

IN THE HIGH COURT AT CALCUTTA  
COMMERCIAL DIVISION  
ORIGINAL SIDE

**BEFORE :-**

THE HON'BLE JUSTICE SHAMPA SARKAR

A.P.COM No. 783 of 2025

Lite Bite Foods Private Limited

vs.

Airports Authority of India

For the Petitioner	: Mr. Anirudh K. Gandhi, Adv. Mr. Abhishek Kurian, Adv. Mr. Tanay Agarwal, Adv. Mr. Deepak Kripalani, Adv. Mr. Harsh Agarwal, Adv.
For the Respondents	: Mr. Rupak Ghosh, Adv. Mr. Uttam Kr. Mandal, Adv. Mrs. Maitree Roy, Adv. Ms. Uditā Mandal, Adv.
Reserved on	: 16.04. 2026
Judgment pronounced on	: 30.04.2026
Judgement uploaded on	: 30.04.2026

**Shampa Sarkar, J.**

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act). The petitioner prays for appointment of an arbitrator in terms of Sub-

Article 22.2 of the Concession Agreement dated September 14, 2018 which was executed between the petitioner and the respondent (hereinafter referred to as the said agreement). According to the petitioner, disputes arose between the parties out of the said agreement on account of non-refund of an amount of Rs. 91,17,025.36/- which remained outstanding from the respondent. The petitioner requested the respondent for refund of the excess amounts which were adjusted by the respondent against the supplementary bill and issuance of the No Dues Certificate. The respondent failed to take steps and the petitioner invoked arbitration.

2. The factual background is that, pursuant to a Request For Proposal (RFP) dated December 2, 2017 and letter of intent to award dated January 16, 2018, a concession agreement was entered into between the parties on September 14, 2018, to develop, market, set up, operate, maintain and manage the food and beverage outlets at the New Domestic Terminal Building T1, at Biju Pattanayak International Airport (Bhubaneswar).
3. On the allegation of breach of the terms of the agreement by the respondent, the petitioner issued a termination notice dated April 16, 2019, to the respondent and vacated the premises on August 13, 2019. At the relevant point of time, disputes arose between the parties in relation to credit notes aggregating to a sum of Rs. 92,14,288.68/- which were issued in favour of the petitioner, by the respondent for erroneous charging of concession fee for the period between May 2018 and August 2019.

4. It was alleged by the petitioner that the respondent had wrongfully issued supplementary bill on May 14, 2020, thereby, depriving the petitioner of its lawful dues including the credit notes. The petitioner raised a dispute with regard to the supplementary bill, treating the same to be invalid and without any basis. On the disputes which arose and which could not be amicably resolved, the petitioner involved the arbitration agreement.
5. The petitioner approached the High Court of Orissa at Cuttack for appointment of an arbitrator. The petitioner raised a claim of Rs. 92,14,288.68 for refund of the credit notes and the respondent had a counter claim of Rs. 33,60,548.34. The said application was disposed of by appointing a former Judge of Supreme Court of India as the sole arbitrator, to adjudicate the disputes between the parties. The award was published on August 28, 2023. The learned arbitrator held that there was no contractual sanction for raising the supplementary bill in the month of May, 2020, after the petitioner/claimant had left the premises of the Airport on August 13, 2019. The tribunal further held that supplementary bill was raised by the respondent in disregard to the contractual provisions and there was no factual basis for the respondent to raise such supplementary bill for an amount of Rs. 2,04,79,518. The tribunal was of the view that the supplementary bill had been raised to offset the credit notes issued by the respondent in favour of the claimant/petitioner. Adjustment of the supplementary bill against the credit notes was contrary to the contractual terms and as such the respondent could not raise Rs. 33,60,548.34 as the

balance outstanding by way of a counter claim. The tribunal held that as a result of the aforementioned finding, the petitioner was entitled to be paid the amount covered by the credit notes to the extent of Rs. 92,14,788.68 along with interest @ 8 % per annum from the date when the credit notes were issued by the respondent, till the date of payment.

6. Thus, it was contended by the petitioner that, when the supplementary bill was adjudicated to be wholly without substance and unsustainable, the respondent was under an obligation not to appropriate any amount towards the supplementary bill and also duty bound to refund any amount that was already adjusted against the supplementary bill. The respondent's counter-claim towards the alleged outstanding payment of Rs. 33,60,548.34 in relation to the supplementary bill was rejected. The supplementary bill was for an amount of Rs. 2,04,79,518/-, and the respondent claimed a sum of Rs. 33,60,548.34. Thus, it was apparent from the above calculation that the respondent had adjusted the remaining Rs. 1,71,18,969.66/- from the amount payable to the petitioner against the supplementary bill, which in terms of the award was liable to be refunded. The petitioner contended that the respondent had adjusted Rs. 1,71,18,969.66 in two parts. Rs. 80,01,944.30/- was adjusted against the credit notes and Rs. 91,17,025.36/- was adjusted from the balance available against the excess ad hoc payment made by the petitioner. The respondent refunded Rs. 80,01,944.30. An amount of Rs. 91,17,025.36 remained outstanding.

7. Under such circumstances, the petitioner was constrained to invoke the arbitration agreement, by issuing a notice dated March 26, 2025, in terms of Article 22.2 of Concession Agreement, seeking reference of the disputes which had arisen between the parties, to arbitration. The notice was sent by courier as also by e-mail. It was submitted by Mr. Gandhi, learned Advocate that, although, the arbitration clause provided for appointment of a sole arbitrator by the respondent, in view of the decisions of the Hon'ble Apex Court in ***Perkins Eastman Architects DPC and Another vs. HSCC (India) Ltd.*** reported in ***2019 SCC OnLine SC 1517*** and ***Central Organisation for Railway Electrification vs. ECI SPIC SMO MCML (JV) A Joint Venture Company reported in 2024 SCC OnLine SC 3219***, the law did not permit unilateral appointment of the arbitrator.
8. In the notice invoking arbitration, the name of a learned Senior Advocate was proposed and the respondent was requested to give consent. The respondent sent an e-mail to the petitioner indicating that the matter had been referred to the legal team for opinion. As, more than 30 days elapsed from the date of receipt of the notice, this application was filed.
9. Mr. Rupak Ghosh, learned Advocate for the respondent raised the question of maintainability of the application on the ground of lack of territorial jurisdiction. He submitted that the earlier application for appointment of an arbitrator was filed by the petitioner in the High Court of Orissa at Cuttack. Such application was entertained and the arbitrator was appointed. Thus, the parties and especially the

petitioner understood the jurisdiction over the subject matter of arbitration, to be vested in the High Court of Orissa. Such understanding of the petitioner was on the ground that the contract was to be executed in the Airport at Bhubaneswar. The participation in the proceeding before the learned arbitrator, who was appointed by the High Court of Orissa at Cuttack, amounted to waiver of the jurisdiction of this court.

10. It was submitted by Mr. Ghosh that the concession agreement recorded that the parties had agreed that the courts at Bhubaneswar would have exclusive jurisdiction to deal with the disputes and accordingly the petitioner approached the High Court of Orissa. The Concession Agreement was between two corporate/commercial entities, who deliberated, discussed and understood the contents of the clauses of the agreement and on such understanding, the parties agreed to reduce the clauses into writing. On the facts, it was submitted that, pursuant to the award dated August 28, 2025, the respondent had paid the amount directed by the arbitrator with interest, which aggregated to Rs. 1,51,53,778/- and the said amount was accepted by the petitioner without any objection. An internal mail evidencing such payment was annexed to the affidavit-in-opposition and referred to by Mr. Ghosh. The claim of the petitioner was false and frivolous.
11. It was further contended that the petitioner had filed an application under section 34 of the Arbitration Conciliation Act, 1996 for setting aside the award dated August 28, 2025, before the

commercial Court at Rajarhat being Misc. Case (arbitration) No. 93 of 2023) and renumbered as Misc. Case (arbitration) No. 77 of 2024. The petitioner could not invoke arbitration for further reference of the claims arising out of the concession agreement, which was based on the award, as the award was under challenge before a competent court, at the instance of the petitioner.

12. The dispute between the parties had been finally decided by the learned arbitrator and the dispute which was raised by the petitioner was barred by the principles of *res judicata* as also constructive *res judicata*. Claim No. 3 of the statement of claim of the earlier proceeding would indicate that the petitioner had already prayed before the learned arbitrator for refund of the credit notes raised by the respondent. Claim No. 3 culminated into the award and the claim related to realisation of credit notes worth Rs. 2,04,79,518/-. Issues with regard to the supplementary bills were heard and the learned arbitrator directed the respondent to refund the sum of Rs. 92,14,788.68 to the petitioner. Claim 3 was partially allowed. The adjudication in respect of claim No. 3 was not challenged in the application under section 34, instead the petitioner sought to raise a further claim by issuing the notice invoking arbitration. The claim in the present dispute was covered by the adjudication of claim No. 3 in the earlier proceeding and the arbitrator had decided such issue in an elaborate manner. The learned arbitrator did not deem it necessary to pass further order with regard to refund of the amounts which had

been claimed to be payable by the respondent. Parallel proceedings could not be permitted in law.

13. According to the respondent, the entire amount as directed by the learned arbitrator along with the interest had been paid and was received by the petitioner without any objection or any protest. Thus, Mr. Ghosh prayed for dismissal of the application, both on the grounds of lack of jurisdiction to entertain the application and also on the ground that all the disputes between the parties had been decided by the learned arbitrator. Mr. Ghosh relied on the decision of the Hon'ble Apex Court **Ravi Ranjan Developers Pvt. Ltd. vs. Aditya Kumar Chatterjee** reported in **2022 SCC OnLine SC 568** in support of the contention that the seat of arbitration and venue of arbitration could not be used interchangeably in this case. The place of arbitral proceeding could not be the basis to determine the seat. Kolkata was the place of the meetings, but the jurisdiction was with the High Court of Orissa. The intention of the parties to agree to a seat, should be determined from the other Sub-Articles in the agreement and the conduct of the parties.

14. Mr. Ghosh referred to Article 22 of the agreement which was the dispute resolution clause. Special reference was made to Sub-Article 22.2.1 with regard to the agreement between the parties that the venue of the arbitration shall be at CHQ, that is, the Regional Headquarters, Eastern Region, Airports Authority of India, NSCBI Airport. He further submitted that Sub-Article 25.1 under Article 25 dealt with the miscellaneous provisions. The parties agreed that

courts at Bhubaneswar, Orissa shall have jurisdiction over matters arising out of or relating to the agreement. In view of this contrary indicia, venue i.e. Regional Head Quarters, Eastern Region NSCB1 could not be treated as the seat.

15. Thus, it was submitted that, the parties consented that courts at Bhubaneswar, Orissa would have jurisdiction and the overall governing jurisdiction would override sub-Article 22.2.1. Kolkata was merely the place of the meetings and not the seat. The overall jurisdiction of the courts at Bhubaneswar under Sub-Article 25.1, would take precedence over Sub-Article 22.2.1. He further relied on the decision of ***Virgo Softech Ltd. vs National Institute of Electronics and Information Technology*** reported in **2018 SCC Online Del 12723**, on the point that, there was a difference between seat and venue of arbitration. In the absence of an express agreement with regard to the seat, the venue of arbitration under Sub-Article 22.2.1 could not be treated as a seat, especially because the parties agreed that the courts at Bhubaneswar would have exclusive jurisdiction. ***Samiah International Builders Ltd. vs Green View-II Sahkari Awas Samiti Ltd.*** reported in **2025:AHC:70118-DB** was relied upon, also in support of the ratio that, the moment the seat was designated, it was akin to an exclusive jurisdiction clause, but the same principle did not apply to designation of venue.
16. Heard the learned Advocates for the respective parties. On issue of lack of territorial jurisdiction of this Court to entertain the application under Section 11, a brief appreciation of the background

of the earlier proceeding is necessary. The petitioner filed an application for appointment of an arbitrator before the High Court of Orissa. The respondent filed a counter-affidavit, inter alia, stating that the moment seat was designated, it conferred exclusive jurisdiction to the seat at CHQ/ Concerned Regional Headquarters at Kolkata. The arbitration clause would have a priority over other clauses and the venue agreed to in terms of the arbitration clause would alone confer exclusive jurisdiction to the court to appoint an arbitrator. Thus, the respondent prayed for dismissal of the said application on the ground of maintainability. Specific plea was that, the parties had agreed to vest jurisdiction so far as it related to arbitration, at Kolkata and jurisdiction of the courts at Bhubaneswar, Odisha would be with regard to matters other than arbitration. The relevant paragraphs of the affidavit-in-opposition are quoted below:-

“7. With reference to paragraphs 4,5,6 and 7 of the said petition save and except what are matters of admitted record allegations to the contrary are denied. It is denied that there had been any breach on the part of the respondent or that the Petitioner had suffered any loss or damage on account of any action on the part of the respondent or that the respondent was unable to effectively or otherwise carry out any of its operations as alleged or at all. It is denied that the petitioner was constrained to terminate the said agreement owing to any actions on the part of the respondent as alleged or at all. It is further denied that there has been any breach on the part of the respondent during the subsistence of the said agreement or otherwise or that any act of the respondent formed any basis of the termination by the petitioner or that the termination by the petitioner was legal as alleged or at all. The Respondent states that the Credit Notes and the Supplementary Bill are of the same month and year as alleged by the Petitioner which is said to be fictitious bill and it was thus an erroneous charging for the period of May 2018 to August 2019 which is 10 months after their exit which cannot be raised at all. According to clause

10.4.1 (Pg. 188 of Vol I, SOC) of the Concession Agreement AAI is entitled to raise the bills within 10th of every month and the bills were raised within their 7 years of the term not beyond that. As per Concession Agreement clause 10.4.1 (Pg. 26 of Concession Agreement), clause 14.1.3 (Pg. 41 of Concession Agreement) and clause 14.4 (Pg. 42 of the Concession Agreement) the petitioner is duty bound to remit the License fee, Space Rent and other Utility charges on 25th of day of the current month as per the concession agreement, irrespective of the receipt of the bills from AAL. Thus the Petitioner did not pay concession fee as per the invoices raised on the Petitioner for the period 31.10.2018 to 13.08.2019 amounting to Rs. 33,60,548.34 along with applicable GST on the said invoices and thus the Respondent raised the amount in their Counter Claim.

8. With reference to paragraphs 8 of the said Petition, the same is matter of record which forms part of the Arbitral Award dated 28.08.2023.”

17. The order of the High Court of Orissa recorded that the only objection raised by the respondent was that since Sub-Article 22.2.1 of the Concession Agreement specified the venue of arbitration to be in the Regional Headquarter, Airports Authority of India (NSCBI Kolkata), the High Court of Orissa lacked jurisdiction to appoint an arbitrator. Under Article 25.1, the courts at Bhubaneswar, Odisha would have jurisdiction over other matters arising out of or relating to the agreement. **In BGS Soma JV vs. NHPC Limited** reported in **(2020) 4 SCC 234**, the Hon'ble Supreme Court held that venue shall be interpreted as seat and such venue and seat would determine the jurisdiction of the High Court for adjudication of a proceeding under Section 11(6) of the Arbitration and Conciliation Act, 1996. In the absence of any contrary indication in the arbitration clause with regard to the venue, in this case the venue shall be interchangeably

read as seat. This ratio applies to the subject agreement. In ***Bhahmani River Pellets Limited vs. Kamachi Industries Limited*** reported in **(2020) 5 SCC 462** the position was further clarified by the Hon'ble Apex Court, as hereunder :-

**“4.** Clause 18 of the agreement between the parties contains an arbitration clause which reads as under:

“18. Arbitration shall be under Indian Arbitration and Conciliation Law, 1996 and the Venue of Arbitration shall be Bhubaneswar.”

\* \* \*

\* \* \*

**18.** 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 [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157]* , non-use of words like “exclusive jurisdiction”, “only”, “exclusive”, “alone” is not decisive and does not make any material difference.

**19.** When the parties have agreed to have the “venue” of arbitration at Bhubaneswar, the Madras High Court erred [*Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127*] in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order [*Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127*] is liable to be set aside.”

18. The relevant paragraphs of **BGS Soma** (supra) are quoted

below:-

**“Tests for determination of “seat”**

**60.** The judgments of the English courts have examined the concept of the “juridical seat” of the arbitral proceedings, and have laid down several important tests in order to determine whether the “seat” of the arbitral proceedings has, in fact, been indicated in the agreement between the parties. The judgment of Cooke, J., in *Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376]* , states:

“34. London arbitration is a well-known phenomenon which is often chosen by foreign nationals with a different law, such as

the law of New York, governing the substantive rights of the parties. This is because of the legislative framework and supervisory powers of the courts here which many parties are keen to adopt. When therefore there is an express designation of the arbitration venue as London and no designation of any alternative place as the seat, combined with a supranational body of rules governing the arbitration and no other significant contrary indicia, the inexorable conclusion is, to my mind, that London is the juridical seat and English Law the curial law. In my judgment it is clear that either London has been designated by the parties to the arbitration agreement as the seat of the arbitration, or, having regard to the parties' agreement and all the relevant circumstances, it is the seat to be determined in accordance with the final fall back provision of Section 3 of the Arbitration Act.”

61. It will thus be seen that wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.

\* \* \*

\* \* \*

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.”

19. In ***Balapreetham Guest House (P) Ltd. vs My preferred Transformation and Hospitality (P) Ltd.*** reported in **2021 SCC Online Mad 126**, the High Court of Madras proceeded to hold that when the parties agreed to have the proceeding at New Delhi, the seat would be New Delhi. Consequently, the clause which provided that the agreement shall be governed and interpreted in accordance with the laws of India and the court at Chennai shall have exclusive jurisdiction in all matters arising out of the agreement, would not be applicable. A harmonious reading of the two clauses would indicate that the parties had agreed that in case of cause of action arising from the agreement, the courts of Chennai alone would have jurisdiction in the event the parties abandoned to arbitrate the dispute, and filed a civil suit.
20. In my opinion, the arbitration clause is a prior clause in the concession agreement and the same should be given precedence over Sub-Article 25.1. Secondly, Article 22.2 deals with Arbitration. The venue of arbitration and the express language therein, indicate that the parties consented to anchor the arbitral proceeding at the Regional Headquarter NSCBI Airport, Kolkata. Here the venue should be read as seat as there was no contrary indication. The overall governing jurisdiction under sub-Article 25.1 related to proceedings other than arbitration. The relevant Articles are quoted below:-

“22.2. Arbitration

22.2.1 Any dispute with financial implication above Rs.7,00,000/- (Rupees seven lakhs, as provided in clause 22.1.1, shall be finally decided by reference to arbitration by a Sole Arbitrator to be appointed by the tender approving authority as per AAI delegation of Power in vogue. Such arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and shall include amendments to or any re-enactments thereof, as in force from time to time. The venue of such arbitration shall be CHQ/concerned RHQ and the language of arbitration proceedings shall be English. The cost of arbitration shall be borne equally by both the parties.

22.2.2. The Arbitrator shall make an award (the "Award") for each dispute and/or claim and shall give reasons for the Award. Any award made in any arbitration held pursuant to this Article 22 shall be final and binding on the parties. For avoidance of doubt, the parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or judicial court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

**25.1 Governing Law and Jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws in India, and the courts at Ahmedabad shall have jurisdiction over matters arising out of relating to this Agreement.”

21. The subject matter of arbitration is situated at Kolkata and this Court has the jurisdiction to hear this application. The Sub-Article 22.2.1 will have precedence over the miscellaneous provision. Moreover, the law provides that parties were entitled to decide on the place of arbitration. The respondent interpreted the contract to mean that NSCBI, Kolkata, was the seat and the application of the petitioner in the High Court of Orissa was objected to on this ground. Such objection was not overruled by the High Court. Instead, the

appointment of the arbitrator by the High Court of Orissa was on consent. Consent cannot confer jurisdiction, as the seat had already been designated and the parties intended that the venue shall be the seat. **In Height Insurance Services Limited Vs. Reliance Nippon Life Insurance Company Limited** reported in **2023 SCC Online Cal 912**, it was held as follows :-

“20. Certain features, however, can be gathered from the language of the clause itself. Although Mumbai courts have been conferred exclusive jurisdiction concerning the agreement, the arbitration proceeding has been agreed to be held in its entirety at Kolkata, to the exclusion of all other remedies of the parties. There is no indication in Clause 15 that the reference to Kolkata would be for one or several particular meetings only but applies in general to the entire arbitration proceeding itself.

\* \* \*

\* \* \*

22. Thus, a comprehensive reading of the clause itself leaves no ambiguity that there is no distinction between the ‘venue’ and ‘seat’ of arbitration. Insofar as arbitration is concerned, the same shall be exclusively held in Kolkata, irrespective of all other remedies available to the parties.

23. Secondly, the earlier part of the arbitration clause contemplates disputes in all matters, including construction, interpretation, etc., concerning the agreement to be governed by the laws of India. Although the expression “exclusive jurisdiction” has apparently been conferred on Mumbai courts, such conferment exclusively pertains to the subject-matter of the dispute, as opposed to that of the arbitration.

\* \* \*

\* \* \*

30. Once the parties have subjected themselves to the provisions of the 1996 Act, the interplay of Sections 11 and 20 of the 1996 Act governs the arbitration proceeding. In fact, the particular expression “to be held in.....” was also used in the relevant arbitration clause dealt with in *BGS SGS Soma JV* (supra). Aptly, it was held by the Supreme Court that the inexorable conclusion in such cases is that the stated venue is actually the juridical seat of the arbitral proceeding.

\* \* \*

\* \* \*

33. Again, in *Raman Deep* (supra), the Delhi High Court proceeded on an arbitration clause which clearly fixed the venue of the

arbitration “for the convenience” to be the office of the Company. Although the jurisdiction of all disputes were to be Delhi only, the venue for arbitration proceedings was to be at Faridabad, Haryana. Here, however, the term “venue” has not been used at all. Instead, “shall be held” is the chosen expression in the present case.

\* \* \*

\* \* \*

**38.** Such decision cannot be said to be an exactly identical fit to the present case, since in Clause 15 of the agreement at hand, irrespective of the Mumbai courts having jurisdiction with regard to the agreement, the arbitral proceedings were specifically stipulated to be held at Kolkata. As such, even if the SLP was dismissed against the said order of the Delhi High Court, the same cannot have a direct bearing on the issue at hand in our case.

**39.** Insofar as the *Ravi Ranjan Developers* (supra) is concerned, the general law was discussed, including the distinctions between “seat” and “venue”, as contrasted with the “place” of arbitration. Kolkata was held to be only the venue for sitting of the arbitral tribunal, since “sitting of the said Arbitral Tribunal” was to be at Kolkata. The expression ‘sitting’ cannot exactly be equated to the unequivocal ‘shall be held’ used in the present case.

**40.** Thus, each of the said decisions were rendered in their respective contexts, in the light of the language of the arbitration clauses.

\* \* \*

\* \* \*

**42.** Hence, applying all the relevant yardsticks, the seat of arbitration and, consequently, the subject-matter of the arbitration, as opposed to that of the disputes, has been fixed at Kolkata.”

22. In ***Indus Mobile Distribution Pvt. Ltd. vs Datawind***

***Innovations Pvt. Ltd.*** reported in ***(2017) 3 R.A.J. 682 (SC)*** it was

held as follows:-

“14) This Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration.

xxxxxxxxxxxxxxxx

20) A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further

makes it clear that jurisdiction exclusive vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction—that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

21) It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases Private Limited v. Indian Oil Corporation Limited, (2013) 9 SCC 32 : 2013(4) R.A.J. 30. This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Limited, (2015) 12 SCC 225 : (2014) 6 R.A.J. 632. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly.”

23. The moment a seat was designated, it was akin to the exclusive jurisdiction clause.

24. In ***Mr. Raman Deep Singh Taneja vs Crown Realtech Private Limited*** reported in ***2017 SCC Online Del 11966***, it was held as follows :-

“9. In the present case we are faced with the situation where one part of the agreement provides for exclusive jurisdiction to Courts of Delhi, while the other, due to the venue of arbitral proceedings, vests exclusive jurisdiction in Courts in Faridabad, State of Haryana. As was held by the Supreme Court in the judgment of *Bharat Aluminium Company* (Supra), a distinction is to be drawn between “Subject-Matter of the Arbitration” and “Subject-Matter of the Suit”. For the purposes of identifying the Court, which shall have supervisory control over the arbitral

proceedings, it would be the Court where the ‘Subject-Matter of Arbitration’ is situated that would have precedence over the Court where the “Subject-Matter of the Suit” is situated. In this case, therefore, the exclusive jurisdiction conferred due to venue of arbitration would take precedence over the exclusive jurisdiction vested over the Subject-Matter of the suit in the Courts at Delhi. There are various provisions in the Act where the Court has to exercise supervisory jurisdiction over the arbitration proceedings. These include not only Section 11 of the Act but also Sections 14, 27, 29A, 34 and 37 of the Act. It is, therefore, evident that the Court having jurisdiction over the arbitration proceedings would have precedence over the Court which has jurisdiction over the Subject-Matter of the suit or where the cause of action has arisen. The purported conflict between the two parts of Clause 24 quoted above can be resolved by holding that where the disputes are to be adjudicated without reference to the arbitration, Courts at Delhi would have exclusive jurisdiction, however, where they have to be resolved through arbitration, venue being at Faridabad, Haryana, the Courts at Faridabad, State of Haryana, would have exclusive jurisdiction.

**10.** In view of the above, the present petition is dismissed for want of territorial jurisdiction with liberty to the petitioner to approach the Court of competent jurisdiction in accordance with law.”

25. In ***Vr. Surat Private Limited Through its authorized signatory vs Amit Sinha*** reported in ***2025 SCC Online Del 3992***, a similar situation had arisen, wherein the lease agreement provided for both a governing jurisdiction of courts and dispute resolution clause. The Delhi High Court held that:-

“7. In order to appreciate the aforesaid contentions, the Court has considered clause 18.8 of the Lease Agreement, which reads as under:—

“18.8 Governing Law and Dispute Resolution-

(a) *The validity, construction and performance of this Lease Deed shall be governed interpreted with laws of India with competent Courts at Surat having the exclusive jurisdiction in this regard.*

(b) *If any question of difference or claim or dispute shall arise between the parties hereto touching these presents*

*or the construction thereof to rights, duties or obligations of the parties hereto or as to any matter arising out of or connected with the subject matter of these presents, the same shall be referred to the arbitration to be held at New Delhi in accordance with the provisions of the (Indian) Arbitration and Conciliation Act, 1996. The reference shall be to a sole arbitrator. If the Parties fail to appoint a sole arbitrator within 30 (Thirty) days, then the dispute shall be referred to 3 (Three) arbitrators, with each Party appointing 1 (One) arbitrator and the two arbitrators so appointed appointing the third arbitrator. The arbitrator/s shall render their award In English language and in writing. The Parties agree to abide by the decision of the arbitrator/s, which shall be final and binding.”*

**8.** A bare perusal of Clause 18.8(b) of the Lease Deed indicates that any question with respect to difference, claim, or dispute arising between the parties, touching upon the construction of the Lease Deed or the rights, duties, or obligations of the parties pursuant thereto, shall be referred to arbitration to be held at New Delhi in accordance with the provisions of the 1996 Act.

**9.** The use of the expression “held at New Delhi” is of fundamental significance. This Court, in the case of **Cinopolis India Pvt. Ltd.** considered a similar clause wherein the arbitration was stipulated to be “held” at a particular place, and the objection raised was that the agreement was executed at Ghaziabad and the property in question was also situated in Ghaziabad.

\* \* \*

\* \* \*

**11.** Thus, notwithstanding the situs of the property or the place of execution of the agreement, once the parties have agreed to New Delhi as the venue or seat of arbitration, the jurisdiction would lie with the Courts at New Delhi. The relevant paragraphs of the said decision read as under:—

*“29. What emerges therefore by reading of the various judgments referred to above is that it is really the seat of arbitration which is akin to an exclusive jurisdiction clause. Where there are no contrary provisions in the agreement, the place would be the juridical seat which would determine the territorial jurisdiction of a Court. Where the words in the arbitration clause are neither seat nor place and the*

*arbitration clause only refers to words such as “venue’ or “held in” the intent of the parties would have to be seen from the agreement. If the parties intend that the arbitration proceedings are to be held as a whole at that particular venue then the venue also becomes a juridical seat. It is also clear from the now well settled law that it is the seat or the juridical seat which will be the guiding factor for a Court to determine its jurisdiction while examining a petition under Section 11 of the Act.*

30. *In the case of Devyani International Ltd. v. Siddhivinayak Builders & Developers being OMP (I) (COMM) 373/2017, decided on 27.09.2017, a Coordinate Bench of this Court was dealing with an inter-play between an Arbitration Clause and a clause relating to “Governing Law”. Relevant para of the Arbitration Clause is as under:*

*“22.1 .....The seat of arbitration shall be at New Delhi”*

*Clause 12 which was a clause of the Governing Law read as under : -“12.1... The Courts at Mumbai shall have the exclusive jurisdiction to entertain the dispute or suit arising out of or in relation to this agreement.*

*The Court relied upon the judgment of the Supreme Court in Indus Mobile Distribution Private Limited (supra) and held that the agreement records that the seat of Arbitration shall be at Delhi and thus the Delhi Courts will have exclusive jurisdiction to adjudicate the disputes between the parties*

31. *In the case of Ramandeep Singh Taneja v. Crown Realtech Private Ltd. being Arb. P. 444/2017, decided on 23.11.2017, the issue of territorial jurisdiction arose on account of the fact that under Arbitration Clause 24 of the agreement between the parties, the jurisdiction of all disputes was at Delhi while the venue for arbitration proceedings was agreed to be at Faridabad, Haryana. A coordinate Bench of this Court relying on Indus Mobile Distribution Private Limited (supra) and BALCO (supra), held that the place where the venue of arbitration was located would take precedence over the exclusive jurisdiction vested in the Courts at Delhi. The judgment of the Supreme Court in the case of BALCO (supra) was relied upon wherein the Supreme Court held that a distinction is to be drawn between “subject matter of the arbitration” and “subject matter of the suit”. For the purpose of identifying the Court which shall have supervisory control over the Arbitral Proceedings, it*

would be the Court where the “subject matter of arbitration” is situated and that would take precedence over the Court where the “subject matter of the suit” is situated.

32. The Coordinate Bench resolved the conflict between the two parts of clause 24 by holding that where the disputes are to be adjudicated without reference to arbitration, Courts at Delhi would have exclusive jurisdiction, however, where they have to be resolved through arbitration, venue being at Faridabad, Haryana, the Courts at Faridabad would have exclusive jurisdiction. The same Bench thereafter decided a petition under Section 11 of the Act titled as Global Credit Capital Limited v. Krrish Realty Nirman Pvt. Ltd. being Arb. P. 123/2018, decided on 16.05.2018, where again the issue of territorial jurisdiction of this Court arose. The said case being Arb Pet. 123/2018 was decided on 16.05.2018 and allowed. The conflict was between the Arbitration Clause 24 as per which the venue of arbitration was Delhi and clause 31 of the Collaboration Agreement, which provided that “Courts at Gurgaon shall have jurisdiction of all matters concerning this agreement”. The word ‘venue’ was construed by the Courts at ‘Seat’ of arbitration following the judgments of the Supreme Court on the said issue. Reliance was then placed on Indus Mobile Distribution Private Limited (*supra*) and Ramandeep Singh Taneja (*supra*) and it was held that the seat of arbitration being Delhi, the Courts at Delhi would have the territorial jurisdiction to decide matters concerning arbitration

33. Thus, applying the law laid down the arbitration clause in the present case is clearly referring to a juridical seat of arbitration and since the seat is designated at New Delhi, this Court would have jurisdiction to entertain the present petition, even though cause of action may have arisen in Ghaziabad”

26. Under such circumstances, the issue of lack of jurisdiction of this Court is decided against the respondent. With regard to the other contention that once the award has been challenged before the commercial court at Rajarhat, the petitioner was barred by law to raise a claim on the basis of the self-same award by invoking

arbitration, this court holds that, the nature and extent of claim No. 3 in the earlier arbitral proceeding and what had been allowed or disallowed, are questions of fact which require re-appreciation of the award and weighing of evidence. Such exercise is beyond the jurisdiction of the referral court.

27. Further, whether the present claims of the petitioner are barred by the principles of issue estoppel, constructive res judicata or res judicata or whether they were covered by claim No. 3 and the adjudication thereof was complete, are also matters of evidence. The arbitrator tribunal is the competent forum to decide such matter. With regard to the further submission that the amount in terms of the award along with the interest had been paid and the same had been accepted by the petitioner without any protest, is an issue of accord and satisfaction. Such issue should also be decided by the learned arbitrator. The jurisdiction of a referral court is limited.

28. In the decision of ***SBI General Insurance Co. Ltd. vs Krish Spinning*** reported in ***2024 SCC Online SC 1754***, the Hon'ble Supreme Court held as follows:-

“92. The position that emerges from the aforesaid discussion of law on the subject as undertaken by us can be summarised as follows:—

vi. The decision in Vidya Drolia (supra) although adopted the view taken in Mayawati Trading (supra) yet it provided that in exceptional cases, where it was manifest that the claims were ex facie time barred and deadwood, the Court could interfere and refuse reference to arbitration. Recently, this view in the context of “accord and satisfaction” was adopted in NTPC v. SPML (supra) wherein the “eye of the needle” test was elaborated. It permits the referral court to reject

arbitration in such exceptional cases where the plea of fraud or coercion appears to be ex-facie frivolous and devoid of merit.

**93.** Thus, the position after the decisions in Mayavati Trading (supra) and Vidya Drolia (supra) is that ordinarily, the Court while acting in exercise of its powers under Section 11 of the Act, 1996, will only look into the existence of the arbitration agreement and would refuse arbitration only as a demurrer when the claims are ex-facie frivolous and non-arbitrable.

iii. What is the effect of the decision of this Court in In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act 1899 on the scope of powers of the referral court under Section 11 of the Act, 1996?

**94.** A seven-Judge Bench of this Court, in In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899 reported in 2023 INSC 1066, speaking eruditely through one of us, Dr Dhananjaya Y. Chandrachud, Chief Justice of India, undertook a comprehensive analysis of Sections 8 and 11 respectively of the Act, 1996 and, inter alia, made poignant observations about the nature of the power vested in the Courts insofar as the aspect of appointment of arbitrator is concerned. Some of the relevant observations made by this Court in In Re : Interplay (supra) are extracted hereinbelow:

“179. [...] However, the effect of the principle of competence-competence is that the arbitral tribunal is vested with the power and authority to determine its enforceability. The question of enforceability survives, pending the curing of the defect which renders the instrument inadmissible. By appointing a tribunal or its members, this Court (or the High Courts, as the case may be) is merely giving effect to the principle enshrined in Section 16. The appointment of an arbitral tribunal does not necessarily mean that the agreement in which the arbitration clause is contained as well as the arbitration agreement itself are enforceable. The arbitral tribunal will answer precisely these questions.

xxx xxx xxx

“**129.** Insofar as the first issue is concerned, we are of the opinion that the observations made by us in Arif Azim (supra) do not require any clarification and should be construed as explained therein.

**130.** On the second issue it was observed by us in paragraph 67 that the referral courts, while exercising their powers under Section 11 of the Act, 1996, are under a duty to "prima-facie examine and reject non -arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process."

**131.** Our findings on both the aforesaid Issues have been summarised in paragraph 89 of the said decision thus:-

"89. Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to petition under Section 11(6) of the Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test - first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an arbitral tribunal."

**132.** Insofar as our observations on the second issue are concerned, we clarify that the same were made in light of the observations made by this Court in many of its previous decisions, more particularly in *Vidya Drolia (supra)* and *NTPC v. SPML (supra)*. However, in the case at hand, as is evident from the discussion in the preceding parts of this judgment, we have had the benefit of reconsidering certain aspects of the two decisions referred to above in the light of the pertinent observations made by a seven-Judge Bench of this Court in *In Re: Interplay (supra)*.

**133.** Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the Act, 1996, the referral court should limit its enquiry to examining whether Section 11 (6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in *Arif Azim (supra)*. As a natural corollary, it is further clarified that the referral courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in *In Re: Interplay (supra)*."

29. In the decision of ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re*** reported in **(2024) 6 SCC 1**, the Hon'ble Supreme Court discussed the scope of interference by a referral court and held that the referral court was entitled to cause a, prima facie, examination

with regard to existence of an arbitration clause.. The relevant paragraphs of **Interplay** (supra) are as follows :-

*“114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).*

xxx xxx xxx

*125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.*

xxxxxxxxxxxxxx

*166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.*

*167. Section 11(6-A) uses the expression “examination of the existence of an arbitration agreement”. The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. **Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement.** A similar view was adopted by this Court in *Shin-Etsu Chemical Co. Ltd. v. Aksh**

*Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234]*”

30. The application is allowed. The respondent is at liberty to raise all points with regard to admissibility of the claim, jurisdiction of the learned arbitrator, limitation, accord and satisfaction etc. before the learned arbitrator.
31. The dispute is referred to the sole arbitrator. Mr. Deepan Kumar Sarkar, (Mob. No. 8420473075), learned Advocate, Bar Library Club is appointed as the learned Arbitrator.
32. The learned arbitrator shall apply provision of Section 12 of the Arbitration and Conciliation Act. The learned arbitrator will fix his own remuneration in accordance with the provisions of the schedule of the Act.
33. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

**(Shampa Sarkar J.)**