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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ARB.P. 511/2023 & I.A. 8821/2023

VED CONTRACTS PVT LTD Petitioner
Through: Mr. Sanjeev Anand, Sr. Advocate
with Mr. Bipin Prabhat, Advocate.
versus

INDIAN OIL CORPORATION LTD..... Respondent
Through: Mr. Amit Meharia, Mr. Abinash
Agarwal and Mr. Sambhav,
Advocates.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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04.03.2024

By way of the present petition filed under section 11 of the Arbitration & Conciliation Act 1996 („A&C Act“), the petitioner seeks reference of disputes that are stated to have arisen with the respondent to arbitration.

2. Notice on this petition was issued on 08.05.2023; pursuant to which reply dated 11.07.2023 has been filed on behalf of the respondent.
3. Mr. Sanjeev Anand, learned senior counsel appearing on behalf of the petitioner has drawn attention of this court to the arbitration agreement embedded in clause 9 of the General Conditions of Contract („GCCs“), governing Contract dated 22.06.2020 („Contract“) signed between the parties. Mr. Anand argues that the reference to Mathura, Uttar Pradesh in Article 4.1 of the Contract, which deals with „jurisdiction“ would not govern the „seat“ of arbitration; and that

the „seat“ of arbitration would be decided on the basis of clause 9.0.4.0 of the GCCs, which provision says that the „venue“ of arbitral proceedings shall be at New Delhi, with a qualification that the Arbitrator may, with consent of both the parties, agree upon any other venue.

4. Mr. Anand argues that since Article 4.1 of the Contract only deals with the general territorial jurisdiction of courts over the subject matter of the transaction; and since a „venue“ has been specifically stipulated in clause 9.0.4.0, the „venue“ would be deemed to be the „seat“ of the arbitration, as agreed-to between the parties.
5. The relevant provisions, read as follow :

Article 4 of the Contract

“ARTICLE 4 JURISDICTION

4.1 Notwithstanding any other court or courts having jurisdiction to decide the question(s) forming the subject matter of the reference if the same had been the subject matter of a suit, any and all actions and proceedings arising out of or relative to the contract (including any arbitration in terms thereof) shall lie only in the court of competent civil jurisdiction in this behalf at Mathura (where this Contract has been signed on behalf of the OWNER) and only the said Court(s) shall have jurisdiction to entertain and try any such action(s) and/or proceeding(s) to the exclusion of all other Courts.”

(emphasis supplied)

Clause 9.0.4.0 of the GCC

“9.0.4.0 The venue of the arbitration under Clause 9.0.1.0 shall be New Delhi, provided that the Arbitrator may with the consent of the OWNER and the CONTRACTOR agree upon any other venue, while the arbitration under Clause 9.0.2.0 shall be at the place where the General Manager is located, provided that the

Arbitrator may with the consent of the Contractor agree upon any other venue.”

(emphasis supplied)

6. On the other hand, Mr. Sambhav, learned counsel appearing for the respondent submits that a plain reading of clause 9.0.4.0 would show, that what the parties have referred to therein, is merely the geographical location that is to say the „venue“ where the arbitration would be conducted, with a further stipulation that such location may be changed by the learned Arbitrator with consent of the parties, which however never happened.
7. Counsel submits however, that once there is a specific territorial jurisdiction clause comprised in Article 4.1, which begins with a *non-obstante* phrase and says that regardless of any other court having subject matter jurisdiction over the reference, all actions and proceedings arising from the contract “... ..including any arbitration in terms thereof ” shall lie only before the civil court of competent jurisdiction at Mathura, it is very clear that the parties had agreed that the „seat“ of arbitration would be at Mathura, Uttar Pradesh; which is also the location where the subject refinery is situate.
8. Mr. Sambhav has also drawn attention to the decision of a Co-ordinate Bench of this court in *ISGEC Heavy Engineering Ltd. vs. Indian Oil Corporation Limited*¹, in which case the exact same provisions, viz. Article 4 of the Contract (entered into by the same respondent with another party) and clause 9.1.2.0 (which reads exactly the same as clause 9.0.4.0 of the GCCs in the present case)

¹ 2021 SCC OnLine Del 4748

have been interpreted to hold that the „seat“ of arbitral proceedings was at the place specified in Article 4.1 and not in clause 9.1.2.0.

9. It is further pointed-out that, in fact, in a judgement of this Bench in *Mrs. Meenakshi Nehra Bhat & Anr. vs. Wave Megacity Centre Private Limited*², a similar conclusion has been rendered.
10. It is noticed that both the aforesaid judgements proceed on the principles laid down by the Supreme Court in *BGS SGS Soma JV vs. NHPC Limited*³, which, in sum and substance holds that the correct approach is for the court to gather the intention of the parties, based upon on a conjoint reading of the terms of the contract; and *only if there is no contrary indicia*, the „venue“ mentioned in an arbitration clause would amount to being the „seat“ of arbitral proceedings.
11. In the present case, there is a „venue“ mentioned in clause 9.0.4.0, which the Arbitrator is entitled to change with the consent of the parties; *with a clear contrary indication* in Article 4.1 which specifically refers to the territorial jurisdiction of courts and says that notwithstanding any other court having jurisdiction to decide the question forming the subject matter of a suit, “... ..*all actions and proceedings arising out of or relative to the contract (including any arbitration in terms thereof) shall lie only in the court of competent civil jurisdiction in this behalf at Mathura (where this Contract has been signed on behalf of the OWNER) and only the said Court(s) shall have jurisdiction to entertain and try any such action(s) and/or*

² 2022 SCC OnLine Del 3744

³ (2020) 4 SCC 234

proceeding(s) to the exclusion of all other Courts.” (emphasis supplied)

12. In view of the above, in the opinion of this court, the only conclusion is that the parties had agreed that the *geographical location* where the arbitral proceedings may be conducted would at New Delhi, or at any other place as may be decided by the Arbitrator with the consent of both parties; but that the arbitral proceedings would be anchored in the place where the contract was signed, *viz.* Mathura, Uttar Pradesh, as was expressly mentioned in the territorial jurisdiction clause.
13. Accordingly, this court is of the view that the present petition under section 11 of the A&C Act is not maintainable before this court since it lacks territorial jurisdiction to entertain or decide the petition.
14. The present petition is therefore dismissed, granting liberty to the petitioner to approach the court of competent jurisdiction in relation to the relief sought, in accordance with law.
15. The petition stands disposed-of in the above terms.
16. Pending applications, if any, also disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 4, 2024/V.Rawat