



## Exclusive jurisdiction clause regarding appointment of arbitrator shall prevail over the seat clause<sup>1</sup>

### Brief Facts

Cars24 Services Pvt. Ltd. (“**Applicant**”) and Cyber Approach Workspace LLP (“**Respondent**”) entered into a lease deed, whereby the Respondent leased a premises to the Applicant for running an office. The Applicant was to deposit an interest free refundable security deposit of INR 5.28 million and pay the monthly lease rental of INR 0.73 million to the Respondent. Owing to the COVID-19 pandemic, the Applicant claimed that it had to suspend its operations completely. The Applicant issued a notice to the Respondent seeking to terminate the lease deed, invoking Clause 13.2 thereof (which dealt with *force majeure*). Correspondingly, the Applicant requested the Respondent to refund the interest free refundable security deposit of INR 5.28 million paid by it. The Respondent denied any liability towards the Applicant.

Thereafter, the Applicant issued a separate notice invoking arbitration for the resolution of the dispute in accordance with Clauses 25.2 to 25.4 of the lease deed. The said provisions of the lease deed provided that disputes shall be referred to a sole arbitrator to be appointed mutually by the parties, failing which either party may approach a court of competent jurisdiction in Haryana for appointment of the sole arbitrator. The seat of arbitration was provided as New Delhi. The Applicant’s notice also suggested the name of an advocate as the sole arbitrator. However, the Respondent rejected the Applicant’s suggestion to appoint the advocate and instead recommended the name of Hon’ble Mr. Justice Badar Durrez Ahmed, J.

Since the parties could not come to a consensus regarding the identity of the arbitrator to arbitrate the disputes between them, the Applicant approached the High Court of Delhi (“**Court**”) by means of an application under Section 11(5) of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”).

### Issue

Whether the Court had jurisdiction to appoint an arbitrator in light of the lease deed, which provided that the jurisdiction for appointment of the sole arbitrator vests in a court of competent jurisdiction in Haryana?

### Judgment

The Court dismissed the application due to lack of jurisdiction. The Court acknowledged that a clause fixing the seat of arbitration was akin to an exclusive jurisdiction clause and therefore, courts having jurisdiction over the seat so fixed would ordinarily possess jurisdiction over the arbitral proceedings in their entirety. However, in the specific facts of the instant case,

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wherein the contract contained a separate exclusive jurisdiction clause for appointment of an arbitrator, the Court would be doing violence to the contractual covenant if it conferred jurisdiction to appoint an arbitrator on a court in another territorial location.

The Court distinguished various precedents on account of the said factual distinction, including **BALCO v. Kaiser Aluminium Technical Services**<sup>2</sup> and **Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd.**<sup>3</sup> The Court summarised its findings by observing as under:

*“Where, therefore, the seat of arbitration is at place X, and exclusive jurisdiction over the subject matter of the suit is conferred on courts at place Y, a petition under Section 11 would unquestionably lie before the courts at place X. The present case, however, is different, as the exclusive jurisdiction conferred by the arbitration agreement is not in respect of the subject matter of the suit but specifically for appointment of an arbitrator. It would be doing violence to the said clause, therefore, if this Court were to treat the exclusive jurisdiction clause as limited to the subject matter of the suit, and exercise Section 11 jurisdiction contrary to the mandate thereof”.*

## Analysis

The decision reiterates the importance of the contractually determined “seat of arbitration” in deciding which court would have the territorial jurisdiction to deal with petitions relating to the arbitral proceedings, whether preferred under Sections 9, 11 or 34 of the Arbitration Act.

However, at the same time, the judgment highlights the importance of the agreement between the parties. It is important to note that counsel for both parties had submitted that the Court had jurisdiction; however, the Court laid emphasis on the contractual agreement between the parties, which provided otherwise. This heightens the importance of drafting arbitration clauses in agreements so as to accurately capture the intent of the parties.

## Endnotes

- 1 Authored by Aashish Gupta, Partner and Alind Chopra, Associate; *Cars24 Services Pvt. Ltd. v. Cyber Approach Work-space LLP*, Arbitration Petition No. 328/2020, High Court of Delhi, judgment dated 17 November 2020.

Coram: C. Hari Shankar, J.

- 2 (2012) 9 SCC 552.  
3 (2013) 9 SCC 32.

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## PRACTICE AREA EXPERTS

### Pallavi Shroff

Managing Partner and  
National Practice Head Dispute Resolution  
+91 98100 99911  
E: pallavi.shroff@AMSShardul.com

### Rishab Gupta

Partner  
+91 98217 80313  
E: rishab.gupta@AMSShardul.com

### Binsy Susan

Partner  
+91 96500 80397  
E: binsy.susan@AMSShardul.com

### Tejas Karia

Partner and Head, Arbitration Practice sub-group  
+91 98107 98570  
E: tejas.karia@AMSShardul.com

### Siddhartha Datta

Partner  
+91 90070 68488  
E: siddhartha.datta@AMSShardul.com

### Aashish Gupta

Partner  
+91 98189 19857  
E: aashish.gupta@AMSShardul.com

### Anirudh Das

Partner  
+91 98100 98329  
E: anirudh.das@AMSShardul.com

### Ila Kapoor

Partner  
+91 98717 92737  
E: ila.kapoor@AMSShardul.com

### Smarika Singh

Partner  
+91 97170 98075  
E: smarika.singh@AMSShardul.com

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