* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on : September 07, 2021***
Pronounced on : September 23, 2021

\+ **ARB.P. 450/2021**

S.P. SINGLA CONSTRUCTIONS PRIVATE LIMITED
.....Petitioner
Through: Mr. Anirudh Wadhwa, Advocate

Versus

CONSTRUCTION AND DESIGN SERVICES, UTTAR PRADESH JAL NIGAM .....Respondent
Through: Mr. Rishabh Kapoor, Mr.Naman Tandon & Mr. Mayank Punia, Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Petitioner- S.P. Singla Constructions Private Limited claims to be one of the most reputed construction company specialized in construction of bridges and other projects across the country. Respondent- Construction and Design Services, a 100% undertaking of Government of Uttar Pradesh, claims to be providing construction and design Services.

2. Respondent had invited proposals for Qualification cum Request for Proposal dated 06.04.2016 to undertake design, engineering, procurement and construction of a dedicated corridor (4 lane including extra-dosed bridge

across River Ganga) for old and differently-abled persons during Kumbh and Magh Mela at Sangam, Allahabad, UP, India. Petitioner participated in the bidding process and was adjudged as the successful bidder with the lowest bid. Therefore, respondent had issued a Letter of Award dated 03.01.2017 in favour of the petitioner and a formal Contract dated 08.02.2017 was executed between the parties.

3. Petitioner claims that the value of the Contract was Rs.984,53,75,000/- (Rupees Nine Hundred Eighty-Four Crores, Fifty- Three Lacs Seventy-Five Thousand Only) and the project was to be concluded within a period of 30 months followed by a defect liability period of 48 months from the date of provisional certificate of completion. Further, petitioner was obligated to deposit Bank Guarantees towards performance security to the tune of 5% of the said Contract Value and so, vide letter dated 13.02.2017, thirteen bank guarantees to the tune of Rs.49,22,69,000/- were deposited by the petitioner, which also stood extended.

4. According to petitioner, to execute the Contract in question, petitioner had immediately taken steps like mobilisation of resources, appointment of various third-party Consultants i.e. proof check Consultant, safety Consultant and a Design Director, submission of general arrangement

drawings for bridge and viaduct approaches, geotechnical reports, placing work orders etc. However, respondent utterly failed in fulfilling its part of obligations, as in terms of Clause- 4.1.3 of the said Contract, the "Right of Way" in respect to the said works was to be provided by the respondent to the petitioner within 15 days of the date of the agreement dated 03.01.2017, but even after expiry of entire period of 30 months, respondent did not do so, which is contrary to the Clauses - 4.1.3, 5.2(g) and 5.2(h) of the said Contract. Further pleaded by petitioner that despite communications dated 27.06.2017, 17.07.2017, 12.09.2019 and 03.03.2020, respondent has not even compensated the petitioner for the cost incurred by it towards fulfilling its part of obligations. Due to non-performance of obligations by the respondent, the petitioner claims to have incurred huge loss of productivity, turnover, overhead costs, Contractor's profits and earning capacity besides cost of construction under the Contract in question. The respondent vide its letter dated 09.06.2020, while referring to a letter dated 16.04.2020 by the Prayagraj Mela Board, intimated that the project as well as the contract ought to be considered as “terminated”.

5. Petitioner further claims that in response to the aforesaid letter dated 09.06.2020, respondent/petitioner sent a letter dated 24.06.2020 to the

respondent acknowledging termination of the Contract at respondent's convenience in terms of Clause-23.3 of the Contract and raised an invoice for Rs.174,36,50,777/- towards "Termination Payment" in accordance with Clause 23.6.2 of the Contract. According to petitioner, Clause 23.6.4 of the Contract provides that the 'Termination Payment' shall constitute a full and final payment and respondent shall make the payment within 30 days under Clause- 23.6.3 and shall discharge the bank guarantees.

6. Petitioner next claims that not only respondent failed to honour the payment of Rs.174,36,50,777/- towards "Termination Payment" but vide letter dated 27.07.2020 demanded extension of bank guarantees for a further period in an attempt to disown the termination notice dated 09.06.2020, which was already acknowledged by the petitioner vide letter dated 24.06.2020. The respondent vide letter dated 30.07.2020 communicated the petitioner that the decision of termination of Contract was taken by Prayagraj Mela Board and till the time the said decision is under consideration and finalized by the Government of Uttar Pradesh, the Contract in question is "valid" and subsists and there is no liability towards "Termination Payment" except for refund of performance security in case the project is withdrawn by the State of Uttar Pradesh. Vide communication

dated 01.08.2020, petitioner sought a clarification from respondent seeking extension of bank guarantees for 12 months even after termination of Contract vide letter dated 09.06.2020. The said communication was replied by the respondent vide letter dated 10.08.2020 wherein demand for extension of bank guarantees till 31.08.2020 was reiterated and a copy thereof was also marked to the concerned bank asking to invoke the same in case bank guarantees were not extended by the petitioner.

7. According to petitioner, against the aforesaid arbitrary, irrational and unreasonable action of respondent, petitioner preferred a writ petition before the High Court at Allahabad and the said writ petition is still pending adjudication. Further, vide letter dated 14.10.2020, respondent again communicated the petitioner its decision to revoke/terminate the said Contract and that it was instructed by Department of Urban Development, Uttar Pradesh to stop expenditure on it. Thereafter, respondent released the bank guarantees furnished toward performance security by the petitioner and the same were released vide letter dated 20.11.2020.

8. It is next averred on behalf of petitioner that vide its communication dated 25.11.2020, petitioner invoked dispute resolution clause (Article 26) of the said Contract towards denial of the 'termination payment' amounting

to Rs.174,36,50,777 /- payable to the petitioner under Article 23.6.2 and 26.3.3 of the said Contract and also as a prerequisite, in terms of Article 26.2 of the Contract, petitioner referred the dispute to the Chairman of respondent. Further averred that vide its communication dated 14.01.2021, respondent again denied the claim of petitioner towards "Termination Payment" and when also efforts to amicably resolve the dispute failed, petitioner in terms of Article 26.3 of the Contact, invoked the arbitration vide Notice dated 06.02.2021 and proposed name of Hon'ble Mr. Justice (Retd.) S.J. Mukhopadhyay as its nominee Arbitrator. Against the aforesaid Notice dated 06.02.2021, respondent vide its letter dated 01.03.2021, communicated the petitioner that once the Contract itself has been revoked vide letter dated 14.10.2020 without commencement of work and bank guarantees have been returned, no dispute between the parties survives and so, the invocation of arbitration Clause 26.03 is untenable.

9. Further, vide letter dated 08.03.2021, petitioner once again communicated the respondent that in terms of Article 23.8 and Article 27.7.1.(a), the rights and obligations of the parties, including the right to claim and recover damages and termination payments survives.

10. During the course of hearing, learned counsel for petitioner submitted

that since respondent has failed to appoint its nominee Arbitrator within 30 days of issuance of Notice dated 10.02.2021 invoking arbitration, petitioner has approached this Court seeking appointment of Arbitrator.

11. To support of his submissions, learned counsel drew attention of this Court to Clause 26.3 of the Contract in question to submit that if dispute is not resolved amicably by conciliation, as provided in Clause 26.2, the same shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 26.3.2. and the arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (ICADR) or such other rules as may be mutually agreed by the parties, and shall be subject to the provisions of the Arbitration Act. Attention of this Court was also drawn to Article 17 of the ICADR Rules to submit that the place of arbitration shall be New Delhi or such other place where any of the Regional Offices of ICADR is situated, provided that failing any agreement between the parties, the place of arbitration shall be determined by the arbitral tribunal with the convenience of the parties.

12. Learned counsel for petitioner next submitted that Clause 26.3 of the Contract is specific that the arbitration shall be held "*in accordance with the*

Rules of the International Centre for Alternative Dispute Resolution, New Delhi" and that by incorporating the Rules of ICADR, New Delhi into the Contract in question, the parties have expressly chosen the seat /place of arbitration at New Delhi.

13. To submit that where parties expressly choose to incorporate the rules of an arbitral institute into their arbitration clause, while failing to specifically agree on a "seat" of arbitration, they are deemed to knowingly have chosen and relied on the seat selection clause of the institutional rules, reliance is placed upon Hon'ble Supreme Court's decision in ***Imax Corporation Vs. M/s E-City Entertainment (I) Pvt. Ltd.*** **(2017) 5 SCC 331**. It is further submitted on behalf of petitioner that in view of Article 17 of the Rules of ICADR, New Delhi in the absence of any seat being agreed upon between the parties, the seat has to be nominated through ICADR, New Delhi, as the institute and incorporation of the Rules of ICADR, New Delhi is "*New Delhi*".

14. Learned counsel also placed reliance upon Hon'ble Supreme Court's decisions in ***Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited And Others (2017) 7 SCC 678*** and ***Bharat Aluminium Company Vs. Kaiser Aluminium Technical Services Inc***

(2012) 9 SCC 552 to distinct between the "seat" and the "venue" of an arbitration while submitting that Section 20(1) and 20(2) of the Act refers to juridicial "seat" or "situs" of the arbitration, whereas in Section 20(3) of the Act, "place" refers to the physical site(s) or "venue" where arbitration proceedings are physically held.

15. To distinguish between "seat" and "venue", learned counsel further relied upon decision of Hon'ble Supreme Court in ***Enercon (India) Ltd. & Ors. Vs. Enercon GMBH & Anr. (2014) 5 SCC 1*** to submit the language of Clause 26.3 of the Contract manifestly distinguishes between "venue" and a "seat".

16. Next, reliance was placed upon decision of Hon'ble Supreme Court in ***Mankastu Impex Private Limited Vs. Airvisual Limited (2020) 5 SCC 399,*** wherein while adverting to the arbitration clause in the said case, the Hon'ble Court had emphasized use of word "arbitration administered in "Hongkong" and held that "Hongkong" was not only a nomination of the "venue" but also "seat", whereas in the present case the term "venue" is opposed to term "seat".

17. Learned petitioner's counsel also placed reliance upon decisions of this Court in ***Balancehero India Private Limited Vs. Arthimpact Finserve***

Private Limited, 2021 SCC OnLine Del 2872; ***Cinepolis India Pvt. Ltd Vs. Celebration City Projects Pvt. Ltd. and Another*** **2020 SCC OnLine Del 301** and ***Vikram Awasthy Vs. Hassad Netherland B.V. & Ors.*** **2016 SCC OnLine Del 982** in support of his submissions.

18. On the contrary, learned counsel appearing on behalf of respondents has opposed the present petition on the issue of maintainability of this petition lacking jurisdiction before this Court. Learned counsel submitted that the agreement between the parties was executed at Lucknow for the work to be performed at Allahabad and that respondent is having its registered office at Lucknow and only petitioner has its registered office at Delhi and so, no cause of action has arisen within the jurisdiction of this Court and, therefore, the present petition is not maintainable.

19. It was next submitted by learned respondent's counsel that as per the Agreement dated 08.02.2017, it was agreed between the parties that any dispute, difference or controversy shall be first tried to be resolved through conciliation and if it fails, then all disputes shall be referred to arbitration in terms of Arbitration and Conciliation Act, 1996. Attention of this Court has specifically been drawn to Clause 26.3 and 26.3.1 wherein recourse to arbitration has been enumerated in the aforesaid Agreement. It was further

submitted that reliance placed by petitioner upon ICADR Rules for want of jurisdiction of this Court is erroneous and unwarranted, as ICADR Rules shall come into play only after arbitral tribunal is constituted.

20. Learned counsel also submitted that at the time of execution of Agreement dated 08.02.2017, both the parties relied upon ICADR Rules only for the purpose of determining the procedure of arbitral proceedings and not the seat of arbitration proceedings. Also submitted that as per Rule 17 of ICADR Rules, even if seat of arbitration is to be decided as per ICADR Rules, mutual consent of both the sides is required and in the present case, respondent has never consented to the seat of arbitration as New Delhi.

21. Learned counsel for respondent next drew attention of this Court to Clause 27.1 of the aforesaid Agreement to submit that the Courts at Lucknow shall have the exclusive jurisdiction over matters arising out of the Agreement. Learned counsel emphasized that in cases where more than one courts have the jurisdiction, the place where the Agreement has been executed shall have the jurisdiction, which in the case in hand is Lucknow. Learned counsel also submitted that in the Agreement in question only the word "venue" has been mentioned and thereby the term "venue" means

"seat" of the arbitration and distinction between the two is not applicable to the present case.

22. In support of aforesaid submissions, learned counsel for respondent relied upon decision of Hon'ble Supreme Court in ***BGS SGS SOMA JV v. NHPC,*** **(2020) 4 SCC 234** to submit 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."*

23. Reliance was also placed upon another Hon'ble Supreme Court decision in ***Indus Mobile Distribution (Supra)*** in support of aforesaid submissions. Lastly, learned counsel pressed that the present petition be not allowed, lacking jurisdiction.

24. Upon hearing learned counsel representing both the sides at length and on perusal of material placed on record as well as decisions relied upon by both the sides, this Court finds that existence of Agreement dated 08.02.2017 entered into between the parties is not disputed. Parties have also not disputed that in terms of aforesaid Agreement, the disputes between the

parties have to be referred to an Arbitrator. The relevant Article-26 of the Agreement dated 08.02.2017 reads as under:-.

"ARTICLE 26

DISPUTE RESOLUTION

26.1 Dispute Resolution

26.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.

26.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

26.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Authority's Engineer, or such other person as the Parties may mutually agree upon (the "Conciliator") to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later

than 7 (seven) business days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) business day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 26.1.1 or suit, longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3.

26.3 Arbitration

26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 26.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [Lucknow), and the language of arbitration proceedings shall be English.

26.3.2 *There shall be a Board of three arbitrator so, of whom each party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.*

26.3.3 *The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay."*

25. Pertinently, Clause-26.1 of Article 26 in the aforesaid Agreement dated 08.02.2017 deals with the mechanism in which disputes *inter se* parties shall be resolved. Clause -26.2 defines the manner in which either party may call upon Authority's Engineer to mediate or assist the parties in arriving at an amicable settlement. Upon respondent's denial of the termination payment under Article 23.6.2 and 26.3.3 of the said Contract, petitioner vide its communication dated 25.11.2020 invoked the pre-requisite dispute resolution clause calling upon the Chairman of the Authority Board of Directors of the Contractor to frame a time line for amicable resolution of disputes. In response to the aforesaid communication dated 25.11.2020, respondent vide letter dated 14.01.2021, through its Chief General Manger, informed the petitioner that pursuant to revocation of the Contract Agreement vide its letter dated 14.10.2020, no claim towards 'Termination Payments' was due upon respondents. It is in these circumstances; petitioner has rightly invoked the arbitration Clause 26.3.1 of the Contract and by its communication dated 06.02.2021 proposed name of Hon'ble Mr. Justice (Retd.) S. J. Mukhopadhyay, as its nominee Arbitrator.

26. A bare reading of aforesaid Clause 26.3.1 shows that upon invocation of arbitration by either party, the proceedings shall be conducted in

accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi and the venue of such Arbitration shall be Lucknow.

27. During the course of arguments, without going into the merits of the disputes with regard to contract in question, counsel for the both the sides laid emphasis upon distinction between the "venue" and "seat" of arbitration and several decisions in this regard were cited before this Court. According to learned counsel for the petitioner, "venue" of arbitration does not include the "seat" of the arbitration and since the arbitration has to be conducted in terms of Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, therefore, seat of the Arbitrator has to be New Delhi. To the contrary, learned counsel for respondent strenuously argued that in terms of clause 26.3.1, the venue of arbitration has to be Lucknow only.

28. What this Court is required to consider and decide in terms of Clause 26.3.1, whether the seat of arbitration shall be New Delhi in the light that the arbitration has to be conducted in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi OR Lucknow, in the light of agreement that the venue of such arbitration

shall be Lucknow?

29. The Hon'ble Supreme Court in a catena of judgments has elaborately discussed the terms "venue" and "seat".

30. A five judge Constitution Bench of the Supreme Court in ***Bharat Aluminium Company Ltd. (Supra)*** recognized that "Seat" and "Venue" are different and observed that the "Seat" of arbitration is the center of gravity of the arbitration and the "Venue" is the geographical location where such arbitration meetings are conducted. The Court held that under sub-Section (2), (2) and (3) of Section 20 of the Arbitration and Conciliation Act, 1996, "Place of Arbitration" is used interchangeably. The Hon'ble Court further held as under:-

> *"96. We are of the opinion, the term "subject matter of the arbitration" cannot be confused with "subject matter of the suit". The term "subject matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy.*

Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject

matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located.

31. In ***Enercon (India) Ltd. (Supra),*** the Hon'ble Supreme Court held that the seat of arbitration shall be India and Indian judiciary shall have the jurisdiction, despite London being chosen as the venue of arbitration. The Hon'ble Court relied upon decision in ***Bharat Aluminium Company Ltd. (Supra)*** to hold *"that the courts are required to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing arbitration clause"*.

32. In ***Imax Corporation (Supra),*** three foreign arbitral awards were under challenge before the Hon'ble Supreme Court, of which execution was sought by petitioner after ten years of passing of the Award and the Court was required to consider the limitation period.

33. In ***Indus Mobile Distribution (Supra)***, the Hon'ble Supreme Court has dealt with the issue whether the seat of arbitration suggests the jurisdiction and held that once a seat is determined, the courts at seat shall have the exclusive jurisdiction for the purpose of regulating arbitral proceedings. However, in the said case, the parties had not only agreed to

the seat of arbitration but also had an exclusive jurisdiction clause, which ousted other jurisdictions.

34. The Hon'ble Supreme court in a recent decision in ***Mankastu Impex Private Limited (Supra)*** while dealing with the issue whether the seat of arbitration shall be New Delhi or Hongkong, observed that mere expression of place of arbitration will not entail that the parties intended it to be the seat. The intention of the parties to the seat has to be determined from other clauses of the Agreement and the conduct of the parties.

35. The afore-noted ratio of law with regard to "Seat" and "Venue", laid down by the Hon'ble Supreme Court in ***Bharat Aluminium Company Ltd. (Supra)*** was further clarified in ***BGS SGS SOMA JV (Supra)***, wherein on the question of maintainability of three appeals under Section 37 of the Arbitration and Conciliation Act, the Hon'ble Court observed that though the agreement between the parties therein was executed at Faridabad and part of cause of action also arose at Faridabad and also that Faridabad was the place where request for arbitration was received, however, the arbitration clause in the said agreement did not specifically mention that "the hearings shall take place at the venue" or the tribunal "may meet" or "may hear the witnesses, experts or parties" at the venue. In the facts of the said case,

since the proceedings were held in Delhi and Award was also signed in Delhi, the Court directed hearing of Section 34 petition in the Courts at New Delhi. The Court observed that if the arbitration agreement provides that arbitration proceedings "*shall be held*" at a particular venue, then that indicates arbitration proceedings would be anchored at such venue, and therefore, the choice of venue is also a choice of the seat of arbitration. The Hon'ble Court reiterated that once the parties designate the seat of arbitration, only the courts governing the seat have exclusive jurisdiction to govern such arbitration proceeding and jurisdiction of all other courts stand ousted.

36. In view of afore-noted holding of the Hon'ble Supreme Court in ***BGS SGS SOMA JV (Supra)*** that **"choice of venue is also a choice of the seat of arbitration"**, this Court finds that in Clause-26.3.1 of Article-26 of the Agreement dated 08.02.2017, the parties have agreed that the venue of arbitration shall be 'Lucknow' and therefore, the courts at Lucknow shall have the exclusive jurisdiction to entertain the disputes arising out of Agreement in question.

37. Further, as per relevant clause 26.3.1 of the Agreement in question, the arbitration shall be held in accordance with the ICADR Arbitration

Rules, 1996. Learned counsel for respondent has heavily relied upon Para-17 of ICADR Arbitration Rules, 1996, which reads as under:-

> *"17.* ***Place of arbitration.—*** *(1) The place of arbitration shall be New Delhi or such other place where any of the Regional Offices of ICADR is situated as the parties may agree : Provided that failing any agreement between the parties, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including convenience of the parties.*
>
> *(2) The arbitral tribunal may, after consulting the ICADR, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property."*

38. A plain reading of afore-noted Para-17 of ICADR Rules clearly shows that the place of arbitration shall be New Delhi or any of its regional office "as the parties may agree". No doubt the aforesaid Clause-26.3.1 of Article-26 of the Agreement dated 08.02.2017 stipulates that the arbitration shall be held in accordance with the Rules of ICADR but soon thereafter it follows the condition that the venue of arbitration shall be 'Lucknow'. Accordingly, in the considered opinion of this Court, the role of ICADR Rules shall come into play with regard to procedure to be followed, only after the arbitration

commences before the appropriate jurisdiction of law, which in this case is "Lucknow".

39. In view of above discussion and legal position, this Court has no jurisdiction to entertain the present petition seeking appointment of Arbitrator under the provisions of Section 11(6) of Arbitration and Conciliation Act, 1996 and it is accordingly dismissed, with liberty to petitioner to approach the Court at Lucknow for the relief sought herein.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 23, 2021
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