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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on 01.05.2024

+ O.M.P. (COMM) 337/2021 & I.As. 14635/2021, 14862/2022

DELHI TOURISM AND TRANSPORTATION
DEVELOPMENT CORPORATION

..... Petitioner

Through: Mr. Suresh Tripathy, Ms. Puja
Dewan, Mr. Uday Seth, Advocates.

versus

M/S SATINDER MAHAJAN

..... Respondent

Through: Mr. Sameer Chandwani, Mr.
Parivesh Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The challenge in the present petition, under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Arbitration Act”], is to an arbitral award dated 05.08.2021 passed by the District Level Micro and Small Enterprises Facilitation Council, Pathankot, [“the Facilitation Council”] constituted under the Micro, Small and Medium Enterprises Development Act, 2006 [“the MSME Act”].

A. Facts

2. The respondent, established in Pathankot, Punjab, is registered as a medium enterprise under the MSME Act. It entered into an agreement dated 21.01.2016 [“the Agreement”] with the petitioner – Delhi Tourism and Transportation Development Corporation, for construction of a bus depot at Kharkhari Nahar Village, New Delhi.



3. Disputes having arisen between the parties, the respondent made a claim for payment of its alleged dues under the Agreement before the Facilitation Council. For this purpose, it invoked jurisdiction of the Facilitation Council under Section 18 of the MSME Act. The Facilitation Council first adopted conciliation proceedings. The conciliation proceedings were closed on 15.10.2020, and the reference was taken up for arbitration. The petitioner also raised an objection as to the jurisdiction of the Facilitation Council, which was rejected by an order dated 26.10.2020. By the impugned award, the Facilitation Council has awarded a sum of Rs. 4,11,55,845/- (inclusive of interest until the date of the award), to the respondent. It is undisputed that the Facilitation Council conducted its proceedings, and made its award, in Pathankot.

B. Submissions of the Parties

4. At the outset, Mr. Sameer Chandwani, learned counsel for the respondent, takes an objection as to the territorial jurisdiction of this Court to entertain this petition, which is directed against an arbitral award made by the Facilitation Council in Pathankot.

5. Mr. Chandwani submits that Section 18(4) of the MSME Act, vests jurisdiction in a Micro and Small Enterprises Facilitation Council to act as an arbitrator or conciliator in disputes between a supplier located within its jurisdiction and a buyer located anywhere in India. It is submitted that the respondent herein, being the supplier, therefore, invoked arbitration before the Facilitation Council in Pathankot, where it is located, and Pathankot was the seat of the arbitration proceedings.

6. Mr. Chandwani also relies upon a judgment of the Kerala High Court in *Shreyas Marketing v. Micro and Small Enterprises Facilitation*



*Council*¹, and a judgment of the Madhya Pradesh High Court in *Madhya Pradesh Purv Kshetra Vidhyut Vitran Company Ltd. v. Ami Tech India Pvt. Ltd.*², to submit that a challenge to an award passed under the MSME Act would lie at the location of the Facilitation Council.

7. Mr. Suresh Tripathy, learned counsel for the petitioner, on the other hand, submits that this Court has jurisdiction to entertain the petition under Section 34 of the Arbitration Act, as the Courts in Delhi are vested with exclusive jurisdiction under the Agreement. For this purpose, he relies upon an exclusive jurisdiction clause contained in Article 7 of an “Integrity Pact”, which forms part of the tender documents. According to Mr. Tripathy, the Integrity Pact is part of the Agreement, and the exclusive jurisdiction clause contained therein, confers jurisdiction upon the Courts in Delhi for the purposes of the Agreement also.

8. Mr. Tripathy relies upon two Division Bench judgments of this Court in *Indian Oil Corporation Ltd. v. FEPL Engineering (P) Ltd.*³ and *IRCON International Ltd v. Pioneer Fabricators Pvt. Ltd.*⁴, to submit that even where any arbitration, under the MSME Act, is conducted by a facilitation council situated outside Delhi, jurisdiction for the purposes of challenge to the award, would lie in the Court having exclusive jurisdiction in terms of the contract under consideration.

9. Mr. Tripathy alternatively submits that, even if the Court comes to the conclusion that there was no exclusive jurisdiction clause in the

¹ 2023 SCC OnLine Ker 4206.

² 2023:MPHC-JBP:44566.

³ 2019 SCC OnLine Del 10265.

⁴ 2023 SCC OnLine Del 1811.



present case, the seat of arbitration is Delhi. He submits that the cause of action in the arbitral proceedings arose entirely in Delhi, and no part of the cause of action arose at Pathankot. He relies upon the judgment of the Supreme Court in *BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd.*⁵, and a judgment of a coordinate Bench of this Court in *Cement Corporation of India v. S. Sultan*⁶, to contend that the cause of action in the underlying dispute is determinative of the seat of arbitration.

C. Analysis

10. Having heard learned counsel for the parties, two questions arise for consideration:

- I. Whether the Agreement between the parties contains an exclusive jurisdiction clause for the purposes of the present petition?
- II. Whether the seat of the arbitration was, in any event, in Delhi?

11. As far as the first aspect is concerned, it may be noted that the Agreement contains an arbitration clause [Clause 25 of the General Conditions of Contract (“GCC”)] which is entitled, “Settlement of Disputes & Arbitration”. It contains detailed provisions with regard to resolution of disputes between the parties, and provides for arbitration in the event they are not able to resolve their disputes in terms of the mechanism provided therein. The GCC does not contain an exclusive jurisdiction clause, nor is the seat of the arbitration stipulated. Clause 25, however, provides that the venue of the arbitration “*shall be such place as may be fixed by the arbitrator in his sole discretion*”.

12. Mr. Tripathy rests his arguments with regard to existence of an

⁵ (2023) 1 SCC 693.

⁶ 2004 SCC OnLine Del 505.



express exclusive jurisdiction clause, upon Article 7(1) of a document attached to the tender, entitled “Integrity Pact”. The Integrity Pact was to be signed by the bidder and was to be read as an integral part of the tender document and the Agreement between the parties. It contains certain commitments on part of the bidder to take measures to prevent malpractices, and provides for the consequences of breach thereof.

13. Two provisions in Article 7 of the Integrity Pact are relevant for adjudication of this contention:

“Article 7- Other Provisions

1) This Pact is subject to Indian Law, place of performance and jurisdiction is the Head quarters of the Division of the Principal/Owner, who has floated the Tender.

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5) It is agreed term and condition that any dispute or difference arising between the parties with regard to the terms of this Integrity Agreement / Pact. any action taken by the Owner/Principal in accordance with this Integrity Agreement/ Pact or interpretation thereof shall not be subject to arbitration.”

14. Article 7(1) of the Integrity Pact, provides that jurisdiction in respect thereof is with the headquarters of the division of the owner/principal, being the petitioner. It does not appear to deal with the jurisdiction of courts or resolution of disputes. This provision is therefore of little assistance in determining the question of exclusive jurisdiction for disputes under the main Agreement. Clause 7(5) of the Integrity Pact is more relevant for this purpose. The said provision makes it clear that disputes and differences arising under the Integrity Pact and questions of interpretation thereof, shall not be subject to arbitration. Thus, it is apparent that the dispute resolution mechanism under the main Agreement and the Integrity Pact were intended to be entirely different;



Clause 7 of the Integrity Pact was not intended to deal with disputes arising under the underlying Agreement at all. The two documents, as suggested by Mr. Tripathy, have to be read together, but such reading must be harmonious and reconcilable. As far as the main Agreement is concerned, disputes as to contractual performance, which were admittedly the subject matter of arbitration proceedings, are not covered by Clause 7 of the Integrity Pact.

15. I thus find that, upon a proper interpretation of the contractual terms, the parties did not expressly provide for the seat of the arbitration under the Agreement, and only provided that the venue would be at the discretion of the arbitrator.

16. It would be appropriate at this stage, to deal with the two judgments of the Division Bench of this Court, relied upon by Mr. Tripathy, which have considered the question of jurisdiction for the purposes of Section 34 of the Arbitration Act, in the context of arbitrations under the MSME Act. In *Indian Oil Corporation*⁷, the arbitral proceedings were conducted by the Maharashtra Facilitation Council at Thane. The Division Bench nevertheless held that this Court had jurisdiction to entertain the petition under Section 34 the Arbitration Act, in view of an exclusive jurisdiction clause contained in the agreement between the parties therein, which was read as providing for exclusive jurisdiction of the Courts at New Delhi. The reasoning of the Division Bench is contained in the following paragraphs:

“20. In the present case, both the VENUE as well as the SEAT (by way of the jurisdiction clause) has been agreed to be at New Delhi.”

⁷ Supra (note 3).



We, therefore, have no hesitation to say that the Courts at Delhi would have the jurisdiction to entertain the petition challenging the award passed by the MSME Council. Since the parties agreed to confer exclusive jurisdiction to Courts at New Delhi, notwithstanding the fact that the purchase order in question dated 10th March 2016, was issued by the Petitioner from its Vadodra Office to the Respondent at Navi Mumbai, and even if no cause of action has arisen in Delhi, the Courts of Delhi would have jurisdiction to entertain the petition under Section 34 of the Arbitration Act. This is pertinently because in Indus

Mobile (supra) as noted in para 19 of the judgement, the Court has held that Section 16 to 21 of CPC would not be attracted. Thus notwithstanding the fact that cause of action may not have arisen in New Delhi, since the Seat has been agreed to be in Delhi, the courts here would have the jurisdiction to entertain the petition under section 34 of the Arbitration Act.

21. *There is yet another aspect, which needs to be dealt with at the present stage. Section 18 of the MSME Act provides that the provisions of the Arbitration and Conciliation Act 1996 shall apply to the dispute between the parties. Learned Single Judge has decided the 'SEAT' of arbitration in the present case, on the basis of Section 18 of the MSME and has held that exclusive jurisdiction would be with the Courts at Thane.*

22. *Section 18 of the MSME Act, reads as under:*

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23. **Undoubtedly, the MSME Act is a special legislation dealing with Micro, Small and Medium Enterprises and would have precedence over the general law.** *There are decisions of several Courts holding that the provisions of MSME Act would override the provisions of the Contract between the parties. However, we are not engaged with the said controversy and, in fact, we had made it clear to the learned counsel for the Appellant, during the course of arguments, that the questions relating to the jurisdiction of the MSME Council to act as an Arbitrator and other similar issues will not be examined by us, as the learned Single Judge has not considered any of those aspects and has decided the objection petition only on the ground of territorial jurisdiction. **However, this does not mean that the jurisdiction clause agreed between the parties has to be given a go-by.** The overriding effect of the MSME Act, cannot be construed to mean that the terms of the agreement between the parties have also been nullified. Thus, jurisdiction of the MSME Council which is decided on the basis of the location of the supplier, would only determine the 'VENUE', and not*



the 'SEAT' of arbitration. The 'SEAT' of arbitration would continue to be governed in terms of the arbitration agreement between the parties, which in the present case as per jurisdiction Clause No. 35 is New Delhi. As a result, in terms of the decision of the Supreme Court in *Indus Mobile (supra)*, it would be the Courts at New Delhi that would have exclusive jurisdiction to entertain the petition under Section 34 of the Act.”⁸

17. This judgment has been followed by the Division Bench in *IRCON International*⁹. In the said case also, the concerned MSME Facilitation Council was located outside Delhi, but the agreement between the parties conferred exclusive jurisdiction upon the Courts in Delhi. The Division Bench considered the judgments of the Supreme Court in *BGS SGS SOMA JV v. NHPC*¹⁰, *Hindustan Construction Co. Ltd. v. NHPC Ltd.*¹¹, *Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.*¹², and *Silpi Industries v. Kerala SRTC*¹³, as well as the Division Bench judgment of this Court in *Indian Oil Corporation*¹⁴. It agreed with the judgment of a learned Single Judge of the Bombay High Court, in *Gammon Engineers & Contractors (P) Ltd. v. Sahay Industries*¹⁵, and disapproved of a judgment of this Court in *Ahluwalia Contracts (India) Ltd. v. Ozone Research & Applications (I) (P) Ltd.*¹⁶.

18. The aforesaid judgments of the Division Bench are applicable in cases where parties agree to confer exclusive jurisdiction for supervision of the arbitration proceedings, upon a particular Court in their contract.

⁸ Emphasis supplied.

⁹ *Supra* (note 4).

¹⁰ (2020) 4 SCC 234.

¹¹ (2020) 4 SCC 310.

¹² (2023) 6 SCC 401.

¹³ (2021) 18 SCC 790.

¹⁴ *Supra* (note 3).

¹⁵ 2023 SCC OnLine Bom 750.

¹⁶ 2023 SCC OnLine Del 518.



Both the judgments proceed on the basis that the exclusive jurisdiction clause in the agreements between the parties, would not be overridden by conferment of jurisdiction upon a particular MSME Facilitation Council under Section 18 of the MSME Act. For the reasons stated above, I have come to the conclusion that, in the present Agreement, there is no exclusive jurisdiction clause. The aforesaid judgments of the Division Bench are therefore inapplicable to the present case.

19. The question then arises as to whether the seat of the arbitration, in the present case, is Pathankot or Delhi. Mr. Tripathy submits that the cause of action arose entirely in Delhi, inasmuch as the work order was issued in Delhi, the Agreement was signed in Delhi, and the work was, in fact, done in Delhi as well. I am afraid that these contentions are not of much relevance, having regard to the settled law that the seat of the arbitration proceedings are to be determined on the basis of connection with the arbitral proceedings, and not with the cause of action for the underlying disputes. The “seat” of arbitration is the place where the arbitral proceedings are anchored¹⁷; the determination of jurisdiction under Sections 16 to 20 of the CPC for the purposes of filing a suit has no relevance¹⁸.

20. In *BGS SOMA*¹⁹, the Supreme Court has clearly held that in the absence of any significant contrary indicia, “*the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding*”²⁰. The aforesaid view has subsequently been followed by the

¹⁷ Supra (note 10), paragraph 82.

¹⁸ *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.* [(2017) 7 SCC 678], paragraph 19.

¹⁹ Supra (note 10).

²⁰ *Ibid.*, paragraph 61.



Supreme Court *inter alia* in *Inox Renewables Ltd. v. Jayesh Electricals Ltd.*²¹.

21. Mr. Tripathy's reliance upon *Cement Corporation of India*²² is misconceived, as that was a judgment under the Arbitration Act, 1940, which interpreted Section 20 of Code of Civil Procedure, 1908, for the purposes of determining jurisdiction on the basis of the cause of action. The Supreme Court's judgment in *BBR (India)*²³, relied upon by him, also follows *BGS SOMA*²⁴. It, in fact, supports the case of the respondent herein, in holding that the seat court alone has jurisdiction to decide a petition under Section 34 of the Arbitration Act. The reference to cause of action was for the purposes of determining the court which a party may approach in anticipation of arbitration proceedings, by way of an application under Section 9 of the Arbitration Act. In fact, the Court, in *BBR (India)*²⁵, held that Section 42 of the Arbitration Act would not confer jurisdiction in a court which had entertained a Section 9 application, if the seat of the arbitration had, in fact, been changed during the arbitral proceedings.

22. Although the judgment of the Kerala High Court in *Shreyas Marketing*²⁶ was rendered in a writ petition, under Article 226 of the Constitution, Mr. Chandwani refers me to an observation in paragraph 7 of the judgment, that an award under Section 18 of the MSME Act, which is deemed to be an award under the Arbitration Act, can be challenged in

²¹ (2023) 3 SCC 733, paragraph 11.

²² Supra (note 6).

²³ Supra (note 5).

²⁴ Supra (note 10).

²⁵ Supra (note 5).

²⁶ Supra (note 1).



the appropriate court at the seat of the concerned facilitation council. This observation was made in the context of determining whether the Kerala High Court was *forum conveniens* for the purposes of the writ petition. However, it supports the case made out by the respondent herein. The Madhya Pradesh High Court, in *Ami Tech India*²⁷, has also followed this judgment of the Kerala High Court.

23. In the present case, the proceedings were admittedly conducted exclusively in Pathankot and the award was made there. There being no contrary indication, in the form of an exclusive jurisdiction clause or otherwise, to suggest that the seat of the arbitration was at any place other than the venue which was, even contractually, left to the learned Arbitrator to decide, I do not find any reason to depart from the general principle that, the seat of the arbitration was at the place where the arbitration was conducted, i.e., in Pathankot.

24. This also accords with the objective of Section 18(4) of the MSME Act, which permits a medium or small enterprise to approach a facilitation council at the place where it is located. In the absence of an exclusive jurisdiction clause, by which such an enterprise agrees to confer jurisdiction elsewhere, the legislative intent that the dispute will be resolved at the location of the said medium or small enterprise, is furthered by this interpretation.

D. Conclusion

25. For the aforesaid reasons, I hold that this Court does not have jurisdiction to entertain the present petition. The petition, alongwith

²⁷ Supra (note 2).



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pending applications, is therefore rejected, but this order will not come in the way of the petitioner approaching the jurisdictional Court for setting aside of the impugned award.

26. The amount deposited by the petitioner, in terms of the order dated 11.11.2021, will be released to the petitioner, upon the petitioner furnishing proof to the Registry that it has filed a petition, under Section 34 of the Arbitration Act, in any other Court, so that it can deposit the said amount before that Court. In the event no such application is filed within three months from today, the parties will be at liberty to make an application in these proceedings for appropriate directions with regard to the deposited amount.

PRATEEK JALAN, J

MAY 1, 2024

'Bhupi'/TJ/