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Exclusive Jurisdiction Clause vs. Seat of Arbitration: Insights from the decision of the Delhi High Court in Viva Infraventure Pvt. Ltd. v. New Okhla Industrial Development Authority

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Introduction

The Delhi High Court ("**Court**"), in a recent decision of ***Viva Infraventure Pvt. Ltd. ("Viva") v. New Okhla Industrial Development Authority (NOIDA)***[i] dismissed a petition under Section 29A(5) of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking extension of the mandate of the sole arbitrator for want of territorial jurisdiction.

The Court held that an exclusive jurisdiction clause conferring jurisdiction on the courts at Gautam Budh Nagar, Uttar Pradesh for the enforcement of the arbitration clause would prevail over a subsequent procedural order by the arbitral tribunal that designated Delhi as the seat. The decision emphasises on the binding nature of exclusive jurisdiction clauses and affirms the principle of party autonomy.



Factual Background

The dispute arose out of a construction contract dated 19.10.2015 awarded to VIVA by NOIDA for a road infrastructure project in Noida ("**Contract**"). The Contract contained an arbitration clause (Clause 34) providing for the reference of disputes to a sole arbitrator appointed by the CEO of NOIDA. Importantly, Clause 32 conferred exclusive jurisdiction on the courts at Gautam Budh Nagar and permitted the arbitrator to fix the venue of arbitration in his discretion. The relevant section of Clause 32 of the Contract is extracted herein below:

> "*—32….All dispute between the parties to the contract arising out of relating to the contract shall after written notice by either party to the contract to the other party be referred to arbitration as above. Unless the parties otherwise agree such reference shall not take place until after the completion, alleged completion or abandonment of the work of the determination of the contract. The venue of arbitration shall be such a place or places as may be fixed by an arbitrator in his/theirs sole discretion. Any suit or application for the* ***enforcement of this arbitration clause shall be filed in the competent court at Gautam Budh Nagar****,* ***no other court or any other district or Pradesh or outside Uttar Pradesh shall have any jurisdiction in the matter****. The award of the arbitrator shall be final, conclusive and binding on both the parties to the contract."*

Disputes emerged between the parties and VIPL approached the Allahabad High Court under Section 11 of the 1996 Act. The High Court appointed Justice G.S. Singhvi (Retd.) as the sole arbitrator. The arbitrator entered reference on 15 October 2022 and, by way of Procedural Order No. 1 issued on the same date, designated Delhi as the seat of arbitration ("**Procedural Order**"). In particular, Para 7 of the Procedural Order read as under:

> "*7. Seat for the meetings:*
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> *The Seat for the Arbitration shall be Delhi. For holding the meeting of the tribunal (virtual / physical), necessary arrangements shall be made as per directions given from time to time. The tribunal may fix any hearing or hearings at any other place as it considers necessary / appropriate. This does not preclude the tribunal, after consultation with the parties, from meeting with the parties and witnesses at any other place or communicating with the parties by conference call or video conference.*"

As the proceedings remained pending at the stage of final arguments, VIVA, this time, approached the Delhi High Court, and not the Allahabad High Court, under Section 29A(5), seeking a further extension of the arbitrator's mandate.

Issues

1. Whether the Delhi High Court had territorial jurisdiction to entertain a petition under Section 29A(5) of the 1996 Act basis the designation of the seat by the Tribunal?

2. Whether the Procedural Order designating Delhi as the seat of arbitration overrode the exclusive jurisdiction clause in the contract?

Petitioner's Arguments

Viva contended that the arbitrator, with the consent of parties, had fixed Delhi as the seat of arbitration in the Procedural Order. It was argued that this procedural order, recorded that all procedural orders and the final award would be deemed to be made at New Delhi, thereby establishing Delhi as the seat of arbitration.

Relying on *BGS SGS Soma JV v. NHPC Ltd.* [ii], the Petitioner submitted that the designation of a place as the seat confers exclusive jurisdiction on the courts of that location for all applications under the 1996 Act. It was further submitted that the change of seat also effected a change in court under Section 2(1)(e), placing reliance on *Inox Renewables Ltd. v. Jayesh Electricals Ltd.*,[iii]. The petitioner also cited *Ashiyana Infrahomes Pvt. Ltd. v. Adani Power Ltd.*[iv], where the Delhi High Court had upheld jurisdiction based on a shift in the seat of arbitration by mutual consent.

Respondent's Arguments

NOIDA resisted the petition on the ground that Clause 32 of the contract conferred exclusive jurisdiction on the courts at Gautam Budh Nagar, thereby indicating their intent to designate Gautam Budh Nagar as the seat of arbitration. It argued that the arbitrator's procedural designation of Delhi as the seat could not override the express agreement between the parties especially in the absence of another express agreement in writing between the parties.

It was submitted that the Procedural Order fixing Delhi as the seat was passed without NOIDA's consent and at a time when the contract was not before the arbitrator. Therefore, any such designation was as a matter of fact for the venue and not the seat and was merely a matter of convenience. It also argued that the Tribunal could not have gone beyond the contract executed between the parties, and absent any dispute with respect to the seat, there was no question of determining it under Section 20(2) of the 1996 Act.

Further reliance was placed on *BBR (India) Pvt. Ltd. v. S.P. Singla Constructions Pvt. Ltd.*[v], to assert that the seat must remain static and cannot be altered by conduct. NOIDA also emphasised that the appointment under Section 11 was made by the Allahabad High Court in consonance with the exclusive jurisdiction clause, reinforcing the exclusion of any other court's supervisory role.

Decision and Analysis

The Court observed that Clause 32 of the contract contained a bifurcated clause: while it permitted the arbitrator to fix the "venue" in his discretion, it also stated in unequivocal terms that any application for enforcement of the arbitration clause was to be filed only in courts at Gautam Budh Nagar, ousting the jurisdiction of all other courts.

The use of exclusionary language in Clause 32 - "*Any suit or application for the enforcement of this arbitration clause shall be filed in the competent court at Gautam Budh Nagar, no other court or any other district or Pradesh or outside Uttar Pradesh shall have any jurisdiction"* was held to reflect the parties' conscious intent to confer exclusive jurisdiction to the courts of Gautam Budh Nagar to exercise supervisory control and could not be ignored.

Relying extensively on the recent decision of the *Precitech Enclosure Systems Pvt. Ltd. v. Rudrapur Precision Industries*[vi], the Court held that where a contract contains an express exclusive jurisdiction clause in relation to arbitral proceedings, such clause must prevail and be given effect to over designation of a seat by an arbitrator. The Court traced the jurisprudential development including in the case of *Mankastu Impex*[vii] to reinforce the primacy of exclusive jurisdiction clauses where they expressly govern applications under the 1996 Act.

On the effect of Procedural Order, the Court noted that in any event the designation of Delhi as the seat was not recorded with the express consent of the Respondent, and Paragraph 7 (supra) could at the most be construed as procedural directions within the scope of Section 20(3), and not determinative of supervisory jurisdiction.

In conclusion, the Court held that the parties' agreement to confer exclusive jurisdiction on the courts at Gautam Budh Nagar must be given full effect. The court held that overriding such a clause would amount to re-writing the contract. The petition was accordingly dismissed for lack of territorial jurisdiction.

Conclusion

This judgment offers clarity on the interplay between an exclusive jurisdiction clause and the arbitral tribunal's power to designate a seat. While tribunals are empowered under Section 20 of the 1996 Act to determine the seat in the absence of agreement between the parties, such discretion must yield to a contractually agreed exclusive jurisdiction clause, especially where the clause is expressed in unequivocal, exclusionary terms.

The Court is clear that an exclusive jurisdiction clause conferring jurisdiction on a particular court to the exclusion of all others with respect to the enforcement of an arbitration clause as in this case, cannot be diluted by a procedural order designating another seat especially when there is no mutual and unequivocal consent for such a change.

The decision is also a reminder that drafting consistency matters. When arbitration clauses and jurisdiction clauses are not aligned in language or intent, they invite unnecessary litigation and procedural uncertainty. For parties and counsel alike, this case is a reminder on the importance of ensuring that contractual provisions on seat, venue, and jurisdiction are harmoniously worded to avoid interpretational conflict at a later stage.

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i O.M.P.(MISC.)(COMM.) 606/2024, decided on 1 July 2025

ii (2020) 4 SCC 234

iii (2023) 3 SCC 733

iv 2018 SCC OnLine Del 9110

v (2023) 1 SCC 693

vi 2025 SCC OnLine Del 1609

vii (2020) 5 SCC 399

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