IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-04-2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

Civil Revision Petition No.1138 of 2023

Waterbury Farrel,
A Division of Magnum Integrated Technologies
Inc, having its registered office at 200,
First Gulf Boulevard, Brampton, Ontario, Canada
L6W4T5, Represented by its General Manager,
Mr.Suresh Neelakantan Ramanathapuram,
S/o.Ramanathapuram Ganapathy Nellakandan.

..Petitioner

Vs

1.Steel Authority of India Limited
Salem Steel Plant, Salem 636 013, Rep. by its
Authorised representative and Chief General
Manager (Materials Manager)
Mr. Manoj Kumar Nayak,
S/o.Late Dinabandhu Nayak.

2.Shriram EPC Limited
Registered Office at 4th Floor,
Sigapi Achi Building, No.18/3,
Rukmani Lakshmipathi Road,
Egmore, Chennai 600008
Represented by its Managing Director.

..Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 02.12.2021 in I.A.No.03 of 2020 in Arb.OP.No.103 of 2019 on the file of the Principal District Judge, Salem.

For Petitioner: Mr. R.Vidhya Shankar

For R1: Mr. T.M.Hariharan

For R2: Mr.Siddharth Khattar

ORDER

The revision petitioner had filed Arb.O.P.No.103 of 2019 before the Principal District Judge, Salem, under Section 34 of the Arbitration and Conciliation Act, 1996 (the A & C Act) challenging arbitral award dated 28.02.2019. The first respondent herein filed I.A.No.3 of 2020 under Order VII Rule 10 of the Code of Civil Procedure, 1908 (the CPC) and other relevant provisions to return the Section 34 petition for presentation before the court of competent jurisdiction at New Delhi. By order dated 02.12.2021, said petition was allowed and the revision petitioner was permitted to re-present the petition before the court of competent jurisdiction in New Delhi within three months from the date of receipt of the order. Said order in I.A.No.3 of 2020 forms the subject of this revision petition.

2. The contentions of Mr. R.Vidhya Shankar, learned counsel for the revision petitioner, may be summarised as under:

(i) Clause 10.1 of the contract provides that courts at Salem/Chennai, India shall have exclusive jurisdiction. Therefore, the petitioner was entitled to

prosecute the Section 34 petition before the Principal District Judge, Salem.

(ii) An application under Section 9 of the A & C Act was filed earlier at Salem. No jurisdictional objection was raised in the counter affidavit.

(iii) The conduct of arbitral proceedings at New Delhi does not lead to the inference that New Delhi was accepted as the seat of arbitral proceedings. *BGS SGS Soma JV v. NHPC Limited, 2019 SCC OnLine 1585 (BGS SGS Soma),* dealt with the interplay between Section 42 and the designation of seat/venue. In paragraph 59, the Supreme Court held that Section 42 may be pressed into service where no seat is designated by the agreement or the agreement provides only for a convenient venue. In paragraph 82, the Court held that venue should not be construed as seat if there are contrary indicia.

(iv) There are two contrary indicia. First, the clause enabling the venue to be at New Delhi or a neutral country. Secondly, the clause providing for the exclusive jurisdiction of courts at Salem/Chennai, India. The judgment of the Supreme Court in *BBR (India) Private Limited v. S.P. Singla Constructions Private Limited, (2023) 1 SCC 693,* particularly paragraphs 32 to 37, is also relied upon in this regard.

(v) Section 42 of the A & C Act opens with a non-obstante clause. It uses the expression “a Court”. This is in contrast with other provisions of the A & C Act wherein the expression “the Court” is used. The application under Section 9 was filed prior to the amendment to Section 2(1)(e). Considering these aspects,

the Principal District Judge, Salem retains jurisdiction in relation to all arbitrations that commenced on or before 23.10.2015 notwithstanding the amendment to Section 2(1)(e).

3. Learned counsel for the first respondent, Mr.T.M.Hariharan, responded as under:

(i) Clause 10.1 uses the mandatory word 'shall' with regard to the venue being New Delhi. Therefore, if arbitral proceedings are held in India, the contract does not enable the conduct thereof at any place other than New Delhi. The arbitral proceedings were held at New Delhi from start to finish and the award was pronounced at New Delhi.

(ii) Therefore, New Delhi was accepted by the parties as the seat of arbitration. In support of the contention that the specification of a venue may be construed as seat, the following judgments were relied upon:

(a) *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and others, (2017) 7 SCC 678,* particularly paragraphs 6, 7 and 19;

(b) *Hindustan Construction Company Limited v. NHPC Limited and another, (2020) 4 SCC 310*, particularly paragraphs 2, 4, 5 and 6;

(c) *BGS SGS Soma,* particularly paragraph 97;

(d) *Inox Renewables Limited v. Jayesh Electricals Limited, 2023 (3) SCC*

733, particularly paragraphs 9 & 12; and

(e) *State of West Bengal and others v. Associated Contractors, (2015) 1 SCC 32,* regarding the scope of Section 42 of the A & C Act

(iii) The amendment to Section 2(1)(e) with effect from 23.10.2015 is a procedural amendment with regard to forum. There is no vested right to a particular forum and the amendment is applicable with regard to the Section 34 petition filed after the entry into force of the amendment. The judgments of the Supreme Court in *Rajendra Kumar v. Kalyan (dead) by legal heirs, (2000) 8 SCC 99*, particularly paragraph 22, and *Ramesh Kumar Soni v. State of Madhya Pradesh, (2013) 14 SCC 696*, particularly paragraphs 19, 21 & 22, were relied upon in support of the above proposition.

4. In light of the rival contentions, the primary question which falls for consideration is whether parties designated New Delhi as the seat of arbitration either in the contract or subsequently. In *BGS SGS Soma,* the Supreme Court considered earlier judgments on the issue and held that the designation of the seat of arbitration is akin to an exclusive jurisdiction clause. The importance of looking for contrary indicia while determining whether the stated venue should be construed as the seat was also underscored therein.

5. The relevant paragraphs of *BGS SGS Soma* are set out below:

> *"58. Equally, the ratio of the judgment in Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] , is contained in paras 19 and 20. Two separate and distinct reasons are given in Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] for arriving at the conclusion that the courts at Mumbai alone would have jurisdiction. The first reason, which is independent of the second, is that as the seat of the arbitration was designated as Mumbai, it would carry with it the fact that courts at Mumbai alone would have jurisdiction over the arbitration process. The second reason given was that in any case, following the Hakam Singh [Hakam Singh v. Gammon (India) Ltd., (1971) 1 SCC 286] principle, where more than one court can be said to have jurisdiction, the agreement itself designated the Mumbai courts as having exclusive jurisdiction. It is thus wholly incorrect to state that Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] has a limited ratio decidendi contained in para 20 alone, and that para 19, if read by itself, would run contrary to the 5-Judge Bench decision in Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] .*

59. Equally incorrect is the finding in Antrix Corpn. Ltd. [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non obstante clause, and then goes on to state "...where with respect to an arbitration agreement any application under this part has been made in a court..." It is obvious that the application made under this part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the court where the seat is located, and that court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so-called "seat" is only a convenient "venue", then there may be several courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the "seat" of arbitration, and before such "seat" may

have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.

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."

6. Having set out the law, the next step in this inquiry is to extract and construe the relevant clauses in the contract documents. Both the Contract Agreement and the General Conditions of Contract (the GCC) contained arbitration clauses. Clause 10.1 of the Contract Agreement is reproduced below:

"Clause 10.1 of the Contract Agreement:"

Any disputes, differences, whatsoever, arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this Contract shall be settled between the Employer and the Contractor amicably. If however, the Employer and the Contractor are not able to resolve their disputes/differences amicably as aforesaid the said disputes/differences shall be settled by Conciliation, failing which, through Arbitration.

Conciliation shall be resorted to prior to invoking

Arbitration. The applicable rules for Conciliation proceedings shall be that of "SCOPE forum of Conciliation and Arbitration" (SCFA). The Arbitration Clause is to be invoked by the parties to the Contract only on failure of conciliation proceedings to amicably settle the disputes.

Subject to the stipulations made hereinabove, Arbitration shall be conducted as per forum specified below:

Arbitration with foreign contractor or in Consortium contracts (including foreign contractor), shall be governed by the Rules of Arbitration of International Chamber of Commerce (ICC), Paris. ***The venue of the arbitral proceedings shall be New Delhi or a neutral country, which will be mutually discussed and finalised between the contractor and the employer in case a situation so arise****.*

The Arbitration with Indian Contractors shall be held at Salem Steel Plant, Salem, India.

The Court of Salem/Chennai, India (with exclusion of all other courts) shall have exclusive jurisdiction over all matter of dispute.

The language of arbitration shall be English." (emphasis added)

Clause 6 of the GCC, in relevant part, is as under:

"Arbitration with foreign contractor or in Consortium contracts (including foreign contractor), ***where the contract value is more than Indian Rs.20 crores*** *shall be governed by the Rules of Arbitration of International Chamber of*

Commerce (ICC), Paris. ***The venue of the arbitral proceedings shall be New Delhi or a neutral country, which will be mutually discussed and finalised between the contractor and the employer in case a situation so arise****.*

Unless otherwise mentioned *the Arbitration with Indian Contractors shall be held at Salem Steel Plant, Salem, India.*

The Court of Salem/Chennai, India (with exclusion of all other courts) shall have exclusive jurisdiction over all matter of dispute. *"*

(emphasis added)

7. On close reading, as will be evident from the following analysis of the sub-clauses, clause 10.1 is intended to apply both to domestic and international commercial arbitrations. Whenever a particular sub-clause applies only to domestic or international commercial arbitrations, as the case may be, there is a clear indication. The first sub-clause provides that disputes shall be settled between the employer and the contractor amicably. If the attempt to resolve the dispute amicably fails, said sub-clause provides for settlement by conciliation, failing which through arbitration. The second sub-clause deals with conciliation and provides that such conciliation shall be conducted as per the applicable rules of the "SCOPE Forum of Conciliation and Arbitration (SCFA)". Thereafter, the 3rd and 4th sub-clauses deal with applicable rules and venue. With regard to arbitrations with a foreign contractor, it provides for the Rules of Arbitration of the International Chamber of Commerce (ICC) to apply. As

regards venue, it is specified that the venue shall be New Delhi or a neutral country which will be mutually discussed and finalised between the contractor and the employer if a situation arises. With regard to arbitrations with Indian contractors, it separately provides that such arbitration shall be held at Salem Steel Plant, Salem, India.

8. The penultimate sub-clause deals with jurisdiction of courts. It stipulates that courts of Salem/Chennai, India (with exclusion of all other courts) shall have exclusive jurisdiction in all matters of dispute. The last sub-clause provides that the language of arbitration shall be English.

9. Thus, except with regard to the sub-clauses dealing with rules governing arbitration and the venue of arbitration, it follows that all other sub-clauses apply equally to domestic arbitrations and international commercial arbitrations, such as the arbitration in this case. While clause 6 of the GCC (the GCC arbitration clause) contains minor variations, in the above respect, it follows the same pattern. This conclusion, in turn, leads to the inference that the stipulation that courts of Salem/Chennai, India shall have exclusive jurisdiction, which is found both in clause 10.1 of the Contract Agreement and clause 6 of the GCC, also applies to arbitrations with a foreign contractor. In this regard, it should be noted that, at the time of execution of this contract, jurisdiction could

be conferred even on a district court in an international commercial arbitration because Section 2(1)(e) of the A & C Act had not been amended to limit jurisdiction to the competent high court.

10. Besides, as noticed above, the sub-clause dealing with venue of arbitral proceedings in arbitrations with a foreign contractor does not stop with mentioning a single venue. After recording that the venue of arbitration proceedings shall be New Delhi, it also provides that such venue may be at a neutral country to be mutually discussed and finalised. Thus, the contract does not specify a fixed place of arbitration in arbitrations with a foreign contractor. Learned counsel for the first respondent contended, in this regard, that arbitral proceedings cannot be held at any place in India other than New Delhi as per the applicable sub-clause. On reading the clause carefully, this contention is liable to be accepted. Nonetheless, it should be noticed that parties could also hold arbitral proceedings in any neutral country on the basis of mutual consent. Especially in the context of the designation of seat being akin to an exclusive jurisdiction clause as per the law laid down by the Supreme Court, the option extended to parties to hold arbitral proceedings in a neutral country militates against construing New Delhi as the seat of arbitration. Therefore, it qualifies as a contrary indicia. In addition, as discussed earlier, the stipulation that courts of Salem/Chennai shall have exclusive jurisdiction also constitutes a contrary

indicia, i.e. an indication that parties did not agree that New Delhi would be the seat of arbitration. Upon considering these contrary indicia cumulatively, I conclude that Clause 10.1 of the Contract Agreement and Clause 6 of the GCC do not designate New Delhi as the seat of arbitration.

11. Whether parties subsequently agreed that New Delhi shall be the seat of arbitration remains to be considered. In response to a specific question to learned counsel for the first respondent as to whether the minutes of arbitral proceedings record an agreement between the parties that New Delhi shall be the seat of arbitration, learned counsel submitted that it may be inferred from the fact that every hearing took place at New Delhi and the award was pronounced at New Delhi. Sub-section (2) of Section 20 of the A & C Act enables the arbitral tribunal to fix the place of arbitration if there is no agreement between the parties in that regard. The first respondent has been unable to provide any evidence of either an agreement between the parties fixing the place of arbitration or an order to that effect by the arbitral tribunal under Section 20(2). Indeed, on carefully examining the award, I find no reference therein to the determination of seat. Another aspect has a bearing on this issue. The first applications before court in relation to this arbitration were filed in this Court in November 2012 under Section 9 of the A & C Act by the second respondent. As recorded in paragraph 4.1.12 of the award, these

applications were rejected in October 2013. Thereafter, the revision petitioner applied for interim relief under Section 9 before the Principal District Judge, Salem. These applications were decided on merits and not on grounds of lack of jurisdiction. Considering all these aspects, I conclude that the seat of arbitration was not fixed as New Delhi after the dispute arose between the parties.

12. It is common ground between the parties that Arb.O.P.No.103 of 2019 was filed after the amendment to Section 2(1)(e) of the A & C Act under Act 3 of 2016 entered into force on 23.10.2015. Relying on the amendment, learned counsel for the first respondent contended that the Principal District Judge, Salem ceased to have jurisdiction to entertain the Section 34 petition once the amendment came into force. Learned counsel for the revision petitioner countered by contending that the Principal District Judge, Salem retained jurisdiction by virtue of the fact that the Section 9 application was filed in that Court prior to the amendment. Referring to the judgment of the Supreme Court in *Board of Control for Cricket in India v. Kochi Cricket Private Limited and others, (2018) 6 SCC 287 (BCCI),* learned counsel contended that operative paragraph 39 does not advert to or deal with Section 42 of the A & C Act.

13. In paragraph 39 of *BCCI*, after construing Section 26 of the Amendment Act, in relevant part, the Supreme Court held as follows:

"39. .... The scheme of Section 26 is thus clear: that the Amendment Act is prospective in nature, and will apply to those arbitral proceedings that are commenced, as understood by Section 21 of the principal Act, on or after the Amendment Act, and to Court proceedings which have commenced on or after the Amendment Act came into force."

As is evident from the above extract, the Supreme Court concluded that the Amendment Act would apply to court proceedings commenced on or after the Amendment Act came into force. Although the Court did not deal with the implications of Section 42 in said judgment, the conclusion that follows is that the amendment would apply to a Section 34 application instituted after the Amendment Act came into force.

14. Because Section 42 opens with a non-obstante clause, learned counsel for the petitioner contended that any court which entertained an application under Part I prior to the entry into force of the amendment would retain jurisdiction notwithstanding the amendment. I am unable to accept said contentions for the following reason. Section 42 is intended to resolve the question as to which of more than one court having jurisdiction should exercise jurisdiction in relation to matters arising out of an arbitration agreement. Such provision was necessitated by the fact that Section 2(1)(e) provided for the

exercise of jurisdiction on the same basis on which a civil court would have exercised jurisdiction over the questions forming the subject matter of the arbitration. Evidently, more than one court could have jurisdiction on that basis. In order to ensure that court proceedings relating to arbitration are conducted in one of the courts having jurisdiction under Section 2(1)(e), it prescribes that the Court to which the first application under Part I was made shall be the exclusive court in relation to all subsequent applications arising out of the agreement.

15. After the amendment of Section 2(1)(e), the provision reads as under:

> *"2(1)(e) - "Court" means ---*
>
> *(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;"*
>
> *(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of Courts subordinate to that High Court."*

As regards international commercial arbitration, only the High Court having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of the suit or the High Court having jurisdiction to hear appeals from decrees of courts subordinate to the High Court qualifies as Court for the purposes of the A & C Act. By virtue of this amendment, the Principal District Judge, Salem, no longer has jurisdiction in relation to an international commercial arbitration, such as in this case. Section 42 cannot be pressed into service to overcome the lack of jurisdiction.

16. In any event, as briefly noticed earlier, one more significant aspect should be taken note of. The first Section 9 applications arising out of this arbitration agreement were filed before this Court in O.A. Nos.922 and 923 of 2012, and not before the Principal District Judge, Salem. Consequently, as per Section 42, all subsequent applications are required to be filed before this Court and not any other. Even after the amendment to Section 2(1)(e), this Court retains jurisdiction. Hence, the refusal of the Principal District Judge, Salem to entertain the Section 34 petition by returning the same is affirmed.

17. For reasons set out earlier, the direction to the petitioner to re-present the petition before the court of competent jurisdiction in New Delhi is, however,

set aside. Instead, the petitioner is permitted to re-present the Section 34 petition before this Court within thirty days from the date of receipt of a copy of this order. This revision petition is disposed of on these terms without any order as to costs.

21-04-2026

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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To

The Principal District Court, Salem.

SENTHILKUMAR RAMAMOORTHY J.

KJ

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