

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ARB-53-2015 (O&M)

Date of decision:- 15.09.2017

Silverglades Holdings Pvt. Ltd. (SHPL), New Delhi and
another

...Petitioners

Versus

Shefali Varma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE

Present:- Mr. Akshay Bhan, Senior Advocate,
with Mr. Alok Mittal, Advocate,
for the petitioners.

Ms. Namitha Mathews, Advocate,
and Mr. Sourabh Goel, Advocate,
for respondent No. 1.

Mr. Arun Jain, Senior Advocate,
with Mr. Vikas Mohan Gupta, Advocate,
for respondents No. 2 to 12.

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S.J. VAZIFDAR, C.J. (ORAL)

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator.

2. The parties had admittedly entered into a contract clause 16 whereof contains an arbitration agreement. For the purpose of this petition, it is necessary to also read clause 17.

3. Clauses 16 and 17 of the agreement read as under:-

"16. Arbitration

16.1 The Parties herein agree that any dispute or difference arising between the Parties under this Agreement shall be resolved amicably in the first instance. In case the

Parties fail to arrive at a amicable settlement within 30 days of reference thereof for amicable discussions, such unresolved disputes or differences shall be settled by arbitration to be referred to a sole arbitrator, to be mutually appointed by the disputing Parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereto from time to time.

16.2 The award of the arbitrator/s shall be final and binding on the Parties to the Agreement. Neither Party shall be entitled to commence or maintain any action in court of law upon any matter in dispute arising from or in relation to this Agreement, except for the enforcement of an arbitral award granted pursuant to this Agreement. The place of Arbitration shall be Delhi. The arbitration proceeding shall be conducted in English language.

17. Applicable Law and Jurisdiction

17.1 That this Agreement shall be governed, construed and enforced according to the laws of India and subject to dispute resolution mechanism mentioned herein above, the Courts at Gurgaon shall have the exclusive jurisdiction to entertain and decide any dispute between the Parties in respect of the present Agreement."

(emphasis supplied)

4. Clause 16.2, therefore, makes it clear that the place or seat of arbitration is Delhi. In view of a judgement of the Supreme Court in *Indus Mobile Distribution Private Limited Vs Datawind Innovations Private Limited and others*, 2017 (7) SCC 678, this Court does not have jurisdiction to entertain this petition. The Supreme Court held as under:-

"14. This Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration.

20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction - that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties."

5. The only question is whether clause 17.1 of the agreement would make any difference. In my view, it would not. Clause 17.1 states that the Courts at Gurgaon shall have the exclusive jurisdiction to entertain and decide any dispute between the parties in respect of the present agreement, but the words preceding this state that the same is "subject to dispute resolution mechanism mentioned herein above". This would be the dispute resolution mechanism referred to in clause 16. Clause

17.1, therefore, obviously refers only to jurisdiction in the Courts of Gurgaon in respect of the matters other than arbitration. The judgement of the Supreme Court, therefore, is applicable to the present case.

6. The petition is, therefore, dismissed only on the ground that this Court has no jurisdiction. The petitioners are always at liberty to file the petition in the Court of competent jurisdiction, namely, Delhi.

(S.J. VAZIFDAR)
CHIEF JUSTICE

15.09.2017

Amodh

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No