APHC010667162025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3572]

THURSDAY,THE SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

COMMERCIAL COURT APPEAL NO: 27/2025

Between:

1. CARLOYN JOYCE TADAMALA,, D/O. BISHOP ERNEST P. KOMNAPALLI, AGED ABOUT 43 YEARS, R/O. 96 CEDAR GROVE DRIVE EXETER, RHODE ISLAND 02822, UNITED STATE OF AMERICA, ALSO, R/O. H.NO.10-5-391/16/A/I, FLAT NO. 403, HANGING GARDENS, MITHILA NAGAR, ROAD NO. 12, BANJARA HILLS, HYDERABAD. EMAIL CKOMANA@QMAIL.COM REPRESENTED BY HER POWER OF ATTORNEY, MR. GORENTIA RATHNAKAR.

...APPELLANT

AND

1. ROYAL CITY DEVELOPER PRIVATE LIMITED, (Formerly Royalmindz Infra Private Limited) Having its registered office at. Flat No. 402, 4th Floor, Jhaveri Sanghi Residency, H. No. 8-2-467/1, Road No. 5, Khairtabad, Hyderabad - 500 034. Represented by its Managing Director, Satya Venkata Srinivas Brousu.

...RESPONDENT

Counsel for the Appellant:

1. D S SIVADARSHAN

Counsel for the Respondent:

1. DEVALAMPALLI PURUSHOTHAM REDDY

RESERVED ON : 25.02.2026

PRONOUNCED ON : 07.05.2026

UPLOADED ON : 07.05.2026

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

&

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

1. Whether Reporters of Local Newspapers may be allowed to see the Judgment/Order? Yes/No

2. Whether the copy of Judgment/Order may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Lordships wish to see the fair copy of the Judgment/Order? Yes/No

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JUSTICE RAVI NATH TILHARI

_____

JUSTICE BALAJI MEDAMALLI

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

*** THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**

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! Counsel for the Appellant:

1. D S SIVADARSHAN

^ Counsel for the Respondent:

1. DEVALAMPALLI PURUSHOTHAM REDDY

< Gist:

> Head Note:

? Cases referred:

1. 2020 (4) SCC 234
2. 2021 SCC OnLine AP 3114
3. 2021 SCC OnLine Del 4748
4. 2022 SCC OnLine Del 3309
5. 2021 SCC OnLine Del 5350
6. 2022 SCC OnLine Del 3744
7. 2023 SCC OnLine Cal 1405
8. 2022 SCC OnLine ALL 96
9. 2017 (4) SCR 744
10. (2020) 5 SCC 462

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

COMCA.No.27 of 2025

JUDGMENT: *(Per Hon'ble Sri Justice Balaji Medamalli)*

1. The C.O.M.C.A.,is filed by the appellant/ petitioner against the order dated 01.12.2025 passed in C.A.O.P.No.11 of 2025 on the file of Special Judge For Trial and Disposal Of Commercial Disputes, Visakhapatnam, whereby the Special Court dismissed the petition filed by the appellant/petitioner under Section 9 of the Arbitration And Conciliation Act, 1996 (for brevity 'the Act') on the ground of lack of territorial jurisdiction.

2. The brief facts of the case are that the appellant/petitioner filed application under section 9 of the Arbitration and Conciliation Act, 2015 (for brevity referred to as 'the Act') seeking an injunction restraining the respondent from alienating or encumbering, and also to restrain the respondent and its men from developing or making construction in the petition schedule property and also seeking further direction to deposit Rs.9,20,000 (Rupees Nine Lakhs and Twenty Thousand Only) before the Commercial Court, pending adjudication, of the arbitration proceedings.

3. Petitioner claims that she is the absolute owner of petition schedule property to an extent of Ac.4.45Cents in Sy.Nos.139/2, 143/2,143/4 and

143/5 of Samanasa Village of Amalapuram Mandal of East Godavari District and she entered into a registered Development Agreement - Cum - General Power Of Attorney (hereinafter referred to as DAGPA) vide Document No. 6957/2019 dated 29.10.2019 with the respondent herein for development of petition scheduled property, with the commercial terms as mentioned in there. It is further stated that the respondent herein also entered into agreement of sale dated 27.07.2022 with the appellant/petitioner in respect of sale of 16 plots that fell to the share of the petitioner for a total consideration of 9,20,00,000/-.

4. It is further alleged that the respondent committed breach of the contract by deliberately delaying the construction and contravening the terms of the DAGPA dated 29.10.2019 as well the Agreement of Sale dated 27.07.2022. Thereafter, the petitioner contends that she requested the respondent to complete the construction and to allot her share. A notice was also issued to the respondent on 01.04.2023 about the breach of development agreement as well as allocation agreement. The respondent gave reply on 26.04.2023, with all baseless allegations and the respondent did not deny the fact that the project was not completed. The petitioner has also sent an email dated 15.04.2023 to the respondent seeking cancellation of Agreement of Sale dated 27.07.2022 on account of the respondent's failure to handover possession of the development share as per the DAGPA

and Allocation Agreement. Subsequently, a legal Notice was also issued on 31.08.2024 to the respondent to execute the sale deeds in accordance with the Agreement of Sale dated 27.07.2022.

5. The petitioner asserts that the respondent failed to complete the project within 42 months as agreed upon from the date of approval from the authorities i.e., 17.03.2025. As the respondent is not evincing interest in development of petition schedule property and only concentrating on selling his share of units, which may result in harm and injury, a notice has been issued to the respondent terminating the DAGPA and nominated Hon'ble Sri Justice Challa Kodandaram as an Arbitrator. Hence, an application seeking order of restraint against the respondent from alienating the petition schedule property has been filed seeking directions under Section 9 of the Act.

6. The respondent denying the averments of the petition, filed counter stating that the project involves construction of residential units and does not contemplate or involve any commercial activity relating to immovable property and hence it is not a commercial dispute within the meaning of section 2(1)(C)(vii) of the Commercial Courts Act. Further, it was contended that the Special Court has no jurisdiction to entertain the petition under Section 9 of the Act, as Clause 57 of DAGPA expressly provides for

resolution of disputes through arbitration, and the petitioner instead of invoking arbitral mechanism filed the petition under Section 9 of the Act. It is further contended that the petitioner failed to initiate arbitral proceedings within the stipulated time of 90 days and therefore, the interim order dated 29.04.2025 is liable to be vacated.

(ii) That apart, the respondent has also raised several other issues regarding entitlement of the petitioner, since Clause 24 of the DAGPA itself provides for monetary compensation in the event of delay in handing over petitioner's share of property and also contended that she is not entitled to the relief sought for in the application in view of Section 41(ha) of the Specific Relief Act, 1963(as amended in the year 2018). According to Clause 55 of the agreement, 42 months shall commence only from the date of approval of building plans i.e.,01.04.2023 and original period was not expired, and it would expire only on 01.10.2026, by which time, petitioner's share of constructed plots would be handed over to her.

(iii) It was further contended that the delay in the project was due to the outbreak of COVID-19 pandemic after entering into DAGPA on 29.10.2019 and the property was converted from agricultural land to non-agriculture land only on 01.11.2019 and the layout plan was approved on 17.09.2021 and almost a year time was taken for completion of the

compaction of site. It was also contended that as per clause 24 of DAGPA,36 months time is stipulated for completion of project from the date of sanction of building plan with a grace period of three months and a further period of three months is provider for obtaining NOC/occupancy certificates.

(iv) It is also denied by the respondent that there is no obligation under Clauses 6 and 7 of the marketing agreement on the respondent to purchase units that fell to the share of the petitioner. It was further contended that the delay attributable to the official authorities of Gram Panchayat had been attributed to the respondent. Clause 55 of the DAGPA provides for force majeure events which were beyond the control of respondent. Hence, such events are to be excluded from computation of the time period.

7. To the said averments in the counter, petitioner filed her rejoinder and stated that the dispute is purely commercial in nature, and further stated that clause 58 of DAGPA stipulates that the Civil Courts in East Godavari District shall have jurisdiction and excludes all other courts in respect of any disputes with or in relation to DAGPA and further contended that section 9 of the Act itself is a part of arbitral mechanism and timeline stipulated in Section 9 of the Act is not applicable to interim orders and is only applicable to final orders and it was further denied regarding intimation of interim order

on 17.09.2025.It is further stated that the project under DAGPA is not an infrastructure project within the meaning of Section 41(ha) of the Specific Relief Act and stated that only those projects which are specified in the schedule as stated in section 20(A)(I) of the Specific Relief Act, fall within the definition of infrastructure projects. The time limit for completion of project expired on 17.03.2025 and the respondent cannot contend that time will expire only on 01.10.2026, and she also denied the delay on her part in acting as per the terms of the DAGPA.

8. Based on the above pleadings and submissions, the Special Court framed the following points for determination:

a. *Whether the dispute is commercial in nature?*
b. *Whether this Court has jurisdiction to deal with this application?*
c. *Whether petitioner is entitled to interim injunction restraining respondent from alienating petition schedule property pending final adjudication of dispute pursuant to arbitration?*
d. *Whether petitioner is entitled to injunction restraining respondent from developing or constructing and from entering into any agreement with third parties in respect of the final adjudication of the dispute?*
e. *Whether respondent can be directed to deposit Rs.9,20,00,000/- (Rupees Nine Crores And Twenty Lakhs Only) before this Court till final adjudication of dispute pursuant to the arbitration?*
f. *To what relief*

9. Based on the above points for determination, the Special Court held that the dispute is commercial in nature. However, while answering Point

No.2, the Court concluded that it lacked territorial jurisdiction to entertain the application. In view of the said finding, the Court held that Point Nos.3, 4 and 5 need not be determined by the Court. Consequently, under Point No.6, the application was dismissed for want of territorial jurisdiction, holding that the parties had clearly intended that Hyderabad shall be the seat of arbitration.

10. Aggrieved by the order of the Special Court, the appellant/petitioner filed the present appeal alleging that the Court dismissed the application filed under section 9 of the Act holding that it has no territorial jurisdiction to decide the issues is contrary to law, facts, legal events and improper exercise of its jurisdiction. As the respondent has not even raised the argument of territorial jurisdiction/place of suing at the first instance, the Special Court ought not to have dismissed the petition, as the said plea was neither taken in the counter nor grounded in any of the pleadings. Thus, the respondent is precluded from raising such a contention during the course of hearing.

11. It was also contended in the grounds that the Commercial Court materially erred in disregarding Clause 58 of DAGPA, which clearly and categorically states that in respect of matters/disputes arising out of in connection with or in relation to this DAGPA, ‘only the civil courts in East

Godavari District shall have jurisdiction to the exclusion of all other Courts'. In the DAGPA, it is a contra indicia as observed by the Hon'ble Apex Court in the judgment reported in ***BGS SGS SOMA JV Vs NHPC Limited***[1]. Clause 58 of DAGPA is also an ouster of jurisdiction as it not only state that the civil courts in East Godavari District have jurisdiction but also excludes all other Courts, as such, the governing law and the seat is of the Courts of East Godavari District. The finding of the trial court that the seat of arbitral proceedings is Hyderabad has the effect of re-written of the agreement and also clause 58 will be rendered otiose and redundant.

12. It was further contended that in the case of ***KEI-Rsos Petroleum and Energy Pvt. Ltd., vs. R.A.K.Ceramics (I) Pvt. Ltd***[2]***,*** this Hon'ble Court relied upon the ouster of jurisdiction clause similar to that of clause 58 of DAGPA to hold that the Court has jurisdiction over the proceedings arising out of agreement including arbitral proceedings. On these grounds and placing reliance on several Judgments, the appellant sought to set aside the order dated 01.12.2025 in C.A.O.P.No.11 of 2025 and to allow the said OP.

13. The respondent herein filed counter replying to the grounds raised by the appellant/ petitioner contending that the finding of the trial court that it lacks territorial jurisdiction is neither perverse nor arbitrary but is a reasoned

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[1] 2020 (4) SCC 234
[2] 2021 SCC OnLine AP 3114

explanation based on express stipulation in the arbitration clause fixing the seat of arbitration and also in view of the settled legal principles. As such, seeking re-appreciation of the settled legal principles under the guise of the present appeal is impermissible under law. The respondent also denied the averment that the respondent did not raise objection of territorial jurisdiction at the first instance and contended that the issue of lack of jurisdiction has been extensively argued and supported by settled legal precedents during the hearing and there can be no estoppel, waiver or acquiescence against law, particularly, when the court itself lacks jurisdiction.

14. It is further contended that Clause 58 of DAGPA pertains to the civil courts' exercising jurisdiction over non-arbitral disputes arising out of the agreement, whereas Clause 57 expressly and unequivocally governs arbitral disputes by fixing seat of arbitration at Hyderabad and the Hon'ble Apex Court in the judgment reported in ***BGS SGS SOMA JV's case (Supra 1),*** categorically held that once the seat of arbitration is designated, it operates as an exclusive jurisdiction clause for all applications arising out of arbitral proceedings, irrespective of any other Civil jurisdiction clause and clause 58 does not constitute a 'Contra Indicia' so as to dilute or override the express stipulation of seat under Clause 57, and both clauses operate indistinct and mutually exclusive fields. As such, the commercial court has

correctly applied the law by invoking the arbitration clause while adjudicating jurisdiction under the Act.

15. With regard to the contention that Clause 58 constitutes an ouster of jurisdiction, it is submitted that the said clause expressly refers only to the jurisdiction of Civil Courts in East Godavari District in respect of civil proceedings not governed by arbitration. The governing law and seat of arbitration are not determined by civil jurisdiction clause but by the arbitration clause itself which categorically provides that 'arbitration proceedings shall be held at Hyderabad'.

16. By the authoritative Pronouncement of Judgment of Hon'ble Apex Court in ***BGS SGS SOMA JV (Supra 1),*** the Hon'ble Apex Court categorically held that once the seat of arbitration is selected or mentioned in the agreement, such selection amounts to an exclusive jurisdiction clause for supervisory jurisdiction of the courts at the seat of all arbitral proceedings. By placing reliance on various judgments of Hon'ble Apex Court, it is contended that clause 58 cannot be construed as an ouster of arbitral jurisdiction, nor it can override or misplace the expressly agreed seat of arbitration and contended that the appellant intended to equate civil court jurisdiction clause with an arbitral jurisdiction is contrary to settled law and is liable to be rejected.

17. It was also contended that the averment of re-written the contract or that clause 58 has been rendered in otiose is wholly unfounded stating that clause 57 governs arbitral disputes for the proceedings initiated under the Act, whereas clause 58 governs non - arbitrable civil disputes arising under the agreement. As such, clause 58 continues to have full force and effect in respect of matters not subjected to arbitration. As such, the plea of redundancy or rendering the clause meaningless is unfounded.

18. With regard to the averment that the commercial court erred in distinguishing the judgment of Hon'ble Apex Court in ***KEI-Rsos Petroleum and Energy Pvt. Ltd (Supra 2)***, it is contended that the Clause is materially different from Clause 57 of the subject DAGPA, inasmuch as it merely referred to the place of arbitration without any mandatory designation of a juridical seat or anchoring of arbitrary proceedings thereto, and the court on facts found that the parties had intended to designate a juridical seat. Thus, clause 58 cannot override clause 57 in the present agreement. As such, the contention that clauses are similar in nature is also denied. The respondent also placed reliance on various judgments to support his contentions that once a seat is designated it operates as an exclusive jurisdiction, irrespective of the presence or absence of any other civil jurisdiction clause and clause 58 of the DAGPA on hand does not intend to dilute the applicability of settled law regarding the seat of arbitration is concerned. It is

also contended that the ouster clause akin to clause 58 of DAGPA is legally misconceived and untenable for the reason that those two clauses are distinct and does not operate as contra indicia so as to nullify clause 57 and also referred to various judgments on the point that Hon'ble Apex Court has expressly held that designation of a seat of arbitration confers exclusive jurisdiction upon the courts of the seat. Any judgments of High Court relied upon by either party carry only persuasive value and must necessarily yield to the binding precedents of the Hon'ble Apex Court and further contended that all the decisions of the Hon'ble Apex Court consistently affirm the principle that the designation of the seat of arbitration confers exclusive supervisory jurisdiction upon the courts at the seat and that the grounds raised are wholly misconceived, irrelevant, and were denied in toto which are nothing but traversing into the merits of the dispute. The commercial court has rightly and consciously refrained from examining the merits of the matter after recording its finding of lack of territorial jurisdiction to entertain an application under section 9 of the Act.

19. Basing on the above pleadings, the respective counsel made their submissions and also cited various judgments as under:

Judgments cited by the learned counsel for the petitioner:

i. ***BGS SGS SOMA JV Vs NHPC LIMITED***

ii. ***Isgec Heavy Engineering Ltd Vs Indian Oil Corporation Limited***

iii. ***Kush Raj Bhatia Vs DLF Power and Services Limited***

iv. ***Cravants Media Private Limited Vs Jharkhand State Co-Operative Milk Producers Federation Ltd***

v. ***Meenakshi Nehra Bhat Vs Wave Megacity Centre Private Limited***

vi. ***Homevista Décor and Furnishing Pvt. Ltd Vs Connect Residuary Private Limited***

vii. ***Hasmukh Prajapati Vs Jai Prakash Associates Ltd***

viii. ***Kei-Rsos Petrolium and Energy Pvt Ltd Vs RAK Ceramics Pvt.Ltd***

Judgments cited by the learned counsel for the respondent:

i. ***BGS SGS SOMA JV Vs NHPC LIMITED***

ii. ***Indus Mobile Distribution Private Limited Vs Datawind Innovations Private Limited***

iii. ***Brahmani River Pellets Limited Vs Kamachi Industries Limited***

20. Though several grounds are raised by the appellant in the memorandum of grounds, the primary argument advanced is in regard to Clause 57 and 58 of the DAGPA, which reads as under.

> ***57. Arbitration:***
>
> *In the event of a disagreement or dispute between the "PARTIES" in relation to these "PRESENTS" the "PARTIES" shall attempt in good faith to resolve those differences, failing which, all disputes or differences whatsoever which shall at any time hereafter (whether during the continuance of these "PRESENTS or upon or after its discharge or determination) arise between the "PARTIES" hereto shall be referred to arbitration in accordance with and subject to the provisions of the Indian Arbitration & Conciliation Act, 2015, or any statutory modification or re-enactment thereof for the time being in force. Each party shall be entitled*

to appoint/nominate one Arbitrator and the two Arbitrators so appointed/nominated shall appoint the third Presiding Arbitrator. The awards of the Arbitrators shall be final and binding on the "PARTIES" to the reference. The arbitration proceedings shall be held in Hyderabad only.

58. Jurisdiction:

In respect of matters / disputes arising out of in connection with or in relation to this Development Agreement cum GPA only the civil courts in East Godavari District shall have jurisdiction to the exclusion of all other courts.

During the pendency of any dispute, both "PARTIES" shall save as otherwise provided herein continue to perform their respective obligations under this Agreement and shall not, whether by acts or omissions impede or otherwise interfere with the endeavors of the defaulting party to remedy the breach or default to which such dispute relates.

21. Learned counsel for the appellant contended that the intention of the parties to the agreement was for not conferring the seat of arbitration, but it is only to indicate the place of arbitration. When place / venue is fixed without any contra indication, the same can be treated as seat of arbitration. However, in the express terms of Clause 58 of the agreement, the Civil Courts at East Godavari District were conferred with exclusive jurisdiction, thereby excluding the jurisdiction of all other courts. which meant to be read that for the purpose of jurisdiction, there is an exclusion provision which ousters jurisdiction of all other civil courts, except the courts at East Godavari District which would clearly and categorically confers jurisdiction upon the courts at East Godavari alone, and no other Court at any place will not have any jurisdiction to entertain any application. As such, the commercial court went wrong in holding that the seat of arbitration is fixed at Hyderabad. While referring to clause 57, learned counsel for the appellant

contended that the place of arbitration is only fixed at Hyderabad does not mean that the place fixed is the seat of arbitration to confer the territorial jurisdiction of all the proceedings under Clause 57 upon Courts at Hyderabad. As there is a contra indicia as contained in clause 58 of the agreement, whereby the civil courts at East Godavari District alone are conferred with the jurisdiction, duly and expressly excluding the jurisdiction of all other courts, as such, at any stretch of imagination, it cannot be called the place of arbitration stated in Clause 57 as the seat of arbitration to provided exclusive jurisdiction of the courts at Hyderabad.

22. It is also contended that if there is no contra indicia or no clause indicating contra to the arbitration clause where place of arbitration is prescribed; the same can be treated as seat of arbitration. However, in the instant case clause 58 excludes and also ousters jurisdiction of other courts except the courts at East Godavari would have to be treated as contra indicia to clause 57, as such, the place mentioned in clause 57 is a mere place of arbitration to conduct the arbitral proceedings at Hyderabad, the same does not confer status of seat/venue as decided in the order impugned. For the said proposition, learned counsel for the appellant placed reliance on the judgment of Hon'ble Apex Court in ***BGS SGS SOMA JV's case (Supra 1)***. The relevant portion of the said judgment is extracted hereunder:

46. This Court in Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] , 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 [Balco v. Kaiser Aluminium Technical Services Inc.,(2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] 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 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. [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 : (2016) 158 DRJ 391] 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.

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. Learned counsel would submit that as held above, when there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration, the expression would make it clear that the "venue" is really the "seat" of arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearings, 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 the 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.

24. In the case on hand, clause 57 indicates that the place of arbitration at Hyderabad, would be a place of arbitration for the purpose of conducting hearings and the same cannot be equated with status of seat in view of the clause 58 which indicate contra that the jurisdiction of civil courts at East Godavari alone are conferred, duly excluding the jurisdiction of other courts, which operates as ouster of jurisdiction of all other courts except the courts at East Godavari District. This would mean and intend to exclude the jurisdiction of all other courts and amounts to contra indicia to clause 57, as such, the same must be treated as a mere place of arbitration in which the proceedings shall take place, whereas jurisdiction of the courts is meant to confer upon the courts at East Godavari alone. Therefore, the commercial court at Visakhapatnam alone can entertain the application under section 9 of the Act and no other court would be entitled to.

25. Learned counsel for the appellant also placed reliance on judgment of Hon’ble Delhi High Court reported in ***Isgec Heavy Engineering Ltd. v. Indian Oil Corporation Limited***[3]**,** wherein the relevant portion is extracted here under:

[3] 2021 SCC OnLine Del 4748

> *14. As opposed to the general stipulation in Clause 9.1.2.0, Article 4 is worded in clear, unambiguous, and directory terms. In fact, it serves as the 'contrary indica', which further demonstrates that the 'venue' in Clause 9.1.2.0 is only a physical place of meeting under Section 20(3) of the Act. Article 4 - leaves no room that all actions and proceedings arising out of the Contract, including arbitration, shall have to necessarily be tried by the civil court(s) at Guwahati exclusively, and does not lead to jurisdiction being vested in the court(s) at Delhi.*

26. In the aforesaid judgment, clause 9.1.2.0 of GCC provides that venue of arbitration shall be New Delhi. The said clause also provides that the arbitrator may with the consent of the owner and the contractor agree upon any other venue. The relevant portion of the aforesaid clause reads under:

> *"9.1.2.0.The venue of arbitration shall be New Delhi, provided that the Arbitrators may with the consent of the OWNER and the CONTRACTOR agree upon any other venue.*

27. Considering the same, it was held that the said clause and Article 4 of the GCC worded in clear, unambiguous, and direct terms. In fact, it serves as the 'contrary indica', which further demonstrates that the 'venue' in Clause 9.1.2.0 is only a physical place of meeting under Section 20(3) of the Act. Article 4 - leaves no room that all actions and proceedings arising out of the Contract, including arbitration, shall have to necessarily be tried by the civil court(s) at Guwahati exclusively, and does not lead to jurisdiction being vested in the court(s) at Delhi. Thus, from the above, the Hon'ble Delhi Court held that as there is a contra indicia regarding the Civil Courts jurisdiction, the place of arbitration is treated as venue of arbitration and the

same is treated as not the seat of arbitration. Similarly, in the case on hand also, Clause 58 constitutes a contraindication which would renders the place indicated in Clause 57 as the mere venue/ place of arbitration for conducting the proceedings alone and nothing more and the same cannot be treated as seat of arbitration.

28. Learned counsel for the appellant also placed reliance on the judgment of Delhi High Court reported in ***Kush Raj Bhatia v. DLF Power & Services Ltd.,***[4] wherein the relevant portion is extracted hereunder:

> *18. There is no reference to either seat or venue but it only mentions about the "place" where the arbitration may take place. Much controversy over a period of time has arisen in regard to the concept of seat and venue which needs to be considered. The Act does not define the term 'Seat' or 'Venue'. Section 20 merely defines the 'place of arbitration' which is often used interchangeably with the term 'Seat' and 'Venue' which often leads to controversy. It has been ascertained in various judgments but the controversy keeps arising in different factual settings and become subject matter of decisions by the Courts. The terms 'Seat' is of utmost importance as it connotes the situs of arbitration. The term 'Venue' though often confused with the term 'Seat', is more of a place chosen as convenient location by the parties to carry out the arbitration proceedings, but it should not be confused with 'Seat'. The term 'Seat' carries more weight than 'Venue' or 'place'.*
>
> *29. Similarly, in Cravants Media Pvt. Ltd. v. Jharkhand State Cooperative Milk Food Federation Pvt. Ltd. Arbitration petition 915/2021 decided on 06.12.2021 by the Coordinate Bench, the Dispute Resolution Clause provided that the venue of arbitration shall be Ranchi, but any disputes arising out of this agreement shall be subject to the sole and exclusive jurisdiction of Courts in Delhi. It was held that the intention of the parties was clear that the seat would be in New Delhi and the Court at New Delhi was held to have the jurisdiction.*

[4] 2022 SCC OnLine Del 3309

30. In the facts in hand, the relevant Clause 48 and Clause 49 read as under:

> *48. All or any dispute arising out of touching upon or in relation to the terms of the Lease Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act 1996 or any statutory amendments/modifications thereto for the time being in force. The arbitration proceedings shall he held at an appropriate location in New Delhi by a Sole Arbitrator who shall be appointed by the Lessee and whose decision shall be final and binding upon Lessor.*
>
> *The Lessor hereby confirms that it shall have no objection to this appointment even if the person so appointed, as the Arbitrator, is an employee or Advocate of the Lessee or is otherwise connected to the Lessee and the Lessor confirms that notwithstanding such relationship/connection, the Lessor shall have no doubts as to the independence or impartiality of the said Arbitrator." That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction.*
>
> *49. That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction."*

31. It is quite evident that there is a contraindication in the registered Agreement that while the venue of arbitration may be New Delhi, but the seat of arbitration shall be Gurgaon and High Court at Chandigarh. In the circumstances, it has to be held that this Court has no jurisdiction and it is the Courts at Gurgaon/High Court of Chandigarh which have the exclusive jurisdiction for entertaining the disputes arising out of the registered Lease Agreement.

29. Learned counsel would also contend that there is no reference to either seat or venue of arbitration, and the clause only mentions about the place where the arbitration may take place. As such, the same is only a mere place of arbitration, which is often used interchangeably with the term 'sitting or venue'. The term 'venue' though often confused with the term 'seat' is more of a place chosen as a convenient location by the parties to carry out arbitration proceedings, but it should not be confused with the

seat. The term 'seat' carries more weight than 'venue or place' and the clause 57 indicates that the proceedings shall be held at Hyderabad and there is a contraindication in clause 58 conferring the jurisdiction of Civil Courts at East Godavari excluding or ousting the jurisdiction of all other courts would have to be treated as a contra indicia and the place of arbitration shall be treated as a mere place for conducting proceedings, not the seat of arbitration. In the above referred case, the Hon'ble Delhi High Court had taken the very similar view and held that the Courts at Gurgaon or Chandigarh will have the exclusive jurisdiction to entertain the dispute arising out of the said agreement.

30. Learned counsel also placed reliance on the judgment of Hon'ble Delhi High Court reported in ***Cravants Media (P) Ltd. v. Jharkhand State Co. Operative Milk Producers Federation Ltd.,***[5] wherein the relevant portion is extracted hereunder:

> *11. The question whether the intention of the parties in specifying a location for arbitral proceedings is merely to fix a convenient 'venue' or a seat/place of arbitration has to be ascertained from the language of the arbitration agreement.*
>
> *13. Clause 16.2 of the Agreement uses the word "venue". This clearly indicates that the parties had agreed that the venue of the arbitration shall be Ranchi and not the place of arbitration. It is clear from a conjoint reading of the two clauses (Clause 16.2 and 16.5 of the Agreement) that the parties had agreed that the venue of arbitration would be Ranchi but the court at Delhi would have the exclusive*

[5] 2021 SCC OnLine Del 5350

jurisdiction. Thus, Ranchi must be considered only as the venue of arbitration and not the place or seat of arbitration.

31. Learned counsel, while relying on the above said judgment, submits that the intention of the parties in specifying a location for arbitral proceedings is merely to fix a convenient 'venue' or a place of arbitration. It has to be ascertained from the language of the arbitration agreement itself as to whether that is a seat or not. A conjoint reading of the two clauses referred to in the present agreement would clearly establish that place of arbitration mentioned in Clause 57 is only a place for conducting the proceedings and is a mere venue, which cannot be equated as a seat of arbitration to confer upon the jurisdiction, as the same was expressly excluded by clause 58 to confer upon the jurisdiction of Civil Courts at East Godavari District alone and excluding the jurisdiction or ousting the jurisdiction of all other courts.

32. Learned counsel also placed reliance on the judgment of the Hon'ble Delhi High Court reported in ***Meenakshi Nehra Bhat v. Wave Megacity Centre (P) Ltd***.,[6]

14. Upon a conspectus of the averments contained in the petition and in the reply; and based upon the submissions made, in the opinion of this court, the following inferences arise:

14.1. The evident discordance in the arbitration clause as regards territorial jurisdiction for purposes of arbitration and for purposes of

[6] 2022 SCC OnLine Del 3744

general civil proceedings, is resolved by de-constructing the clause itself. It is noticed that nowhere in the arbitration clause are the words 'venue' or 'seat' used at all. What the parties have said, and agreed to in the arbitration clause, is that the arbitration proceedings shall be 'held' at the corporate office of the respondent at New Delhi. The agreement to hold arbitral proceedings at a given office is an indication only of the location where such arbitration sittings shall be conducted;

14.2. Though the arbitration clause could, no doubt, have been worded with more clarity, the absence of neat wordingdoes not mean that the court can re-write the clause by inserting words that do not exist in it, or by ignoring some other part of it. In such circumstances, what the court must do, is to bear in mind the legal distinction between 'venue' and 'seat' of arbitration, and the further distinction with "territorial jurisdiction" generally in relation to civil proceedings other than arbitration, as settled by various precedents; and then read the arbitration clause to give the clause its plain, simple and straightforward meaning, while not effacing the territorial jurisdiction clause contained in the same agreement;

14.3. Though, as noted above, multiple judicial precedents have been cited by both sides, this court is persuaded to follow the interpretation given to a very similarly worded arbitration clause in a recent decision of a Co-ordinate Bench of this court in Kush Raj Bhati (supra), where the court was dealing with an arbitration clause which read as follows:

> *"48. All or any dispute arising out of touching upon or in relation to the terms of the Lease Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act 1996 or any statutory amendments/modifications thereto for the time being in force. The arbitration proceedings shall he held at an appropriate location in New Delhi by a Sole Arbitrator who shall be appointed by the Lessee and whose decision shall be final and binding upon Lessor. The Lessor hereby confirms that it shall have no objection to this appointment even if the person so appointed, as the Arbitrator, is an employee or Advocate of the Lessee or is otherwise connected to the Lessee and the Lessor confirms that notwithstanding such relationship/connection, the Lessor shall have no doubts as to the independence or impartiality of the said Arbitrator."*
>
> *"49. That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction."*

> *In the above case, after referring to the extant legal position, and in view of the contraindication in the agreement whereby the 'venue' of arbitration, viz. the place where the arbitration proceedings were agreed to be held, was New Delhi, but the 'seat' of arbitration would lie within the territorial jurisdiction of the civil courts at Gurgaon and the High Court of Punjab & Haryana at Chandigarh, the Co-ordinate Bench declined to entertain the arbitration petition for lack of territorial jurisdiction.*
>
> *14.4. The arbitration clause in the present case is similarly worded, and therefore, in the opinion of this court, New Delhi is referred to in that clause only as the location for conducting arbitral proceedings. However, from the jurisdictional perspective, the parties have expressly agreed to territorial jurisdiction vesting in the courts at Gautam Buddh Nagar, Uttar Pradesh and the Allahabad High Court, as may be applicable, depending on the proceedings in question.*

33. Learned counsel, while relying on the above said judgment, submitted that in view of the contraindication contained in the agreement, whereby the venue of arbitration, namely, the place where the arbitration proceedings were agreed to be held, was New Delhi, but the seat of arbitration would lie within the territorial jurisdiction of the Civil Courts at Gurgaon. As the arbitration clause is similarly worded that of the clause in the above referred judgment and the jurisdiction conferred upon the Civil Courts at East Godavari clearly constitutes a contraindication to clause 57 of the agreement. Thus, the place of arbitration mentioned in the case on hand cannot be equated with the seat of arbitration.

34. Learned counsel also placed a reliance on the judgment of Hon'ble Calcutta High Court reported in ***Homevista Decor & Furnishing (P) Ltd. v.***

Connect Residuary (P) Ltd.,[7]wherein the relevant portion is extracted hereunder:

> *14. In My Preferred Transformation and Hospitality Pvt. Ltd. (supra), the Delhi High Court had before itself two different clauses, one stating that place of arbitration shall be New Delhi and another opting courts at Bengaluru to have exclusive jurisdiction in the matter. The court placed reliance upon the Apex Court's judgment in Mankastu Impex (supra) to hold that the seat was Delhi and it had jurisdiction over the arbitral proceedings. With great humility, I would disagree with the ratio laid down in this judgment. Firstly, it did not examine whether the clause opting courts at Bengaluru to have exclusive jurisdiction can be seen as a 'contrary indicia'. Secondly, the reliance on Apex Court's judgment in Mankastu Impex (supra) was misplaced as in Mankastu Impex (supra), the Apex Court was dealing with an international commercial arbitration wherein the courts at New Delhi were stated to have jurisdiction, but disputes were to be resolved by arbitration administered in Hong Kong. There was an additional clause which provided that a party may seek injunctive relief from a court having jurisdiction. The Apex Court held that since it was a foreign seated arbitration, the inclusion of clause giving courts at New Delhi jurisdiction was only for the purpose of enabling injunctive relief and reading the contract in a wholesome manner would indicate that the seat was actually Hong Kong. Such is not the case in a domestic seated arbitration. Therefore, a clause designating another court to have exclusive jurisdiction has to be considered while appreciating if there is a 'contrary indicia'.*
>
> *15. In Balapreetham Guest House (supra), the Madras High Court was dealing with a situation wherein the place of arbitration was stated to be New Delhi and courts at Chennai were selected to have exclusive jurisdiction. Relevant portions of the judgment are extracted below:—*
>
>> *'30. Considering the apparent conflict in respect of these 2 clauses the two have to be harmoniously constructed to give meaning to both. The rule of harmonious construction is to harmonise and not to destroy and while interpreting the clauses Courts have to presume that the parties had inserted every clause thereof for a purpose and therefore attempt to give effect to both. A reading of the 2 clauses would indicate that the parties had agreed that in case of a cause of action arising from out of the agreement then the Courts at Chennai alone will have jurisdiction, if parties abandon their right to arbitrate the dispute and file a civil suit.*

[7] 2023 SCC OnLine Cal 1405

> *31. However, the latter clause viz; 10.2 and 10.3 relates to disputes between the parties arising out of or in connection with the agreement and parties have agreed to resolve their disputes through Arbitration and have agreed that the seat of such Arbitral proceedings will be New Delhi. Therefore, the two clauses can be harmoniously constructed without one doing violence to the other.*
>
> *32. Even if we were to assume that the two clauses are in conflict with each other the same can be resolved by considering the law laid down by the Supreme Court. The Hon'ble Supreme Court has in the judgments referred above placed importance on the juridical seat to confer jurisdiction on Courts in the case of Arbitration Proceedings. In the Judgment in BGS Soma the learned Judges had held that the very fact that parties have chosen a place to be the seat necessarily implies that both parties have agreed that the Courts at the seat would have jurisdiction over the entire arbitral process. Therefore, on account of a conspectus of the above judgments of the Hon'ble Supreme Court, wherein emphasis and importance has been given to the juridical seat, in the instant case the Court having supervisory jurisdiction is the Courts where parties have agreed would be the place of arbitration.'*

21. Contractual interpretation necessitates taking into consideration all clauses and relevant factors to propound the proper intention between the parties. The rule of harmonious construction must be applied so that a panoramic meaning can be given to any agreement. The law with respect to arbitration clauses, as laid down in BGS SGS SOMA (supra) and Mankastu Impex (supra), is not alien to such interpretive principles. In light of the Apex Court's decisions in these two judgments, other clauses have to be scrutinized, when a location has been mentioned as 'venue' or 'place', to fathom if such a location can be dignified with the status of 'seat'. In my opinion, a clause opting a place as 'venue' or 'place' read with another clause which mentions courts of another location to have jurisdiction over disputes that may arise, inhibits the promotion of such 'venue' to 'seat'. The intention that emerges from an aggregate understanding of such clauses is that the 'venue' or 'place' was to be a convenient location for holding of arbitration seatings. The courts of the place selected as having exclusive jurisdiction over disputes should be considered as 'seat' and having jurisdiction to entertain applications under the Act.

22. In the facts of this case, Exhibit 2 of the MRA mentions that the arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, and the venue of such arbitration shall be in Kolkata. However, it cannot be analysed in seclusion of the other clauses. Due regard must be paid to other clauses, if any, which may act as a 'contrary indicia' to suggest that the parties intended the venue to not be

> *seat of the arbitral proceedings. It is clear that Clause 25 contained in the MRA which confers exclusive jurisdiction on the courts in Mumbai in respect of any and all disputes arising out of the agreement, is a 'contrary indicia' and shall proscribe the upgradation of 'Kolkata' from being a mere 'venue' to that of 'seat'. The courts at Mumbai, in my opinion, possess the jurisdiction to entertain the instant petition and other applications under the Act. Correspondingly, this court does not have jurisdiction to entertain the instant petition.*

35. Basing on the above it was submitted that, while considering the similar clauses in the agreement and referring to the judgment of Hon'ble Apex Court in ***BGS SGS SOMS JV's case (Supra 1)***, it was held that 'venue' or 'place', to fathom if such a location can be dignified with the status of 'seat' or opting a place as 'venue' or 'place' read with another clause which mentions courts of another location to have jurisdiction over disputes that may arise, inhibits the promotion of such 'venue' to 'seat'. The intention that emerges from an aggregate understanding of such clauses is that the 'venue' or 'place' was to be a convenient location for holding of arbitration sittings. The courts of the place selected as having exclusive jurisdiction over disputes, should be considered as 'seat' and having jurisdiction to entertain applications under the Act. The contra indicia is to suggest that the parties intended the venue to not be seat of the arbitral proceedings. In the case on hand, clause 57 indicates only the place/venue of arbitration proceedings, but not conferring the jurisdiction upon the courts at Hyderabad and clause 58 specifically confers exclusive jurisdiction and intentionally avoiding/ ousting jurisdiction of the other Civil Courts would

have to be conjointly read and understood that the jurisdiction is conferred upon the courts at East Godavari alone. Hence, the Special Court went wrong in rejecting the application.

36. Learned counsel for the appellant also placed reliance on the judgment of the Hon'ble Allahabad High Court reported in ***Hasmukh Prajapati Vs Jai Prakash Associates***[8]***,*** for the principle as stated in the above referred judgments stating that once a contra indicia is evident indicating that the parties are intended to treat the place of arbitration as mere venue, the same cannot be treated as the seat so as to confer jurisdiction.

37. Similarly, learned Counsel for the appellant also placed reliance for the very same principle on the judgment of this Hon'ble Court in ***Kei-Rsos Petrolium & Energy Pvt. Ltd., Vs RAK Ceramics Pvt.Ltd., (Supra 2)*** wherein the relevant portion is extracted hereunder:

> *30. The argument of Mr. C.V. Mohan Reddy, learned senior counsel, that the words "arbitration proceedings" in Clause 9.3 coupled with the expression "the place of arbitration shall be Hyderabad" will exclusively and unambiguously mean that the seat of arbitration is Hyderabad, cannot be accepted, because the place of arbitration is not restricted to Hyderabad alone and as may be resolved by the parties, it could be also in any other places in another State, namely, in the State of Andhra Pradesh. It is difficult to subscribe to the argument that the expression "place of arbitration" so far as it relates to Hyderabad should be construed as seat of arbitration and "any place mutually agreed by the parties in Andhra Pradesh" should be construed as a venue. A uniform*

[8] 2022 SCC OnLine ALL 96

interpretation has to be given with regard to an expression used in the same sentence. That apart, the words "arbitration proceedings" in Clause 9.3 are relatable to only in which language the proceedings will be conducted and nothing beyond that. It is difficult to accept that, Clause 9.1, having regard to the expression used in Clause 9.3, will not bring within its fold arbitration proceedings and, therefore, it cannot be understood to mean that the seat of arbitration is in Andhra Pradesh.

31. Having regard to the expression used in Clause 9.1, which ousted the jurisdiction of all courts other than the courts of the State of Andhra Pradesh, Clause 9.3 must be construed to mean that the parties intended Hyderabad or any other place in the State of Andhra Pradesh, as may be found convenient, as a venue for holding arbitration hearings and meetings. Clause 9.3 does not contain an expression, such as, "arbitration proceedings shall be held" and all that it says is that the place of arbitration shall be at Hyderabad or any other place mutually agreed by the parties in Andhra Pradesh and as such, the expression "place of arbitration" cannot be taken as a basis to determine that the parties had intended Hyderabad to be the seat of arbitration. The intention of the parties has to be gathered from relevant clauses in the agreement. Clause 9.3, in the understanding of the Court, does not suggest that the parties intended to anchor arbitral proceedings at Hyderabad, signifying thereby that Hyderabad is the seat of arbitral proceedings.

32. The argument advanced that Clause 9.1 relates to the subject matter of the suit between the parties and not to arbitration proceedings has no merit and no such restriction, limiting application of Clause 9.1 to only suits and not arbitration proceedings can be inferred. Clause 9.1 makes it clear that the State of Andhra Pradesh alone shall have sole and exclusive jurisdiction with respect to "any proceedings" arising out of or in relation to the subject agreement. Clause 9.2 also makes it clear that any claim, dispute or controversy arising out of or in relation to the agreement, including any dispute with respect to the existence or the validity of the agreement shall be referred to a sole arbitrator. An application for appointment of arbitrator is a "proceeding" arising out of or in relation to the agreement in question and, therefore, in my opinion, the same would fall under the purview of Clause 9.1 of the agreement. Thus, the plea set up by the respondent company that this Court has no jurisdiction to entertain this application is not tenable.

38. Relying upon the above, learned counsel for the appellant argued that in the case on hand mere mentioning that the place of arbitration shall be at

Hyderabad cannot be construed to mean that the seat of arbitration shall be at Hyderabad alone. In view of the clause 58, indicating contra that the jurisdiction of all other civil courts except the courts at East Godavari District were excluded would mean and intend that Hyderabad was intended only as a convenient place for conducting arbitral proceedings, whereas the jurisdiction of the courts at Hyderabad are not conferred with any jurisdiction to entertain any proceedings, as such, the same has to be treated as a place of arbitration and the status of seat cannot be conferred upon the same.

39. With these above referred cases as well as the arguments advanced, the appellant sternly contended that as mentioned in clause 57 of the agreement of DAGPA, place of arbitration cannot be elevated to the status of seat where proceedings shall be taken place at that place for the convenience of the parties and clause 58 which needs to be conjointly read with clause 57 would clearly indicate that the jurisdiction of the courts other than civil courts at East Godavari were intentionally excluded or the jurisdiction of the said courts is ousted, as such, at any stretch of imagination, the place at Hyderabad cannot be treated as the seat of arbitration. As such, the learned trial court miserably failed to consider the same and erred in dismissing the application filed under section 9 of the Act.

40. Learned Senior Counsel, Sri P Gangaiah Naidu assisted by Sri K. Dhanunjaya Naidu, learned counsel for respondent would submit that the seat of arbitration mentioned in clause 57 must be read in exclusion of Clause 58 of the agreement. Referring to Section 42 of Arbitration and Conciliation Act, learned counsel for the respondent would submit that 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 the agreement and the arbitral proceedings shall be made in that Court and in no other Court. He would further submit that the seat of arbitration mentioned in agreement would decide and determine the territorial jurisdiction of the court to entertain any further proceedings under the provisions of the Act and clause 58 of the DAGPA is not a clause for the arbitration, it is an independent clause. Clause 57 and 58 cannot be read together and Clause 58 would not over rule clause 57 of the Agreement. In fact, with regard to the proceedings under Arbitration and Conciliation Act, Clause 57 overrule clause 58 of the agreement. Clause 57 has to be read independently as Clause 58 is not an arbitration clause for resolution of disputes under the provisions of the Act. Clause 57 alone has to be treated as an arbitration clause under the

provisions of the said Act. Once clause 57 is read independently, there is no contra indicia to render place of arbitration at Hyderabad as mere place/venue. It is the seat of arbitration and there is no contra indicia in the arbitration agreement (Clause 57) as such, the intention of the parties has to be drawn from the very arbitration agreement itself, which indicate the place of arbitration as Hyderabad only which would mean and intend that it will be the seat of arbitration alone. For the said proposition, learned Senior Counsel placed reliance, particularly, on Para Nos. 97 and 98 of the judgment of Hon'ble Apex Court reported in ***BGS SGS SOMA JV's case (Supra 1)*** and the relevant paragraphs are extracted hereunder:

> *97. Given the fact that if there were a dispute between NHPC Ltd. and a foreign contractor, Clause 67.3(vi) would have to be read as a clause designating the "seat" of arbitration, the same must follow even when sub-clause (vi) is to be read with sub-clause (i) of Clause 67.3, where the dispute between NHPC Ltd. would be with an Indian contractor. The arbitration clause in the present case states that "Arbitration proceedings shall be held at New Delhi/Faridabad, India…", thereby signifying that all the hearings, including the making of the award, are to take place at one of the stated places. Negatively speaking, the clause does not state that the venue is so that some, or all, of the hearings take place at the venue; neither does it use language such as "the Tribunal may meet", or "may hear witnesses, experts or parties". The expression "shall be held" also indicates that the so-called "venue" is really the "seat" of the arbitral proceedings. The dispute is to be settled in accordance with the Arbitration Act, 1996 which, therefore, applies a national body of rules to the arbitration that is to be held either at New Delhi or Faridabad, given the fact that the present arbitration would be Indian and not international. It is clear, therefore, that even in such a scenario, New Delhi/Faridabad, India has been designated as the "seat" of the arbitration proceedings.*
>
> *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.*

41. Learned Senior Counsel would further contend that the arbitration clause states that the arbitration proceedings shall be held at Hyderabad thereby, signifying that all the hearings including making of award are to be taken place at one of the stated places, as such, that does not state that some proceedings shall take place at some place or some proceedings shall take place at some other place. The clause expressly state that 'shall be held at Hyderabad' includes hearing and examining witnesses or parties would clearly indicate that the so-called venue is really the seat of arbitral proceedings itself. Thus, once the same is treated as seat of arbitration, all the proceedings and subsequent proceedings before the competent civil courts at Hyderabad shall have to be taken place. In the instant case, the appellant approached the Commercial Court at Visakhapatnam under Section 9 of Arbitration and Conciliation Act, which cannot be said that the proceedings are not under Arbitration and Conciliation Act. As such, once they are governed by clause 57 (arbitration agreement) the place of arbitration is specified and designated at Hyderabad, the same has to be treated as the seat of arbitration and the courts at Hyderabad would only have the jurisdiction and all the other jurisdictions are excluded, as such, the

commercial court is right in holding that the application under section 9 is not maintainable and the court lacks jurisdiction to entertain such application.

42. Learned Senior Counsel also placed reliance on the judgment of Hon'ble Apex Court reported in ***Indus Mobile Distribution Private Limited Vs Datawind Innovations Private Limited***[9]**,** wherein the relevant portion is extracted hereunder:

> *20. 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.*
>
> *21. 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 Private Limited v. Indian Oil Corporation Limited, (2013) 9 SCC 32. This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited, (2015) 12 SCC 225. 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*

[9] 2017 (4) SCR 744

> *this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly.*

43. In the above referred case, the challenge was against the order passed by the Delhi High Court holding that the place of arbitration is at Mumbai and Mumbai Courts have exclusive jurisdiction stating that the courts at Mumbai alone would have jurisdiction in respect of disputes arising under the agreement and it would oust the jurisdiction of all the other courts including High Court of Delhi. Wherein the clauses were also extracted in Para No.3 of the said judgment under the heading 'Dispute Resolution Mechanism' and the relevant portion is extracted hereunder:

> *All disputes and differences of any kind whatever arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of Court of Mumbai only*

44. In Para No. 20 of the ***Indus Mobile Distribution Private Limited's case (Supra 10)***, it was held that 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 the purposes of regulating arbitral proceedings arising out of agreement between the parties. Thus, it was contended that the place of arbitration, unless there is specifically provided for as mere place of arbitration and jurisdiction is conferred upon the other courts in the arbitration agreement itself, the place mentioned in the arbitration agreement will have to be

treated as a seat of arbitration. It is contended that, in the case on hand, the arbitration clause under 57 does not indicate any contraindication regarding territorial jurisdiction and mentioned that the place of arbitration shall be at Hyderabad which would be a clear indication that the same should be within the courts at Hyderabad alone, as such, the learned Special Court rightly dismissed the application.

45. Learned Senior Counsel also cited a Judgment of Hon'ble Apex Court reported in ***Brahmani River Pellets Limited Vs Kamachi Industries Limited***[10] for the very same principle, and contended that once the parties have agreed that the venue of arbitration shall be at a particular place as per the agreement, the intention of the parties is to exclude all other courts and non use of words like 'exclusive jurisdiction', 'only', 'exclusive', 'alone' is not decisive and does not make any material difference. The clause under 57 had categorically specify that the arbitration 'shall be held at Hyderabad only' is nothing but deciding the seat of arbitration at Hyderabad alone. As such, the clause 57 alone has to be treated as an arbitration agreement and the jurisdiction under clause 58 cannot be said to be with reference to the proceedings under Arbitration and Conciliation Act, they are independent. As such, the commercial court is right in holding that it lacks jurisdiction and accordingly, rejected application filed under Section 9 of the Arbitration and

[10] (2020) 5 SCC 462

Conciliation Act. Therefore, there is no illegality or irregularity committed by the commercial court in dismissing the application for want of territorial jurisdiction to entertain the application under section 9 of the Act and prayed to dismiss the appeal.

46. Considering the above said rival contentions of either party, the point that fell for consideration is

> ***"Whether the proceedings initiated under Section 9 of the Act, by invoking arbitration clause 57 of the agreement, would fall within the territorial jurisdiction of the Commercial Court at Visakhapatnam or not, in the light of Clause 58 of the agreement?"***

POINT : -

47. As stated above, Clauses 57 and 58 of the DAGPA read in contravention with each other, if Clause 57 is read in isolation, it provides that the 'place of arbitration shall be at Hyderabad only' would indicate that the proceedings of the arbitration shall be held at Hyderabad in the event of any disagreement or dispute between the parties in relation to the agreement. It further provides that all disputes or differences whatsoever which shall at any time hereafter arise between the parties hereto shall be referred to arbitration in accordance with and subject to the provisions of the Indian Arbitration and Conciliation Act, 2015 or any statutory modification or re-enactment thereof for the time being in force. The awards of the

arbitrators shall be final and binding on the parties to the reference. **The arbitration proceeding shall be held in Hyderabad only**. A plain reading of the said clause would indicate that all the differences or disputes and disagreements between the parties shall be the arbitrable disputes and each party shall be entitled to appoint one arbitrator and the appointed arbitrators shall appoint the third presiding arbitrator for resolving the said disputes and it specifically refers to the place of proceedings as Hyderabad, specifically stating that " the arbitration proceedings shall be held in Hyderabad only" would indicate that the proceedings shall be held at Hyderabad alone. However, clause 58, followed by Clause 57 titled as 'jurisdiction' refers to in respect of the matters/disputes arising out of, in connection with or in relation to this DAGPA, only the Civil Courts in East Godavari District shall have the jurisdiction to the exclusion of all other Courts. This would indicate contra to clause 57 of the agreement, stating that the matters/ disputes arising out of, in connection with or in relation to this DAGPA shall be dealt by the civil courts in East Godavari with an exclusive jurisdiction by excluding all other courts. By virtue of clause 58, the jurisdiction of the courts other than civil courts in East Godavari District were intentionally excluded or ousted from entertaining any such proceedings. Basing on this, learned counsel for the appellant would submit that this exclusion will also works against clause 57 (arbitration agreement),

whereby the part of the clause **‘**that arbitration proceedings shall be held in Hyderabad only’ renders it as a place of arbitration only for the convenience of parties and that does not confer jurisdiction of the Civil courts at Hyderabad to entertain any proceedings under the provisions of the Act. Mere mentioning of a place of arbitration would not amount to fixing of the seat of arbitration, thereby conferring jurisdiction upon the courts of that place and Clauses 57 and 58 of the DAGPA must be conjointly read to arrive and draw the intention of the parties to the agreement while entering into such an agreement. Thus, the intention is very clear that the arbitration proceedings will be taken place at Hyderabad where the same has to be treated as a place/venue of arbitration and the same cannot be equated or elevated to the status of seat of arbitration.

48. However, learned counsel for the respondent would submit that the clauses are independent to each other and clause 57 will not be superseded by clause 58 and they have to be read independently excluding the proceedings of arbitration from the regular civil proceedings under the development agreement, the arbitration proceedings shall be held at Hyderabad was intentionally mentioned to confer upon the jurisdiction of the courts at Hyderabad with regard to the proceedings under the Act. Thus, the commercial court rightly interpreted clause 57 and 58 and placed reliance on the judgment of Hon’ble Apex Court, particularly, ***BGS SGS SOMA JV’s***

case (Supra 1) and held that the arbitration agreement is independent of clause 58 of agreement and the place of arbitration has to be treated as seat of arbitration as there is no contra indicia, as such, the court lacks jurisdiction and accordingly, rightly rejected the application filed under section 9 of the Act.

49. On careful consideration of the above referred clauses as well as the judicial pronouncements relied upon by the parties, and upon analysis of facts and law, it is evident that clause 57 of the DAGPA which invokes the provisions of the Arbitration and Conciliation Act, mandates that the proceedings under Section 9 of the Act, would invariably fall under clause 57 amounts to the proceedings under the provisions of the said Act. As such, the courts are bound to rely upon the arbitration agreement between the parties while deciding either the jurisdiction or the scope of arbitral proceedings. In the instant case, clause 57 of the DAGPA would clearly indicate that all the disagreements/disputes are arbitrable disputes falling under clause 57 of the agreement would be dealt with in accordance with the provisions of Arbitration and Conciliation Act, and the said clause specifically provides that the place of arbitration as Hyderabad alone, which would mean and intend to say that the proceedings under the arbitration shall be taken place at Hyderabad alone.

50. The Hon'ble Apex Court in the judgment of ***BGS SGS SOMA JV's case,*** laid down the principle that unless there is a contra indicia in the agreement, the place/venue of proceedings shall be treated as the 'seat' of arbitration, which would conclusively and expressly provided the territorial jurisdiction on the courts of the said territory. As such, the courts at the place/venue of arbitration confers a vital role in deciding the seat of arbitration, thereby the jurisdiction itself. Provided that there is no contra indication.

51. In the instant case, as contended by the learned counsel for the petitioner that there is a mention of contra indicia in the agreement, indicating that the place of arbitration, which can be treated as only a mere place to take up the proceedings. As the clause mentions only the phrase that "place of arbitration shall be at Hyderabad only" would clearly indicate that all the hearings and other proceedings of arbitral tribunal like examining witnesses, taking place of hearings and making of award would also fall within the said place of arbitration which would definitely be treated as a seat of arbitration, if Clause 58 of the agreement is not indicating contra. Regarding clause 58 of the agreement, there is a mention about all the disputes which also cover the proceedings under the clause 57. The said clause also provides for continuation of obligations under the agreement during the pendency of disputes. The intention of the parties would be clear

from a conjoined reading of clause 57 and 58 that the parties are intended to take place the proceedings of arbitration under clause 57 at the Hyderabad, whereas the jurisdiction of Courts are excluded by Clause 58. Thus, in all probabilities the place mentioned in clause 57 would have to be treated as a place of arbitration and the jurisdiction of courts should be decided by Clause 58.

52. The case law relied upon by the Special Court in ***BGS SS SOMA JV's case,*** at Para 97 would clinches the issue that the place of arbitration, if the same is not contra Indicia, it is to be the seat of arbitration and all the proceedings would take place only at that particular place of arbitration, including the territorial jurisdiction of the civil courts in respect of the said arbitration proceedings would take place. But in the instant case, Clause 58 of the agreement in its express terms excludes the jurisdiction of all other courts except the courts at East Godavari District. If both the clauses are not read together, as contended by the learned counsel for the petitioner, Clause 58 would render in otiose and no meaningful interpretation could be given to the said clause.

53. In fact, it was the intention of the parties that all the clauses in the agreement are to be read in conjoint and cannot be in isolation. Clause 57 would only provide for arbitration and Clause 58 provide for jurisdiction of

courts. Therefore, Clauses 57 and 58 have to be read together and they are dependent clauses and Clause 58 covers the proceedings under Clause 57 also which would mean to include the arbitration proceedings also. That apart, clause 57 speaks that the proceedings of arbitration shall be held at Hyderabad only would mean and intend that the said proceedings shall take place at Hyderabad for the convenience of the parties. Therefore Hyderabad can be treated as place of arbitration only. The same cannot be treated as seat of arbitration. Thus, it can be safely held that the jurisdiction of all the civil courts other than the Courts at East Godavari District are excluded and as such the proceedings under Section 9 of the Arbitration and Conciliation Act are to be invoked or instituted in terms of Clause 57 read with Clause 58 of the agreement. As the subject territory of East Godavari District has been attached to the jurisdiction of the Special Judge For Trial and Disposal of Commercial Disputes Act, Visakhapatnam, the Special Court at Visakhapatnam is vested with the territorial jurisdiction over the subject proceedings.

54. Therefore, the order passed by the learned commercial court is not in accordance with the arbitration clause provided under the agreement and also the settled legal principles. Thus, the order dated 01.12.2025 passed in C.A.O.P.No.11 of 2025 is liable to be set aside.

55. Accordingly, we **allow** the appeal by setting aside the order dated 01.12.2025 passed in C.A.O.P.No.11 of 2025 by the learned Special Judge For Trial and Disposal Of Commercial Disputes, Visakhapatnam.

There shall be no order as to costs.

As a sequel, miscellaneous applications, pending, if any, shall stand closed.

JUSTICE RAVI NATH TILHARI

JUSTICE BALAJI MEDAMALLI

Date: 07.05.2026
Dvs

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

COMCA.No.27 of 2025

Date: 07.05.2026

Dvs