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## DELHI HIGH COURT ON INTERPRETATION OF INCONSISTENT CLAUSES

### **A. Introduction**

The Delhi High Court (**HC**), in *Sunil Kumar Chandra* case,<sup>1</sup> in January 2023, held that a former clause in an agreement will prevail over a latter clause in case of any inconsistency between them.

### **B. Brief Facts**

1. In 2013, Sunil Kumar Chandra (**Chandra**) invested in World Trade Centre project being developed by Spire Tech Park Private Limited (**Spire**).
2. They entered into an agreement under which Spire was supposed to transfer ownership of a lockable commercial unit upon payments from Chandra.
3. Chandra deposited the booking amount and final consideration for the unit as per the terms of the agreement.
4. As per the agreement, upon receipt of payment, Spire was required to transfer ownership of the unit within the earlier of 36 months or August 2017. However, Spire demanded an additional consideration to transfer ownership.
5. When Chandra approached Spire to pay the additional consideration, he found that the unit was already leased to a third party, and he was allotted a different unit.
6. Given that a dispute had arisen, Chandra invoked the arbitration clause of the agreement. He approached the HC for appointment of arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (**Act**).

### **C. Clauses in the Agreement**

1. As per Clause 18.2 of the agreement, Spire has the power to choose an arbitrator to adjudicate conflicts between the parties with the venue of arbitration being New Delhi.
2. However, Clause 18.3 conferred exclusive jurisdiction to courts in Gautam Buddha Nagar, Uttar Pradesh (**GBN Court**).

### **D. Parties' Contentions**

1. Chandra contended that:
  - a. GBN Court does not have jurisdiction.
  - b. As per clause 18.2, any dispute arising out of the agreement would be adjudicated by way of arbitration in New Delhi and thus the following clause 18.3 of the agreement is ambiguous and invalid.
2. Spire contended that although the matter was arbitrable, HC did not have pecuniary jurisdiction.

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<sup>1</sup> *Sunil Kumar Chandra vs. Spire Techpark Pvt. Ltd.* (18.01.2023 - DELHC): MANU/DE/0337/2023.

## E. HC's Judgment & Reasoning

1. The HC adjudged that it had the jurisdiction to entertain the petition.
2. It observed that “[t]he law related to the jurisdiction of the court in the matters pertaining to arbitration is no longer res integra,”<sup>2</sup> various cases have held that appointment of arbitrator by one party is invalid. Effectively, it read down the first part of clause 18.2.
3. It relied on the apex court’s decisions in the *BGS* case of 2019<sup>3</sup> and the *Indus Mobile* case of 2017<sup>4</sup> and reiterated that the use of the term ‘venue’ in an arbitration clause refers to the ‘seat’ of the arbitration proceedings, where the entire arbitration process, including the award, must take place. This contrasts with language that refers only to hearings or meetings, which may indicate a convenient location rather than the ‘seat’ of proceedings. The use of “*shall be held*” further supports the designation of that location as the seat of the proceedings. The second part of clause 18.2 read thus: “...in case of any disputes between the parties hereto (including their successors) concerning this agreement or matters arising therefrom, the same shall be adjudicated by way of arbitration...arbitration shall be at New Delhi.”
4. It also used the golden rule of interpretation relying on a plethora of cases<sup>5</sup> to hold that, “...[W]here there exists any iota of inconsistency between two provisions of a same instrument, the former clause shall prevail over the latter one.” It concluded that clause 18.2 shall have a prevailing effect over the latter clause 18.3 of the agreement.<sup>6</sup> Thus, it disposed of the petition after appointing an arbitrator.

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<sup>2</sup> Paragraph 13 of the Judgement.

<sup>3</sup> *BGS SGS SOMA JV vs. NHPC Ltd.* (10.12.2019 - SC): MANU/SC/1715/2019.

<sup>4</sup> *Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited and Ors.* (19.04.2017-SC): MANU/SC/0456/2017.

<sup>5</sup> *Ramkishore Lal vs. Kamal Narain* (22.11.1962 - SC): MANU/SC/0022/1962; and *Sbree Bhowani Cotton Mills vs. Union Textile Traders* (19.11.1965 - CALHC): MANU/WB/0114/1966.

<sup>6</sup> Paragraph 18 of the Judgement.