

(2025) 07 DEL CK 0768

In the Delhi High Court

Case No : O.M.P.(MISC.)(COMM.) No. 606 Of 2024

M/s Viva Infraventure Pvt. Ltd

APPELLANT

Vs

New Okhla Industrial Development Authority

RESPONDENT

Date of Decision : 01-07-2025

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)(e), 9, 11, 11(6), 12(1)(b), 20, 20(2), 20(3), 29A, 29A(1), 29A(3), 29A(5), 31(4), 34

Citation : (2025) 07 DEL CK 0768

Hon'ble Judges : Jasmeet Singh, J

Bench : Single Bench

Advocate : Suhail Dutt, Vikas Tiwari, Kumar Deepraj, Arushi Rathore, Suvigya Awasthy, Vivek Joshi, Rohan Gulati

Final Decision : Dismissed

Judgement

Jasmeet Singh, J

1. This is a petition filed under section 29A (5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act") seeking extension of the mandate of the learned Sole Arbitrator for a period of 6 months for concluding the arbitral proceedings and passing the Arbitral Award.

2. It is stated that the mandate of the learned Sole Arbitrator had expired on 22.09.2024.

FACTUAL MATRIX AS PER THE PETITIONER

3. The petitioner is a Private Limited Company, incorporated under the Indian Companies Act, 1956, engaged in the business of construction and maintenance of roads, highways and buildings etc., having its registered office at C - 3/142, Sector - H, LDA Colony, Kanpur Road, Lucknow - 226012, Uttar Pradesh.

4. The respondent i.e. New Okhla Industrial Development Authority is a statutory body set up under the Uttar Pradesh Industrial Development Act, 1976,

responsible for the development and upkeep of the civic amenities in the city of Noida.

5. On 21.02.2015 a notice was issued by the respondent, inviting tenders from prospective bidders for the 'Construction of 60m wide road from Sector 115, 112 Hindon, Pusta to Sector 1, Tech Zone-4, Greater Noida, Bsrakh Road, Hindon Road, Noida.', (hereinafter referred to as "project"). In response, the petitioner submitted its bid on 11.06.2015 and the project was awarded to the petitioner through a Letter of Award dated 19.10.2015. On the same date, a Contract Bond (hereinafter referred to as "Contract Agreement") was executed between the parties.

6. The arbitration clause is contained as clause 34 of the General Conditions of Contract attached with the Contract Agreement and the same reads as under:

"Clause 34 –

Arbitrator Except where otherwise provided in contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions herein mentioned and as to the quantity of workmanship of materials used on the work or as to any other questions, claim, right, materials, specifications, estimates, instructions, under or these conditions or otherwise concerning the work or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the person appointed by the C.E.O. of the work at the time of dispute. It will be no objection to any such appointment that the arbitrator so appointed is a government or public servant that, he had to deal with matters to which the contract relates and that in the course of his duties as Government/Public servant he had expressed views on all or any of the matters in dispute of difference. In the event of the arbitrator to who the matter is originally referred being transferred or vacating his office of being unable to act for any such reason C.E.O. at the time such transfer, vacation of office or inability to act shall appoint another person to act as arbitrator in accordance with the terms of the contract such person shall be entitled to proceed with reference from the stage at which it was left by his predecessors, it is also a terms of his contract that no person other than a person appointed by the C.E.O. should act as arbitrator and for any reason that is not possible the matter is not to be referred to arbitration at all.

The arbitration may from time to time with the consent of the parties enlarge the time for making and publishing the award. Subject as aforesaid the provisions of the Conciliation Act, 1996 or any statutory modification more enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause."

7. Since certain disputes arose between the parties, the petitioner filed a petition under Section 11 of the 1996 Act before the High Court of Allahabad, seeking appointment of a Sole Arbitrator for adjudication of disputes between the parties

arising out of the Contract Agreement.

8. Vide order dated 13.09.2022 passed in ARB P. 113/2022, the High Court of Allahabad appointed Justice G.S. Singhvi (Retd.), Former Judge of Hon'ble Supreme Court of India as the Sole Arbitrator. The learned Sole Arbitrator entered upon the reference on 15.10.2022 and on the same date, designated Delhi as the seat of arbitration.

9. The pleadings in the arbitral proceedings came to be completed on 07.04.2023, however, the period of one year for concluding the arbitral proceedings and passing of the arbitral award in terms of section 29 A (1) of the 1996 Act began from 23.03.2023 as the pleadings had to be completed within six months from the date, the learned arbitrator received the order of his appointment i.e. 24.09.2022. Therefore, the period of one year expired on 22.03.2024. Thereafter, in terms of section 29 A (3) of the 1996 Act, with consent of parties, the mandate of the Sole arbitrator was extended by a further period of six months.

10. The mandate of the Sole Arbitrator stood extended up to 21.09.2024.

11. It is stated that the arbitration proceedings are currently at the stage of final arguments.

12. Hence the present petition has been filed.

SUBMISSIONS ON BEHALF OF THE PETITIONER

13. At the outset, it is submitted that the contract between the petitioner and the respondent conferred exclusive jurisdiction on the courts at 'Gautam Budh Nagar' (clause 32 of the GCC), with no reference to the seat of arbitration. Further, the petitioner had approached the Allahabad High Court under section 11 of the 1996 Act, relying on the exclusive jurisdiction clause as well as the cause of action. Since the seat had not yet been determined, the exclusive jurisdiction clause was considered as the seat of arbitration.

14. It is stated that the Arbitrator vide procedural order dated 15.10.2022 (1st Procedural Order) with consent of parties had changed the seat of arbitration from Gautam Buddha Nagar, Uttar Pradesh to Delhi. Para 7 of the said order records New Delhi as the seat of arbitration. Further, Para 3(I) also records that all procedural orders and the arbitral award shall be deemed to have been made at New Delhi, thereby conclusively establishing New Delhi as the seat of arbitration.

15. Learned Senior counsel places reliance on the judgment passed by the Hon'ble Supreme Court in BGS SGS Soma JV vs NHPC Limited (2020) 4 SCC 234 to state that when the parties choose a place for rendering the award, the parties not only choose the seat, but even choose the court, for the purpose of interim orders and challenges to the award, as defined in Section 2(1) (e) of the 1996 Act.

16. It is further stated that a change in the seat of arbitration, also results in a change in the jurisdiction of the Court under Section 2(1)(e) of the 1996 Act. Reliance is placed on *Inox Renewables Ltd. v. Jayesh Electricals Ltd.*, (2023) 3 SCC 733.

17. Reliance is also placed on the judgment of a coordinate bench of this Hon'ble Court in *Ashiyana Infrahomes Pvt. Ltd. v. Adani Power Ltd.*, 2018 SCC OnLine Del 9110, to state that the facts of *Ashiyana* (supra) are parimateria to the present case. In that matter, the Court held that a mutual change of the seat of arbitration from Gurgaon to Delhi, as recorded in the procedural order, conferred jurisdiction on the Delhi courts. Although the original arbitration clause had specified Gurgaon as the seat, the Court rejected the respondent's objection to jurisdiction, noting that over 40 hearings had taken place in Delhi without any protest.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

18. Per Contra, it is submitted that Clause 32 of the Contract Agreement indicates that the petitioner and the respondent have agreed to confer exclusive jurisdiction on the courts at Gautam Budh Nagar, Uttar Pradesh. Clause 32 of the Contract Agreement ousts the jurisdiction of all other courts and cannot be overridden in the absence of another express agreement in writing between the parties. Accordingly, the determination by the Sole Arbitrator in the order dated 15.10.2022, only pertains to the venue, as the seat already stood determined by way of clause 32.

19. It is stated that the Arbitral tribunal cannot go beyond the contract executed between the parties and a contractual provision can be bypassed or overridden, only if a party specifically challenges it as being unenforceable or unreasonable. In the present case, the petitioner has failed to point to any material on record indicating a dispute between the parties regarding the determination of the seat under Clause 32 of the Contract. In the absence of such a dispute, there was no occasion for the Arbitral tribunal to determine the seat under Section 20(2) of the 1996 Act.

20. It is further stated that the seat is a juridical concept that determines which court will exercise supervisory jurisdiction over the arbitral proceedings. Clause 32 of the Contract Agreement clearly reflects the parties' mutual agreement to place the arbitration within the exclusive jurisdiction of courts in Uttar Pradesh, thereby indicating their intent to designate Gautam Budh Nagar as the seat of arbitration.

21. It is a well-settled position of law that subsequent hearings at a location other than the designated seat do not alter the jurisdictional seat of arbitration. The seat, once fixed, must remain static to avoid uncertainty and jurisdictional disputes. In this regard, reliance is placed upon the judgment passed by the Hon'ble Supreme Court in *BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd.*, (2023) 1 SCC 693. The territorial jurisdiction is determined by the seat

under Section 20(2) of the Act.

22. It is further stated that the reliance of the petitioner on the Procedural Order dated 15.10.2022, to assert that the seat of arbitration is Delhi is misplaced as in the said order, only procedural aspects and timelines were discussed. At that time, the Contract Agreement was not available for the perusal of the Arbitrator. Therefore, there was no occasion to exercise powers under Section 20(2) of the Act to change the seat of arbitration to Delhi, particularly in light of the prior mutual agreement under Clause 32 of the Contract designating Gautam Budh Nagar as the seat. The procedural order dated 15.10.2022 was passed without consent.

23. It is stated that the Arbitrator is yet to make a final determination regarding the seat of arbitration under Section 31(4) of the Act, as the award is yet to be reserved. In these circumstances, any determination by this Hon'ble Court under the present Section 29A petition would be premature and impermissible, especially since the Arbitrator remains seized of the matter.

24. Further, Section 11(6) of the 1996 Act must be harmoniously construed with Section 2(1)(e), meaning that the High Court exercising supervisory jurisdiction over the court defined under Section 2(1)(e) is competent to appoint an arbitrator, reliance is placed on Ravi Banjan Developers (P) Ltd. v. Aditya Kumar Ghattejee, 2022 SCC OnLine SC 568. In the present case, the Allahabad High Court vide order dated 13.09.2022 had appointed the Sole Arbitrator. Accordingly, it is the Allahabad High Court which falls within the ambit of 'Court' under Section 2(1)(e) of the Act.

25. Further, in the petition under Section 11 of the 1996 Act, the petitioner, in its own averments, clearly stated that the seat of arbitration was Gautam Budh Nagar, Uttar Pradesh.

26. It is stated that in view of the order dated 13.09.2022 passed by the Allahabad High Court appointing the Sole Arbitrator, and the exclusive jurisdiction clause (clause 32) in the contract, it is the Allahabad High Court that qualifies as the 'Court' under Section 2(1)(e) of the Act and is thus competent to consider an application under Section 29A (5). To avoid conflicting decisions and concurrent jurisdiction, the term 'Court' under Section 29A should be construed as the Court competent to appoint an arbitrator under Section 11.

ANALYSIS AND CONCLUSION

27. I have heard learned counsel for the parties.

28. Relevant provisions of 1996 Act are as under:

"2. Definitions.—(1) In this Part, unless the context otherwise requires,—

(e) "court" means—

(i) in the case of an arbitration other than international commercial arbitration, the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes....”

“20. Place of arbitration.—(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.”

29. A bare perusal of Section 20 of the 1996 Act, reveals the principle of party autonomy. The provision governs the “place of arbitration”. Under Section 20(1), parties are free to agree on any place within India as the place/seat of arbitration, which determines the juridical seat and the court that will exercise supervisory jurisdiction under Section 2(1)(e). If the parties do not agree on the seat, Section 20(2) empowers the arbitral tribunal to determine it. Section 20(3), however, pertains only to procedural convenience— allowing the tribunal to hold hearings at any venue it considers appropriate.

30. Before proceeding further, it is pertinent to mention the relevant clause of the Contract Agreement pertaining to the arbitration and jurisdiction. Clause

32 of the Contract Agreement reads as under:

“32....

All dispute between the parties to the contract arising out of relating to the contract shall after written notice by either party to the contract to the other party be referred to arbitration as above. Unless the parties otherwise agree such reference shall not take place until after the completion, alleged completion or abandonment of the work of the determination of the contract. The venue of arbitration shall be such a place or places as may be fixed by an arbitrator in his/ theirs sole discretion. Any suit or application for the enforcement of this arbitration clause shall be filed in the competent court at Gautam Budh Nagar, no other court or any other district or Pradesh or outside Uttar Pradesh shall have any jurisdiction in the matter. The award of the arbitrator shall be final, conclusive and binding on both the parties to the contract.”

(Emphasis supplied)

31. A perusal of the agreed arbitration clause shows 2 things being; (a) the

venue of the arbitration is to be at a place, as may be fixed by the arbitrator in his/their sole discretion and (b) any suit or application for the enforcement of the arbitration clause shall be filed in the competent court at Gautam Budh Nagar.

32. The argument of the petitioner is that the first part of the arbitration clause (i.e. the venue of the arbitration shall be fixed by an arbitrator in his/their sole discretion) will apply and must be read along with the procedural order dated 15.10.2022 and more particularly para 3(l) and 7 of the said order. The combined reading of the first part along with the procedural order dated 15.10.2022 contemplates the 'seat of arbitration' to be Delhi. Hence, the jurisdiction of the 'Delhi' courts under Section 2(1)(e) of the Act is established. By choosing the seat of arbitration, the parties have also determined the exclusive jurisdiction of the courts.

33. On the other hand, the respondent has averred that any determination made by the Arbitrator, dehors Clause 32 of the Contract Agreement, can at best be construed as the venue of arbitration under Section 20(3) of the 1996 Act.

34. In my view, there is, in fact, no ambiguity on this aspect. The courts have time and again held that in cases where the arbitration clause specifies a particular 'venue' for arbitration, such designation is to be construed as the 'seat' of arbitration, unless there is a clear indication to the contrary. In this regard, the Hon'ble Supreme Court in BGS SGS Soma (supra) inter alia held as under:

"82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration."

(Emphasis supplied)

35. In the present case, as well, the arbitration clause (clause 32 of the Contract Agreement) categorically holds that the venue of the arbitration shall be such a place as fixed by the arbitrator. Vide procedural order dated 15.10.2022, the arbitrator has fixed the 'seat' of arbitration at Delhi. By applying the case of BGS SGS Soma (supra) Delhi should be regarded as the 'seat' of arbitration.

36. However, it is also pertinent to mention the second part of Clause 32 i.e. any suit or application for the enforcement of this arbitration clause shall be filed in the competent at Gautam Budh Nagar. The same cannot be ignored.

37. There are a series of judgement(s) passed by the Hon'ble Supreme Court wherein the view taken is that the "seat of arbitration" has to be treated as akin to an exclusive jurisdiction clause, however, the issue that arises before me is that whether the seat of arbitration so designated, will override an exclusive jurisdiction clause already present in the arbitration agreement, which confers exclusive jurisdiction on a particular court. The effect of an exclusive jurisdiction clause within an arbitration agreement—particularly one that also governs the arbitral proceedings—has recently been considered and addressed by a coordinate Bench of this Court in a detailed manner in Precitech Enclosures Systems Private Limited vs Rudrapur Precision Industries and Another 2025 SCC OnLine Del 1609.

38. In Precitech Enclosures (supra), while dealing with a similar clause (Clause 20 of the Rent Agreement therein which provided that the court at Rudrapur Uttarakhand, India shall have exclusive jurisdiction), the coordinate bench held that the exclusive jurisdiction clause would prevail even if there would have been any separate clause for fixing the seat of arbitration outside Rudrapur or Uttarakhand. The arbitration clause therein is reproduced below:

"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."

39. The argument of the petitioner in Precitech Enclosures (supra) was that in view of an email dated April 4, 2022, by which the parties had agreed to Delhi being the venue for arbitration, indicated a mutual agreement to designate Delhi as the seat of arbitration, thereby vesting exclusive jurisdiction in the Delhi courts.

40. The coordinate bench while relying on its own earlier decisions in CARS 24 Services (P) Ltd. v. Cyber Approach Workspace LLP, 2020 SCC OnLine Del 1720 and Hunch Circle (P) Ltd. v. Futuretimes Technology India (P) Ltd. 2022 SCC OnLine Del 361, thereby relying on the law laid down by the Hon'ble Supreme Court in Mankastu Impex (P) Ltd. v. Airvisual Ltd., (2020) 5 SCC 399 inter

alia held as under:

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

21. In CARS 24 Services (P) Ltd. v. Cyber Approach Workspace LLP⁹, Clause 25.4 of the agreement between the parties read thus: (SCC OnLine Del para 9)

9. ... 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."

"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:

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

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 (P) Ltd. case 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.

56. ... Rather, the decisions in Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. and Brahmani River Pellets Ltd. v. Kamachi Industries Ltd. both of which have been approvingly cited in BGS SGS SOMA JV v. NHPC Ltd. 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. ***

63. This is the position which, according to me, emanates from Mankastu Impex (P) Ltd. case 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.

23. Following my earlier decision in CARS 24 Services (P) Ltd. case, I held, in Hunch Circle (P) Ltd. case, that, as the exclusive jurisdiction clause covered and included applications relating to the arbitral proceedings, it would predominate over the "seat of arbitration clause".

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 CARS 24 Services (P) Ltd. case and Hunch Circle (P) Ltd. case, 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.

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 the arbitration between Precitech and Rudrapur relating to the Rent Agreement dated 15-7-2017 would have to be preferred at Rudrapur/Uttarakhand, and nowhere else.”

(emphasis supplied)

41. From the aforesaid text, the legal position is clear that where an agreement contains an exclusive jurisdiction clause covering the arbitration clause, the court identified in the exclusive jurisdiction clause will be deemed to have supervisory jurisdiction over the seat of arbitration. To my mind, the party autonomy must be respected, and when parties agree to vest exclusive jurisdiction in a particular court for any dispute arising out of the arbitration clause, it must be presumed that they intended that court only to have supervisory control.

42. The use of the phrase “Any suit or application for the enforcement of this arbitration clause shall be filed in the competent court at Gautam Budh Nagar, no other court or any other district or Pradesh or outside Uttar Pradesh shall have any jurisdiction in the matter” in Clause 32 of the Contract Agreement leaves no room for ambiguity and unequivocally reflects the parties’ intention to confer exclusive jurisdiction solely on the courts at Gautam Budh Nagar “for enforcement of the arbitration clause”.

The principle of *expressio unius est exclusio alterius*—the express mention of one thing implies the exclusion of another—is relevant. The language used in the second part of clause 32 of the Contract Agreement is categorical and exclusionary in nature, making it clear that all other courts, outside Gautam Budh Nagar/State of Uttar Pradesh (as the case may be)—stand ousted from exercising jurisdiction in respect of disputes arising out of the Contract Agreement including enforcement of the arbitration clause. The petitioner had also earlier approached the High Court at Allahabad by filing a petition under section 11 of 1996 Act. It is the petitioner’s own stance that the petitioner had approached the Allahabad High Court based on the exclusive jurisdiction clause as well as the cause of action.

43. If the interpretation urged by the petitioner is to be accepted, it would effectively nullify the second part of Clause 32, which specifically confers exclusive jurisdiction for matters relating to the enforcement of the arbitration clause in the competent court at Gautam Budh Nagar/State of Uttar Pradesh. The exclusive jurisdiction clause of the court at Gautam Budh Nagar/State of Uttar Pradesh includes issues relating to the enforcement of the arbitration clause

between the parties. Further, it will not only defeat the purpose of the arbitration clause but would also amount to re-writing the contract between the parties, which is impermissible in law.

44. In *Inox Renewables* (supra), the seat of arbitration was initially chosen as Jaipur, but was subsequently changed to Ahmedabad, which was recorded in the order of the Arbitral Tribunal. Accordingly, the Supreme Court held that it is now the Court at Ahmedabad which would be the competent court under Section 2(1) (e) of the Act. However, the said judgment is of no help to the petitioner, as the agreement in that case did not contain any exclusive jurisdiction clause dealing with the arbitration clause. To my mind, any reference to the arbitrator's discretion to fix the venue/seat under Clause 32, in the present case, must be understood strictly in the context of Section 20 of the 1996 Act, and cannot override the parties' explicit agreement regarding courts at Gautam Budh Nagar/ State of Uttar Pradesh.

45. Again, the judgment of *Ashiyana Infrahomes* (supra) is of no use to the petitioner as in that case, the arbitration clause stated that the "proceedings of the arbitration shall be in Gurgaon and further, the procedural order dated 19.12.2014 in that case, by way of which the venue was changed was passed after consent of the parties. The judgments cited before me do not show that where the seat of arbitration was given primacy over an express exclusive jurisdiction clause in the agreement covering the arbitration clause.

46. The words "enforcement of this arbitration clause" in clause 32 of the Contract Agreement persuades me to dismiss the petition. The judgment of *Precitech Enclosures* (supra) while relying on *Mankastu Impex* (supra) as quoted above is clear in this regard. Where a distinct exclusive jurisdiction clause exists—conferring exclusive jurisdiction on courts in relation to the arbitration clause, the same must be given full effect.

47. In addition to the aforesaid, I am also of the view that the order dated 15.10.2022 is a procedural order. It would be important to quote the entire order to appreciate its true meaning and import. The procedural order dated 15.10.2022 reads as under:

"BEFORE THE SOLE ARBITRATOR

JUSTICE G.S. SINGHVI

FORMER JUDGE SUPREME COURT OF INDIA

IN THE MATTER OF ARBITRATION

BETWEEN

M/S. VIVA INFRAVENTURE PRIVATE LIMITED

...CLAIMANT

AND

NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY

...RESPONDENT

Via Video-conferencing

Present: S/Shri Anil Kumar, Suvir Sharma, Prakhar Khanna and Sahil Manganani, Advocates with Shri Vivek Yadav (Director - Representative) for the claimant

S/Shri Sameer Jain, Suvigya Awasthy, Deepesh Raj, Vivek Joshi, Rohan Gulati, Advocates with Shri M.L. Rawat (Junior Engineer) and Shri Mukesh Kumar (Assistant Manager) for the respondent

RECORD OF THE PRELIMINARY HEARING CUM PROCEDURAL ORDER NO. 1
DATED 15.10.2022

1. With the consent of the learned counsel for the parties, the matter has been taken up via video conferencing for which the link has been provided by my Secretary Shri Chandra Pratap Sharma vide his mail dated 13.10.2022.

2. Shri Suvir Sharma one of the counsels representing the claimant gave a brief overview of the background in which the dispute has been raised by his client and stated that approximate claim would be about Rs.20 crores. Shri Suvigya Awasthy one of the counsels representing the respondent disclosed that his client intends to file counter claim, but at this stage he cannot give approximate quantum of the counter claim.

3. Schedule steps to be taken-

In view of the provisions contained in the Arbitration and Conciliation Act, 1996 (Amended), the pleadings are to be completed within a period of six months. Accordingly, with the consent of counsel I representative(s) of the parties, the following time schedule is fixed for steps to be taken for completion of the pleadings, filing of documents, affidavits of admission and denial, application(s) for discovery and inspection and submission of the proposed issues / points for determination:

Steps to be Taken

On or before

Statement of Claim along with supporting documents be filed by the claimant.

26.11.2022

Statement of Defense, and Counter Claim, if any, with supporting documents be filed by the respondent

07.01.2023

Reply to the Counter Claim, if any, along with the supporting

documents be filed by the claimant.

04.02.2023

Application(s) for discovery and inspection of the documents.

18.02.2023

Affidavits of Admission/ Denial be filed by the parties as per the Commercial Courts Acts 2015.

18.02.2023

Proposed Issues/points for determination along with list of witnesses be filed by the parties simultaneously.

18.02.2023

Note 1: The application(s), if any, filed by either party shall be disposed of by the tribunal after giving reasonable opportunity to the opposite side to file reply to such application and hearing the arguments. However, the filing of application(s) for discovery and inspection and disposal of such application by the tribunal shall not be made a ground by either party to seek extension of time to take various steps enumerated hereinabove.

Note 2: If the documents filed by either party are admitted by the other side and the parties decide not to lead oral evidence then the matter shall be fixed for final arguments.

Note 3: If the parties intend to rely upon oral evidence, then affidavits of evidence shall be filed simultaneously by both the parties within 4 weeks counted from the date of framing of issues/points for determination.

Note 4: In the verification of affidavits, the deponent should clearly state the number of paragraphs which are true to his personal knowledge or knowledge based on the record and the number of paragraphs which he/she believes to be true on the basis of information supplied by any other person or obtain by him/her from specified source.

Note 5: The pleadings and documents filed by either party shall be fully legible. If any document is wholly or partially illegible then the same must be accompanied by a neatly typed copy thereof.

Note 6: The pleadings and documents filed by either party shall be simultaneously served upon on the opposite party.

3. Practice Directions

a. Filing of rejoinders/replications is dispensed with. Neither party shall be entitled to file rejoinder / replication as of right. However, liberty is given to both the parties to seek leave of the tribunal for filing rejoinder / replication. If such application is found to be without substance, then the party filing the application

shall have to pay cost and additional fee in lieu of the time spent in dealing with and deciding the application.

b. The pleadings shall be accompanied by documents (in a separate volume with Index) in support of the case pleaded by the party. Hard copy shall be in Font Size-14, A-4 size paper. Each document filed with the pleadings/application etc. must be marked separately as Annexure. The documents filed by the claimant shall be marked as Annexures C 1, C2,..... The documents filed by the respondent shall be marked as Annexures R 1, R 2.....

c. It shall be ensured by the counsel / representatives of the parties that the documents filed by them are fully legible. If zerox copies of the documents are not fully legible then the same shall be accompanied by typed copies. Soft copies of the pleadings and documents shall also be supplied to the Sole Arbitrator and opposite counsel in pen drive as well as through google docs, and appropriately hyperlinked/ book-marked and/or contain page thumbnails in searchable pdf format.

d. After the process for filing the pleading and documents by both the parties is completed, neither party shall be entitled to place on record additional documents except with the express leave which may be granted by the tribunal on an application made for that purpose.

e. Filing by either party of any pleading, document, application and communication, etc to the tribunal shall be deemed to have been effectively done only after a copy having been previously delivered to the opposite party. All pleadings/documents must also be served on the opposite party.

f. Brief applications/communications to the tribunal be made by e-mail and hard copy thereof shall be sent by post or supplied at the time of physical hearing, as and when such hearing is held.

g. Any default in adhering to the above schedule may result in convening of a meeting of the tribunal. In that event cost incurred for such meeting shall be exclusively born by the defaulting party.

h. Learned counsel of the parties, while preparing the evidence affidavit or thereafter, shall not coach or train the witness(s) or allow any other person to supplant or supplement the witness's own evidence; preparation of witness's affidavit of evidence should not be done in groups, with a view to eradicate any possibility of changing any testimony in order to proffer the best answers.

i. With consent of the counsel / representative of the parties it is directed that the following procedure shall be adopted for recording of evidence:

(i) The practice of putting the respective cases of parties to the witnesses in the form of suggestions is dispensed with.

(ii) Cross examination, if any, would be recorded in question/answer form.

(iii) Any statement/averment by a witness with regard to interpretation of the contract in his affidavit of evidence will be of no consequence. No questions are required to be put to witnesses to merely confirm the contents of a document.

(iv) No questions shall be put with regard to interpretation of any document including contract because that exercise will be done by the Tribunal after hearing the counsel / representatives of the parties.

j. Adjournment, if any, shall be requested at least two weeks in advance failing which costs of the hearing, which is adjourn shall be borne by the party seeking adjournment.

k. All communications and orders by the tribunal to the parties will be made by e-mail on the e-address given hereunder. E-mail communications shall be treated as effective communication to the tribunal and the parties and their counsel / representatives. Counsel for the Claimant:

(i) Shri Anil Kumar Advocate, Synergy Partners,

A-33, Lower Ground Floor, Defence Colony, New Delhi-110024. Email: anil.kumar@synergypartners.in

(ii) Shri Suvir Sharma

(iii) Shri Prakhar Khanna Advocate,

Email: prakhar khanna@synergypartners.in

(iv) Shri Sahil Manganani

Advocate, Email: sahil.manganani@synergypartners.in

Representative(s) of the Claimant:

(i) Shri Vivek Yadav, Director,

Director

M/s Viva Infraventure Private Limited C-3/142, Raj Shree Plaza

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Email vivainfra.lko@gmail.com

Counsel for the Respondent:

(i) Shri Sameer Jain

Advocate,

PSL Advocates & Solicitors, A-220, Defence Colony, New

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(ii) Shri Suvigya Awasthy

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(iii) Shri Deepesh Raj

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(iv) Shri Vivek Joshi

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(v) Shri Rohan Gulati

Advocate,

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Representative(s) of the Respondent:

(i) Shri M.L. Rawat

Junior Engineer Senior Manager

Noida

Email Mirawat65@gmail.com

(ii) Shri Mukesh Kumar,

Assistant Manager

Noida

For the Tribunal:

1. Justice GS Singhvi (Retd.) Email: singhvi.gs@gmail.com

k. After completion of pleadings and filing of the documents and their admission/denial, marking of exhibits should mandatorily be carried out by the parties in either of their respective chambers. On the completion of this exercise the exhibit particulars shall be conveyed to the tribunal. The parties shall agree upon and prepare a common Convenience File (CF) containing documents which they intend to actively rely upon.

l. All Procedural Orders and Awards shall be deemed to have been made at New Delhi, India, irrespective of where they may have been signed.

m. It is incumbent upon the parties to strictly adhere to the timelines contained

in the schedule above. Failing such adherence, the parties risk the forfeiture their rights to file the pleadings and/or evidence and/or documents. It is made clear that no application for extension of time will ordinarily be entertained by the tribunal. In case the parties fail to take steps as per the schedule, the tribunal may proceed with the matter in the absence of such pleadings and/or evidence and/or documents. It must be the endeavor of both i.e. the tribunal and the parties in ensuring compliance with the time frame under Section 29A and adhering to the procedure under Section 24 of the 1996 Act, failing which a defaulting party may be saddled with exemplary costs.

4. Next Hearing

The tribunal shall next meet on 27.02.2023 at Delhi for framing issues/points of determination and for arguments on applications(s), if any, filed by the parties in the intervening period. The meeting shall be held at 5 PM through video conferencing. As and when become feasible and is considered safe, physical meeting of the tribunal will be held at New Delhi. The cost / expenses of such meeting shall be equally shared by the parties.

5. Declaration by the Arbitrator

The Sole Arbitrator state that there are no circumstances or reasons which are likely to give rise to any doubt or concern about his independence or impartiality, or to affect his ability to devote sufficient time for the arbitration as' postulated in Section 12(1)(b) read with the Fifth and the Seventh Schedule to the Arbitration & Conciliation Act, 1996. The parties have confirmed that they do not have any reservations or objections in this regard.

6. Fees of the Sole Arbitrator

a. In view of the statement made by Shri Suvir Sharma, learned counsel for the claimant about the approximate quantum of the claim of his client, each party shall make an ad-hoc on-account deposit of Rs.3.5 lakhs to the arbitrator within four weeks from today i.e. on or before 12.11.2022 towards the fees. The bank details of the Sole Arbitrator are as under:

Name: G.S. Singhvi

PAN: AFEPS6667Q

Bank Name: AU Small Finance Bank

F-4, Ground Floor, East of Kailash,

New Delhi-110065

Account No: 1913210422961187

Type of A/c: Savings

IFSC: AUBL0002104

b. In case a counter claim is filed, it shall be heard and billed / taxed separately. This has been explicitly agreed to by both parties.

c. Each party is directed to communicate the details / reference numbers of the payments of arbitration fees as soon as it is remitted, failing which there shall be no acknowledgment by / on behalf of the tribunal. TDS declarations as well as certificates shall also be provided by the parties.

d. Administrative expenses equal to 10% of the fee payable to the arbitrator shall be paid by each party to Shri Chandra Pratap Sharma, who shall act as Secretary of the Sole Arbitrator. The bank details of Chandra Pratap Sharma are as under:

Name: Chandra Pratap Sharma

PAN: DNRPS3737M

Bank Name: HDFC (Panchsheela Park Branch)

Account No.: 50100041577004

IFSC: HDFC0000248

The first payment of administrative expenses shall be made by the parties within four weeks from today i.e. on or before 12.11.2022.

The parties are put to notice that vide Government Notification dated 20th June 2012, read with Government Notification No.18/2016-Service Tax dated 1-3-2016 with effect from 1-7-2012 and 1-4-2015 in respect of services provided by an Arbitral Tribunal, the person/entity receiving such services only are liable to pay the entire Service Tax on the services provided or agreed to be provided by an Arbitral Tribunal to any person/ business entity and this liability to the Government of India is in addition to the remittance which has been directed to be made to the Arbitral Tribunal. The parties shall keep this in mind while making remittance to the Arbitral Tribunal.

7. Seat for the meetings:

The Seat for the Arbitration shall be Delhi. For holding the meeting of the tribunal (virtual / physical), necessary arrangements shall be made as per directions given from time to time. The tribunal may fix any hearing or hearings at any other place as it considers necessary / appropriate. This does not preclude the tribunal, after consultation with the parties, from meeting with the parties and witnesses at any other place or communicating with the parties by conference call or video conference."

48. A perusal of the procedural order dated 15.10.2022 indicates that the consent of the parties was limited to three specific aspects. Para No. 1 reflects that the matter was taken up via video conferencing on the said date with the consent of the parties. Para No. 3 under the heading 'Schedule of steps to be taken' further shows that the time schedule for completion of pleadings was fixed

with the consent of the counsel/representative of the parties.

49. Again, in Para No. 3 under the head 'Practice Directions', particularly Para 3 No. (i) indicates that the procedure for recording of evidence was also laid down with the consent of the parties. However, the venue/seat of arbitration has been fixed under Para No. 3 (I) and Para No. 7. Even though the same has been passed in presence of the counsel for the parties, but was without the consent of the respondent (as the phrase "with consent of parties" is missing). Hence, the procedural order dated 15.10.2022 fixing the venue/seat of arbitration at New Delhi is only an order under Section 20(3) of the 1996 Act and does not override Clause 32 of the Contract agreement.

50. Additionally, after filing the present petition, the respondent has already filed an application before the Arbitrator seeking clarification/ review/ modification of the Procedural Order dated 15.10.2022 to the limited extent that New Delhi is merely the venue of arbitral proceedings as the seat was already fixed in terms of Clause 32 of the Contract and there was no mutual consent, whereby the seat has been altered from Gautam Budh Nagar, Uttar Pradesh to New Delhi. Hence, it cannot be said that there was clear and unequivocal consent of the respondent for change of seat of arbitration to New Delhi. In these circumstances, the discretion of the arbitrator to fix the venue of arbitration can only be under section 20 (3) of the 1996 Act.

51. For the said reasons, the petition is dismissed on the ground of lack of territorial jurisdiction.