



ARB-502-2021 (O&M)

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

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ARB-502-2021 (O&M)

Date of Decision: 09.07.2024

Concept Eateries Pvt. Ltd.

.... Petitioner

Vs

Hamir Real Estate Pvt. Ltd.

.... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Ish Puneet Singh, Advocate for the petitioner.

Mr. J.S. Chandail, Advocate for the respondent.

SUVIR SEHGAL, J.

1. Instant petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, (for short 'the Act') for appointment of a sole Arbitrator to adjudicate the claims arising out of three different agreements between the parties.

2. Counsel for the petitioner submits that by virtue of lease agreement, Annexure P-1, premises located in SAS Nagar, Mohali was leased to the petitioner w.e.f. 01.04.2019 for a period of 11 months. A Permission Agreement, Annexure P-2, was also entered into by them to run 'Kiosk' by the name of 'Toy Train' on the upper ground floor and by a separate Permission Agreement, Annexure P-3, petitioner was granted authorization to run a 'Kiosk' by the name of 'Remote Cars' on the



second floor for a period of 11 months. He submits that all the three agreements contained separate arbitration clauses and also a clause conferring jurisdiction on the courts at Mohali. He asserts that the clauses are almost similarly worded. He submits that due to imposition of lockdown, petitioner suffered losses and the respondent took possession of the goods and machinery belonging to the petitioner, which were not released despite e-mails. Counsel submits that a dispute arose between the parties and by legal notice, dated 28.11.2020, Annexure P-6, petitioner invoked the arbitration clause but the respondent did not send any reply. He submits that the petitioner filed an application under Section 9 of the Act before the courts at SAS Nagar, Mohali for the release of goods and machinery. He contends that as the jurisdiction has been vested in the courts at Mohali, this Court has the territorial jurisdiction to decide the instant petition. Counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in *M/s Emkay Global Financial Services Ltd. Vs. Girdhar Sondhi*, 2018(9) SCC 49.

3. Upon notice by this Court and despite grant of last opportunity, respondent did not file any response. However, counsel for the respondent has filed written submissions along with a copy of order dated 30.11.2021 passed by the learned Additional District Judge, SAS Nagar, Mohali, which are taken on record. He has urged that this Court does not have the jurisdiction to entertain the instant petition as by virtue of the arbitration clause, the parties have designated seat of arbitration at New Delhi. He submits that by order dated 30.11.2021, petition filed under Section 9 of the Act by the petitioner has been rejected on merits as also



on the ground that only Delhi court has jurisdiction to entertain it. Reliance has been placed by him upon the judgment of the Supreme Court in ***BGS SGS Soma JV Versus NHPC Limited***, (2020) 4 Supreme Court Cases 234.

4. I have heard counsel for the parties and considered their respective submissions.

5. The question of jurisdiction has been settled by the Supreme Court in ***BGS SGS Soma JV's case (supra)***. Supreme Court has held that the seat of arbitration alone and not the place where the cause of action arises, determines the jurisdiction of Court over the arbitration. It has been observed that where a particular place has been determined as the seat of Arbitration by the parties, who have entered into an agreement, that place alone would have the jurisdiction to entertain all the petitions filed under the Act.

6. Adverting to the facts of the present case, the relevant clauses of the agreement, Annexure P-1, deserves to be noticed and are reproduced hereunder:-

18.8 Governing Law and Dispute Resolution:-

(a) *The validity, construction and performance of this Lease Deed shall be governed and interpreted in accordance with the laws of India with competent Courts at Mohali having the exclusive jurisdiction in this regard.*

(b) *If any question of difference or claim or dispute shall arise between the parties hereto touching these presents or the construction thereof to rights, duties or obligations of the parties hereto or as to any*



matter arising out of or connected with the subject matter of these presents, the same shall be referred to the arbitration. The seat of arbitration shall be New Delhi in accordance with the provisions of the (Indian) Arbitration and Conciliation Act, 1996. The reference shall be to a sole arbitrator to be appointed by the Lessor. The arbitrator shall render their award in English language and in writing. The Parties agree to abide by the decision of the arbitrator, which shall be final and binding.”

6. A perusal of Clause 18.8(b) shows that parties have willingly consented that the seat of arbitration shall be at New Delhi. No doubt, under clause 18.8(a), it has been agreed that the competent courts would be at Mohali, but in view of the judgment of the Supreme Court in **BGS SGS Soma JV’s case (supra)**, the jurisdiction for the purposes of the Act, would be before the courts at Delhi only. **M/s Emkay Global Financial Services Ltd.’s case (supra)**, relied upon by counsel for the petitioner would not come to his aid. The Supreme Court has noticed that the parties had agreed that the courts at Mumbai would have an exclusive jurisdiction as per the agreement and it was the Mumbai courts alone, which would have the jurisdiction to entertain the petitions filed under Section 34 of the Act. The Supreme Court observed that though the arbitration was conducted at Delhi, but it was only a convenient venue earmarked by one of the parties and would not confer jurisdiction upon the courts at New Delhi.

7. Consequently, the petition must fail as this Court does not have the jurisdiction to entertain it. Petition is dismissed. However, liberty is



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granted to the petitioner to approach the competent court at New Delhi by filing an appropriate petition, if so advised, in accordance with law.

**(SUVIR SEHGAL)
JUDGE**

09.07.2024
pooja saini

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>