A.F.R.

Neutral Citation No. - 2025:AHC-LKO:41684

Court No. - 8

Case :- CIVIL MISC. ARBITRATION APPLICATION No. - 2 of 2024

Applicant :- Devi Prasad Mishra
Opposite Party :- M/S Nayara Energy Limited (Earlier Essar Oil Limited) Thru Auth. Signatory/ Managing Director
Counsel for Applicant :- Girish Chandra Sinha,Dhirendra Singh,Manish Mehrotra,Mayank Sinha
Counsel for Opposite Party :- Kumar Ayush

Hon'ble Jaspreet Singh, J.

1. Heard Shri Pratham Mehrotra and Shri Manish Mehrotra, learned counsel for the petitioner and Shri Kumar Ayush, learned Counsel appearing for the respondent.

2. The instant petition has been preferred under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as Act, 1996) seeking appointment of a sole Arbitrator to resolve the disputes having arisen between the parties, emerging from a franchisee agreement dated 18.01.2018.

3. Submission of the learned counsel for the petitioner is that a franchisee agreement was executed initially between Essar Oil Ltd. and the petitioner. In furtherance of the said agreement, the petitioner invested a sum of Rs.1.5 crores and odd to establish a petrol pump. It is the case of the petitioner that since Essar Oil Ltd. is a bulk supplier to the Indian State Controlled Petroleum Companies, hence it colluded with the local companies, as a consequence, the retail price of petrol

and petroleum products were dearer at the Essar Petrol Pump in comparison to the pumps operated by the Government Control Petroleum Company.

4. It is also stated that Essar Oil Ltd. established another local company, namely, M/s. Nayara Energy Ltd. and the local business of petrol pumps was merged in the said company and M/s. Nayara Energy Ltd. stepped into the shoes of Essar Old Ltd. and took over the management and control of the erstwhile company Essar Oil Ltd.

5. M/s. Nayara Energy Ltd., the respondent company terminated the dealership/franchisee agreement of the petitioner by an unilateral decision dated 18.08.2023. The termination was against the interest of the petitioner as well as in violation of the terms as contained in the franchisee agreement. Since disputes had arisen, accordingly the petitioner invoked the dispute resolution mechanism and sent a letter to the respondent on 18.09.2023 calling upon the respondent to resolve the same amicably and in case if the same did not materialise, then the petitioner also suggested a name of the Former Judge of this Court, who may be appointed as a sole Arbitrator and a request was made to the respondent that it may give its consent.

6. It is urged that despite the aforesaid invocation of the arbitration clause, no response was given by the respondent, as a consequence, the petitioner was compelled to institute the above petition and it is urged that this Court may appoint the sole Arbitrator exercising powers under section 11(6) of the Act. 1996.

7. Shri Kumar Ayush, learned counsel for the respondent has raised a preliminary objection indicating that this Court does not have the jurisdiction to appoint the sole Arbitrator. The crux of the submission of the respondent is that though the franchisee agreement was signed at NOIDA and the dealership of the petrol pump related to District Amethi in State of Uttar Pradesh. However, the parties had agreed that the arbitration proceedings will be held in Mumbai coupled with the fact that clause 22 of the franchisee agreement provided for an exclusive jurisdiction clause which excluded the jurisdiction of all other Courts including the Courts at Lucknow are vested powers of appointment of the Arbitral Tribunal and supervision of the arbitral proceedings with the Court at Mumbai only.

8. It is, thus, submitted that in view of the fact that the parties had agreed to the 'seat' of arbitration being at Mumbai coupled with the exclusive jurisdiction clause, hence it is only the Courts at Mumbai who had the jurisdiction to appoint an Arbitrator and not this Court at Lucknow. In support of his submission, learned counsel for the respondent has relied upon the decision of the Apex Court in ***Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. & others, (2017) 7 SCC 678.***

9. Shri Pratham Mehrotra, learned counsel for the petitioner has refuted the aforesaid submission and has primarily urged that the parties had not agreed to fix the 'seat' of arbitration and the entire franchisee agreement is silent thereon. It is further submitted that even

if clause 21 of the agreement is seen, it only refers to Mumbai as the 'venue' and not as a 'seat'. It is alsosubmitted that the exclusive jurisdiction clause 22 in the agreement refers to those disputes which are not arbitrable for which the jurisdiction of the regular City Civil Courts are to be invoked and alternatively it has also been urged that since no part of cause of action has accrued in Mumbai, hence the parties even by consent cannot confer jurisdiction on a Court which has none.

10. It has also been urged by the learned counsel for the petitioner that in a case where the agreement is silent and it does not indicate that the parties have agreed on the 'seat' of arbitration, in such circumstances, the Courts where even a part of cause of action has accrued can exercise its jurisdiction and the Court in exercise of its power under section 11(6) of the Act, 1996. Moreover, this Court in Section 11(6) proceedings may not decide the issue of 'seat' rather it should be left open to be considered by the Arbitral Tribunal in terms of Section 20(2) of the Act, 1996.

11. It is, thus, urged that in the given facts and circumstances, the parties had not agreed on the 'seat' of arbitration to be at Mumbai, hence this Court has ample jurisdiction as the dealership was to established at Amethi which is under the territorial jurisdiction of this Court, hence the petition is liable to be entertained and the respondent has not denied the fact that there is no arbitration clause and that there are live and subsisting disputes between the parties, accordingly the

petition deserves to be allowed.

12. In supported of his submissions the learned counsel for the petitioner has relied upon the decision of the Apex Court in ***State of West Bengal and others v. Associated Contractors (2015) 1 SCC 32***, a decision of the Delhi High Court in ***Aarka sports Management Pvt. Ltd v. Kalsi Buildcon Pvt. Ltd. 2020 SCC OnLine Delhi 2077*** and another decision of the Delhi High Court in ***Faith Constructions v. N.W.G.E.L. Church 2025 SCC OnLine Delhi 1746***.

13. The Court has heard the learned counsel for the parties and also perused the material on record.

14. At the outset, it may be noticed that the parties do not dispute that there is an arbitration clause. It is also not disputed by the respondent that the arbitration clause has been invoked by the petitioner, to which there was no response from the side of the respondent. It is also not disputed that there are disputes between the parties. However, what is disputed is the jurisdiction of this Court to entertain the petition on the ground of lack of territorial jurisdiction.

15. In order to examine the respective contentions, it will be appropriate to examine the arbitration clause as well as the exclusive jurisdiction clause which are clause 21 and 22 of the franchisee agreement dated 18.01.2018. For the ease of reference clause 21 and 22 is being reproduced hereinafter:-

> *21. Dispute Resolution*
>
> *"All disputes and differences of any nature whatsoever or any claim, cross, counter claim, or any dispute arising under or out*

> *of this Agreement or any beach or alleged breach of any of the covenants thereof or as to the interpretation of any clause/provision of this Agreement shall be resolved through mutual discussion between the parties hereto, falling which the same shall be referred to and finally resolved by arbitration to be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996, as amended. The arbitration panel shall consist of a sole arbitrator o be appointed by the company.* ***The arbitration proceedings shall be held in Mumbai and shall be conducted in the English language****. The award rendered by the arbitration panel shall be final, conclusive and binding on all parties to this agreement and shall be subject to enforcement in any court of competent jurisdiction. Bach party shall bear the cost of preparing and presenting its case, and the cost of arbitration, including fees and expenses of the arbitrator, shall be shared equally by the disputing parties, unless the award otherwise provides."*
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> *22 (Governing laws and jurisdiction) is reproduced as under:*
>
> *"this agreement will be governed by and construed in accordance with the laws of India and shall be subject to the exclusive jurisdiction of the courts at Mumbai only"*

16. On the bare perusal of the dispute resolution clause 21, it would indicate that the parties had agreed that any dispute or difference of any nature whatsoever or claim or counter claim arising out of this agreement or any breach of any of the covenants or interpretation of any clause, first it shall be resolved through mutual discussions, failing which, the same could be resolved by referring it to a sole Arbitrator.

17. However, what is relevant to note is the language of clause 21, which specifically states that arbitration panel shall consist of a sole Arbitrator to be appointed by the company (referring to the respondent). It further states that '*the arbitration proceedings shall be held in Mumbai and shall be conducted in English language*'. This sentence regarding the proceedings to be held at Mumbai and read in context with clause 22 as reproduced above, indicates that the

agreement will be governed by the laws of the country and it shall be subject to the exclusive jurisdiction of Courts at Mumbai only.

18. In light of the aforesaid two clauses, it is to be ascertained as to whether the parties had agreed to fix the 'seat' of arbitration at Mumbai or not coupled with the fact that what could be implication of the exclusive jurisdiction clause.

19. There are several conflicting decisions relating to the issue of 'seat' and 'venue' of arbitration as well as whether the parties could confer jurisdiction on a Court who possessed none on the ground that no part of cause of action may have accrued within the jurisdiction of such a Court.

20. The Apex Court in ***Indus Mobile (supra)*** had the occasion to consider this aspect of the matter and upon perusal of the aforesaid decision, it would reveal that the arbitration clause contained in the instant case was quite similar to the one which was before the Apex Court in ***Indus Mobile (supra)***. Similar submissions were raised regarding vesting of jurisdiction in a Court, which otherwise may not have any jurisdiction in context with Section 16 to Section 20 CPC.

21. The Apex Court considering the submissions as well as the provisions of law and noticing the earlier decisions, in para 19 and 20 held as under:-

> *19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to*

> *suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.*
>
> *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. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. [B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] 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 [Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744] 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.*

22. Later this issue was once again considered in great detail by the Apex Court in ***B.G.S. S.G.S. Soma JV v. NHPC Limited (2020) 4 SCC 234*** wherein the Apex Court again considered the issue of 'seat' and 'venue' vis-a-vis Section 42 of the Act, 1996 and the relevant paragraphs 59, 61, 81 and 82 are being reproduced hereinafter:-

> *"59. Equally incorrect is the finding in Antrix Corpn. Ltd. [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless.* ***Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non obstante clause, and then goes on to state "…where with respect to an arbitration agreement any application under this part has been made in a court…" It is obvious that the application made under this part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the court where the seat is located, and that court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read,***

Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so-called "seat" is only a convenient "venue", then there may be several courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the "seat" of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.

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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.

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81. Most recently, in Brahmani River Pellets [Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 : 2019 SCC OnLine SC 929 at para 15] , this Court in a domestic arbitration considered Clause 18 — which was the arbitration agreement between the parties — and which stated that arbitration shall be under Indian Arbitration and Conciliation Act, 1996, and the venue of arbitration shall be Bhubaneswar. After citing several judgments of this Court and then referring to Indus Mobile Distribution [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] , the Court held : (Brahmani River Pellets case [Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 : 2019 SCC OnLine SC 929 at para 15] , SCC pp. 472-73, paras 18-19)

"18. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference.

19. When the parties have agreed to the have the "venue" of arbitration at Bhubaneshwar, the Madras High Court erred [Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127] in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order [Kamchi Industries Ltd. v. Brahmin River

Pellets Ltd., 2018 SCC OnLine Mad 13127] is liable to be set aside."

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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."

23. Lately, the Apex Court in ***Arif Azeem Comapny Ltd. vs. Micromax Informatices FZE : 2024 SCC OnLine SC 3212*** approved the reasoning as laid down in ***B.G.S. S.G.S. Soma (supra)*** and in paras 53 and 54 noticed as under:-

"53. Thus, this Court in BGS SGS SOMA (supra) laid down a three-condition test as to when 'venue' can be construed as 'seat' of arbitration. The conditions that are required to be fulfilled are as under:—

i. The arbitration agreement or clause in question should designate or mention only one place;

ii. Such place must have anchored the arbitral proceedings i.e., the arbitral proceedings must have been fixed to that place alone without any scope of change;

iii. There must be no other significant contrary indicia to show that the place designated is merely the venue and not the seat.

Where the aforesaid conditions are fulfilled, then the place that has been designated as 'venue' can be construed as the 'seat' of arbitration. It is clarified that, while applying the aforesaid test, it must be borne in mind that where a supranational body of rules has been stipulated in an arbitration agreement or clause, such stipulation is not to be regarded as a contrary indicium, such stipulation does not mean that no seat has been designated rather such stipulation is a positive indicia that the place so designated is actually the 'seat'.

54. The aforesaid test was approvingly applied by this Court in Mankastu Impex Private Ltd. v. Airvisual Ltd. reported in (2020) 5 SCC 399 and it was held that where the reference to a place in the arbitration agreement is not simply as "venue" and rather a reference as place for final resolution by arbitration, such place shall be construed as the seat of arbitration. The relevant observations read as under:—

"20. It is well settled that "seat of arbitration" and "venue of arbitration" cannot be used interchangeably. It has also been established that mere expression "place of arbitration" cannot be the basis to determine the intention of the parties that they have intended that place as the "seat" of arbitration. The intention of the parties as to the "seat" should be determined from other clauses in the agreement and the conduct of the parties.

21. In the present case, the arbitration agreement entered into between the parties provides Hong Kong as the place of arbitration. The agreement between the parties choosing "Hong Kong" as the place of arbitration by itself will not lead to the conclusion that the parties have chosen Hong Kong as the seat of arbitration. The words, "the place of arbitration" shall be "Hong Kong", have to be read along with Clause 17.2. Clause 17.2 provides that "... any dispute, controversy, difference arising out of or relating to MoU shall be referred to and finally resolved by arbitration administered in Hong Kong....". On a plain reading of the arbitration agreement, it is clear that the 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 is for final resolution by arbitration administered in Hong Kong. The agreement between the parties that the dispute "shall be referred to and finally resolved by arbitration administered in Hong Kong" clearly suggests that the parties have agreed that the arbitration be seated at Hong Kong and that laws of Hong Kong shall govern the arbitration proceedings as well as have power of judicial review over the arbitration award.

22. As pointed out earlier, Clause 17.2 of MoU stipulates that the dispute arising out of or relating to MoU including the existence, validity, interpretation, breach or termination thereof or any dispute arising out of or relating to it shall be referred to and finally resolved by the arbitration administered in Hong Kong. The words in Clause 17.2 that "arbitration administered in Hong Kong" is an indicia that the seat of arbitration is at Hong Kong. Once the parties have 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."

(Emphasis supplied)"

and then in para 71, it recorded the exposition of law as under:-

> *"71. From the above exposition of law, the following position of law emerges:—*
>
> *(i) Part I of the Act, 1996 and the provisions thereunder only applies where the arbitration takes place in India i.e., where either (I) the seat of arbitration is in India OR (II) the law governing the arbitration agreement are the laws of India.*
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> *(ii) Arbitration agreements executed after 06.09.2012 where the seat of arbitration is outside India, Part I of the Act, 1996 and the provisions thereunder will not be applicable and would fall beyond the jurisdiction of Indian courts.*
>
> *(iii) Even those arbitration agreements that have been executed prior to 06.09.2012 Part I of the Act, 1996 will not be applicable, if its application has been excluded by the parties in the arbitration agreement either explicitly by designating the seat of arbitration outside India or implicitly by choosing the law governing the agreement to be any other law other than Indian law.*
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> *(iv) The moment 'seat' is determined, it would be akin to an exclusive jurisdiction clause whereby only the jurisdictional courts of that seat alone will have the jurisdiction to regulate the arbitral proceedings. The notional doctrine of concurrent jurisdiction has been expressly rejected and overruled by this Court in its subsequent decisions.*
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> *(v) The 'Closest Connection Test' for determining the seat of arbitration by identifying the law with which the agreement to arbitrate has its closest and most real connection is no longer a viable criterion for determination of the seat or situs of arbitration in view of the Shashoua Principle. The seat of arbitration cannot be determined by formulaic and unpredictable application of choice of law rules based on abstract connecting factors to the underlying contract. Even if the law governing the contract has been expressly stipulated, it does not mean that the law governing the arbitration agreement and by extension the seat of arbitration will be the same as the lex contractus.*
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> *(vi) The more appropriate criterion for determining the seat of arbitration in view of the subsequent decisions of this Court is that where in an arbitration agreement there is an express designation of a place of arbitration anchoring the arbitral proceedings to such place, and there being no other significant contrary indicia to show otherwise, such place would be the 'seat' of arbitration even if it is designated in the nomenclature of 'venue' in the arbitration agreement.*
>
> *(vii) Where the curial law of a particular place or supranational body of rules has been stipulated in an arbitration agreement or clause, such stipulation is a positive indicium that the place so designated is actually the 'seat', as more often than not the law governing the arbitration agreement and by extension the seat of the arbitration tends to coincide with the curial law.*
>
> *(viii) Merely because the parties have stipulated a venue without any*

> *express choice of a seat, the courts cannot sideline the specific choices made by the parties in the arbitration agreement by imputing these stipulations as inadvertence at the behest of the parties as regards the seat of arbitration. Deference has to be shown to each and every choice and stipulations made by the parties, afterall the courts are only a conduit or means to arbitration, and the sum and substance of the arbitration is derived from the choices of the parties and their intentions contained in the arbitration agreement. It is the duty of the court to give weight and due consideration to each choice made by the parties and to construe the arbitration agreement in a manner that aligns the most with such stipulations and intentions.*
>
> *(ix) We do not for a moment say that, the Closest Connection Test has no application whatsoever, where there is no express or implied designation of a place of arbitration in the agreement either in the form of 'venue' or 'curial law', there the closest connection test may be more suitable for determining the seat of arbitration.*
>
> *(x) Where two or more possible places that have been designated in the arbitration agreement either expressly or impliedly, equally appear to be the seat of arbitration, then in such cases the conflict may be resolved through recourse to the Doctrine of Forum Non Conveniens, and the seat be then determined based on which one of the possible places may be the most appropriate forum keeping in mind the nature of the agreement, the dispute at hand, the parties themselves and their intentions. The place most suited for the interests of all the parties and the ends of justice may be determined as the 'seat' of arbitration."*

24. Stage is now set to examine as to whether the parties had agreed to fix the 'seat' of arbitration and applying the test as laid down by the Apex Court in ***B.G.S. S.G.S. Soma (supra),*** this Court finds that in the instant agreement, the parties had clearly agreed that the arbitration will be held at Mumbai. If the arbitration agreement mentions only one place and even if it is termed as the 'venue', then unless there is a contrary indicia the 'venue' is construed as the 'seat'.

25. In the instant case, admittedly there is only one place which is mentioned in the agreement and that is Mumbai, where the arbitration proceedings were to be held as agreed, coupled with the fact that in clause 22, it vested exclusive jurisdiction to the Courts at Mumbai meaning thereby that Mumbai was agreed as to be the 'seat' of

arbitration and the parties had agreed to anchor all the arbitral proceedings in Mumbai and there is no other clause or contrary indicators that any other Court could also have the jurisdiction, hence in the instant case it can safely be held that it is the Courts at Mumbai, who would have the jurisdiction as the parties had fixed the 'seat' of arbitration at Mumbai and there is no contrary indicator to suggest otherwise.

26. In light of the aforesaid, this Court is of the clear view that the Courts at Mumbai would have the jurisdiction as the parties agreed Mumbai to be the 'seat'. Moreover, even it its treated to be the 'venue' but then in absence of any contrary indicia coupled with the exclusive jurisdiction clause, the venue is treated as the 'seat' as held by the Apex Court and once the 'seat' has been fixed then all proceedings relating to the said arbitration would be held within the jurisdiction of that Court.

27. As far as the decisions cited by the learned counsel for the petitioner is concerned, the decisions of ***Faith Constructions (supra)*** does not come to the aid of the petitioner as the said decision does not consider the law as propounded by the Apex Court in ***Indus Mobile (supra)*** and ***B.G.S. S.G.S. Soma (supra).***

28. Considering the decision in ***Aarka Sports Management (supra)***, it would indicate that though the learned Single Judge of the Delhi High Court noticed the decision of the Apex Court in ***Indus Mobile (supra)*** and certain other decisions, however, it has given a

finding which otherwise against the ratio as laid down by the Apex Court in ***B.G.S. S.G.S. Soma (supra)*** and ***Arif Azeem Company Ltd. (supra)***, hence the said decision also does not bind this Court and it cannot be a precedent.

29. For the aforesaid reasons, this Court is of the clear view that the instant petition is not maintainable before this Court at Lucknow, hence it is dismissed, leaving it open for the petitioner to approach the jurisdictional High Court at Mumbai.

Order Date :- 15th July, 2025
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