



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Arbitration Application No. 14/2021

Aseem Watts S/o Sher Singh, Aged About 56 Years, 135-L-Block,  
Sriganganagar, 335001 Sole Proprietor Of M/s Aseem And  
Company, Office At 135-L-Block, Sriganganagar

----Petitioner

Versus

Union Of India, Chief Engineer, Hq (P), Chetak, Rajasthan-  
931707

----Respondent

Connected With

S.B. Arbitration Application No. 4/2021

Aseem Watts S/o Sher Singh, Aged About 56 Years, R/o 135-L-  
Block , Sriganganagar , Rajasthan -335001 Sole Proprietor Of M/  
s Aseem And Company , Having Its Office At 135-L-Block ,  
Sriganganagar , Rajasthan - 335001.

----Petitioner

Versus

1. Union Of India, Through The  
Chief Engineer , Bathinda  
Zone , Bathinda Military Station  
, Bhatinda - 151004.
2. The Commander, Hq  
Commander Work's Engineer ,  
Ganganagar Military Station ,  
Sri Ganganagar .

----Respondents

S.B. Arbitration Application No. 5/2021

Aseem Watts S/o Sher Singh, Aged About 56 Years, R/o 135-L-  
Block , Sriganganagar , Rajasthan -335001 Sole Proprietor Of M/  
s Aseem And Company , Having Its Office At 135-L-Block ,  
Sriganganagar , Rajasthan - 335001.

----Petitioner

Versus

Union Of India, Through Chief Engineer , Hq (P) , Chetak ,  
Rajasthan - 931707

----Respondent

S.B. Arbitration Application No. 19/2021

Aseem Watts S/o Sher Singh, Aged About 56 Years, 135-L-Block,  
Sriganganagar

----Petitioner

Versus

Union Of India, Chief Engineer, Hq (P), Chetak, Rajasthan-  
931707

----Respondent



S.B. Arbitration Application No. 20/2021

Aseem Watts S/o Sher Singh, Aged About 56 Years, 135-L-Block,  
Sriganganagar

----Petitioner

Versus

Union Of India, Chief Engineer, Hq (P), Chetak, Rajasthan-  
931707

----Respondent

S.B. Arbitration Application No. 21/2021

Aseem Watts S/o Sher Singh, Aged About 56 Years, 135-L-Block,  
Sriganganagar

----Petitioner

Versus

Union Of India, Chief Engineer, Hq (P), Chetak, Rajasthan-  
931707

----Respondent

S.B. Arbitration Application No.31/2022

Aseem Watts S/o Sher Singh, Aged About 57 Years, R/o 135-L-  
Block, Sriganganagar, Rajasthan 335001 Sole Proprietor Of M/s  
Aseem And Company, Having Its Office At 135-L-Block,  
Sriganganagar, Rajasthan-335001.

----Petitioner

Versus

Union Of India, Through Chief Engineer, Hq (P), Chetak,  
Rajasthan-931707

----Respondent

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For Petitioner(s) : Mr. Meenal Garg (on VC) a/w  
Mr. Aakash Kukkar.  
For Respondent(s) : Mr. Deelip Kawadia.  
Mr. Dinesh Bishnoi for  
Mr. B.L. Bishnoi.

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**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI**

**Judgment**

**Reportable**

**Reserved on 18/08/2023**

**Pronounced on 02/09/2023**



1. The instant arbitration application nos. 14/2021, 15/2021, 19/2021, 20/2021, 21/2021 and 31/2022 have been filed by the applicant-Firm under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'Act of 1996'*) and for the purpose of deciding the said applications, the factual matrix and prayer clauses are being taken from application no. 14/2021, while treating the same as a lead case. The prayer clauses read as under:-

*"It is, therefore, prayed that this application may kindly be allowed and:*

*(i) An arbitrator may kindly be appointed to resolve the dispute between the parties in terms of condition 35 of the agreement between the parties;*

*(ii) Cost of this application may kindly be awarded in favour of the applicant.*

*(iii) Any other appropriate relief which this Hon'ble Court may deem fit in the facts and circumstances of the case may kindly be awarded in favour of the applicant."*

2. The instant arbitration application nos 04/2021, 05/2021 have been filed by the applicant-Firm under Sections 14 & 15 of the Act of 1996, and for the purpose of deciding the said applications, the factual matrix and prayer clauses are being taken from the applications no.4/2021, while treating the same as a lead case. The prayer clauses read as under:

*"It is, therefore, prayed that this application may kindly be allowed and:*

*(i) The Hon'ble Court may kindly be pleased to Appoint/Substitute an independent and impartial Arbitrator to adjudicate the differences and disputes between the Applicant and the Respondent.;*



(ii) Cost of this application may kindly be awarded in favour of the applicant.

(iii) Any other appropriate relief which this Hon'ble Court may deem fit in the facts and circumstances of the case may kindly be awarded in favour of the applicant."

3. As per the facts pleaded in **Arbitration Application No. 14/2021**, on 04.07.2015, the respondent invited a tender for Providing and Laying of Re-Surfacing With (HMP Mix) MSS Type "B" 2.0 Cm Thick Consolidated with Bitumen VG-30 etc. The applicant submitted its bid and the same was accepted; after finalization of the tender process, the work order was issued in favour of the applicant-Firm on 22.09.2015.

3.1. Thereafter, certain dispute arose between the applicant and respondent regarding delays and defaults in performance of the works in question. The applicant sent a legal notice dated 27.11.2020 for appointment of arbitrator by mutual consent for resolving the dispute between the parties. The respondent via e-mail dated 26.12.2020 informed the applicant that the arbitrator was appointed as per the clause 24 of the Agreement in question. The applicant in its letter dated 05.01.2021 addressed to the respondent, stated that the present dispute is not covered under clause 24, instead the same was covered under clause 35.2 of the agreement in question.

Relevant Clauses of the agreement in question are reproduced hereunder:-

**"24. APPOINTMENT OF ARBITRATOR (APPLICABLE ONLY FOR CONTRACT AGREEMENT TO BE EXECUTED BETWEEN BRO AND A PUBLIC ENTERPRISES:**



सत्यमेव जयते

*In the event of any dispute or difference between the parties hereto, such dispute or differences shall be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government. In the even of any such dispute or differences relating to the interpretation and application of the provisions of contracts where such resolution is not possible then the un-resolved dispute or differences shall be referred by either party to the Arbitration of one of the Arbitrators in the department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Bureau of Public Enterprises and in such case the Arbitration and Conciliation Act shall not be applicable to the arbitration under this clause. The award of the Arbitrator shall be bindings upon both the parties to the dispute. Provided, however, any party, aggrieved by such award, may make a further reference for setting aside or revision of the award to the Law Secretary, department of Legal Affairs, Ministry of Law and Justice, Government of India, upon such reference the dispute shall be decided, the Law Secretary or the special Secretary/additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties conclusively. The parties to the dispute will share equally; the cost of arbitration proceedings as intimated by the Arbitrator.*

**35. VENUE OF ARBITRATION**:- Place of arbitration hearing shall be at New Delhi. (HQ of BRO).

**35.1 ARBITRATION (REFER CLAUSE 70 OF CONDITION OF CONTRACT OF IAFW-2249)**

**35.2** All disputes or difference arising as aforementioned, other than those for which the decision of the Accepting Officer or any other person is by the contract expressed to be final and binding shall be referred to sole arbitrator under condition 70 of General Condition of Contract IAFW-2249 after written notice by either party of the contract to the other of them.

**46. LEGAL JURISDICTION**:- Legal Jurisdiction of this Contract Agreement shall be Bikaner Court only."





3.2. Learned counsel for the applicant-Firm submitted that the respondent failed to make appointment of an independent and impartial arbitrator with mutual consent, despite request made by the applicant in that regard, and therefore, the present case deserves exercise of powers under Section 11 of the Act of 1996 by this Court.

3.2.1. Learned counsel further submitted that as per the agreement clauses, the venue of the arbitration would be at New Delhi (HQ of BRO), but the seat of the arbitration at Bikaner.

3.2.2. Learned counsel also submitted that as per Clause 46 of Special Conditions of the agreement in question, the exclusive jurisdiction regarding all disputes arising out of the agreement is vested with the Courts at Bikaner, and that, this Hon'ble Court has supervisory jurisdiction over such Courts.

3.2.3. Learned counsel also submitted that this Hon'ble Court has powers to appoint the arbitrator under Section 11 of the Act of 1996.

3.2.4. Learned counsel further submitted that as per the arbitration clause, the venue for arbitral proceedings would be New Delhi (HQ of BRO); however, as stipulated in the agreement, the seat for arbitration would be at Bikaner.

3.2.5. In support of such submissions, learned counsel relied upon the judgment rendered by the Hon'ble Apex Court in the case of **BGS SGS SOMA JV Vs NHPC Ltd. (2020) 4 SCC 234**; relevant portion whereof reads as under:-

*"82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of*





arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. **This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration."**

3.2.6. Learned counsel also relied upon the judgment rendered by the Hon'ble High Court of Allahabad in the case of **Torrent Power Ltd. Vs Dakshinanchal Vidyut Vitaran Nigam Ltd. (Civil Misc. Arbitration Application No. 65 of 2021, decided on 22.12.2022)**; relevant portion whereof reads as under:-

"19. Applying the aforesaid law in facts of the present case, there appears a contra indication in the agreement to an extent that the "venue" of the arbitration is stipulated to be Lucknow,





whereas the Courts at Agra and Allahabad are given exclusive jurisdiction in case of any dispute arising out of compliance/non compliance of the agreement. From the jurisdictional perspective, Lucknow is only a venue or location for conducting the Arbitral Proceedings. The exclusive jurisdiction clause contained in the agreement constitutes "significant contrary indica" as per Shashoua principle and only the Courts at Agra/Allahabad will have jurisdiction to decide the disputes between the parties arising out of agreement in question."



3.2.7. Reliance was also placed upon the judgment rendered by the Hon'ble High Court of Delhi in case of **Cravants Media Pvt Ltd. Vs Jarkhand State Co. Operative Milk Producers Federation Ltd. & Anr. (ARB.P. 915/2021**, decided on 06.12.2021); relevant portion whereof reads as under:

"11. The question whether the intention of the parties in specifying a location for arbitral proceedings is merely to fix a convenient 'venue' or a seat/place of arbitration has to be ascertained from the language of the arbitration agreement.

12. In the present case, Clause 16.5 of the Agreement expressly provides that if any disputes arise out of the Agreement, the same would be subject to the sole and exclusive jurisdiction of the Courts at Delhi. It is also necessary to note that Clause 16.5 is part of Article 16 of the Agreement, which is captioned "Disputes Resolution and Governing Law'. Thus, Clause 16.2 and 16.5 of the Agreement are required to be read together to ascertain the intention of the parties.

13. Clause 16.2 of the Agreement uses the word "venue". This clearly indicates that the parties had agreed that the venue of the arbitration shall be Ranchi and not the place of arbitration. It is clear from a conjoint reading of the two clauses (Clause 16.2 and 16.5 of the Agreement) that the parties had agreed that the venue of arbitration would be Ranchi but the court at Delhi would have the exclusive jurisdiction. Thus, Ranchi must





*be considered only as the venue of arbitration and not the place or seat of arbitration.”*

3.2.8. Learned counsel also relied upon the judgment rendered by the Hon'ble High Court of Delhi in case of ***Isgec Heavy Engineering Ltd. Vs Indian Oil Corporation Ltd. (ARB.P. 164/2021***, decided on 16.07.2021); relevant portion whereof reads as under:

*“13. The above position gets reinforced upon a plain reading of Article 4 of the Contract. This clause vests exclusive jurisdiction at the civil court(s) at Guwahati for - all actions/proceedings, including arbitration, and reads as under:—*

*“ARTICLE 4 – JURISDICTION:*

*4.1 Notwithstanding any other court or courts having jurisdiction to decide the question(s) forming the subject-matter of the reference if the same had been the subject-matter of a suit, any and all actions and proceedings arising out of or relative to the contract (including any arbitration in terms thereof) shall lie only in the Court of Competent Civil Jurisdiction in this behalf at GUWAHATI (where this contract has been signed on behalf of the Owner) and the said Court(s) shall have jurisdiction to entertain and try such actions and/or proceeding(s) to the exclusion of all other Courts.”*

*[Emphasis supplied]*

*14. As opposed to the general stipulation in Clause 9.1.2.0, Article 4 is worded in clear, unambiguous, and directory terms. In fact, it serves as the 'contrary indica', which further demonstrates that the 'venue' in Clause 9.1.2.0 is only a physical place of meeting under Section 20(3) of the Act. Article 4 - leaves no room that all actions and proceedings arising out of the Contract, including arbitration, shall have to necessarily be tried by the civil court(s) at Guwahati exclusively, and does not lead to jurisdiction being vested in the court(s) at Delhi.”*



3.2.9. Reliance was also placed upon the judgment rendered by the Hon'ble High Court of Calcutta in case of **Homevista Decor and Furnishing Pvt Ltd. & Anr Vs Connect Residuary Pvt. Ltd. (A.P. No. 358/2020**, decided on 03.05.2023); relevant portion whereof reads as under:-

**"18.** In *Kushraj Bhatia (supra)*, the facts before the Delhi High Court were that the arbitration proceedings were to be held in New Delhi whereas the civil courts at Gurgaon and High Court at Chandigarh alone were to have jurisdiction. Upon a careful perusal of the precedents in the cases of ***Isgec Heavy Engineering. Ltd. v. Indian Oil Corporation Ltd. (Dated 21.10.2021 in Arbitration Petition 164/2001)*** and ***Cravants Media Pvt. Ltd. v. Jharkhand State Cooperative Milk Food Federation Pvt. Ltd. (Dated 06.12.2021 in Arbitration Petition 915/2021)*** of the Delhi High Court, the Court came to the following conclusion:—

'28. Having discussed the distinct concepts of 'Seat' and 'Venue', it may be examined how these two concepts have been interpreted and applied in various situations. In *Isgec Heavy Engineering. Ltd. v. Indian Oil Corporation Ltd. Arbitration Petition No. 164/2001* decided on 21.10.2021 by the Coordinate Bench of this Court, similar Clause came up for interpretation. **The parties have agreed for venue of arbitration to be New Delhi, but in the other Clause, they had agreed that all actions and proceedings arising out of/related to the Contract shall lie in the Courts of competent jurisdiction at Guwahati. The Court held that since the Clauses of the Agreement expressly provided that the Courts at Guwahati would have exclusive jurisdiction, it was a contrary indicator coming within the exception as held by the Supreme Court in the case of DSG SGS Souma (supra).**

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29. Similarly, in **Cravants Media Pvt. Ltd. v. Jharkhand State Cooperative Milk Food Federation Pvt. Ltd.** Arbitration petition 915/2021 decided on 06.12.2021 by the Coordinate Bench, **the Dispute Resolution Clause provided that the venue of arbitration shall be Ranchi, but any disputes arising out of this agreement shall be subject to the sole and exclusive jurisdiction of Courts in Delhi. It was held that the intention of the parties was clear that the seat would be in New Delhi and the Court at New Delhi was held to have the jurisdiction.**

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31. **It is quite evident that there is a contraindication in the registered Agreement that while the venue of arbitration may be New Delhi, but the seat of arbitration shall be Gurgaon and High Court at Chandigarh. In the circumstances, it has to be held that this Court has no jurisdiction and it is the Courts at Gurgaon/High Court of Chandigarh which have the exclusive jurisdiction for entertaining the disputes arising out of the registered Lease Agreement.**

**Emphasis Added**

19. I find myself in consonance with the above view. In circumstances where a place is designated merely as a 'venue' and courts of another place have been granted the exclusive jurisdiction, the latter is a clear 'contrary indicia'. It can be inferred from a comprehensive reading of such clauses, that the 'venue' is a convenient place of arbitration and not the seat."

3.3. On the other hand, learned counsel for the respondent-Union of India, while opposing the aforesaid submissions made on behalf of the applicant-Firm, submitted that as per the clause 70 of the agreement in question, all disputes between the parties to the contract, after written notice by either party to the contract to the





either of them, shall be referred to the sole arbitrator to be appointed by the concerned authority.

3.3.1. It was further submitted that the prayer made in the present case for appointment of an independent arbitrator under Section 11 of the Act of 1996 at this stage, is not maintainable, as per the agreement.

3.3.2. It was also submitted that once the venue for the arbitration proceeding was fixed at New Delhi (HQ of BRO), as per the arbitration clause, the prayer for appointment of the arbitrator under Section 11 of the Act of 1996 shall be maintainable only before the Hon'ble High Court of Delhi, as the said Hon'ble Court is having exclusive jurisdiction in the present matter.

3.3.3. In support of such submissions, learned counsel relied upon the judgment rendered by the Hon'ble Apex Court in the case of ***Brahmani River Pellets Ltd. Vs Kamachi Industries Ltd. (2020) 5 SCC 462***, and; the judgment rendered by the Hon'ble High Court of Delhi in the case of ***Reliance Infrastructure Ltd. Vs Madhyanchal Vidyut Vitran Nigam Ltd. (O.M.P. (MISC.) (COMM). 161/2020 and IA No.9377/2020***, decided on 14.08.2023); relevant portions whereof are reproduced as hereunder:

***Brahmani River Pellets Ltd. (Supra):***

*"16. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other*



courts. As held in *Swastik*, non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference.

17. When the parties have agreed to have the "venue" of arbitration at Bhubaneswar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order is liable to be set aside".

**Reliance Infrastructure Ltd. (Supra):**

"30. On a conspectus of the aforesaid judgments, the position of law that emerges is that when the contract contains an arbitration clause that specifies a "venue", thereby anchoring the arbitral proceedings thereto, then the said "venue" is really the "seat" of arbitration. In such a situation the courts having supervisory jurisdiction over the said "seat" shall exercise supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to confer "exclusive jurisdiction" on a different court.

31. In the present case, the relevant clause in the LOA purporting to confer "exclusive jurisdiction" is a generic clause, and does not specifically refer to arbitration proceedings. For this reason, the same also does not serve as a "contrary indicia" to suggest that that Delhi is merely the "venue" and not the "seat" of Arbitration. As such, the same cannot be construed or applied so as to denude the jurisdiction of the Courts having jurisdiction over the "seat" of Arbitration".

4. As per the facts pleaded in **Arbitration Application No. 4/2021**, the respondent invited a tender for Resurfacing of Road, Interlocking Paved Tiles Pathways, Road Furniture and other Allied Items to Road at certain Military Station; the bid of the applicant-Firm was accepted, whereafter on count of certain delay and default, a dispute arose between the applicant and respondents.



The applicant thereafter made a request before the respondent for appointment of an arbitrator, and one Shri S.C. Gupta, SE, Dr. (WKS) was appointed as arbitrator, whereafter the arbitration proceedings commenced and pleadings were completed on 29.11.2018. The applicant thereafter, through his Counsel, sent a notice dated 23.10.2020 to the respondent for substitution of arbitrator, so appointed.

4.1. Learned counsel for the applicant submitted that despite several requests being made by the applicant, the respondent did not submit any document before the arbitrator, and that, inspite of such conduct on the part of the respondent, the arbitrator so appointed did not take any action against the respondent.

4.1.1. Learned counsel further submitted that the learned arbitrator is *de facto* unable to perform his functions, on count of failing in taking an appropriate lawful action against the respondent, and therefore, the mandate of the Arbitrator stood terminated under Section 14 (1) (a) of the Act of 1996.

4.2. On the other hand, learned counsel for the respondent, while opposing the aforesaid submissions made on behalf of the applicant, submitted that the respondent through a letter dated 21.02.2020 called upon the applicant to give clarification in regard to required document(s) and the Arbitrator, so appointed, also sought consent of the applicant for enhancement of the period of arbitral proceedings, but the applicant did not furnish its response thereto.

4.2.1. It was submitted that the Arbitrator, so appointed, had however, submitted his resignation vide his letter dated





08.07.2022, and now new arbitrator can be appointed in terms of branch letter dated 07.02.2022 from the panel of the independent arbitrators; therefore, on that count alone, the prayer so made herein is not maintainable.

5. Heard learned counsel for the parties, in all the instant applications, as well as perused the record of the case alongwith the judgments cited at the Bar.

6. This Court observes that the aforementioned agreement was executed between the applicant and the respondent, whereafter certain dispute arose between the applicant and the respondent, and thereafter, the applicant sent a notice to the respondent for appointment of the arbitrator as per the arbitration clause as contained in the agreement in question.

7. This Court is conscious of the judgment rendered by the Hon'ble Apex Court in the case of **BGS SGS SOMA JV (Supra)** wherein it was clearly held that "**This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings.**"; and same was further relied by the Hon'ble High Court of Calcutta in the case of **Homevista Decor (Supra)** **wherein it was clearly held that "In circumstances where a place is designated merely as a 'venue' and courts of another place have been granted the exclusive jurisdiction, the latter is a clear 'contrary indicia'. It can be inferred from a comprehensive**



**reading of such clauses, that the 'venue' is a convenient place of arbitration and not the seat."**

8. This Court is also conscious of the judgment rendered by the Hon'ble Supreme Court in the case of **Ravi Ranjan Developers Pvt. Ltd. Vs. Aditya Kumar Chatterjee (Civil Appeal Nos. 2394-2395 of 2022, decided on 24.03.2022)**; relevant portion whereof is reproduced as hereunder:-

"45. In *Mankastu Impex Private Limited v. Airvisual Limited* MANU/SC/0283/2020 : (2020) 5 SCC 399 a three Judge Bench of which one of us (Hon. A.S. Bopanna, J) was a member, held:

.....

20. It is well settled that "seat of arbitration" and "venue of arbitration" cannot be used interchangeably. It has also been established that mere expression "place of arbitration" cannot be the basis to determine the intention of the parties that they have intended that place as the "seat" of arbitration. The intention of the parties as to the "seat" should be determined from other clauses in the agreement and the conduct of the parties.

46. In this case, **the Development Agreement provided that the sittings of the Arbitral Tribunal would be conducted in Kolkata. As observed above, the parties never agreed to submit to the jurisdiction of Calcutta High Court in respect of disputes, nor did the parties agree upon Kolkata as the seat of arbitration. Kolkata was only the venue for sittings of the Arbitral Tribunal."**

9. This Court further observes that in the present case, the local jurisdiction was provided in clause 46 of the Agreement in question and the venue of the arbitration was provided under Clause 35 of the agreement, as reproduced hereinabove.



9.1. After a perusal of both aforesaid clauses, it is clear that the seat of arbitration was mentioned as Bikaner and Bikaner Court shall have exclusive jurisdiction in the matter, and the venue of arbitration was mentioned as New Delhi (HQ of BRO). Therefore, it comes under the jurisdiction as well as supervision of this Hon'ble Court.

10. This Court also observes that the "*contrary indicia*" is clearly reflected in the present case, because the seat was mentioned as Bikaner and venue was mentioned as New Delh (HQ of BRO). This Court further observes that once the seat was fixed then this Court had exclusive jurisdiction to entertain the applications under Section 11 of the Act of 1996.

11. This Court also observes that New Delhi (HQ of BRO) is venue of the arbitration, and that, different seats have been specially mentioned in different clauses of the agreement in question.

12. In **Arbitration Application No. 4/2021**, in particular, this Court observes that the applicant is seeking the substitution of arbitrator so appointed earlier, by an independent arbitrator to resolve the dispute between the parties. This Court further observes that the arbitrator was appointed on 25.05.2018 and the matter is still pending, and thus, it is necessary to appoint an independent arbitrator, afresh, in the present case.

12.1. It is also observed that at this stage, this Court is to deal only with the substitution of the arbitrator with appointment of new independent arbitrator. This Court is further conscious of the judgment rendered by the Hon'ble Apex Court in the case of





**Perkins Eastman Architects DPC v. HSCC (India) Ltd.,  
(2020) 20 SCC 760.**

13. This Court thus finds that the limited issue in question falls within the ambit of Section 11 of the Arbitration and Conciliation Act, 1996.

14. This Court is also conscious of the fact that any further issue(s) can be raised by either of the parties before the arbitrator to be appointed by this Court vide the present order, who in turn, shall deal with the same, strictly in accordance with law.

15. Accordingly, this Court is of the opinion that the agreement clause, relating to appointment of the Arbitrator, is required to be invoked, and accordingly, the instant applications, filed by the applicant, are **allowed**, and while exercising the power conferred under Section 11 of the Act of 1996, **Hon'ble Shri Justice Dinesh Maheshwari, Former Judge, Supreme Court of India; C-4, Upper Ground Floor (Rear Portion), Green Park Extension, New Delhi-110016**, is appointed as the Sole Arbitrator as well as the Substituted Arbitrator, to adjudicate the dispute between the parties. The payment of cost of arbitration proceedings and arbitration fee shall be made as per the 4th Schedule appended to the Act of 1996. However, it is made clear that looking to the convenience of the parties, the venue for conducting the arbitral proceedings shall be New Delhi (HQ of BRO).

16. The intimation of appointment, as aforesaid, may be given by the counsel for the parties as well as by the Registry to **Hon'ble Shri Justice Dinesh Maheshwari**. The above



[ARBAP-14/2021]

appointment is subject to necessary disclosure being made under Section 12 of the Act of 1996.

**(DR.PUSHPENDRA SINGH BHATI),J**

SKant/-

