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DELHI HIGH COURT ON THE SEAT OF ARBITRATION

The Delhi High Court (“**HC**”), in *Delhi Tourism and Transportation Development Corporation* case¹ on May 1, 2024, held that the seat of arbitration proceedings will be decided only by its relationship to the arbitral procedures and not by the underlying dispute’s cause of action.

Brief Facts.

Satinder Mahajan (“**Mahajan**”) entered into an agreement with Delhi Tourism and Transportation Development Corporation (“**DTDC**”) for the construction of a bus depot (“**Agreement**”). When dispute arose regarding the payment of dues, Mahajan approached the Facilitation Council (“**FC**”) under Section 18² of Micro, Small and Medium Enterprises Development Act, 2006 (“**MSME Act**”).

The FC first adopted conciliation proceedings, which failed. The matter was referred to arbitration. The FC conducted the arbitration and passed award in favour of Mahajan. DTDC approached the HC challenging the award under Section 34³ of the Arbitration and Conciliation Act (“**A&C Act**”).

Parties’ Contentions before HC.

DTDC’s Contentions

- Since entire cause of action transpired in Delhi (from issuance of work order to the signing and actual work conducted), Delhi should be seat of arbitration.
- In the Integrity Pact signed by Mahajan, at article 7(1), Delhi courts was the designated jurisdiction. Hence that should apply.

Mahajan’s Contention

- As per Section 18(4) of the MSME Act, disputes of Mahajan located within his jurisdiction and buyer (DTDC) located anywhere in India, FC Pathankot had the jurisdiction.

HC’s Judgment and Reasoning.

The HC:

- Observed that agreement referred to General Conditions of Contract (GCC), which contained detailed provisions for dispute resolution and provided for arbitration. It, however, did not

¹*Delhi Tourism and Transportation Development Corporation vs. Satinder Mahajan*, (2024) SCC OnLine Del 3206.

² Section 18 – Reference to Micro and Small Enterprises Facilitation Council.

³ Section 34 - Application for setting aside arbitral awards.

contain an exclusive jurisdiction clause nor seat of arbitration but the venue “...shall be such place as may be fixed by the arbitrator in his sole discretion.”⁴

- Further observed that the Integrity Pact submitted by Mahajan made it clear that differences arising from the pact shall be subject to arbitration but it was “...apparent that the dispute resolution mechanism under the main Agreement and the Integrity Pact were intended to be entirely different; Clause 7 of the Integrity Pact was not intended to deal with disputes arising under the underlying Agreement at all.”⁵
- Held that “...the seat of the arbitration proceedings are to be determined on the basis of connection with the arbitral proceedings, and not with the cause of action for the underlying dispute.
- Relied on *BSG SGS Soma JV* case⁶ and *Inox Renewables Limited* case⁷ where the Supreme Court held that the seat of arbitration is where the arbitral proceedings are anchored and Kerala High Court in *Shreyas Marketing* case,⁸ where it held that awards under Section 18 of the MSME Act are deemed to be awards under the A&C Act.
- Observed that the proceedings were exclusively conducted in Pathankot and the award was rendered there.
- Held, that in absence of any contrary indication, such as an exclusive jurisdiction clause, the seat of arbitration remains at the venue where the arbitration was conducted. This interpretation is consistent with Section 18(4) of the MSME Act, which enables medium or small enterprises to approach a Facilitation Council at their location for dispute resolution.
- Dismissed the petition under Section 34 of the A&C Act holding that HC did not have jurisdiction to entertain the present petition.

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⁴ Paragraph 11 of the Judgment.

⁵ Paragraph 14 of the Judgment.

⁶ *BGS SGS Soma JV vs. NHPS Ltd*, (2020) 4 SCC 234.

⁷ *Inox Renewables Limited vs. Jayesh Electricals Limited* (2023) 3 SCC 733.

⁸ *Shreyas Marketing vs. Micro and Small Enterprise Facilitation Council* (2023) SCC OnLine Ker.