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

% *Date of decision: October 31, 2019*

\+ O.M.P. (COMM) 435/2019 & I.As.14406-14409/2019

RAJ KUMAR BROTHERS

..... Petitioner

Through: Mr. Anil Goel and Ms. Aditya Goel, Advs.

versus

LIFE ESSENTIALS PERSONAL CARE PRIVATE LTD

..... Respondent

Through: Mr. Harpreet S. Popli, Mr.Anuj Yadav and Ms. Razia Wadhwa, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**V. KAMESWAR RAO, J. (ORAL)**

1. The present petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award dated November 29, 2018 passed by the learned sole Arbitrator.

2. The respondent has entered appearance through Mr. Harpreet S. Popli, Advocate, who has taken a preliminary objection about the maintainability of the petition in this Court on the ground that in terms of the agreement between the parties, they have agreed that all the disputes related to the agreement shall be subject to the Gurugram jurisdiction. I may, here, reproduce clauses 36 and 37 of the agreement.

> *"36. In the event of any dispute or differences arising between the parties in regard to this agreement or any matter connected therewith, the same will be attempted to be resolved amicably by the parties inter Se. Falling such*

*resolution within 15 days, the dispute shall then be referred to and settled by Arbitration of a sole Arbitrator to be mutually agreed. The provisions of the Arbitration and Conciliation Act, 1996 and its amendment/ s shall be applicable. The venue of Arbitration shall be Gurgaon and the proceedings shall be conducted in English.*

*37. All disputes related to this Agreement shall be subject to GURGAON jurisdiction."*

3. Learned counsel appearing for the petitioner contested the preliminary objection raised by Mr. Popli by stating that in the petition filed by the respondent herein under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the Punjab and Haryana High Court at Chandigarh, the Hon'ble the Chief Justice has referred the dispute between the parties to be adjudicated under the aegis of the Delhi International Arbitration Centre, New Delhi and the arbitration proceedings actually held in Delhi and as such the venue being Delhi, this Court shall also have jurisdiction. In support of his submission, he has relied upon the following judgments:

1. ***Commander Works Engineer v. Diplomat Engineer and Anr., 2011 (6) R.A.J. 164 (P&H);***
2. ***NGC Network India Pvt. Ltd. v. Orangefish Entertainment Private Limited, 2018 (172) DRJ 169; and***
3. ***Spentex Industries Ltd. v. Louis Dreyfus Commodities India Pvt. Ltd., 258 (2019) DLT 138.***

4. On the other hand, Mr. Popli by taking support of clauses 36 and 37 submitted that the parties are situated in Gurugram and Kolkata; the contract was executed in Gurugram and accordingly, the parties

decided to hold the arbitration proceedings at Gurugram and also limit the dispute related to the agreement to Gurugram jurisdiction.

5. The seat of arbitration being Gurugram, it is the Court in Gurugram which shall have jurisdiction to entertain the petition under Section 34 of the Arbitration and Conciliation Act. He also submitted that the order passed by the Punjab and Haryana High Court in the petition under Section 11 (6) of the Arbitration and Conciliation Act referring the dispute between the parties to the Delhi International Arbitration Centre, New Delhi, for adjudication shall have no bearing, as according to him Delhi is only a venue for holding the arbitration proceedings for convenience of the parties. In support of his submission, he has relied upon the following judgments:

1. ***Swastik Gases Private Limited v. Indian Oil Corporation Limited, (2013) 9 SCC 32;***
2. ***B.E. Simoese Von Staraburg Niedenthal and Anr. V. Chhattisgarh Investment Limited, (2015) 12 SCC 225;***
3. ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. & Ors. (2017) 7 SCC 678; and***
4. ***Dwarika Projects Ltd. v. Superintending Engineer, Karnal PWD, 2019 (4) RAJ 445=2019 (261) DLT 6.***

6. Having heard the learned counsel for the parties, a perusal of clause 36 of the agreement executed between the parties, show that the parties have decided to hold the arbitration proceedings at Gurugram as the contract was executed in Gurugram and moreover, the respondent is also based in Gurugram. It is precisely for this reason that even the

respondent had invoked jurisdiction of Punjab and Haryana High Court for appointment of an Arbitrator.

7. That apart, the parties have also limited all the disputes to jurisdiction of Gurugram. The plea of the learned counsel for the petitioner that Delhi being the *"venue"* of arbitration and as such, jurisdictional place / seat, is not appealing for the reason (i) that the Punjab and Haryana High Court was the Competent Court for a petition under Section 11 of the Arbitration & Conciliation Act as Gurugram falls under its jurisdiction; (ii) the provisions of Section 20 of the Arbitration and Conciliation Act, 1996, inasmuch as sub-section 1 of Section 20 recognizes the freedom of the parties to fix the juridical place / seat of their choice. Sub-section 2 of the same section confers the power on the arbitral tribunal where the parties have failed to arrive at an agreement in that regard to fix a juridical place for the conduct of the proceedings. The Sub-section 3 of Section 20 give a discretion to the arbitral tribunal to meet at a place other than the jurisdictional place / seat of arbitration for variety of reasons such as recording of evidence, inspection of documents, goods or other property being at that place etc.

8. The Supreme Court in ***Reliance Industries v. Union of India, (2014) 7 SCC 603*** has held as under:

> *"18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO (2012) 9 SCC 552 judgment in no uncertain terms has referred to "place" as "juridical seat" for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word "place" is used, refers to "juridical seat", whereas in Section 20(3), the*

*word "place" is equivalent to "venue". This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act."*

9. From the above, it is clear that in Sections 20(1) and 20(2) the word *"place"* is used to refer to juridical seat where as in Section 20(3), the word *"place"* is equivalent to *"venue"*. The case in hand, wherein the parties have agreed to Gurugram to be the *"venue"*, it is a case which falls under Section 20(1) [not under Section 20 (2) or Section 20(3)] of the Arbitration and Conciliation Act and the word *"venue"* must read to mean "*place"* i.e. juridical seat.

10. During the course of submissions, Mr. Popli has laid stress on the fact that the DIAC was selected only for the reason that the one of the parties is based in Kolkata and other being in Gurugram, Delhi would be a convenient place. The same is appealing. That apart, I find the High Court regulated the fee of the learned Arbitrator not under the DIAC, but under the Chandigarh Arbitration Centre Rules, 2014 which also give an indication in that regard that Delhi shall be "*venue"* as different from juridical seat.

11. The aforesaid issue is no more *res-integra* in view of the latest judgment of the Supreme Court in ***Brahmani River Pellets Limited v. Kamachi Industries Limited, (2019) SCC OnLine SC 929,*** wherein in paras 17 and 18, the Supreme Court has held as under:

*"17. The inter-play between "Seat" and "place of arbitration" came up for consideration in the case of* Indus *Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. and others (2017) 7 SCC 678. After referring*

*to BALCO, Enercon (India) Limited and others v. Enercon GMBH and another (2014) 5 SCC 1 and Reliance Industries Limited and another v. Union of India (2014) 7 SCC 603 and also amendment to the Act pursuant to the Law Commission Report, speaking for the Bench Justice Nariman held as under:-*

*"18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO (2012) 9 SCC 552 judgment in no uncertain terms has referred to "place" as "juridical seat" for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word "place" is used, refers to "juridical seat", whereas in Section 20(3), the word "place" is equivalent to "venue". This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.*

*19. 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 exclusively 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 Sections 16 to 21 of 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.*

*20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. (2013) 9 SCC 32 This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. (2015) 12 SCC 225 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.*

*18. <u>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</u>*

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

*(emphasis supplied by this Court)*

12. Insofar as the judgments relied upon by the counsel for the petitioner are concerned, in ***Commander Works Engineer (supra)*** the issue, which arose for consideration before the Punjab and Haryana High Court was whether in view of the fact that the respondents had earlier filed application under Section 11 of the Act before this Court seeking appointment of Arbitrator can be said to be an event, which will lead to the conclusion that all other obligations pertaining to the arbitration disputes between the parties shall lie in this Court in view of bar under Section 42 of the Arbitration and Conciliation Act. The answer was in negative.

13. Suffice it would be to state, in view of my above conclusion, more specifically in paras 7 to 9 above, this judgment has no applicability.

14. Insofar as the judgment in the case of ***NGC Network India Pvt. Ltd.(supra)*** is concerned, the learned counsel had relied upon the conclusion of the Coordinate Bench of this Court under issue No.(iii) which was whether the Gurugram Court will have jurisdiction or the Delhi Court. The Coordinate Bench of this Court referring to the initial Memorandum of Understanding which stipulated the venue of arbitration shall be Gurugram and subsequently executed arbitration agreement which stipulated that the proceedings shall be held at Delhi,

held that the Court of Delhi shall have the jurisdiction. Suffice would it be to state, the said judgment is distinguishable on facts.

15. Insofar as the judgment in the case of ***Spentex Industries Ltd. (supra)*** is concerned, the said judgment is of no help to the petitioner, rather it holds against the petitioner, inasmuch as the contract stipulates the jurisdiction of Delhi Courts for any issue arising out of the Arbitration Proceedings or the Award; hence the Court held that the intention of the parties is clearly decipherable from the jurisdiction clause in the contract, wherein parties have agreed that the jurisdiction shall vest with the Courts in Delhi to deal with any dispute arising out of arbitration proceedings or the award to mean that it is the Court in Delhi which shall have the jurisdiction. This judgment is of no help to the learned counsel for the petitioner.

16. In view of my above discussion, I hold that this Court does not have jurisdiction to entertain the present petition. The Registry is accordingly directed to return the petition and the applications to the petitioner with an appropriate endorsement. The petitioner will be entitled to institute the proceeding in an appropriate Court in accordance with law. No costs.

**V. KAMESWAR RAO, J**

**OCTOBER 31, 2019***/aky*