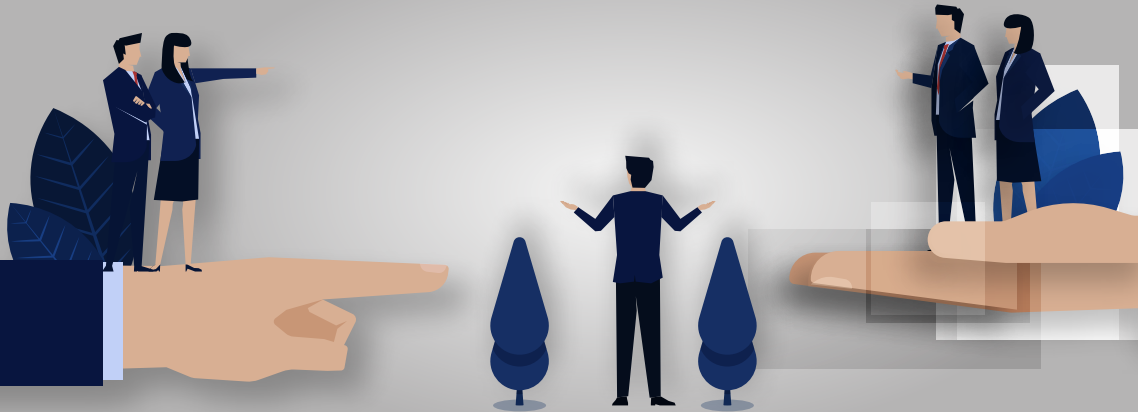


October 2021



High Court of Delhi reiterates that courts at the seat/venue of arbitration will have exclusive jurisdiction over the matters arising under a contract¹

Brief Facts

On 3 January 2017, S.P. Singla Construction Private Ltd. (“**Petitioner**”) entered into a contract (“**Contract**”) with Construction and Design Services, Uttar Pradesh Jal Nigam (“**Respondent**”), a wholly owned undertaking of the Government of Uttar Pradesh for construction of a dedicated corridor for old and differently-abled persons for Magh and Kumbh Mela in Allahabad. The project was to be completed in 30 months and the value of the whole project was estimated to be INR 9,84,53,75,000/-.

As part of the contract, the Petitioner deposited bank guarantees to the tune of INR 49,22,69,000/-. It also mobilised its resources by appointing third-party consultants, prepared geotechnical reports and placed work-orders for the execution of the project. However, the Respondent failed to provide the “right of way” to the Petitioner in terms of the Contract. Further, the Respondent by its letter dated 9 June 2020, informed the Petitioner that the Contract ought to be considered as “terminated”. Accordingly, in view of the Respondent’s letter of termination, the Petitioner raised an invoice of INR 1,74,36,50,777/- towards “termination payment”, in terms of Clause 23.6.4 of the Contract.

In response to the Petitioner’s demand for “termination payment”, the Respondent informed the Petitioner that the decision regarding termination of the Contract is pending approval by the Government of Uttar Pradesh, and demanded further extension of the bank guarantees deposited by the Petitioner. The Petitioner challenged the Respondent’s demand for extension of bank guarantees before the Allahabad High Court in a writ proceeding.

Subsequently, the Respondent, by its letter dated 14 October 2020, issued a final notice of termination and also released the bank guarantees. However, the Respondent denied any liability towards “termination payment”.

As a pre-requisite to invocation of arbitration, the Petitioner also referred the dispute to the Chairman of the Respondent. However, the Respondent again denied the Petitioner’s claim towards “termination payment”.

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On 6 February 2021, the Petitioner invoked arbitration and appointed its nominee arbitrator. However, the Respondent refused to appoint its nominee arbitrator on the basis that as the Contract had been terminated without any commencement of work and the bank guarantees furnished by the Petitioner had already been released, no dispute exists between the parties. In this background, the Petitioner filed the present petition seeking appointment of an arbitrator under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 (“Act”).

Issue

Whether the petition filed before the High Court of Delhi (“Court”) under Section 11(6) of the Act was maintainable?

Judgment

The Petitioner laid emphasis on the distinction between “venue” and “seat” of arbitration. The Petitioner argued that although the venue of arbitration specified in the Contract was Lucknow, in terms of the arbitration clause, the arbitration was required to be held “in accordance with Rules of the International Centre for Alternative Dispute Resolution, New Delhi” (“ICADR Rules”). Further, the ICADR Rules provide that the place of the arbitration will be New Delhi or such other place where the regional centres of ICADR are situated. Thus, relying on the ICADR Rules, the Petitioner argued that the parties have expressly chosen the seat/place of arbitration as New Delhi. Accordingly, the Court has jurisdiction to appoint an arbitrator under Section 11(6) of the Act.

On the contrary, the Respondent argued that courts at Delhi do not have jurisdiction and challenged the maintainability of the petition on the basis of the following arguments:

- No cause of action had arisen in Delhi, as the Contract was executed in Lucknow for the work to be performed in Allahabad and the Respondent has its registered office in Lucknow;
- In terms of Clause 27.1 of the Contract, courts at Lucknow had the exclusive jurisdiction over matters arising under the Contract; and
- The venue of arbitration (i.e., Lucknow), as specified in the arbitration clause, should be construed as the seat of the arbitration. The Respondent argued that the ICADR Rules will come into operation only when the arbitral tribunal has been constituted for conducting the arbitration proceedings.

Upon hearing the parties, the Court held that the present petition was not maintainable. The Court relied on a catena of Supreme Court decisions to analyse the jurisprudence on the “seat” and “venue” distinction. The Court extensively relied on **BGS SGS SOMA JV v. NHPC**² to hold that in the absence of an express designation of seat of arbitration by the parties, the choice of venue will be considered as the choice of seat. The Court held that although the arbitration clause stipulated that the arbitration will be conducted in accordance with the ICADR Rules, it is followed by a condition that the venue of arbitration will be Lucknow. Accordingly, the role of the ICADR Rules will commence with regard to the procedural aspects, only after the arbitration is commenced.

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In arriving at this decision, the Court extensively relied upon the principles laid down in the Supreme Court's decision in **BGS SGS SOMA JV** (*supra*), that a choice of venue is also a choice of seat of arbitration and accordingly, courts at the seat/venue of arbitration will have exclusive jurisdiction over the matters arising under an agreement. The decision also lends credence to the sanctity of a contract entered into between parties. The decision further blurs the distinction between seat and venue, specifically in the context of a domestic arbitration.

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Endnotes

1 Authored by Binsy Susan, Partner, Neha Sharma, Senior Associate and Prabhakar Yadav, Associate; *S.P. Singla Construction Private Limited v. Construction and Design Services, Uttar Pradesh Jal Nigam.*, ARB. P. No. 450/2021, High Court of Delhi, 2021 SCC OnLine Del 4454, judgment dated 23 September 2021.

Coram: Suresh Kumar Kait, J.

2 (2020) 4 SCC 234.

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