collusion with Respondent No. 2, the erstwhile partner illegally terminated the Collaboration Agreement and was seeking to alienate and sell the Collaboration Property.

5. For seeking interim measures of protection, Appellant filed the subject petition under Section 9 of the Arbitration Act *inter alia* seeking a direction to the Respondent No. 1, to maintain status quo qua possession and title of the Collaboration Property and further to restrain them from directly or indirectly, selling, transferring, alienating or creating any third party rights therein.

6. By an interim order dated 23.12.2022, the learned Single Judge directed maintenance of status quo with regard to title and possession of the subject property.

7. However, by the impugned order dated 14.03.2023, learned Single Judge has dismissed the Petition filed seeking interim measures of protection under section 9 of the Act, holding that, as the Collaboration Agreement between the parties already stands terminated, there was an impossibility for this Court to direct its specific performance in a proceedings under Section 9 of the Act.



8. Aggrieved by the said decision, Appellants have filed the subject appeal under Section 37 of the Act.

9. At the outset a preliminary objection has been raised by the Respondents about the lack of territorial jurisdiction of the courts at Delhi to entertain the proceedings under the Act.

10. It is contended by the Respondents, that the Collaboration property is situated in Sohna, Haryana, the Collaboration Agreement dated 15.05.2018 was executed in Sohna, Haryana containing an exclusive jurisdiction clause stipulating all disputes to be subject to jurisdiction of courts at Gurugram/Haryana alone, the courts at Delhi would have no territorial jurisdiction to entertain the proceedings under the Act.

11. Per contra, as per the Appellants, the Collaboration Agreement contains an Arbitration Clause conferring jurisdiction to the courts at Delhi and as such the courts at Delhi would have the territorial jurisdiction to entertain the proceedings under the Act.

12. It would be expedient to refer to the respective clauses in the Collaboration Agreement dated 15.05.2018 entered into between Appellant and Respondent No. 1. The respective Clause 19 and 23 read as under:



“19. Jurisdiction

19.1 All matters concerning these presents and the development of the schedule property shall be subject to the jurisdiction of courts at Gurugram/Haryana alone.

23. Arbitration

23.1. In the event any dispute or difference arises out of or in connection with the interpretation or implementation of this Agreement, or out of or in connection with the breach, or alleged breach of this Agreement, such dispute shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 to be decided by a sole Arbitrator appointed mutually by the Parties hereto. In case of any difference between the parties on appointment of a sole Arbitrator, the arbitration tribunal shall consist of three Arbitrators. The SECOND PARTY shall appoint one Arbitrator and the FIRST PARTY shall appoint the second Arbitrator. The third Arbitrator shall be appointed by the two selected Arbitrators failing which such appointment shall be done by the Arbitration Council of India, New Delhi. The decision taken by the majority of Arbitrators shall be final and binding on the Parties hereto. The venue of the Arbitration shall be at Delhi, India.

23.1.1. All proceedings in any such Arbitration shall be conducted in English.

23.1.2. Each Party agrees to bear its own costs of Arbitration.



23.1.3. The Arbitration award made by the Arbitrators shall be Final and binding on the Parties and the Parties agree to be bound thereby and to act accordingly.

23.1.4. The award shall be in writing.

23.1.5. The provisions of this Clause shall survive the termination of this Agreement.”

13. It may be noticed that clause 19 of the Collaboration Agreement stipulates that all matters concerning the Collaboration Agreement and the development of the scheduled property have been made subject to the courts at Gurugram/ Haryana alone.

14. On the other hand clause 23 of the Collaboration Agreement provides for Arbitration between the parties and stipulates that the venue of Arbitration shall be at Delhi, India.

15. Mr. Amit Sibal, the Learned Senior Counsel on behalf of the Appellant submits that the usage of the expression “venue” in the arbitration clause by the parties was intended to be Seat for arbitration, and not mere convenient place. Thus, the parties were *ad idem* on New Delhi being the Seat of Arbitration.

16. He further submits that in the petition filed under Section 9 of the Arbitration Act, Appellant had specifically stated that the venue of



arbitration was New Delhi and that no other Seat of Arbitration was provided under the Collaboration Agreement. He submitted that the issue of jurisdiction was not raised before the learned single judge and had been raised for the first time in the appeal. He submits that the Respondents by their conduct of not objecting to the Jurisdiction before the learned single judge even in their reply have accepted the jurisdiction of the courts at Delhi and as such are precluded from raising the same at this belated stage.

17. Learned senior counsel submits that in the interpretation of any agreement, the subsequent conduct of party is a relevant factor. He submits that even though the parties have intended New Delhi to only be venue, but through their subsequent conduct i.e. exchange of pleadings in terms of Section 7(4)(c) of the Act they have impliedly agreed to arbitrate with New Delhi being the Seat of Arbitration.

18. He further submits that in view of the Section 21 of the Code of Civil Procedure, 1908, since the Respondents did not object to jurisdiction before the Learned Single Judge raising of objection in the present appeal is only an afterthought and lacks *of bona fides* and cannot be permitted to be raised.



19. Learned seniorcounsel appearing for the Respondent submits that the appeal is not maintainable, in the backdrop of the Collaboration Agreement, which contains a jurisdiction clause and arbitration clause. He submits that upon bare perusal of Clause 19.1 it is evident that the Collaboration Agreement vests jurisdiction exclusively with courts of Gurugram/Haryana ousting the jurisdiction of other courts. The usage of word '*alone*' in the said clause makes it abundantly clear that the intention of parties was to confer 'exclusive jurisdiction' upon the courts of Gurugram/Haryana only.

20. He further submits that the opening line of Clause 19.1 i.e., 'All matters concerning these presents and the developments of the scheduled property' itself suggests that the said clause is exhaustive in nature covering all aspects of the collaboration agreement. Moreover, the rationale to interpret the phrase 'all matters' in the context encompasses all disputes, differences etc. arising in relation to the Agreement and will include arbitrable disputes also.

21. He further submits that Clause 23 pertaining to 'Arbitration' refers only to the 'venue' and not the 'seat' and cannot be read as the seat in view of the exception carved out by the Supreme Court in *BGS SGS Soma JV v. NHPC Ltd. (2020) 4 SCC 234*.



22. He submits that the ‘Arbitration Clause’ contained in the Agreement deliberately used the word ‘venue’ and not ‘seat’ thereby substantiating the intention of the parties that only the geographical location of the arbitration proceedings/meetings will be at Delhi and the word ‘venue’ used in Clause 23.1 could not be interpreted as ‘Seat of Arbitration’ as ‘Delhi’.

23. Learned Senior counsel for the Respondent further submits that reliance on Section 7(4)(c) of the Arbitration Act is misplaced as there is no alleged written ‘Arbitration Agreement’ contained in the pleadings which have been exchanged between the parties. Therefore, the Collaboration Agreement, in whole remains undisputed till date and the arbitration agreement in question is clearly contained in the said Collaboration Agreement and not the pleadings.

24. He further submits that the issue of territorial jurisdiction, is a pure question of law and could be raised at any stage of the proceedings and the bar of Section 21 of the Code of Civil Procedure, could not be applied.

25. Reference may be had to the judgment of the Supreme Court of India in *BGS SGS Soma JV v. NHPC Ltd.*, (2020) 4 SCC 234 wherein it is held as under:



“38. A reading of paras 75, 76, 96, 110, 116, 123 and 194 of Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] would show that where parties have selected the seat of arbitration in their agreement, such selection would then amount to an exclusive jurisdiction clause, as the parties have now indicated that the courts at the “seat” would alone have jurisdiction to entertain challenges against the arbitral award which have been made at the seat. The example given in para 96 buttresses this proposition, and is supported by the previous and subsequent paragraphs pointed out hereinabove. The Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] judgment, when read as a whole, applies the concept of “seat” as laid down by the English judgments (and which is in Section 20 of the Arbitration Act, 1996), by harmoniously construing Section 20 with Section 2(1)(e), so as to broaden the definition of “court”, and bring within its ken courts of the “seat” of the arbitration.

40. Para 96 of Balco case [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] is in several parts. First and foremost, Section 2(1)(e), which is the definition of “court” under the Arbitration Act, 1996 was referred to, and was construed keeping in view the provisions in Section 20 of the Arbitration Act, 1996, which give recognition to party autonomy in choosing the seat of the arbitration proceedings. Secondly, the Court went on to state in two



places in the said paragraph that jurisdiction is given to two sets of courts, namely, those courts which would have jurisdiction where the cause of action is located; and those courts where the arbitration takes place. However, when it came to providing a neutral place as the “seat” of arbitration proceedings, the example given by the five-Judge Bench made it clear that appeals under Section 37 of the Arbitration Act, 1996 against interim orders passed under Section 17 of the Arbitration Act, 1996 would lie only to the courts of the seat — which is Delhi in that example — which are the courts having supervisory control, or jurisdiction, over the arbitration proceedings. The example then goes on to state that this would be irrespective of the fact that the obligations to be performed under the contract, that is the cause of action, may arise in part either at Mumbai or Kolkata. The fact that the arbitration is to take place in Delhi is of importance. However, the next sentence in the said paragraph reiterates the concurrent jurisdiction of both courts.

49. Take the consequence of the opposite conclusion, in the light of the facts of a given example, as follows. New Delhi is specifically designated to be the seat of the arbitration in the arbitration clause between the parties. Part of the cause of action, however, arises in several places, including where the contract is partially to be performed, let us say, in a remote part of Uttarakhand. If concurrent jurisdiction were to be the order of the day, despite the seat having been located and specifically chosen by the parties, party autonomy would suffer,



which Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] specifically states cannot be the case. Thus, if an application is made to a District Court in a remote corner of the Uttarakhand hills, which then becomes the court for the purposes of Section 42 of the Arbitration Act, 1996 where even Section 34 applications have then to be made, the result would be contrary to the stated intention of the parties — as even though the parties have contemplated that a neutral place be chosen as the seat so that the courts of that place alone would have jurisdiction, yet, any one of five other courts in which a part of the cause of action arises, including courts in remote corners of the country, would also be clothed with jurisdiction. This obviously cannot be the case. If, therefore, the conflicting portion of the judgment of Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] in para 96 is kept aside for a moment, the very fact that parties have chosen a place to be the seat would necessarily carry with it the decision of both parties that the courts at the seat would exclusively have jurisdiction over the entire arbitral process.

50. *In fact, subsequent Division Benches of this Court have understood the law to be that once the seat of arbitration is chosen, it amounts to an exclusive jurisdiction clause, insofar as the courts at that seat are concerned. In Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59], this Court approved the dictum in Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] as follows*



: (*Enercon case [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59]* , SCC p. 55, para 126)

“126. Examining the fact situation in the case, the Court in Shashoua case [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] observed as follows:

‘The basis for the court's grant of an anti-suit injunction of the kind sought depended upon the seat of the arbitration. An agreement as to the seat of an arbitration brought in the law of that country as the curial law and was analogous to an exclusive jurisdiction clause. Not only was there agreement to the curial law of the seat, but also to the courts of the seat having supervisory jurisdiction over the arbitration, so that, by agreeing to the seat, the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of the arbitration.

Although, “venue” was not synonymous with “seat”, in an arbitration clause which provided for arbitration to be conducted in accordance with the Rules of the ICC in Paris (a supranational body of rules), a provision that “the venue of arbitration shall be London, United Kingdom” did amount to the designation of a juridical seat....’

Tests for determination of “seat”



60. The judgments of the English courts have examined the concept of the “juridical seat” of the arbitral proceedings, and have laid down several important tests in order to determine whether the “seat” of the arbitral proceedings has, in fact, been indicated in the agreement between the parties. The judgment of Cooke, J., in Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] , states:

“34. London arbitration is a well-known phenomenon which is often chosen by foreign nationals with a different law, such as the law of New York, governing the substantive rights of the parties. This is because of the legislative framework and supervisory powers of the courts here which many parties are keen to adopt. When therefore there is an express designation of the arbitration venue as London and no designation of any alternative place as the seat, combined with a supranational body of rules governing the arbitration and no other significant contrary indicia, the inexorable conclusion is, to my mind, that London is the juridical seat and English Law the curial law. In my judgment it is clear that either London has been designated by the parties to the arbitration agreement as the seat of the arbitration, or, having regard to the parties' agreement and all the relevant circumstances, it is the seat to be determined in accordance with the final fall back provision of Section 3 of the Arbitration Act.”



61. *It will thus be seen that wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.*

62. *In Enercon GmbH v. Enercon (India) Ltd. [Enercon GmbH v. Enercon (India) Ltd., 2012 EWHC 689 (Comm) : (2012) 1 Lloyd's Rep 519] , the arbitration clause between the parties read as follows:*

“18.3. All proceedings in such arbitration shall be conducted in English. The venue of the arbitration proceedings shall be London. The arbitrators may (but shall not be obliged to) award costs and reasonable expenses (including reasonable fees of counsel) to the party(ies) that substantially prevail on merit. The provisions of the Indian Arbitration and Conciliation Act, 1996 shall apply.”

63. *The Court in Enercon GmbH [Enercon GmbH v. Enercon (India) Ltd., 2012 EWHC 689 (Comm) : (2012) 1 Lloyd's Rep 519] began its discussion on the “seat” of the arbitration by referring to Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] , and then referring to “The Conflict of Laws”, Dicey, Morris & Collins, 14th Edn. as follows:*

“58. Moreover, as Cooke, J. noted, this conclusion is consistent with the views expressed in The Conflict of Laws, Dicey, Morris & Collins,



14th Edition at 16-035 where the authors state that the seat “is in most cases sufficiently indicated by the country chosen as the place of the arbitration. For such a choice of place not to be given effect as a choice of seat, there will need to be clear evidence that the parties ... agreed to choose another seat for the arbitration and that such a choice will be effective to endow the courts of that country with jurisdiction to supervise and support the arbitration”.

59. *Apart from the last sentence in Clause 18.3 (i.e. “The provisions of the Indian Arbitration and Conciliation Act, 1996 shall apply”), it seems to me that the conclusion that London is the “seat” of any arbitration there-under is beyond any possible doubt. Thus, the main issue is whether this last sentence is to be regarded as “significant contrary indicia” (using the language of Cooke, J.) so as to place the “seat” of the arbitration in India. A similar issue was considered by Saville, J. in *Union of India v. McDonnell Douglas [Union of India v. McDonnell Douglas Corpn., (1993) 2 Lloyd's Rep 48]* which, of course, pre-dates the English 1996 Act. The arbitration agreement in that case provided as follows: “In the event of a dispute arising out of or in connection with this agreement...the same shall be referred to an Arbitration Tribunal...The arbitration shall be conducted in accordance with the procedure provided in the Indian Arbitration Act of 1940 or any enactment or modification thereof. The arbitration shall be conducted in the English*



language...The seat of the arbitration proceedings shall be London, United Kingdom.” Saville, J. expressed the view that the arguments on both sides were “finely balanced” but in effect concluded that the reference to the Indian Arbitration Act, 1940 did not have the effect of changing the “seat” of the arbitration designated by the parties. Rather, the phrase referring to the 1940 Act was to be reconciled with the rest of the clause by reading it as referring to the internal conduct of the arbitration as opposed to the external supervision of the arbitration by the courts.”

64. *The Court in Enercon GmbH [Enercon GmbH v. Enercon (India) Ltd., 2012 EWHC 689 (Comm) : (2012) 1 Lloyd's Rep 519] 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.”

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.

(underlining supplied)

26. The Supreme Court in *BGS SGS Soma JV*, referring to *Balco* (*supra*), held that where parties had selected the Seat of Arbitration in their agreement, such selection would amount to an exclusive jurisdiction clause, as the parties had indicated that the courts at the “seat” would alone have jurisdiction to entertain challenges against the arbitral award which have been made at the seat. Further, if jurisdiction is given to two sets of courts, namely, those courts which would have jurisdiction where the cause of action is located; and those courts where the arbitration takes place all proceedings would lie only to the courts of the Seat which are the courts having supervisory control, or jurisdiction, over the arbitration proceedings. It held that if



concurrent jurisdiction were to be the order of the day, despite the seat having been located and specifically chosen by the parties, party autonomy would suffer, which as per the Supreme Court *Balco (supra)* specifically stated could not be the case.

27. The Supreme Court further held that the very fact that parties had chosen a place to be the seat would necessarily carry with it the decision of both parties that the courts at the seat would exclusively have jurisdiction over the entire arbitral process. Once the seat of arbitration is chosen, it amounted to an exclusive jurisdiction clause, insofar as the courts at that seat are concerned.

28. Referring to *Shashoua v. Sharma (supra)*, the Supreme Court in *BGS SGS Soma JV (supra)* held that not only was there agreement to the curial law of the seat, but also to the courts of the seat having supervisory jurisdiction over the arbitration, so that, by agreeing to the seat, the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of the arbitration. It further held that although, “venue” was not synonymous with “seat”, in an arbitration clause which provided for arbitration to be conducted in accordance with the Rules of the ICC in Paris (a supranational body of rules), a provision that “the venue of



arbitration shall be London, United Kingdom” did amount to the designation of a juridical seat....’.

29. The Supreme Court held that the judgments of the English courts had examined the concept of the “juridical seat” of the arbitral proceedings, and laid down several important tests in order to determine whether the “seat” of the arbitral proceedings has, in fact, been indicated in the agreement between the parties.

30. Referring to *Shashoua v. Sharma (supra)* it was held that wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.

31. The Supreme Court also referred to the *Conflict of Laws, Dicey, Morris & Collins, 14th Edition at 16-035* and noted that seat was in most cases was sufficiently indicated by the country chosen as the place of the arbitration. For such a choice of place not to be given effect as a choice of seat, there would need to be clear evidence that the parties agreed to choose another seat for the arbitration.



32. The Supreme Court referred to *Enercon GmbH (supra)* and noted that the Court had held that although the word “venue” was 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.

33. It noted that parties were anchoring the whole arbitration process in London right up to and including the making of an award and held that the place designated for the making of an award is a designation of seat. It held that the language in Clause 18.3 did not refer to the venue of all hearings “taking place” in London instead provided that the venue of the arbitration proceedings “shall be” London. This suggested that the parties intended to anchor the arbitration proceedings to and in London rather than simply physically locating the arbitration hearings in London.

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 proceedings.

35. Similar view has been expressed by several judicial pronouncements rendered by learned single judges of this court. Reference may be had to some of such judgements.

36. In *Dholi Spintex Pvt. Ltd. vs. Louis Dreyfus Company Pvt. Ltd.*, 2020 SCC OnLine Del 1476 considering the term ‘Venue’ used in clause 6 of the agreement learned single judge held that by agreeing to conduct the arbitration through International Cotton Association (ICA for short), parties had agreed that the seat of arbitration would be London and not Delhi even though by Clause 7 the Substantive Law of the contract was Indian Law and parties had agreed to exclusive jurisdiction of the Courts at Delhi. It was held that per clause 6, parties had specifically agreed that any dispute arising out of the contract shall be resolved through arbitration in accordance with International Cotton Association Rules and arbitration procedure, the



parties had thus agreed to abide by the rules and byelaws of the ICA which provided that the seat of arbitration is in London and the law of England and Wales shall apply to every arbitration and/or appeal under these byelaws. The Court held that Clause 7 entered into between the parties would be relevant if by an agreement both parties decide not to settle their disputes through arbitration but by approaching the Court of law, in which case the exclusive jurisdiction would be of the Courts at New Delhi.

37. In *M/s Cable Corporation of India Ltd. v. M/s Jay Pee Sports International Ltd.*, 2018 SCC OnLine Del 10340 where the *Dispute Resolution and Arbitration* Clause stipulated the Venue of Arbitration as New Delhi but the *Governing Laws and Jurisdiction* clause stipulating that the district Courts of Gautam Budh Nagar and High Court of Judicature at Allahabad shall have exclusive jurisdiction over all matters arising out of or related to this Contract, a learned single judge of this court referring to the decision of the Supreme Court in *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.* (2017) 7 SCC 678 and *Enercon (India) Ltd. v. Enercon GmbH*, (2014) 5 SCC 1 and noted that like in the present case, the Arbitration Clause was distinct from the Jurisdiction Clause and noted that the arbitration clause in that case was Clause 31 with the heading



“*Disputes Resolution and Arbitration*”. Clause 31.2 clearly stipulated that the venue of arbitration shall be New Delhi. Clause 38 had a heading “*Governing Laws and Jurisdiction*”. It was not dealing with arbitration. Clause 31 was a provision dealing only in arbitration and would apply in relation to arbitration proceedings. As the arbitration proceedings are to be held in Delhi, the courts in Delhi would exercise jurisdiction over the arbitration process and the seat of arbitration would be Delhi. Clause 38 being a general provision would be applicable to proceedings that may take place other than the arbitration proceedings. This would be the appropriate harmonious interpretation of the two clauses of the agreement between the parties.

38. In *Gauri Dwivedi v. Director News Pvt. Ltd.* 2023 SCC OnLine Del 2367 the learned single judge held that the Juridical or legal seat of arbitration once designated or determined exclusively determines which courts will have jurisdiction over the arbitration, as opposed to the place where whole or part of the cause of action arises. Thus, 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 the cause of action may have arisen. The Test for determination of juridical seat



wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat” is the *Shashoua principle* which states that wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding, to the exclusion of all other courts, even courts where part of the cause of action may have arisen.

39. The learned Judge further held 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 “arbitration proceedings” 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 intend 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, to the exclusion of all other courts, even courts where part of the cause of action may have arisen.”

40. Similar view is expressed in *Cinapolis India Pvt. Ltd. v. Celebration City Projects Pvt. Ltd.* 2020 SCC Online Del 301 wherein the court referring to the clauses of the agreement noted that parties by agreement had conferred exclusive jurisdiction on the subject matter of the agreement on the courts in Ghaziabad, while the place of the arbitration was New Delhi. Learned judge held that while it was true that the arbitration clause did not specifically use the word “seat” but it was no longer res integra that the term “place” would be the “juridical seat” for the purpose of Section 2(2) of the Act and the word “place” was equivalent to “venue”.

41. In *Raman Deep Singh Taneja v. Crown Realtech Private Limited* 2017 SCC OnLine Del 11966, referring to *Balco (Supra)*, it was held that a distinction is to be drawn between “Subject-Matter of the Arbitration” and “Subject-Matter of the Suit”. For the purposes of identifying the Court, which shall have supervisory control over the arbitral proceedings, it would be the Court where the ‘Subject-Matter of Arbitration’ is situated that would have precedence over the Court where the “Subject-Matter of the Suit” is situated. Therefore, the



exclusive jurisdiction conferred due to venue of arbitration would take precedence over the exclusive jurisdiction vested over the Subject-Matter of the suit and the Court having jurisdiction over the arbitration proceedings would have precedence over the Court which has jurisdiction over the Subject-Matter of the suit or where the cause of action has arisen. The court held that the purported conflict between the two parts could be resolved by holding that where the disputes are to be adjudicated without reference to the arbitration, Courts at Delhi would have exclusive jurisdiction, however, where they have to be resolved through arbitration, venue being at Faridabad, Haryana, the Courts at Faridabad, State of Haryana, would have exclusive jurisdiction.

42. In *Reliance Infrastructure Limited v. Madhyanchal Vidyut Vitran Nigam Limited* 2023 SCC OnLine Del 4894, another learned single judge of this court referring to several judgments held that the choice of Delhi as the venue of arbitration was demonstrative of the fact that the arbitral proceedings were intended to be anchored to Delhi, and in the absence of any contrary indicia, the inexorable conclusion was that Delhi is the seat of Arbitration. It was further held that when the contract contains an arbitration clause that specifies a “venue”, thereby anchoring the arbitral proceedings thereto, then the



said “venue” is really the “seat” of arbitration. In such a situation the courts having supervisory jurisdiction over the said “seat” shall exercise supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to confer “exclusive jurisdiction” on a different court. Further, that a generic clause, not specifically referring to arbitration proceedings would not serve as a “contrary indicia” so as to denude the jurisdiction of the Courts having jurisdiction over the “seat” of Arbitration.

43. Coming back to the facts of the present case, reference has been made by the parties to two different clauses of the Collaboration Agreement. One is clause 19 (Jurisdiction) which stipulates that all matters concerning the agreement and the development of the schedule property shall be subject to the jurisdiction of courts at Gurugram Haryana alone. The other being clause 23 (Arbitration) stipulating that *“In the event any dispute or difference arises out of or in connection with the interpretation or implementation of this Agreement, or out of or in connection with the breach, or alleged breach of this Agreement, such dispute shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 to be decided by a sole Arbitrator appointed mutually by the Parties hereto. In case of any difference between the parties on appointment of a sole*



Arbitrator, the arbitration tribunal shall consist of three Arbitrators. The SECOND PARTY shall appoint one Arbitrator and the FIRST PARTY shall appoint the second Arbitrator. The third Arbitrator shall be appointed by the two selected Arbitrators failing which such appointment shall be done by the Arbitration Council of India, New Delhi. The decision taken by the majority of Arbitrators shall be final and binding on the Parties hereto. The venue of the Arbitration shall be at Delhi, India

44. Clause 23 is the Arbitration clause and it is distinct from clause 19. The Arbitration contract is contained in Clause 23 and it is a complete contract between the parties relating to arbitration. When clause 23 is read, it clearly establishes that the parties agreed that the Venue of the entire Arbitration proceedings would be Delhi, India. Even in case of a disagreement between the two selected arbitrators, the appointment of the third arbitrator is to be done by the Arbitration Council of India, New Delhi Clause 23.1.5, which is under the main Clause 23 pertaining to Arbitration stipulates that the provisions of the Clause shall survive the termination of the Agreement. This clearly shows that Clause 23 pertaining to Arbitration is distinct from the Collaboration Agreement and is to survive even the termination of the Agreement.



45. Clause 23 provides for Venue of the Arbitration and thus in terms of the Judgment of the Supreme Court in *BGS SGS Soma JV (supra)* and *Balco (Supra)* would amount to the Juridical Seat of Arbitration and thus the courts at Delhi would have the exclusive jurisdiction over the entire arbitral process. The Arbitration clause provides that all dispute or difference arises out of or in connection with the interpretation or implementation of this Agreement, or out of or in connection with the breach, or alleged breach of this Agreement are to be settled through Arbitration. There are no contra indicia in the instant case to indicate otherwise.

46. On the other hand Clause 19 provides that *all matters concerning these presents and the development of the schedule property* shall be subject to the jurisdiction of courts at Gurugram/Haryana.

47. Arbitration is stipulated by Clause 23 which is distinct from Clause 19 providing for jurisdiction. Clause 19 being a general provision would be applicable to proceedings that may take place, other than arbitration proceedings and would cover all matters that are not subject matter of arbitration.



48. Accordingly, the Courts at Delhi would have the exclusive jurisdiction to entertain all proceedings covered by Clause 23 i.e. the Arbitration Clause.

49. Looked at from another angle, it may be noted that Respondent did not object to the assertion of the Appellant, that the Venue agreed between the Parties being Delhi, the Courts at Delhi would have the territorial jurisdiction.

50. Appellants in their Petition under section 9 of the Act stated as under:

“55. The Petitioner submits that this Hon'ble Court has the territorial jurisdiction to try and entertain the present Petition inasmuch as the venue of arbitration under Clause 23.1 of the Collaboration Agreement is New Delhi and therefore this Hon'ble Court is exercising supervisory jurisdiction over the arbitration proceedings to be initiated. The Petitioner submits that the Collaboration Agreement does not provide for any other "seat" of arbitration and also provides that the arbitrator shall be appointed by the Arbitration Council of India, New Delhi in the event of failure of any of the Parties to appoint an arbitrator. Accordingly, New Delhi is deemed to be the seat of arbitration and in view of the Judgement of the Hon'ble Supreme Court in BGS SGS Soma JV vs. NHPC (2020) 4 SCC 234, the Courts at New Delhi have the exclusive jurisdiction to deal in respect of any matters arising out of the arbitration clause. The Petitioner submits that Clause 19 of the Collaboration Agreement



providing for jurisdiction of Courts at Gurugram is irrelevant and would only apply in relation to matters outside of the Arbitration Agreement.”

51. In the reply filed by the respondent No. 1 on 23.01.2013 before the learned single judge no denial was made to the above assertion by the Appellant. Similarly, in the reply filed by Respondent No. 2 on 30.01.2023 before the learned single judge no denial was made to the above assertion by the Appellant, about the territorial jurisdiction of the courts at Delhi and the venue being the seat.

52. Respondent before the learned single judge have not denied the assertion of the Appellant that Venue being in Delhi is the Seat of Arbitration and thus the Courts at Delhi have the jurisdiction to entertain all proceedings under the Arbitration Act.

53. Reference may be had to the Judgment of the Supreme Court in *S.N. Prasad v. Monnet Finance Ltd., (2011) 1 SCC 320* wherein the Supreme Court has held that *the words, “statements of claim and defence” occurring in Section 7(4)(c) of the Act, are not restricted to the statements of claim and defence filed before the arbitrator. If there is an assertion of existence of an arbitration agreement in any suit, petition or application filed before any court, and if there is no denial thereof in the defence/counter/written statement thereto filed by the*



other party to such suit, petition or application, then it can be said that there is an “exchange of statements of claim and defence” for the purposes of Section 7(4)(c) of the Act. It follows that if in the application filed under Section 11 of the Act, the applicant asserts the existence of an arbitration agreement with each of the respondents and if the respondents do not deny the said assertion, in their statement of defence, the court can proceed on the basis that there is an arbitration agreement in writing between the parties.

54. In *K.P. Ranga Rao v. K.V. Venkatesham*, (2015) 13 SCC 514 the Supreme Court referring to Section 21 of the Code of Civil Procedure and the judgment in *Pathumma v. Kuntalan Kutty* (1981) 3 SCC 589 held that *Pathumma (supra)* really concludes the matter and in order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential: (1) The objection was taken in the court of first instance; (2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement and (3) There has been a consequent failure of justice. The Supreme Court held that all these three conditions must coexist.

55. The Supreme Court further held that the appellate court or revisional court shall not allow an objection to the place of suing



unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement. What follows is important. An objection as to place of suing cannot be allowed unless there has been a consequent failure of justice.

56. As noticed above, the assertion of the Appellants of the Delhi Courts having jurisdiction has not been denied before the learned Single Judge and as such the Respondents are precluded from raising the same in Appeal.

57. Even, if the objection of jurisdiction could be raised before the Appellate Court, since the Venue has been held to be the Juridical Seat of Arbitration in terms of the Arbitration Agreement Clause 23, the Courts at Delhi had the territorial jurisdiction to entertain the Petition under section 9 of the Arbitration Act. Clause 23 expressly designates Delhi at the Venue for arbitration and there is no designation of an alternative place as the 'Seat', the inexorable conclusion is that the stated Venue i.e. Delhi is the juridical seat of the arbitral proceedings. Clause 19 would be relevant only if by an agreement both parties decided not to settle their disputes through arbitration but by approaching a Court of law, in which case the exclusive jurisdiction would be of the Courts at Gurugram, Haryana.



58. Reliance placed by learned senior counsel for the respondent on *Enercon (India) Ltd. vs Enercon GmbH* [*Enercon (India) Ltd. v. Enercon GmbH (2014) 5 SCC 1*] is misplaced. In the said case, the Supreme Court found that the seat of arbitration was fixed in India but the venue was in London. The Supreme Court held that as the parties had agreed that the governing law would be the law of India and the Provision of Indian Arbitration and conciliation Act, 1996 was to apply, the seat was fixed in India. In the present case there is no separate stipulation which could fix the seat for the purposes of arbitration Act at a place different from the venue. As held hereinabove the Venue being Delhi also fixed the seat for the purposes of Arbitration at Delhi.

59. Further, reliance placed on the judgment in *Mankatsu Impex Private Limited vs. Airvisual Limited (2020) 5 SCC 399* is also misplaced. Rather the said judgment supports the case of the Appellants. In the said case, the contract stipulated that the MoU was governed by laws of India and courts at New Delhi shall have the jurisdiction but with regard to arbitration it stipulated that any dispute shall be referred to and finally resolved by arbitration administered in Hong Kong and the place of arbitration shall be Hong Kong. The Supreme Court held that reference to Hong Kong as “place of



arbitration” is not a simple reference as the “venue” for the arbitral proceedings; but a reference to Hong Kong was for final resolution by arbitration administered in Hong Kong. The words “arbitration administered in Hong Kong” is indicia that the seat of arbitration is at Hong Kong. Once parties had chosen “Hong Kong” as the place of arbitration to be administered in Hong Kong, the laws of Hong Kong would govern the arbitration. The Indian courts have no jurisdiction for appointment of the arbitrator.

60. The judgment in *Kush Raj Bhatia vs. DLF Power and Services Limited 2022 SCC OnLine Del 3309* is not applicable to the facts of the present case for the reason that in the said case, the same clause stipulated that the place of holding arbitration proceedings and that the civil courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction. The court thus held the seat to be in Gurgaon.

61. *Meenakshi Nehra Bhat and Another vs Wave Megacity Private Limited 2022 SCC Online Del 3744* does not further the case of the Respondent for the reason that the arbitration clause in that case stipulated that the “Arbitration Proceedings shall be held at New Delhi and the courts at Gautam Budh Nagar, Uttar Pradesh shall to the exclusion of all other courts, alone have the exclusive jurisdiction in all matters arising out of/or concerning the Application Form/this



Arrangement, regardless of the place of execution of this Arrangement. This will be without prejudice to the territorial and statutory jurisdiction of Allahabad High Court.” The stipulation that the Courts at Gautam Budh Nagar, Uttar Pradesh shall have exclusive jurisdiction was also part of the Arbitration Clause unlike the present case where the clauses are different and the Arbitration Clause not containing a contradictory stipulation.

62. Reliance placed by learned counsel for the respondent on the judgment in the case of *BBR (India) Private Limited vs. S.P. Singla Constructions Private limited (2023) 1 SCC 693* does not further the case of the Respondent for the reason that the issue in the said case was as to whether conducting arbitration proceedings at Delhi owing to appointment of a new arbitrator would shift the jurisdictional seat of arbitration from Panchkula in Haryana, the place fixed by the first arbitrator for the arbitration proceedings. The court noticed that the Arbitral Tribunal had fixed the seat at Panchkula and thus by mere change of arbitrator and holding subsequent sittings at New Delhi and publishing of the award in Delhi would not change the seat of arbitration, where it was initially fixed in Panchkula to Delhi.

63. In view of the above, the objection of territorial jurisdiction raised by the Respondents is accordingly decided in favour of the



Appellant and against the Respondents. It is held that clause 23 of the Collaboration Agreement providing for Venue of Arbitration at Delhi is indicative of the fact that the arbitral proceedings are intended to be anchored to Delhi and Delhi being the Seat of Arbitration, the Courts at Delhi would have the territorial jurisdiction to entertain all proceedings under the Arbitration Act pertaining to disputes and differences arising out of or in connection with the interpretation or implementation of the Collaboration Agreement, or out of or in connection with the breach, or alleged breach of the Collaboration Agreement.

64. List the appeal for directions before the Roster bench on 20.03.2024.

SANJEEVSACHDEVA, J

MANOJ JAIN, J

MARCH 01, 2023

HJ