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

Reserved on: 6 August 2024
Pronounced on: 17 March 2025

\+ O.M.P.(I) (COMM.) 305/2023

PRECITECH ENCLOSURES SYSTEMS PVT LTD

.....Petitioner

Through: Mr. L.B. Rai, Mr. Krishan Kumar Arora, Mr. Shivam Bedi, Advs.

versus

RUDRAPUR PRECISION INDUSTRIES & ANR.

.....Respondents

Through: Mr. Avdhesh Chaudhary and Ms. Geetanjali Setia, Advs. for R-1 and 2
Mr. Zaryab Jamal Rizvi, Ms. Firdouse Qutb Wani, Advocates for R-3 and 4

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

% 17.03.2025

1. This order decides whether this Court has, or does not have, the territorial jurisdiction to hear and decide the present petition, instituted by the petitioner Precitech Enclosures Systems Pvt Ltd[1] against the respondent Rudrapur Precision Industries[2] under Section 9 of the Arbitration and Conciliation Act, 1996[3]. The petitioner,

[1] "Precitech" hereinafter
[2] "Rudrapur" hereinafter
[3] "the 1996 Act" hereinafter

needless to say, asserts that it has, whereas the respondent, with equal vehemence, insists that it does not.

Facts

2. Rudrapur and Precitech admittedly entered into a Rent Agreement dated 15 July 2017, whereunder Rudrapur, holding itself out to be the lease holder and landlord of a piece of industrial land situated at Plot 33, Sector 4, SIDCUL, IIE, Pant Nagar, Uttarakhand[4], agreed to sub-lease the said property to Precitech, for a fixed rent, for manufacturing and storage purposes. The Rent Agreement refers to Rudrapur as the "sub-lessor" and Precitech as the "sub-lessee".

3. Clause 20 of the Rent Agreement provided for resolution of disputes, and read thus:

> "20. The court at Rudrapur Uttarakhand, India shall have exclusive jurisdiction to determine any question issue dispute or claim between the parties including but not limited to any application to be made under the Arbitration and Conciliation Act, 1996 as amended and re-enacted from time to time. The arbitrator will be appointed on mutual consent of both the parties."

4. A brief overview of the dispute between the parties would be required at this point. The case set up by Precitech, in its Section 9 petition, is this. Till March 2021, Precitech was regularly paying rent to Rudrapur, in accordance with the Rent Agreement. Owing first to the COVID-19 pandemic and, later, disputes among its Directors, resulting in freezing of the bank account of Precitech in March 2021,

[4] "the disputed premises" hereinafter

Precitech was unable to pay rent to Rudrapur. On 3 March 2021, Precitech and Rudrapur entered into a compromise deed, whereunder the total rent for the premises was settled at ₹ 27,75,547/-. Under the Compromise Deed, Precitech also agreed to sell its property situated at Plot No. 24, Sector 7, SIDCUL, to Rudrapur, for a total consideration of ₹ 90 lakhs, with Rudrapur undertaking to pay back the balance after deducting, from the said amount, the agreed rent of ₹ 27,75,547/-. Within two months of the Compromise Deed, however, Rudrapur addressed an e-mail to Precitech on 15 May 2021, inflating the agreed rent from ₹ 27,75,547/- to ₹ 42,26,854/-, and threatening to take forcible possession of the belongings of Precitech lying in the premises. Rudrapur also appointed, unilaterally, Dr. Pankaj Garg, Advocate, as the arbitrator to arbitrate on the disputes between the parties. Precitech did not consent. Dr. Garg, however, issued notice to the parties. Precitech filed objections before Dr. Garg on 31 January 2023, objecting to his appointment as being unilateral and without Precitech's consent. On Dr. Garg fixing further dates of arbitration, disregarding Precitech's objection, Precitech moved this Court by means of OMP (T) (Comm) 25/2023, for termination of the mandate of Dr. Garg and appointment of another arbitrator. This Court, on 24 March 2023, stayed the arbitral proceedings pending before Dr. Garg. OMP (T) (Comm) 25/2023 is presently pending before this Court.

5. Alleging that, while things stand thus, Rudrapur has taken forcible possession of the disputed premises, as a result of which Precitech is unable even to obtain access to its machinery and goods

lying there, Precitech has moved this Court by means of the present petition, preferred under Section 9 of the 1996 Act, praying that

> (i) Rudrapur be restrained from selling, alienating, parting with possession of, or creating third party interest in, the machineries and stocks lying in the disputed premises, enlisted in the Annexure to the petition, and
>
> (ii) Rudrapur be directed to hand over, to Precitech, possession of the machineries and equipment, belonging to Precitech, lying in the disputed premises.

6. At the outset, Rudrapur has objected to the maintainability of the present petition before this Court, asserting that this Court does not possess the territorial jurisdiction to entertain or deal with it.

7. I have heard learned Counsel Mr. L.B. Rai for Precitech, Mr Avdhesh Chaudhary for Rudrapur and its partner Mr. Amit Rajput (Respondents 1 and 2 herein) and Mr. Zaryab Jamal Rizvi for Mr. Sunil Kohli and Ms. Seema Kohli, who were allowed to implead themselves as Respondents 3 and 4 respectively, *vide* order dated 8 December 2023.

Rival Contentions

8. Mr. Chaudhary submits that, in view of Clause 20 of the Rent Agreement, courts at Rudrapur alone would have jurisdiction to entertain the present petition.

9. Responding to the submission, Mr. Rai submits that Rudrapur itself, by the following e-mail dated 4 April 2022 (reproduced verbatim, with errors and omissions intact), agreed to Delhi being the arbitral venue and, therefore, the arbitral seat and, in its wake, also acquiesced to the jurisdiction of this Court:

> "Dear Sir,
>
> Good Morning.
>
> As discussed in morning, *We have clause of arbitration in our rent deed with arbitration location in Nainital/Rudrapur.*
>
> If both parties are ok. We can have arbitration in Delhi also with mutually acceptance.
>
> We are ok for arbitration in delhi.
>
> Kindly send your acceptance for arbitration in Delhi ..
>
> *If you are not ok for arbitration in Delhi. We shall file application for arbitration in Nainital high court*. Within this week.
>
> Kindly revert by this Wednesday as you requested for mutually agreeable location of delhi.
>
> Thanking you
>
> With Best Regards
> Amit Rajput
> Partner
> Rudrapur Precision Industries.
> Rudrapur."
>
> (Emphasis supplied)

To this, Precitech replied *vide* e-mail dated 8 April 2022, thus:

> "Dear amit ji
>
> I am ok with delhi arbitration
>
> Regards
> Parveen Kohli"

Relying on the judgment of the Supreme Court in ***Inox Renewables Ltd v Jayesh Electricals Ltd***[5], Mr. Rai submits that Rudrapur cannot now seek to contest the jurisdiction of this Court to entertain the present petition.

10. Besides, submits Mr. Rai, Section 42[6] of the 1996 Act obligates Precitech to file the present Section 9 petition before this Court, once this Court has already entertained OMP (T) (Comm) 25/2023 and passed orders thereon. He further points out that the arbitral proceedings are also being conducted at Delhi.

11. Mr. Avdhesh Chaudhary, in response, submits that the e-mail dated 4 April 2022 merely referred to the geographical venue of the arbitration, and did not consent to Delhi being regarded as the arbitral seat, or in any manner override the exclusive jurisdiction clause contained in the Rent Agreement.

12. Mr. Rizvi contends, further, that the consent granted by the e-mail dated 4 April 2022, if any, was by Respondent 2 Amit Rajput in his individual capacity, and could not bind the other respondents.

13. The respondents, therefore, press their objection to this Court entertaining the present petition.

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[5] **(2023) 3 SCC 733**

[6] **42. Jurisdiction**.—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 that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

Analysis

14. It would be instructive to examine the legal position, regarding territorial jurisdiction, *vis-à-vis* the arbitral seat, or arbitral venue, and an exclusive jurisdiction clause, at the outset.

The legal position generally applicable

15. On the general law applicable to ascertainment of the Court having territorial jurisdiction to deal with proceedings relating to, or arising out of, the arbitration, three propositions are fossilized in the law, viz.

(i) where there is a designated seat of arbitration, the Court having territorial jurisdiction over the designated seat *alone* would have jurisdiction to deal with all matters relating to the arbitral proceedings,

(ii) where no *seat* of arbitration is specified in the arbitration agreement, but a *venue* of arbitration, or a *place* of arbitration is mentioned, the venue, or place, or arbitration, would be deemed to be the arbitral seat, and

(iii) in such a situation, *the existence of an exclusive jurisdiction clause in the arbitration agreement, vesting jurisdiction in Courts elsewhere, would make no difference*.

16. Various Single Benches of this Court have dealt with situations in which these principles have been iterated and reiterated. The principle that, if the agreement contains an exclusive jurisdiction

clause and a clause designating a seat/venue of arbitration, the Court having territorial jurisdiction over the seat/venue alone could be approached in connection with the arbitral proceedings, stands enunciated by Single Benches of this Court in ***Raman Deep Singh Taneja v Crown Realtech (P) Ltd***[7], ***Global Credit Capital Ltd v Krrish Realty Nirman (P) Ltd***[8], and ***My Preferred Transformation & Hospitality Pvt Lrtd v Sumithra Inn***[9], as well as a Division Bench of this Court in ***Yassh Deep Builders LLP v Sushil Kumar Singh***[10]. Significantly, one of the contentions advanced in ***Yassh Deep Builders*** was the plea that the arbitration clause merely designated Delhi as the *venue* of the arbitration, and not as its *seat*. The Division Bench held this contention not to be acceptable, in view of the judgment of the Supreme Court in ***BGS SGS Soma JV v NHPC Ltd***[11], which held that the arbitral venue, as identified in the agreement, would be deemed to be the arbitral seat, in the absence of any other identified arbitral seat[12]. This, therefore, answers the submission of Mr. Avdhesh Chaudhary that the e-mail dated 4 April 2022 merely consented to Delhi being the *arbitral venue*, and not the *arbitral seat*.

17. Para 57 of ***Yassh Deep Builders*** crystallizes the legal position thus:

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[7] **2017 SCC OnLine Del 11966**
[8] **2018 SCC OnLine Del 9178**
[9] **278 (2021) DLT 297**
[10] **2024 SCC OnLine Del 1547**
[11] **(2020) 4 SCC 234**
[12] One example of a case in which the arbitration agreement contained independent stipulations regarding the arbitral venue and the arbitral seat is to be found in **Enercon (India) Ltd v Enercon GmbH**, **(2014) 5 SCC 1**, in which the agreement fixed the seat of arbitration in India, but the venue of arbitration as London. The Supreme Court, in these circumstances, held that, as the seat of arbitration had been fixed by the agreement, differently from the arbitral venue, as India, the petition was maintainable here.

> "57. Even, if the objection of jurisdiction could be raised before the appellate court, since the venue has been held to be the juridical seat of arbitration in terms of the arbitration agreement Clause 23, the courts at Delhi had the territorial jurisdiction to entertain the petition under Section 9 of the Arbitration Act. *Clause 23 expressly designates Delhi at the venue for arbitration and there is no designation of an alternative place as the "seat", the inexorable conclusion is that the stated venue i.e. Delhi is the juridical seat of the arbitral proceedings. Clause 19 would be relevant only if by an agreement both parties decided not to settle their disputes through arbitration but by approaching a court of law, in which case the exclusive jurisdiction would be of the courts at Gurugram, Haryana*."
>
> (Emphasis supplied)

18. That, then, is the *generally applicable* legal position. If the agreement contains one clause designating the arbitral seat/arbitral venue, and another conferring exclusive jurisdiction on courts located elsewhere over the agreement and disputes that arise out of it, legal or judicial proceedings relating to arbitration would lie *only* before the Court having territorial jurisdiction over the arbitral seat/arbitral venue.

Where the exclusive jurisdiction clause also covers proceedings relating to arbitration

19. What if, however, the exclusive jurisdiction clause *also expressly covers proceedings relating to the arbitration?*

20. I have had occasion to deal with such a situation twice earlier. This appears to be the third such occasion.

21. In ***Cars24 Services (P) Ltd v Cyber Approach Workspace LLP***[13], Clause 25.4 of the agreement between the parties read thus:

> 25.4 Parties have agreed that all the Disputes arising out of this Deed shall be referred to a Sole Arbitrator who shall be mutually appointed by the parties, failing which *either Party may approach a court of competent jurisdiction at Haryana for appointment of the Sole Arbitrator* in terms of the Arbitration and Conciliation Act, 1996 (Act) as amended from time to time. The arbitration proceedings shall be conducted in terms of the Act. The award of the Sole Arbitrator shall be reasoned and in written, which shall be final and binding upon the Parties. It has been further agreed between the Parties that Arbitration proceedings shall be conducted in English Language and *the seat of Arbitration will be at New Delhi, India."*

Learned Counsel for both sides, in this case, submitted that this Court possessed the territorial jurisdiction to entertain the petition (which had been preferred under Section 11 of the 1996 Act), as the seat of arbitration was New Delhi. The contention was thus noted, in para 15 of the judgment:

> "15. The submission, of both the learned counsel, has been that, as the seat of arbitration has been fixed as New Delhi, this Court has exclusive jurisdiction to appoint the sole arbitrator. It is emphatically submitted, at the Bar, that there is a long line of authorities, of the Supreme Court, underscoring the position that a clause fixing the seat of arbitration is akin to an exclusive jurisdiction clause and that, once such a clause exists, the court having jurisdiction over the seat thus fixed, would, *ex facie*, also have jurisdiction in all matters relating to the arbitral proceedings, including Sections 9, 11 and 34 of the 1996 Act."

Expressing my inability to agree, I held:

[13] **2020 SCC OnLine Del 1720**

"19. Firstly, while it is true that the Supreme Court has, in various decisions commencing from the judgment of the Constitution Bench in ***BALCO v Kaiser Aluminium Technical Services***[14], held that a clause fixing the seat of arbitration is akin to an exclusive jurisdiction clause and that, therefore, courts having jurisdiction over the seat so fixed, would possess jurisdiction over the arbitral proceedings in their entirety, none of the said decisions pertain to a situation in which the contract contained a separate exclusive jurisdiction clause, conferring jurisdiction on a court in another territorial location.

20. Secondly, there is no decision, either of the Supreme Court, or of this Court, to which my attention has been invited, or on which I have been able to lay my hands, in which the arbitration agreement specifically confers the jurisdiction to appoint the arbitrator, i.e. Section 11 jurisdiction, on courts in a particular territorial location. This, factor, in my view, makes a world of difference to the present case, and its outcome.

21. Learned counsel for the parties are correct in their submission that there is a long line of decisions of the Supreme Court, which have examined the aspect of territorial jurisdiction, *qua* the proceedings under Section 9, 11 and 34 of the 1996 Act. These decisions have dealt with the scope of the "seat of arbitration clause" as well as of the "exclusive jurisdiction clause", and the effect of Section 2(1)(e) of the 1996 Act, juxtaposed therewith.

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40. A reading of the aforesaid decisions, no doubt, reveals that pre-eminence has been accorded by the Supreme Court to the contractually determined "seat of arbitration", while deciding the issue of the court which would be possessed of territorial jurisdiction to deal with petitions relating to the arbitral proceedings, whether preferred under Section 9, 11 or 34. As already noticed hereinabove, however, none of these decisions involved a case in which the contract contained an exclusive jurisdiction clause and a separate seat of arbitration clause, *and the two clauses conferred jurisdiction on courts located at different territorial locations.*

41. In the present case, the situation is more involved, as the exclusive jurisdiction clause specifically confers *Section 11 jurisdiction* on courts of competent jurisdiction at Haryana, as per

[14] **(2012) 9 SCC 552**

the 1996 Act - which, therefore, would mean the High Court of Punjab and Haryana.

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50. There is, however, one decision of the Supreme Court, in which the seat of arbitration was fixed at one location, and exclusive jurisdiction was conferred on courts at another, which did not have territorial jurisdiction over the seat of arbitration. This decision, properly read, in my view, does throw some light on the approach to be adopted in a case such as the present. The decision in question is ***Mankastu Impex Pvt. Ltd. v Airvisual Ltd***.[15].

51. In ***Mankastu Impex Pvt. Ltd***., the place of arbitration, was contractually fixed at Hong Kong. In that case, Clause 17 of the Memorandum of Understanding (MOU) between the parties which provided for arbitration for resolution of the disputes between them, read thus:

> "17**. Governing law and dispute resolution**
>
> 17.1 This MoU is governed by the laws of India, without regard to its conflicts of laws provisions, *and courts at New Delhi shall have the jurisdiction.*
>
> 17.2 Any dispute, controversy, difference or claim arising out of or relating to this MoU, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered in Hong Kong.
>
> *The place of arbitration shall be Hong Kong.*
>
> The number of arbitrators shall be one. The arbitration proceedings shall be conducted in English language.
>
> 17.3 It is agreed that a party may seek provisional, injunctive or equitable remedies, including but not limited to preliminary injunctive relief, from a court having jurisdiction, before, during or after the pendency of any arbitration proceeding."

52. The issue before the Supreme Court was with respect to the courts having jurisdiction to entertain a Section 11 petition, as in the present case. The Supreme Court held that the fixing of Hong

[15] **(2020) 5 SCC 399**

Kong as the "place of arbitration" resulted *ipso facto* in Hong Kong becoming the "seat of arbitration". On the attention of the Supreme Court being invited to Clause 17.1, which conferred jurisdiction on courts at New Delhi, in respect of the MOU, the Supreme Court observed, in paras 25 and 27 of the report, thus:

> "25. Clause 17.1 of MoU stipulates that MoU is governed by the laws of India and the courts at New Delhi shall have jurisdiction. The interpretation to Clause 17.1 shows that the substantive law governing the substantive contract are the laws of India. The words in Clause 17.1, *"without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction"* has to be read along with Clause 17.3 of the agreement. As per Clause 17.3, the parties have agreed that the party may seek provisional, injunctive or equitable remedies from a court having jurisdiction before, during or after the pendency of any arbitral proceedings. In ***Balco v Kaiser Aluminium Technical Services Inc***., this Court held that:
>
> > "157. … on a logical and schematic construction of the Arbitration Act, 1996, the Indian courts do not have the power to grant interim measures when the seat of arbitration is outside India."
>
> If the arbitration agreement is found to have seat of arbitration outside India, then the Indian courts cannot exercise supervisory jurisdiction over the award or pass interim orders. *It would have, therefore, been necessary for the parties to incorporate Clause 17.3 that parties have agreed that a party may seek interim relief for which the Delhi courts would have jurisdiction.*
>
> *****
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> 27. The words in Clause 17.1, *"without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction"* do not take away or dilute the intention of the parties in Clause 17.2 that the arbitration be administered in Hong Kong. The words in Clause 17.1 do not suggest that the seat of arbitration is in New Delhi. Since Part I is not applicable to "international commercial arbitrations", *in order to enable the parties to avail the interim relief, Clause 17.3 appears to have been added*. The words, *"without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction"* in Clause 17.1 is to be read in conjunction with Clause 17.3. Since the arbitration is seated at Hong

> Kong, the petition filed by the petitioner under Section 11(6) of the Act is not maintainable and the petition is liable to be dismissed."

53. As such, the Supreme Court held that once the seat of arbitration has been fixed as Hong Kong, *if exclusive jurisdiction, for obtaining interim relief, was required to be vested in courts at New Delhi, the agreement had necessarily to specifically so state*. It was for this reason, opined the Supreme Court, that Clause 7.3 had been particularly inserted in the agreement which, apart from the exclusive jurisdiction clause i.e. Clause 7.1, *specifically provided for recourse to courts at New Delhi, for obtaining interim relief*. That clause, according to the Supreme Court, however, could be of no assistance in determining the controversy before it, as the Supreme Court was concerned not with an application under Section 9, but with an application for appointment of an arbitrator under Section 11. *Exclusive jurisdiction to seek recourse to courts at New Delhi having been contractually restricted to applications for obtaining interim relief, the Supreme Court held that the locus of the court possessing Section 11 jurisdiction would have to be determined on the basis of the contractually fixed seat of arbitration i.e. Hong Kong.*

54. Extrapolating this reasoning to the facts of the present case, the agreement between the parties has contractually conferred jurisdiction, *for appointment of the arbitrator*, on competent courts in the State of Haryana. In other words, Section 11 jurisdiction has, contractually been specifically conferred on the High Court of Punjab and Haryana. Once such a specific conferral takes place, by the exclusive jurisdiction clause framed by the parties themselves, in my view the principles enunciated in ***Mankastu Impex Pvt. Ltd.*** would operate to vest such exclusive jurisdiction, to that extent, only on such courts and on no other. In other words, once exclusive jurisdiction, qua appointment of arbitrator under Section 11 has been vested in courts at Haryana, by agreement between the parties, that clause has to be accorded due respect, and this court would not, therefore, be entitled to exercise Section 11 jurisdiction in the matter.

55. In view thereof, I specifically queried, learned Counsel for the parties, as to whether acceptance of the stand pleaded by them would not result in this Court effectively nullifying the exclusive jurisdiction clause contained in the lease deed, and arriving at a decision contrary to such clause. Learned Counsel candidly accepted that this may be the result, if their arguments were accepted, but submitted that there was no option but to so hold, in view of the fixation of the seat of arbitration at New Delhi, read with Section 42 of the 1996 Act.

56. As already observed hereinabove, I am not inclined to agree with this submission. *Once the agreement between the parties specifically confers Section 11 jurisdiction, for appointment of an arbitrator, on courts at Haryana, this Court, in my view, would be doing violence to the contractual covenant, if it were to exercise such jurisdiction.* There is no judgment of the Supreme Court, to which my attention has been invited, which permits a Court to exercise jurisdiction contrary to the exclusive jurisdiction clause in the agreement between the parties. Rather, the decisions in ***Swastik Gases Pvt. Ltd. v Indian Oil Corpn. Ltd.***[16] and ***Brahmani River Pellets Ltd. v Kamachi Industries Ltd***.[17] both of which have been approvingly cited in ***BGS SGS Soma JV v NHPC Limited*** [18]emphasised the need to adhere to the exclusive jurisdiction clause. At the cost of repetition yet again, all decisions, which decide the question of territorial jurisdiction on the basis of the seat of arbitration as delineated in the agreement, deal with contracts in which there is no separate exclusive jurisdiction clause, fixing jurisdiction elsewhere. Where such a clause exists, and, especially, where such a clause fixes Section 11 jurisdiction with courts located elsewhere, I am not inclined to hold that this Court can, contrary to the explicit words and intent of said clause, exercise Section 11 jurisdiction and appoint an arbitrator.

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63. This is the position which, according to me, emanates from ***Mankastu Impex Pvt. Ltd***. and which, necessarily, must follow in the present case as well. Once the contract between the parties has fixed Courts at Haryana, *as having jurisdiction to appoint the arbitrator*, any such application under Section 11 of the 1996 Act, has necessarily to be preferred before the High Court of Punjab and Haryana and not before this Court. In view of such a particular and specific contractual dispensation, which reflects the intent of the parties and which the court cannot rewrite, I am of the opinion that the stipulation, in the Lease Deed, that the place of arbitration is New Delhi, cannot confer Section 11 jurisdiction on this Court.

64. Mr. Srivastava seeks to distinguish the decision in ***Mankastu Impex Pvt. Ltd***. on the ground that it dealt with international commercial arbitration, and proceeded on the basis that the curial law governing the arbitration, would be the law applicable in India. I have relied on the decision in ***Mankastu Impex Pvt. Ltd.*** only for the proposition that, if

[16] **(2013) 9 SCC 32**
[17] **2019 SCC OnLine SC 929**
[18] **(2020) 4 SCC 234**

jurisdiction, *qua* any particular provision or relief available under the 1996 Act, is to be exercised by Courts located elsewhere than at the seat of arbitration, such jurisdiction has to be specifically contractually conferred. The Supreme Court noticed, in that case, that para 7.3 of the contract between the parties conferred specific jurisdiction, for obtaining interim relief, on courts at New Delhi. Notably, the Supreme Court did not find this stipulation to be illegal, or conflicting with Section 42 of the 1996 Act. Neither did the Supreme Court find this contractual dispensation 2 conflict with the seat of arbitration clause, fixing the seat of arbitration at Hong Kong. Rather, the Supreme Court held that, as jurisdiction of Courts at New Delhi was specifically conferred only with respect to obtaining of interim relief, it would not extend to a petition under Section 11 for appointment of an arbitrator. In the present case, however, the exclusive jurisdiction clause is specifically with respect to appointment of an arbitrator and relates therefore, directly to Section of the 1996 Act. As such, the fact that ***Mankastu Impex Pvt. Ltd***. may have been dealing with an international commercial arbitration, or that the curial law, in that case was the law applicable in India, cannot affect the applicability of the said decision to the controversy in issue before me.

65. In view thereof, I am constrained to express my disagreement with the submission, advanced by both learned Counsel at the Bar, that this Court would be possessed of territorial jurisdiction to entertain the present petition."

(Italics in original; underscoring supplied)

22. ***Hunch Circle Private Limited v Futuretimes Technology India Pvt Ltd.***[19] presented a similar problem. Clauses 8.1 and 8.2 of the agreement between the parties, in that case, read thus:

"8.1. Governing law

This agreement and the transactions contemplated hereby shall be governed by and construed under the laws of India without regard to conflicts of laws provisions. Subject to resolution of disputes by arbitration, courts at the place where the main premises is located will have exclusive supervisory jurisdiction over matters arising out of this agreement, *especially for granting interim relief and enforcing arbitral awards*.

[19] **2022 SCC OnLine Del 361**

8.2. Arbitration

> Any dispute, controversy or claim arising out of or in relation to this agreement, or at law, or the breach, termination or invalidity of this agreement, that cannot be settled amicably by agreement of the parties to this agreement shall be finally settled by Arbitration in accordance with the arbitration and Conciliation Act, 1996 (as amended from time to time) by one arbitrator mutually appointed by the parties. The seat of arbitration shall be Delhi, India and the venue of arbitration shall be India."

23. Following my earlier decision in ***Cars24 Services***, I held, in ***Hunch Circle***, that, as the exclusive jurisdiction clause *covered and included applications relating to the arbitral proceedings*, it would predominate over the "seat of arbitration clause".

Applying the law

24. The same fate must, in my view, visit the present case.

25. Clause 20 of the Rent Agreement is not a mere omnibus exclusive jurisdiction clause. It specifically vests jurisdiction with courts at Rudrapur in respect of "*any application to be made under the Arbitration and Conciliation Act, 1996*". This would include, needless to say, the present petition under Section 9 of the 1996 Act.

26. That being so, following ***Cars24 Services*** and ***Hunch Circle***, the exclusive jurisdiction clause would prevail even if there would have been any separate clause in the Rent Agreement fixing the seat of arbitration outside Rudrapur or Uttarakhand.

27. There is, as it happens, none. The e-mail dated 4 April 2022 from Rudrapur to Precitech, and Precitech's response thereto, no doubt, fixes the venue of arbitration at Delhi. To that extent, I cannot accede to Mr. Avdesh Chaudhry's submission that the e-mail merely fixed a geographical location of the arbitration at Delhi. Even if it did, applying ***BGS SGS Soma***, ***Mankastu Impex*** and ***Yassh Deep Builders***, Delhi would be eligible to be regarded as the seat of arbitration, thereby. Insofar as the right of the parties to fix the seat of arbitration by *consensus ad idem* even after the arbitration agreement has been executed, the case is, as Mr. Rai correctly contends, covered by ***Inox Renewables Ltd. v Jayesh Electricals Ltd***[20].

28. ***Inox Renewables***, however, was not a case where there was another exclusive jurisdiction clause *which included applications under the 1996 Act*. In the present case, even if the seat of arbitration has been contractually fixed at Delhi in view of the e-mail dated 4 April 2022, the e-mail does not purport to re-write Clause 20 of the Rent Agreement. It merely agrees to have the arbitration conducted at Delhi. Clause 20, insofar as it confers exclusive jurisdiction on courts at Rudrapur over applications under the 1996 Act, stands as it is.

29. That being so, as the parties have, *ad idem*, agreed to courts at Rudrapur having exclusive jurisdiction to "determine any question issue dispute or claim between the parties *including but not limited to any application to be made under the Arbitration and Conciliation Act, 1996*", any application, under the 1996 Act, in connection with

[20] **(2023) 3 SCC 733**

the arbitration between Precitech and Rudrapur relatable to the Rent Agreement dated 15 July 2017 would have to be preferred at Rudrapur/Uttarakhand, and nowhere else.

30. Mr. Rai relies on Section 42, but it cannot help him. Section 42, no doubt, requires every subsequent application, or petition, to be preferred before a Court which is first approached in connection with the arbitration, but is dependent on the obvious premise that the first court had jurisdiction. It would be absurd to interpret Section 42 as clothing a Court which is *coram non judice* and which is nonetheless moved by an application in connection with the arbitral proceedings as, by the mere fact of the filing of such a misguided application, becoming clothed with the jurisdiction to entertain all applications in connection with the arbitration in perpetuity and for ever more.

31. Para 59 of ***BGS SGS Soma*** clearly elucidates this:

> "59. Equally incorrect is the finding in ***Antrix Corpn***[21] that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non obstante clause, and then goes on to state ' where with respect to an arbitration agreement any application under this Part has been made in a court'. *It is obvious that the application made under this Part to a court must be a court which has jurisdiction to decide such application.* The subsequent holdings of this court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the court where the seat is located, and that court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where

[21] **Antrix Corpn Ltd v Devas Multimedia (P) Ltd, (2018) 4 Arb LR 66**

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

32. Inasmuch as this Court does not have territorial jurisdiction to deal with *any* application in connection with the arbitral proceedings between the parties, the filing of OMP (T) (Comm) 25/2023, by Precitech, before this Court, cannot clothe this Court with jurisdiction to decide all applications related to the arbitration. Expressed otherwise, it cannot confer, on this Court, curial jurisdiction over the arbitral proceedings. Clause 20 of the Rent Agreement obligates the parties to move the Courts at Rudrapur in that regard, even if, by consent, they have agreed to have the arbitral proceedings conducted at Delhi.

Conclusion

33. Rudrapur's objection, therefore, sustains.

34. OMP (I) (Comm) 305/2023, consequently, stands dismissed for want of territorial jurisdiction.

C. HARI SHANKAR, J.

MARCH 17, 2025

Click here to check corrigendum, if any