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## ARBITRATION CLAUSE PREVAILS OVER EXCLUSIVE JURISDICTION CLAUSE

The High Court of Delhi (“**HC**”), in *M/s KLA Const Technologies* case,<sup>1</sup> ruled on its territorial jurisdiction to appoint a sole arbitrator, while emphasizing the harmonious interpretation of contractual clauses specifying multiple prospective seats.

### Brief Facts.

- A Letter of Intent was issued in July 2023 by Gulshan Homz Private Limited (“**Gulshan**”) to KLA Const Technologies Pvt Ltd (“**KLA**”) for civil and structural works for Gulshan’s project.
- A formal Agreement was executed in September 2023, with a total contract value of over Rs. 100 crore.
- KLA alleged that delays occurred due to the Gulshan's failure to fulfill contractual obligations, failure to make timely payments against running account bills and did not compensate for additional work executed.
- In August 2024, Gulshan informed KLA of project discontinuation due to poor market response.
- A mutually agreed final work bill of about Rs. 10 crore, with a balance of Rs. 2 crore was recorded in minutes of meetings in September 2024.
- In November 2024, Gulshan issued a termination notice under Clause 33 of the agreement between the parties dated September 6, 2023 (“**Agreement**”), without the mandatory seven-day prior notice.
- KLA invoked the arbitration Clause through a notice in November 2024, and proposed appointment of Sole Arbitrator; however, Gulshan did not respond.
- As a result, KLA claimed an outstanding amount of Rs. 14.5 crore and instituted the present petition seeking the appointment of an independent and impartial Sole Arbitrator.

### Question of Law.

Whether the HC could entertain the petition under Section 11 of the Arbitration and Conciliation Act, 1996 (**ACA**)?<sup>2</sup>

<sup>1</sup> *Arbitration Petition No. 90/2025 M/S KLA Const Technologies Pvt Ltd. vs. M/S Gulshan Homz Private Limited.*

<sup>2</sup> Para 14 of the judgement.

## HC's Judgment & Reasoning.

The HC:

- Considered Clauses 37(a & b) of the Agreement and Clauses 91.2 and 92.10 of the General Conditions of Contract (“GCC”).
- Noted that Clause 37(a) of the Agreement unequivocally stated that the “*seat and venue of such Arbitration shall be Noida/ Delhi (State of U.P./ Delhi)*,” indicating that there was no conflict regarding the seat and venue of arbitration, which could be either Noida or Delhi.
- Observed that Clause 37(b) conferred exclusive jurisdiction upon the District Courts of Noida (Uttar Pradesh) and the High Court of Allahabad, but this Clause was expressly made “*subject to arbitration Clause as defined in sub-Clause (a) above.*”
- Highlighted that Clause 91.2 of the GCC unequivocally stated that “*the Courts of New Delhi alone shall have exclusive jurisdiction in respect of any matter, claim or dispute arising out of or in relation to this Contract.*”
- Applied the golden rule of construction, emphasizing that to ascertain the intention of the parties, the terms of the contract must be read as a whole and in a harmonious manner, aiming to give effect to all clauses.
- Reaffirmed that the designation of a seat of arbitration carries with it exclusive supervisory jurisdiction, overriding any contrary clause on the court’s jurisdiction.
- Interpreted Clause 92.10 (stating Noida as the venue of arbitration) in the context of Clause 91.2 (granting exclusive jurisdiction to New Delhi Courts), concluding that the latter’s declaration of exclusive jurisdiction for New Delhi Courts prevailed.
- Construed Clause 37(b) as being “*subject to*” Clause 37(a)” to uphold the express hierarchy and intent embedded in the Agreement, stating that any other construction would defeat the clear intent and express mandate.
- Concluded that the parties agreed to a clear arrangement that if a dispute is amenable to resolution by arbitration, the seat/venue shall be New Delhi, whereas any dispute falling outside the scope of arbitration shall be subject to the jurisdiction of the Courts at Noida, Uttar Pradesh.
- Held, therefore, that the HC had the jurisdiction to adjudicate the instant petition and appointed a retired Supreme Court judge as the Sole Arbitrator to adjudicate upon the disputes between the parties.

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