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

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Date of decision: 21st May, 2024

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ARB.P. 421/2024**M/s KINGS CHARIOT**

Through its Sole Proprietor Mrs. Neelima Suri

W/o Rohit Suri

Having its office at Flat No.103

Tower 1, Sagavi Apartments

Sector-55, Gurugram

Haryana

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Mob.9818593019

..... Petitioner

Through: Ms. Avsi Malik, Mr.
Abhinav Sharma, Mr. Naveen Gaur &
Mr. Deepak Jain, Advocates.

versus

Mr. TARUN WADHWA

S/o Late Virender Wadhwa

C/o M/s Sunny Vista Hotels Pvt. Ltd.

A.B. Road, Guna, Madhya Pradesh

E-mail: tarunwadhwa@gunaguna@gmail.com

..... Respondent

Through: Mr. Sanyam
Maheshwari & Mr. Bharat Khurana,
Advocates.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****I.A. 7215/2024 (Exemption)**

1. Allowed, subject to all just exceptions.
2. The application is disposed of.



3. **ARB.P. 421/2024**

4. The Petition under Section 11(5) of the Arbitration and Conciliation Act, 1966 has been filed on behalf of the petitioner for appointment of a Sole Arbitrator.

5. The petitioner is engaged in the business of executing internal development works for hotels, offices, factories, auditoriums, schools and colleges across the country and the respondent was constructing a multi-storied hotel in Guna, Madhya Pradesh. The respondent approached the petitioner for executing the internal development works for the said Hotel.

6. In pursuance thereof, meeting was held between the parties in Delhi and the parties entered into an MEP Contract on 11.10.2018.

7. It is asserted that on 03.07.2021, the respondent with utmost *malafide* intentions, manhandled the labour and workforce of the petitioner, who was present at the Project side and threw them out of the site leading to disputes between the parties.

8. On 18.01.2024, the respondent sent a *Notice invoking the Arbitration Clause* contained in the Contract. The petitioner gave a Reply dated 15.02.2024 and called upon the respondent to pay the outstanding amount but the respondent neither paid the outstanding amount nor responded to the Reply till date.

9. The petitioner has filed the present Petition.

10. **The respondent has filed Reply** to the Petition wherein two objections have been taken. The *first objection* is that the present Petition does not disclose any cause of action while the *second objection* is that this Court has *no territorial jurisdiction* to entertain the present Suit as no part of cause of action arose in Delhi.



11. It is submitted that the entire cause of action has arisen in Madhya Pradesh and there is no venue or seat of Arbitration that was agreed upon in the Contract *inter se* the parties. It is asserted that the petitioner is relying on a Clause mentioned in 'Annexure-2' of the MEP Contract dated 11.10.2018, which reads that "*all disputes subjected to Delhi Jurisdiction only*". However, this Clause cannot be construed to designate the seat of Arbitration at Delhi, so as to confer jurisdiction to this Court in exercise of powers under Section 11 of the Act. The *Arbitration Clause No. 3 in the MEP Contract* merely provides for referral of the disputes to Arbitration but is silent about the seat as well as venue of Arbitration. Since no seat has been designated by the parties and that no cause of action having arisen in Delhi, this Court does not have any territorial jurisdiction to entertain the present Petition.

12. Reliance is placed on the case of *Aarka Sports Management Pvt. Ltd. vs. Kalsi Buildcon Pvt. Ltd.*, 2020 SCC OnLine Del 2077

13. Since no seat of Arbitration had been agreed, the same would necessarily be ascertained, in terms of Section 2(1)(e) of the Act read with Section 16 to 20 of the CPC. Furthermore, an Application for appointment of Sole Arbitrator has already been filed by the respondent before the Gwalior Bench of Madhya Pradesh High Court, prior to the filing of the present Petition, which is pending disposal.

14. It is, therefore, submitted that this Petition is not maintainable in Delhi.

15. **The petitioner in the Rejoinder** has asserted that the stamp paper for the MEP Contract, was purchased by the petitioner at Gurgaon, Haryana and the Contract was also signed by her in Gurgaon, Haryana itself. She had



filed the Transfer Petition for getting the FIR registered against her at Madhya Pradesh on the complaint of the respondent, which has been allowed by the Hon'ble Supreme Court for investigations to SIT, Delhi Police.

16. It is further asserted that even if an earlier Petition has been filed under Section 11 of the Act, before the Gwalior Bench of Madhya Pradesh High Court, but the jurisdiction vests only in Delhi. It is submitted that the Clause confers exclusive jurisdiction to this Court and the present Petition is maintainable.

17. The plaintiff has relied on the case of *Aseem Watts vs. Union of India and Ors.*, MANU/RH/1285/2023, *Homevista Décor and Furnishing Pvt. Ltd. and Ors. vs. Connect Residuary Private Limited*, MANU/WB/1155/2023, *Samsung India Electronics Pvt. Ltd. vs. ENN ENN Corp. Limited*, MANU/DE/4152/2023.

18. Submissions heard.

19. For appreciation of the rival contentions, it would be appropriate to refer to Clause 3 of MEP Contract, which provides for Arbitration, which reads as under:-

3) In case of any dispute between the parties, the matter will be referred to arbitration, arbitrator to be mutually agreed upon by the parties.

20. It is evident from this Clause itself that it did not specify any seat or venue for the place of conducting the Arbitration. The plaintiff has placed reliance on Clause contained in 'Annexure-2' of MEP Contract, which reads as under:

"All disputes subjected to Delhi jurisdiction only."

21. The above clause is a general jurisdictional Clause but does not refer



to the seat or venue as has been defined in the Arbitration Clause. The general jurisdictional Clause cannot be read to define the seat or venue for the purpose of the Arbitration.

22. In the present Case, the Arbitration Clause does not give any place of Arbitration. The general jurisdictional Clause cannot be invoked for determination of seat or venue.

23. The Apex Court in the Case of M/s Ravi Ranjan Developers Pvt. Ltd. vs. Aditya Kumar Chatterjee, 2022 SCC OnLine SC 568, it was observed that though in *stricto sensu* this definition of Court in Section 2(1)(e) of the Act, 1996 may not be applicable while exercising jurisdiction under Section 11(6) of the Act, 1996 to appoint the Arbitrator/Arbitral Tribunal, but at the same time, Application under Section 11(6) of the Act, 1996 cannot also be filed in any High Court of India, irrespective of the territorial jurisdiction. Section 11(6) of the Act, 1996 has to be harmoniously read with Section 2(1)(e) of the Act, 1996 and construed to mean a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the Act, 1996. It was noted that the territorial jurisdiction of entertaining the Civil Suits has been provided in Sections 16 to 20 of the Act, 1996. The Court within the legal limits of whose jurisdiction, the defendant actually or voluntarily resides or carries on business, or where any part of cause of action has arisen, would essentially have the territorial jurisdiction to entertain the Suit. Where the Petition under Section 11 of the Act, 1996 is concerned, while it would be governed by the Arbitration Agreement and the jurisdiction of the Court to which the parties may agree, but if there is no such Agreement of seat of jurisdiction, then the Application under Section 11(6) of the Act, 1996 would be filed



only in the jurisdiction of the High Court is to be determined in accordance with Section 16 to 20 C.P.C.

24. A reference was made to Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited and Ors., (2017) 7 SCC 678 Hindustan Construction Company Limited vs. NHPC Limited and Anr. (2020) 4 SCC 310 and BGS SGS Soma JV vs. NHPC Limited, (2020) 4 SCC 234, wherein the parties had designated a seat of arbitration which thus, was held to become the exclusive jurisdiction clause because of which only the Courts within whose territorial limits the seat is located, would have jurisdiction to the exclusion of all other Courts.

25. In Union of India vs. Hardy Exploration and Production (India) Inc., (2019) 13 SCC 472, a 3-Judge Bench of the Apex Court held that the “sittings” at various places are relatable to “venue”. It cannot be equated with the “seat of arbitration” or “place of arbitration”, which has a different connotation.

26. Similarly, in the case of Mankastu Impex Private Limited vs. Airvisual Limited, (2020) 5 SCC 399, a 3-Judge Bench of the Apex Court observed that the “seat of arbitration” is the vital aspect in any arbitration proceedings. It determines the applicable law and also the arbitration procedure. The situs is not just about where an Institution is based or where the hearings will be held, but it is all about which court would have the supervisory power over the arbitration proceedings.

27. Similar observations were made in Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. vs. Enercon GmbH], (2014) 5 SCC 1, wherein also it was held by the Supreme Court that the “location of the seat” shall determine the exclusive jurisdiction of the Court to oversee the arbitration



proceedings.

28. After referring to all the aforesaid judgments in the case of M/s Ravi Ranjan Developers Pvt. Ltd., (supra), it was held that the parties cannot by consent, confer jurisdiction on a Court which inherently lacks jurisdiction. When neither the seat nor the place of arbitration is designated in the particular Arbitration Clause/Agreement and no part of cause of action has arisen within the jurisdiction of the High Court, the Application under Section 11(6) of the Act, 1996 would not be maintainable, in said High Court.

29. The petitioner has relied upon Aseem Watts vs. Union of India and Ors., MANU/RH/1285/2023, Homevista Décor and Furnishing Pvt. Ltd. and Ors. vs. Connect Residuary Private Limited, MANU/WB/1155/2023, Samsung India Electronics Pvt. Ltd. vs. ENN ENN Corp. Limited, MANU/DE/4152/2023, to submit that even if no part of cause of action has arisen, the parties can still agree on a neutral venue. However, the above Judgments are distinguishable as in the Arbitration Clause, the parties had in the above cases agreed for a venue or a seat of arbitration in their respective Clauses whereas, there is no such conferment in the present case.

30. There is thus, no confusion and law is explicit that for the purpose of Arbitration, even if no part of cause of action has arisen in a place, then too, the parties can agree on a seat of jurisdiction, which would then become the place for all litigation under the Arbitration Act. However, if the parties do not specify any seat/place of Arbitration, then the jurisdiction of the Court shall be determined in accordance with Section 16 to Section 20 of C.P.C.

31. In the present case there is neither any place nor any venue determined by the parties, in the Arbitration Clause. Therefore, the territorial



jurisdiction has to be determined in accordance with Section 16 to Section 20, CPC.

32. Moreover, the Petitioner has asserted that she had purchased a stamp paper and signed her Agreement at Gurgaon. From her own submissions as well, it is established that no part of cause of action has arisen in Delhi. It is stated by the respondent that the Contract was signed and executed in Madhya Pradesh for interior works of the respondent's hotels situated in Madhya Pradesh and the respondent carries on business in Madhya Pradesh, it is only the Courts of Madhya Pradesh, which have the jurisdiction to adjudicate the dispute.

33. In the aforesaid discussion, it is held that this Court has no territorial jurisdiction to entertain the present Petition, which is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 21, 2024/RS