IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/PETN. UNDER ARBITRATION ACT NO. 159 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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INSTAKART SERVICES PRIVATE LIMITED

Versus

MEGASTONE LOGIPARKS PVT. LTD.

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Appearance:
Appearance:
MR. DEVANG S. NANAVATI, SENIOR ADVOCATE WITH MR. TABISH SAMDANI, ADVOCATE FOR J SAGAR ASSOCIATES(8162) for the Petitioner(s) No. 1
ADITYA A GUPTA(7875) for the Respondent(s) No. 1
MOHIT A GUPTA(8967) for the Respondent(s) No. 1

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**

Date : 13/10/2023

CAV JUDGMENT

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1. Heard learned Senior Counsel Mr. Devang Nanavati assisted by learned counsel Mr. Tabish Samdani appearing for the petitioner, and learned counsel Mr. Mohit Gupta appearing for the respondent.

2. In the instant petition, seeking for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996', for short), two issues have been raised by the learned counsel for the respondent for consideration, raising an objection with regard to appointment of Arbitrator on the dispute arising out of the Maintenance and Amenities Agreement (hereinafter referred to as 'M & E Agreement', for short) dated 07.05.2018, and further with regard to the territorial jurisdiction of this Court to entertain the petition under Section 11 of the Act, 1996.

3. Contesting the claim of the petitioner to appoint Arbitrator, to deal with the dispute arising out of the M & E Agreement, it is argued by the learned Senior Counsel for the petitioner that M & E Agreement contains no arbitration

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clause and the arbitration clause in the Lease Agreement dated 01.03.2018 cannot be invoked to refer the dispute to the Arbitrator. Second submission is that, even if it is assumed for a moment without admitting that the arbitration clause under the Lease Agreement dated 01.03.2018 can be invoked for appointment of Arbitrator to deal with the above noted dispute, this Court does not have territorial jurisdiction to entertain the petition under Section 11 of the Act, 1996, inasmuch as, the seat of the arbitration as agreed is at Bangalore, as per Clause '25' of the agreement. It was argued that a bare reading of the Clause 25(ii) of the Lease Agreement indicates that the parties had agreed that the arbitration proceedings will be conducted at Bangalore, and hence, the seat of the arbitration having been agreed, the jurisdiction to entertain the petition under Section 11 of the Act, 1996 can only be with the Karnataka High Court.

4. Reliance is placed on the decisions in ***BGS SGS Coma JV versus NPHC reported in (2020) 4 SCC 234, M/s. Devyani International Ltd. versus Siddhivinayak Builders and Developers reported in 2017 SCC OnLine***

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Del 11156, ***Cinepolis India Pvt. Ltd. versus Celebration City Projects Pvt. Ltd. and Another reported in 2020 SCC Online Del 301, M/s. Raman Deep Singh Taneja versus Crown Realtech Private Limited reported in 2017 SCC OnLine Del 11966,*** to substantiate the above submission.

5. In reply to the objections raised by the learned counsel appearing for the respondent, it was argued by the learned Senior Counsel appearing for the petitioner that the petitioner and the respondent had executed a Lease Agreement dated 01.03.2018 for leasing of the premises admeasuring 68,890 sq. feet at Building No. 12, Jupiter Industrial & Logiparks, Survey No. 607, Vadala Road, Village Hariyala, District Kheda, Gujarat – 387120 for warehouses. Another agreement named as M & E Agreement dated 07.05.2018 was executed between the parties, whereunder the respondent had agreed to maintain the premises under Lease and provide various common services and amenities there. Some dispute has arisen between the parties, as a result of which, the petitioner had terminated the Lease

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Agreement as also the Maintenance Agreement on 07.07.2021, asking the respondent to take the possession of the premises-in-question and also to refund the security deposit paid by the petitioner under the M & E Agreement.

6. It is submitted by the learned Senior Counsel appearing for the petitioner that the respondent had failed to perform their contractual obligations and stopped the water supply in the premises. The petitioner had issued pre-arbitration notice dated 16.05.2022 disclosing its intention of amicable settlement of disputes in terms of Clause '25' of the Lease Agreement. By the reply dated 22.06.2022, the respondent had denied the petitioner's stance mainly on the ground that the Lease Agreement and M & E Agreement are separate agreements and that though the disputes arising out of the Lase Agreement are subject to arbitration, the arbitration proceedings with respect to the disputes arising out of the M & E Agreement, cannot be referred to the arbitration by invoking Clause '25' of the Lease Agreement.

7. It is argued by the learned Senior Counsel for the

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petitioner that M & E Agreement is an ancillary agreement, which is related to the principal agreement (which is Lease Agreement) and performance of one agreement was being intrinsically related to another agreement. Clause '25' of the Lease Agreement can be invoked. The Clause 25 of the Lease Agreement and the clauses of M & E Agreement placed before the Court, are relevant to be noted hereinunder : -

> *"**25. Dispute Resolution and Jurisdiction***
>
> *i. Disputes: The Parties shall attempt to amicably settle any dispute arising out of this Agreement and the obligations hereunder ("Dispute"). Either Party may give written notice of a Dispute to the other Party within seven (7) days of the occurrence of the event which gives rise to such Dispute or the day that such event came to the notice of the applicable Party.*
>
> *ii. Arbitration: If any Dispute arising between the Parties is not amicably settled within 10 days of commencement of amicable attempts to settle the same as provided above, such dispute shall be referred to, and be finally settled by arbitration proceedings. The Parties agree that the arbitration proceedings will be conducted at Bangalore and shall be governed by the provisions of the Arbitration and Conciliation Act, 1996. That the Dispute shall be adjudicated by a single arbitrator mutually agreeable to, and appointed by, the Parties. In the event the Parties fail to appoint a single arbitrator due to non-cooperation from the other Party, post due discussions, the other party shall be free to appoint a sole arbitrator to conduct the Proceedings. The decision of the arbitrator shall be final and binding on the Parties. Each Party shall be responsible for the costs of appointing their respective*

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arbitrator as contemplated herein, however, where a joint appointment of an arbitrator occurs, the costs thereof will be shared equally by the Parties. Such Arbitration will be conducted in Bangalore.

iii. Jurisdiction: Subject to the foregoing, the courts at Ahmedabad only shall have exclusive jurisdiction in all matters arising out of this Agreement.

WITNESSETH

A. WHEREAS on 1st March 2018 the Second party has entered into a Agreement to Lease a reprint with minor modifications was then registered with Sub Registrar Kheda on 7th April 2018 with various owners of the building block No. A2, lying and situate in the project named Jupiter Industrial & Logiparks, Survey No 607p, Vadala Road, Village Hariyala, Distt. Kheda, Gujarat together with right to use project's common area, passages along with four-wheeler parking facilities, right of ingress to and egress from the said building A2, water, sanitary and power amenities.

B. The property that the Second Party have taken on lease under the Agreement to Lease mentioned in Clause - 1 above, is more fully described in Schedule 'A' annexed hereto and shall hereinafter be referred to as the 'Leased Premises'.

C. The Second party has requested the First party to provide certain services in the Project named Jupiter Industrial & Logiparks required for business purpose of the second Party to enable the Second Party to start and conduct its business operations and more fruitfully enjoy the Leased Premises. First party has agreed to provide the services on the Terms & Conditions hereinafter contained. This Agreement shall hereinafter be referred to as the Service Level Agreement.

NOW THIS SERVICE LEVEL AGREEMENT WITNESSES AS FOLLOWS:

1) GRANT:

In consideration of the payment of maintenance charges and amenities charges reserved hereunder, the First Party shall provide to the Second Party, the

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services and amenities as set out in this agreement at the common area of the Jupiter Industrial & Logiparks.

2) TERM:
This Agreement shall be operative & co-terminus from the date of the operation of the Agreement to Lease dt. 1st March 2018 (01.03.2018) and shall be operative until the term of the said Agreement ie 01.03.2018 to 28.02.2027 to Lease and to be executed as registered Lease Deed and renewal thereof as provided in the said Agreement to Lease or Registered Lease Deed, as the case may be. Provided specifically that this agreement shall be co-terminus with the term of or early termination of any of the said Agreements, as the case may be."

8. The submission of the learned Senior Counsel appearing for the petitioner is that the fact that the M & E Agreement has been made operative and co-terminus from the date of operation of the agreement to lease dated 01.03.2018, and further has been made operative only under the terms of the Lease Agreement, makes it clear that M & E Agreement is an ancillary agreement, which was intrinsically related to principal agreement. In absence of M & E Agreement, the petitioner was not in position to enjoy the premises as the responsibilities of the respondent in carrying out the operation as contemplated by M & E Agreement were to be discharged with respect to the premises on lease. The Lease Agreement being the Mother agreement, the

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arbitration clause therein would have to be invoked for deciding the disputes arising out of the ancillary agreement, which is M & E Agreement. The claims of the petitioner cannot be bifurcated in two different jurisdictions.

9. Reliance is placed on the decision of the Apex Court in the case of ***Chloro Controls India Private Ltd. vs. Severn Trent Water Purification Inc. & Ors. reported in (2013) 1 SCC 641, Ameet Lalchand Shah and Others versus Rishabh Enterprises and Another reported in (2018) 15 SCC 678, and Duro Felguera S.A. versus Gangavaram Port Ltd. reported in (2017) 9 SCC 729,*** to submit that the question whether or not the arbitration clause contained in another document is incorporated in the contract, is always a question of construction of document with reference to the intention of the parties. In a case, where several parties are involved in a single transaction, or commercial project, all the parties can be covered by the arbitration clause in the main agreement. In cases involving execution of multiple agreements between the same parties, two essential features are to be seen; firstly, that all ancillary

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agreements are related to Mother agreement and, secondly, performance of one is so intrinsically interlinked with the other agreement that they are incapable of being beneficially performed without performance of the others or severed from the rest. The intention of the parties to refer all the disputes of the parties to the Arbitral Tribunal is one of the determinative factor. Where agreements are consequential and in the nature of a follow-up to the principal or mother agreement, the latter containing the arbitration agreement and such agreement being so intrinsically intermingled or interdependent that it is their composite performance which shall discharge the parties to their respective mutual obligations and performances, that would be a sufficient indicator of intent of the parties to refer signatory as well as non-signatory parties to arbitration.

10. On the question of territorial jurisdiction of this Court, according to Clause '25' of the Lease Agreement, it is argued by the learned Senior Counsel for the petitioner that the statement in Clause '25' that "the parties agree that the arbitration proceedings will be conducted at Bangalore", will

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give only an indication that the parties had agreed to the 'venue', and not the 'seat' of arbitration. Section 20(3) of the Act, 1996 gives freedom to the Arbitral Tribunal to meet at any place for conducting hearings at the place of convenience in the matter, such as, consultation among its members, for hearing witnesses, experts or the parties. It is further submitted that same clause '25' states with regard to jurisdiction that "Courts at Ahmedabad only shall have exclusive jurisdiction in all matters arising out of this agreement." If both the above statements in Clause 25 (ii) and (iii) are read together and analysed to ascertain the intention of the parties, it can be seen that Bangalore was chosen as the 'venue' and not the 'seat'. The arbitration agreement at Clause '25' provides that exclusive jurisdiction vests with Courts at Ahmedabad; the agreement was executed and stamped in Gujarat; the respondent is situated in Ahmedabad and the petitioner has its Corporate headquarters in Ahmedabad; the premises in dispute is located in Ahmedabad, Gujarat. All these situation cumulatively establish that the seat of Arbitration is

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Ahmedabad.

11. Reliance is placed on the decision of the High Court of Calcutta in the case of ***Homevista Decor and Furnishing Pvt. Ltd. and Another versus Connect Residuary Private Limited reported in 2023 SCC OnLine Cal 1405,*** decisions of High Court of Delhi in the case of ***Cravants Media Private Limited versus Jharkhand State Co. Operative Milk Producers Federation Ltd. and Another reported in 2021 SCC OnLine Del 5350,*** *and in the case of* ***Mrs. Meenakshi Nehra Bhat and Anr. Versus Wave Megacity Centre Private Limited passed in Arbitration Petition No. 706/2020*** *and the latest decision of the Apex Court in the case of* ***M/s. Ravi Ranjan Developers Pvt. Ltd. versus Aditya Kumar Chatterjee passed in Civil Appeal arising out of Special Leave to Appeal (C) No(s). 17397-17398/2021***, to submit that only in case where there is a standalone clause in the agreement, which states that arbitration is to be held at a particular place, then that place

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would be the 'seat' of arbitration. However, in cases, where there are other clauses in the agreement and are contrary indicative that the stated place of arbitration is merely a 'venue' and not the 'seat' of the arbitral proceedings, the Courts to the exclusive jurisdiction of which the parties have submitted for entertaining the disputes arising out of the agreement, would have exclusive jurisdiction even in the matter of appointment of Arbitrator under Section 11 of the Act, 1996.

12. It is argued that the decisions relied upon the learned Counsel for the respondent in the case of **BGS SGS Soma JV versus NPHC Ltd. reported in (2020) 4 SCC 234,** will not be of benefit to the respondent, inasmuch as, the said decision pertains to international commercial arbitration, and it was noted by the Apex Court therein that there being no other significant contrary indica that the stated venue was merely a "venue" and not the "seat" of the arbitral proceedings, it would conclusively show that such a clause designated "seat" of the arbitral proceedings. However, it was held therein that other clauses of the

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agreement must be read to ascertain whether a venue is actually the seat or simplicitor a place owing to there being a contrary indica, in the form of further clauses or conduct of the parties.

13. The decision in the case of ***Cinepolis India Pvt. Ltd. versus Celebration City Projects Pvt. Ltd. and Another reported in 2020 SCC Online Del 301,*** relied by the Counsel for the respondents has been distinguished with the submission that the same was taken note by the Delhi High Court in the subsequent decision in ***Kush Raj Bhatia versus DLF Power and Services Limited through its Director reported in 2022 SCC OnLine Del 3309, Mrs. Meenakshi Nehra Bhat and Anr. Versus Wave Megacity Centre Private Limited (supra), Cravants Media Private Limited versus Jharkhand State Co. Operative Milk Producers Federation Ltd. and Another (Supra), IGSEC Heavy Engineering Ltd. versus Indian Oil Corporation Ltd. reported in 2021 SCC OnLine Del 4748*** of Delhi High Court, which have held to the contrary. In ***M/s.***

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Devyani International Ltd. versus Siddhivinayak Builders and Developers (supra), the arbitration clause itself provided for the seat of arbitration. In ***M/s. Raman Deep Singh Taneja versus Crown Realtech Private Limited (supra)***, it was noted that there was a conflict in the arbitration clause, inasmuch as, there was no distinction for arbitration proceedings and other Court reference. It was, thus, submitted that in view of the above noted decision of the Delhi High Court, clear law laid down therein, the decisions relied by the respondent Counsel will have no application.

14. Heard learned counsels for the parties and perused the record. On the first question with respect to the invocation of arbitration clause '25' of the Lease Agreement, to seek appointment of Arbitrator with respect to the disputes arising out of M & E Agreement, the decision of the Apex Court in the case of ***Chloro Controls India Private Limited versus Seevern Trent Water Purification Inc. and Others (Supra),*** is relevant to be noted. Relevant paragraphs 73 and 74 of the said decision are extracted

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hereinunder : -

> *"73. A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The Court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject matter and the agreement between the parties being a composite transaction. The transaction should be of a composite nature where performance of mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute. Besides all this, the Court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the Court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed.*
>
> *74. In a case like the present one, where origin and end of all is with the Mother or the Principal Agreement, the fact that a party was non-signatory to one or other agreement may not be of much significance. The performance of any one of such agreements may be quite irrelevant without the performance and fulfillment of the Principal or the Mother Agreement. Besides designing the corporate management to successfully complete the joint ventures, where the parties execute different agreements but all with one primary object in mind, the Court would normally hold the parties to the bargain of arbitration and not encourage its avoidance. In cases involving execution of such multiple agreements, two essential features exist; firstly, all ancillary agreements are relatable to the mother agreement and secondly, performance of one is so intrinsically inter- linked with the other agreements that they are incapable of being beneficially performed without performance of the others or severed from the rest. The intention of the parties to refer all the disputes between all the parties to the arbitral tribunal is one of the determinative*

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factor."

15. In ***Duro Felguera S.A. versus Gangavaram Port Ltd. (supra),*** it was held in paragraph 35 as under : -

> *"**35.** Section 7(5) of the Arbitration and Conciliation (Amendment) Act, 2015 reads as under:-*
>
> *"**7. Arbitration agreement.**—(1)-(4)*
>
> *(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."*
>
> *As per Section 7 (5) of the Act, even though the contract between the parties does not contain a provision for arbitration, an arbitration clause contained in an independent document will be imported and engrafted in the contract be- tween the parties, by reference to such independent document in the contract, if the reference is such as to make the arbitration clause in such document, a part of the contract. Section 7(5) requires a conscious acceptance of the arbitration clause from another document, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties. The question whether or not the arbitration clause contained in another document, is incorporated in the contract, is always a question of construction of document in reference to intention of the parties. The terms of a contract may have to be ascertained by reference to more than one document."*

16. In ***Ameet Lalchand Shah and Others versus Rishabh Enterprises and Another (supra),*** it was held in

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paragraphs 17, 21 and 22 as under : -

> *"17. xxxxxxxx……..*
>
> *Through the Sale and Purchase Agreement (05.03.2012) does not have any arbitration clause, by the above clauses, it is clearly linked with the main agreement - Equipment Lease Agreement (14.03.2012). Sale and Purchase Agreement was entered into between Astonfield and Rishabh only for the purpose of onward transmission of leasing of the goods by Rishabh to Dante Energy. There is no merit in the contention that the Sale and Purchase Agreement is not connected with the Equipment Lease Agreement with Dante Energy."*
>
> *21. Mr. Sibal, learned senior counsel for the respondents submitted that the High Court rightly relied upon Sukanya Holdings as it relates to Part-I of the Act that the parties who are not signatories to the arbitration agreement (in this case, Astonfield under Sale and Purchase Agreement) cannot be referred to arbitration. It was further submitted that Chloro Controls arises under Part-II of the Act and was rightly distinguished by the High Court and Sukanya Holdings was not overruled by Chloro Controls and hence, the appellants cannot rely upon Chloro Controls. It was contended that the Sale and Purchase Agreement (05.03.2012) under which huge money was parted with, is the main agreement having no arbitration clause cannot be referred to arbitration. It was submitted that the subject matter of the suit cannot be bifurcated between the parties to arbitration agreement and others.*
>
> *22. In Chloro Controls, this Court was dealing with the scope and interpretation of Section 45 of the Act - Part-II of the Act and in that context, discussed the scope of relevant principles on the basis of which a non-signatory party also could be bound by the arbitration agreement. Under Section 45 of the Act, an applicant seeking reference of disputes to arbitration can either be a party to the arbitration*

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> *agreement or any person claiming through or under such party. Section 45 uses the expression "….at the request of one of the parties or any person claiming through or under him….." includes non-signatory parties who can be referred to arbitration provided they satisfy the requirements of Sections 44 and 45 read with Schedule I of the Act."*

It was finally held in paragraph 24 therein in the facts of that case that though there are different agreements involving several parties, but they pertain to a single commercial transaction and as per the commercial understanding between the parties, the project has been effected through several agreements, the agreement – Equipment Lease Agreement for commissioning of the Solar Plant is the principal / main agreement. The other two agreements; (i) Equipment and Material Supply Contract and (ii) Engineering, Installation and Commissioning Contract were ancillary agreements which led to the main purpose of commissioning the Photovoltaic Solar Plant. Even though, the sale and projects agreements did not contain arbitration clause, it being integrally connected with the commissioning of the Solar Plant, even though the parties to the subsequent agreement are not signatories to the main agreement i.e.

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Equipment Lease Agreement, the disputes between the parties to various agreements could be resolved only by referring all the agreements and the parties thereon to arbitration. In such a case, all the parties can be covered by the arbitration clause in the main agreement i.e. Equipment Lease Agreement.

17. We may note further decision in the case of ***M.R. Engineers and Contractors Private Limited versus Som Datt Builders Limited reported in (2009) 7 SCC 696,*** relied on by the learned Senior Counsel for the petitioner, referring to the wordings of Section 7(5) of the Act, 1996, wherein it is held that : -

> *"15. Section 7(5) therefore requires a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties. But the Act does not contain any indication or guidelines as to the conditions to be fulfilled before a reference to a document in a contract, can be construed as a reference incorporating an arbitration clause contained in such document, into the contract. In the absence of such statutory guidelines, the normal rules of construction of contracts will have to be followed.*
>
> *16. There is a difference between reference to*

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> *another document in a contract and incorporation of another* document in a contract, by reference. In the first case, the parties intend to adopt only specific portions or part of the referred document for the purposes of the contract. In the second case, the parties intend to incorporate the referred document in entirety, into the contract. Therefore when there is a reference to a document in a contract, the court has to consider whether the reference to the document is with the intention of incorporating the contents of that document in entirety into the contract, or with the intention of adopting or borrowing specific portions of the said document for application to the contract.

18. Learned Senior Counsel for the petitioner has further relied upon the decision in the ***State of M.P. and another versus Mahendra Kumar Saraf and Others reported in 2005 (3) M.P.L.J. 578***, to submit the meaning of co-terminus as it should mean to imply two things or objects having the same end, same finishing point or same terminating point. It is argued that both the agreements namely Lease Agreement and M & E Agreement have 'co-terminus' and integrally related to each other, performance of Lease Agreement being dependent upon the M & E Agreement, both being part of the same transaction, the arbitration clause '25' in the Lease Agreement will have to be invoked to refer the dispute to the Arbitrator.

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19. From the above noted discussion, taking note of the decisions of the Apex Court, this Court finds itself in complete agreement with the contention of the learned Senior Counsel for the petitioner that performance of the Lease Agreement was not possible without performance of the M & E Agreement. They being integrally related to each other, even if there is no separate arbitration clause in M & E Agreement, the intention of the parties can be ascertained from the Lease Agreement that they had agreed to refer the disputes arising out of the transaction, which is lease of the premises-in-question to arbitration. The petitioner cannot be forced to submit to two different Forums to determine the disputes arising out of one single transaction. The arbitration clause '25' of the Lease Agreement is a conscious acceptance of the agreement clause as part of the M & E Agreement between the parties in view of the above noted facts and the language employed in Section 7(5) of the Act, 1996. The objections raised by the learned Counsel for the respondent with regard to invocation of Clause '25' of the Lease Agreement seeking to refer the disputes arising out of

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the M & E Agreement to the Arbitrator, therefore, is liable to be turned down.

20. Coming to the question of territorial jurisdiction of this Court to entertain the application under Section 11 of the Act, 1996, the contention of the learned counsel for the respondent that this Court lacks jurisdiction to appoint Arbitrator under Section 11, is based on the statement in the Lease Agreement, noted above, which states that "the parties agree that the arbitration proceedings will be conducted at Bangalore". The contention is that this statement in the Lease Agreement not only decides the "venue" but also the "seat" of arbitration.

21. Learned Senior Counsel for the petitioner, however, relied upon various judgments of the Apex Court and Delhi High Court as noted above to submit that reference to the decision of the Apex Court in ***BGS SGS Soma JV versus NPHC Ltd. (supra)*** and Delhi High Court in the case of ***Cinepolis India Pvt. Ltd. versus Celebration City Projects Pvt. Ltd. and Another (supra),*** to assert that

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place of arbitration, the venue, is really the seat of arbitration is misplaced. The submission is that these judgments are distinguishable in the facts and circumstances of the case as a result of misreading of the decision of the Apex Court.

22. To examine the issue, this Court is required to note the decision of the Apex Court **BGS SGS Soma JV versus NPHC Ltd. (supra), Mankastu Impex Private Limited versus Airvisual Limited reported in (2020) 5 SCC 399,** wherein the question of "seat" and "venue" with reference to the arbitration proceedings has been decided. In **BGS SGS Soma JV versus NPHC Ltd. (supra),** the issue was pertaining to maintainability of appeal under Section 37 of the Act, 1996, on the premise that in view of the arbitration clause, whether the seat of arbitration proceedings was New Delhi or Faridabad, consequent upon which the petition under Section 34 of the Act, 1996 may be filed dependent on where the seat of arbitration was located.

23. The Apex Court has noted therein that in the

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judgment impugned, the Punjab and Haryana High Court referred two earlier decisions of the Apex Court in **Bharat Aluminum Co.(BALCO) vs. Kaiser Aluminum reported in** (**2012**) **9 SCC 522** and **Indus Mobile Distribution (P) Ltd. versus Datawind Innovations (P) Ltd. reported in (2017) 7 SCC 678,** along with other decisions to arrive at a conclusion that the arbitration clause in that case did not refer to the seat of arbitration, but only referred to the "venue" of arbitration. Consequently, since a part of the cause of action had arisen in Faridabad, the Faridabad Commercial Court alone would have jurisdiction over the arbitral proceedings, and the Courts at New Delhi would have no such jurisdiction. The correctness of the said proposition was assailed before the Apex Court. The Apex Court has proceeded to lay down the law on what constitutes the "juridical seat" of arbitration proceedings, and whether, once the seat is delineated by the arbitration agreement, courts at the place of the seat would alone, thereafter, have exclusive jurisdiction over the arbitral proceedings.

24. Considering the scheme of the old Arbitration Act,

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1940, it was observed therein that it did not refer to the juridical seat of the arbitration proceedings at all. The UNCITRAL Model of International Commercial Courts as adopted by the United Nations Commission on International Trade Law on 21.06.1985, introduced the concept of "place" or "seat" of the arbitral proceedings, which has been adopted by our country. The Arbitration Act, 1996 which repealed the Arbitration Act, 1940, adopted provisions of UNCITRAL Model and refers to "the place" of arbitration and defines "Courts", and indicates which Courts have jurisdiction in relation to arbitral proceedings. The provisions in Part – I in Section 2(1)(e), 2(2), Section 20, Section 31(4) and 42 of the Act, 1996, noted therein are relevant to be extracted as under : -

> ***"2.Definitions. -***
>
> ***(1)*** *In this Part, unless the context otherwise requires,-*
>
> *(a) to (d) – xxxxxx...xxxxxx...xxxxxx*
>
> *(e)"Court" means-*
>
> *(i) in case of an arbitration other than international*

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commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of a suit if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

(f) to (h) –xxxxxx...xxxxxx...xxxxxx

***(2)** This part shall apply where the place of arbitration is in India.*

Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of Section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award or to be made in such place is enforceable and recognised under the provisions of Part II of this Act."

20. Place of Arbitration.-

(1)The parties are free to agree on the place of arbitration.

(2)Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience

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of the parties.

(3)Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, 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."

"31. Form and contents of arbitral award.-

(1) to (3) - xxxxxx...xxxxxx...xxxxxx

***(4)** The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place."*

*"**42. Jurisdiction.**- Notwithstanding anything contained elsewhere in this Part or any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in any Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and no other Court."*

25. It was further discussed in paragraph '31' and '32' in **BGS SGS Soma JV versus NPHC Ltd. (supra)** that from the above noted provisions, the new concept of "juridical seat" of the arbitration proceedings has been given by the Act, 1996 and the arbitral award is now not only to state its date, but also the place of arbitration as determined in accordance with Section 20. However, the definition of

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"Court" has been narrowed down to mean only principal civil court and the High Court in exercise of their original ordinary civil jurisdiction. Thus, the concept of "juridical seat" of the arbitral proceedings, and its relationship to the jurisdiction of the courts which are then to look into matters relating to the arbitral proceedings including challenges to arbitral awards had to be developed in accordance with international practice on a case by case basis by the Apex Court.

Noticing that in some of the earlier decisions of the Apex Court, no proper distinction between the "seat" and "venue" of arbitral proceedings was made, the observations in the judgment in the case of ***Union of India versus McDonnell Douglas Corporation reported in (1993) 2 Lloyd's Rep 48***, were noted that the provisions of Section 2(1)(e) of the Act, 1996 had been considered therein to provide jurisdiction of the original Civil Court and the High Court to decide the question forming "the subject matter of the arbitration", if the same had been the subject matter of a suit. The term "subject matter of the arbitration" cannot be

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confused with "subject matter of the suit". The term "subject matter" in Section 2(1)(e) is confined to Part I of the Act, 1996. It has a reference and connection with the process of dispute resolution. It's 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. It was noted that the provisions of Section 2(1)(e) have to be construed keeping in view the provisions in Section 20, which give recognition to party autonomy. It was further noted that 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. Therefore, the Courts where the arbitration takes place, would be required to exercise supervisory control over the arbitral process. It was observed : -

> "33. xxxxxxx xxxxx
>
> 96 xxxxxxxxx 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

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> 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."

26. It was further noted that a plain reading of the Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any "place" or "seat" within India. In absence of the agreement of the parties thereto, Sub-section (2) of Section 20 authorizes the tribunal to determine the place / seat of such arbitration. Section 20(3), however, enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties. The observations in paragraph 99 in ***McDonnell Douglas Corporation (supra),*** emphasis to which is supplied therein, are relevant to be extracted hereinunder : -

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> "99. The fixation of the most convenient "venue" is taken care of by Section 20(3). Section 20, has to be read in the context of Section 2(2), which places a threshold limitation on the applicability of Part I, where the place of arbitration is in India. Therefore, Section 20 would also not support the submission of the extra-territorial applicability of Part I, as canvassed by the Learned Counsel for the Appellants, so far as purely domestic arbitration is concerned."
>
> (emphasis in original and supplied)

27. While examining the concept of "juridical seat" of the arbitral proceedings and the important test laid down in the decision of the English Courts and the Apex Court, in order to determine whether the "seat" of the arbitral proceedings has, in fact, been indicated in the agreement between the parties, it was observed by the Apex Court in **BGS SGS Soma JV versus NPHC Ltd. (Supra),** in paragraph '82' as under : -

> *"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*

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> *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."*

28. In **Mankastu Impex Private Limited versus Airvisual Limited (supra),** the Apex Court was dealing with the question of maintainability of the petition under Section 11(6) of the Act, 1996 in the matter of international commercial arbitration. The decision in the case of **BGS SGS Soma JV versus NPHC Ltd. (Supra),** has been considered to note that it was held therein that in absence of contrary expression expressed by the parties, the conclusion has to be drawn that the parties have chosen the place where arbitration proceedings were held as the seat of arbitration under Section 20(1) of the Act. It was noted that as per

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Section 2(2), Part - I, shall apply where the place of arbitration is in India. If the "international commercial arbitration" is seated in India, then Part – I of the Act shall apply. It was observed in paragraph '19' and '20' therein as under : -

> ***"19.*** *The seat of arbitration is a vital aspect of any arbitration proceedings. Significance of the seat of arbitration is that it determines the applicable law when deciding the arbitration proceedings and arbitration procedure as well as judicial review over the arbitration award. The situs is not just about where an institution is based or where the hearings will be held. But it is all about which court would have the supervisory power over the arbitration proceedings. In Enercon (India) Limited and others v. Enercon GMBH and another, (2014) 5 SCC 1, the Supreme Court held that*
>
> *"The location of the Seat will determine the courts that will have exclusive jurisdiction to oversee the arbitration proceedings. It was further held that the Seat normally carries with it the choice of that country's arbitration/curial law". (emphasis supplied)*
>
> ***20.*** *It is well-settled that "seat of arbitration" and "venue of arbitration" cannot be used inter-changeably. It has also been established that mere expression "place of arbitration" cannot be the basis to determine the intention of the parties that they have intended that place as the "seat" of arbitration. The intention of the parties as to the "seat" should be determined from other clauses in the agreement and the conduct of the parties."*

29. It was considered that though the arbitration

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agreement entered into between the parties provided Hong Kong as the place of arbitration, however that fact by itself will not be lead to the conclusion that the parties have chosen Hong Kong as the seat of arbitration. However, by reading further clauses of the arbitration agreement, it was observed that reference to Hong Kong as "place of arbitration" is not a simple reference as the "venue" for the arbitral proceedings; but a reference to Hong Kong is for final resolution by arbitration administered in Hong Kong. The agreement between the parties that the dispute "shall be referred to and finally resolved by arbitration administered in Hong Kong" clearly suggests that the parties have agreed that the arbitration be seated at Hong Kong and that laws of Hong Kong shall govern the arbitration proceedings as well as have power of judicial review over the arbitration award. However, in the context of domestic arbitration, the observations of the Apex Court in **Indus Mobile Distribution (P) Ltd. versus Datawind Innovations (P) Ltd. (supra),** (in paragraph 19) were noted therein as under: -

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> *"**24**. In the context of domestic arbitration, holding that once the "Seat" is determined, only that jurisdictional court would have exclusive jurisdiction, in Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. and others, (2017) 7 SCC 678, it was held as under:-*
>
> > *"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."*

30. From the reading of the above noted decisions, it can be seen that mere designation of a place of arbitration in arbitration clause as being "venue of the arbitration proceedings", would not be determinative factor to decide the "seat of the arbitral proceedings". The language of the arbitral agreement has to be read on case by case basis to

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determine as to whether "venue" so stated is "seat" of arbitral proceedings, or it is only convenient place of meeting. The moment the seat is designated, it is akin to an exclusive jurisdiction clause for the purpose of regulating arbitral proceedings arising out of the agreement between the parties.

31. Taking note of the above, this Court is further required to go through the recent decision of the Apex Court in the case of ***M/s. Ravi Ranjan Developers Pvt. Ltd. versus Aditya Kumar Chatterjee passed in Civil Appeal arising out of Special Leave to Appeal (C) No(s). 17397-17398/2021*** **decided on 24.03.2022**. The question before the Apex Court in the said decision was with respect to the maintainability of the application under Section 11(6) of the Act, 1996, for appointment of Arbitrator. The challenge was to the order of the Calcutta High Court in rejecting the review application seeking for recall of the order of appointment of Arbitrator. In the context of the arbitration clause therein, which stated that "seat of the arbitral tribunal shall be at Calcutta", the dispute with

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regard to the territorial jurisdiction of the Calcutta High Court examined. It was contended that the development agreement (in question therein) is in respect of the property situated at Muzaffarpur in Bihar outside the jurisdiction of the Calcutta High Court. The development agreement was executed and registered in the State of Bihar, outside the jurisdiction of the Calcutta High Court. The appellant therein had its registered office at Patna, outside the jurisdiction of the Calcutta High Court, and has no establishment or does not carry on any business within the jurisdiction of the Calcutta High Court. It was, thus, argued by the learned counsel for the appellant therein that no part of the cause of action had arisen within the jurisdiction of Calcutta High Court. Section 2(1)(e) of the Act, 1996 defines the Court, in case of arbitration other than international commercial arbitration, to mean Principal Civil Court of Original jurisdiction in a district and would include the High Court in exercise of its ordinary original jurisdiction, having jurisdiction to decide the question forming the subject matter of arbitration, if the same had been the subject matter of the

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suit. The contention, thus, was that subject to the pecuniary or other limitations prescribed by law, suits for recovery of immovable property or determination of any other right to or interest in any movable property or compensation for wrong to immovable property, is to be instituted in the Court, within the local limits of whose jurisdiction the property is situated. Certain specific suits relating to immovable property can be instituted either in the Court within the limits of whose jurisdiction the property is situated, or in the Court within the local limits of whose jurisdiction the Defendant actually or voluntarily resides or carries on business. All other suits are to be instituted in a Court, within the local limits of whose jurisdiction the Defendant voluntarily resides or carries on business. A suit may also be instituted in the Court within whose jurisdiction, the cause of action arises either wholly or in part. In the said case, no suit could have been filed in any court over which the Calcutta High Court exercises jurisdiction, since the suit pertaining to immovable property situated at Muzaffarpur in Bihar, would be outside the territorial jurisdiction of the Calcutta High Court. No

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part of cause of action had arisen therein within the territorial jurisdiction of the Calcutta High Court and the appellant therein, who would be in position of Defendant in a suit, neither resides nor carries on any business within the jurisdiction of the Calcutta High Court. It was, thus, argued that an application for appointment of Arbitration under Section 11(6), necessarily has to be moved in the High Court, irrespective of whether the High Court has supervisory jurisdiction to decide the suit in respect of the subject matter of arbitration situated and irrespective of whether the High Court at all has Original jurisdiction to entertain and decide suits. Dealing with this contention therein, it was observed in paragraph Nos. 26, 27 and 28 as under : -

> *"**26.** Of course, under Section 11(6), an application for appointment of an Arbitrator necessarily has to be moved in the High Court, irrespective of whether the High Court has the jurisdiction to decide a suit in respect of the subject matter of arbitration and irrespective of whether the High Court at all has original jurisdiction to entertain and decide suits. As such, the definition of Court in Section 2(1)(e) of the A&C Act would not be applicable in the case of a High Court exercising jurisdiction under Section 11(6) of the A&C Act to appoint an Arbitrator/Arbitral Tribunal.*
>
> ***27.** At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India,*

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> *irrespective of its territorial jurisdiction. Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act.*
>
> ***28.*** *It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent."*

32. The judgment of the Apex Court in **BGS SGS Soma JV versus NPHC Ltd. (supra),** relied on by the learned counsel for the respondent therein was noted to record that the said judgment was rendered in the context of Section 2(2) of the Act, 1996 and the applicability of Part I of the said Act to an international commercial arbitration, where the seat of arbitration was not in India. Another decision of ***Hindustan Construction Company Limited versus NHPC Limited and Anr. reported in (2020) 4 SCC 310***, was also noted therein to record in paragraph 40 as under : -

> *"**40.** In Hindustan Construction Company Limited (supra), this Court held that once the seat of arbitration is designated, the same operates as an exclusive jurisdiction clause and only Courts within whose jurisdiction the seat was located, would have*

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jurisdiction to the exclusion of all other Courts. In the facts and circumstances of that case this Court found that Courts at New Delhi alone would have jurisdiction for the purpose of challenge to the Award."

33. The decision of the Apex Court in the case of **Mankastu Impex Private Limited versus Airvisual Limited (supra),** was also noted by the Apex Court therein to record that : -

*"**46.** In this case, the Development Agreement provided that the sittings of the Arbitral Tribunal would be conducted in Kolkata. As observed above, the parties never agreed to submit to the jurisdiction of Calcutta High Court in respect of disputes, nor did the parties 12 agree upon Kolkata as the seat of arbitration. Kolkata was only the venue for sittings of the Arbitral Tribunal.*

***47.** It is well settled that, when two or more Courts have jurisdiction to adjudicate disputes arising out of an arbitration agreement, the parties might, by agreement, decide to refer all disputes to any one Court to the exclusion of all other Courts, which might otherwise have had jurisdiction to decide the disputes. The parties cannot, however, by consent, confer jurisdiction on a Court which inherently lacked jurisdiction, as argued by Mr. Sinha.*

***48.** In this case, the parties, as observed above did not agree to refer their disputes to the jurisdiction of the Courts in Kolkata. It was not the intention of the parties that Kolkata should be the seat of arbitration. Kolkata was only intended to be the venue for arbitration sittings. Accordingly, the Respondent himself approached the District Court at Muzaffarpur, and not a Court in Kolkata for interim protection under Section 9 of the A&C Act. The Respondent having himself invoked the jurisdiction of the District Court at Muzaffarpur, is estopped from contending that the parties had agreed to*

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> *confer exclusive jurisdiction to the Calcutta High Court to the exclusion of other Courts. Neither of the parties to the agreement construed the arbitration clause to designate Kolkata as the seat of arbitration. We are constrained to hold that Calcutta High Court inherently lacks jurisdiction to entertain the application of the Respondent under Section 11(6) of the Arbitration Act. The High Court should have decided the objection raised by the Appellant, to the jurisdiction of the Calcutta High Court, to entertain the application under Section 11(6) of A&C Act, before appointing an Arbitrator."*

34. The appeal was ultimately allowed and the order of appointment of Arbitrator and dismissal of the review application was set aside on the ground that the order of appointment of Arbitrator was without jurisdiction. It was held that the parties did not agree to submit to the jurisdiction of Calcutta High Court and they had only agreed that the sitting of the Arbitral Tribunal would be in Kolkata.

35. Further, this Court may note some other decisions of other High Courts relied upon by the learned Senior Counsel for the petitioner.

The Calcutta High Court in ***Homevista Decor and Furnishing Pvt. Ltd. and Another versus Connect Residuary Private Limited (Supra)***, considering the

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decision of the Apex Court in **BGS SGS Soma JV versus NPHC Ltd. (supra),** and **Mankastu Impex Private Limited versus Airvisual Limited (supra)**, as also other decisions of other High Courts has held in paragraph 19 and 20 as under : -

> *"**19.** I find myself in consonance with the above view. In circumstances where a place is designated merely as a 'venue' and courts of another place have been granted the exclusive jurisdiction, the latter is a clear 'contrary indicia'. It can be inferred from a comprehensive reading of such clauses, that the 'venue' is a convenient place of arbitration and not the seat.*
>
> ***20.** The Calcutta High Court's judgment in Height Insurance Services Limited (supra) has been stayed by the same judge who passed the judgment and is therefore not required to be dealt by me."*

36. Similarly, the view has been taken by the Delhi High Court in the case of ***Kush Raj Bhatia versus DLF Power and Services Limited through its Director (supra),*** in paragraph Nos. 28, 29, 30 and 31 as under : -

> *"28. Having discussed the distinct concepts of "Seat" and "Venue", it may be examined how these two concepts have been interpreted and applied in various situations. In Isgec Heavy Engineering. Ltd. vs. Indian Oil Corporation Ltd. & Anr. Arbitration Petition No.164/2001 decided on 21.10.2021 by the Coordinate Bench of this Court, similar Clause came up for*

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interpretation. The parties have agreed for venue of arbitration to be New Delhi, but in the other Clause, they had agreed that all actions and proceedings arising out of/related to the Contract shall lie in the Courts of competent jurisdiction at Guwahati. The Court held that since the Clauses of the Agreement expressly provided that the Courts at Guwahati would have exclusive jurisdiction, it was a contrary indicator coming within the exception as held by the Supreme Court in the case of DSG SGS Souma (supra).

29. Similarly, in Cravants Media Pvt. Ltd. vs. Jharkhand State Cooperative Milk Food Federation Pvt. Ltd. & Ors. Arbitration petition No. 915/2021 decided on 06.12.2021 by the Coordinate Bench, the Dispute Resolution Clause provided that the venue of arbitration shall be Ranchi, but any disputes arising out of this agreement shall be subject to the sole and exclusive jurisdiction of Courts in Delhi. It was held that the intention of the parties was clear that the seat would be in New Delhi and the Court at New Delhi was held to have the jurisdiction.

30. In the facts in hand, the relevant Clause 48 and Clause 49 read as under:

> *48. All or any dispute arising out of touching upon or in relation to the terms of the Lease Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto for the time being in force. <u>The arbitration proceedings shall he held at an appropriate location in New Delhi by a Sole Arbitrator who shall be appointed by the Lessee and whose decision shall be final and binding upon Lessor.</u>*
>
> *The Lessor hereby confirms that it shall have no objection to this appointment even if the person so appointed, as the Arbitrator, is an employee or*

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> *Advocate of the Lessee or is otherwise connected to the Lessee and the Lessor confirms that notwithstanding such relationship/ connection, the Lessor shall have no doubts as to the independence or impartiality of the said Arbitrator."* *That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction.*
>
> *49. That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction."*

31. *It is quite evident that there is a contraindication in the registered Agreement that while the venue of arbitration may be New Delhi, but the seat of arbitration shall be Gurgaon and High Court at Chandigarh. In the circumstances, it has to be held that this Court has no jurisdiction and it is the Courts at Gurgaon/High Court of Chandigarh which have the exclusive jurisdiction for entertaining the disputes arising out of the registered Lease Agreement."*

37. The view taken by the High Court of Delhi in ***IGSEC Heavy Engineering Ltd. versus Indian Oil Corporation Ltd. (supra)*** in paragraph Nos. 8, 12, 13, 14, 15 is also relevant to be noted as hereinunder : -

> ***"8.*** *There can be no doubt on the proposition that the word 'seat' and 'venue' have different connotations. They are not synonymous, in so far as the arbitration proceedings are concerned, although, they have often been used interchangeably. The law on 'seat' and 'venue' of arbitration proceedings is fairly well-defined in view of several judgments of the Supreme Court. The Supreme Court has clearly held that where the parties have determined the 'seat' in their agreement, the same is akin to conferring exclusive jurisdiction on the court(s)*

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thereof.5 The expression 'venue' and 'seat' do not find any mention under the Act. The expression used under the Act is 'place', which finds mention under Section 20 of the Act. In BALCO v. Kaiser Aluminium Technical Services Inc., 6 the Apex Court made it clear that sub-sections (1) and (2) of Section 20, where the word 'place' is used, refer to juridical 'seat'; whereas, in sub-section (3) of Section 20, the word 'place' is equivalent to 'venue', i.e., the location of the meeting of arbitral proceedings.

12. *To answer the afore-mentioned question - What constitutes the 'seat' of arbitral proceedings - the intention of the parties is germane and that can be gathered from the terms of the Contract. Let's have a closer look at the clause. The clause provides a general stipulation that the 'venue' so designated can be changed by the Arbitrators, with the consent of the parties. This, prima facie, suggests that the 'venue' specified is not really envisaged as the 'seat' of the proceedings, which should be specified in certain terms. This interpretation is also in sync with Section 20(3) of the Act, which provides that notwithstanding anything contained in Section 20(1) and (2) - the Arbitral Tribunal can meet at any place it considers appropriate for hearing witnesses, experts, etc. In fact, the language used in the present clause seems to be a replication of the language used in Section 20(3). For this reason, as well, the Court is inclined to agree that in the present case, Clause 9.1.2.0 of the GCC specifies New Delhi only as a geographically convenient place where Arbitral Tribunal can hold meetings.*

13. *The above position gets reinforced upon a plain reading of Article 4 of the Contract. This clause vests exclusive jurisdiction at the civil court(s) at Guwahati for - all actions/proceedings, including arbitration, and reads as under: -*

"*ARTICLE 4 – JURISDICTION:*

4.1 Notwithstanding any other court or courts having jurisdiction to decide the question(s)

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forming the subject-matter of the reference if the same had been the subject-matter of a suit, any and all actions and proceedings arising out of or relative to the contract (including any arbitration in terms thereof) shall lie only in the Court of Competent Civil Jurisdiction in this behalf at GUWAHATI (where this contract has been signed on behalf of the Owner) and the said Court(s) shall have jurisdiction to entertain and try such actions and/or proceeding(s) to the exclusion of all other Courts." *[Emphasis supplied]*

14. *As opposed to the general stipulation in Clause 9.1.2.0, Article 4 is worded in clear, unambiguous, and directory terms. In fact, it serves as the 'contrary indica', which further demonstrates that the 'venue' in Clause 9.1.2.0 is only a physical place of meeting under Section 20(3) of the Act. Article 4 -leaves no room that all actions and proceedings arising out of the Contract, including arbitration, shall have to necessarily be tried by the civil court(s) at Guwahati exclusively, and does not lead to jurisdiction being vested in the court(s) at Delhi.*

15. *For the reasons laid out above, this Court is of the view that Clause 9.1.2.0 only provides a 'venue' of arbitration, and the juridical 'seat' shall vest with the civil court(s) at Guwahati."*

38. The observations in ***Cravants Media Private Limited versus Jharkhand State Co. Operative Milk Producers Federation Ltd. and Another (supra)*** in paragraph No. 11 is as under : -

"11. The question whether the intention of the parties in specifying a location for arbitral proceedings is merely to fix a convenient 'venue' or

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a seat/place of arbitration has to be ascertained from the language of the arbitration agreement."

39. In light of the above discussion, this Court may record that law on "seat" and "venue" of arbitration proceedings is fairly well settled. The cases, where the parties have determined "seat" in their agreements, the same is akin to conferring exclusive jurisdiction on the Court(s) thereof. The expression 'place' occurring in Sub-section (1) and (2) of the Section 20, where the word 'place' is used, refers to "juridical seat"; whereas, expression "place" occurring in sub-section (3) of Section 20, is equivalent to 'venue', i.e., the location of the meeting of arbitral proceedings, as per the convenience of the parties or the arbitrators. The "place" mentioned in Section 20(3) of the Act, 1996 is only a physical place of meeting and has no relevance insofar as "juridical seat", which shall vests exclusive jurisdiction with the Court of competent civil jurisdiction or High Court of original jurisdiction;

(i) As has been held by the Apex Court in the case of ***M/s. Ravi Ranjan Developers Pvt. Ltd. versus Aditya Kumar***

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Chatterjee (Supra), Section 11(6) and Section 2(1)(e) of the Act, 1996, have to be harmoniously read and construed to mean, the High Court which exercises superintendence / supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the Act, 1996. Meaning thereby, where a clause in the contract vests exclusive jurisdiction at a Civil Court for all actions / proceedings arising out of the contract, the Court of the 'place' located as having exclusive jurisdiction over the disputes should be considered as "seat" and having jurisdiction to entertain applications under the Act, 1996.

(ii) Where the parties have agreed that all actions and proceedings arising out of / related to contract shall lie in the Courts of competent jurisdiction at place 'A' and have agreed to conduct arbitration proceedings at place 'B', the expression in the agreement that the Court at place 'A' will have jurisdiction, would be a contrary indicator, as indicated by the Apex Court in the case of **BGS SGS Soma JV versus NPHC Ltd. (supra).** In such cases, the intention of the parties to confer exclusive jurisdiction on the Court at place

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'A', would be clear indication that the seat of arbitration shall be at the same place 'A' and the Court at place 'A' will have jurisdiction to deal with the applications under section 11(6) of the Act, 1996.

(iii) The law laid down by the Apex Court in **Mankastu Impex Private Limited versus Airvisual Limited (supra),** and **BGS SGS Soma JV versus NPHC Ltd. (supra),** as has been relied upon by the learned counsel for the respondent, does not support his contention that the statement about the "place of arbitration" or the expression "arbitration proceedings" in the agreement would mean that "venue" is the "seat".

40. Coming to the facts of the instant case, Clause 25(iii) of the Lease Agreement exclusively confers jurisdiction to the Courts at Ahmedabad in all matters arising out of the said agreement. Whereas Sub-clause (ii) of the Clause 25 reads that the parties have agreed that the arbitration proceedings will be conducted at Bangalore. The expression of the place of arbitration proceedings in Clause 25(ii) as

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extracted hereinabove, is indication of the agreement arrived at between the parties to choose the place of convenience within the meaning of Section 20(3) of the Act, 1996. The words "the parties agree that the arbitration proceedings will be conducted at Bangalore" cannot be read to mean that the place "Bangalore" has been designated under the contract as the "seat of arbitration" and would operate as an exclusive jurisdiction clause to decide the jurisdiction of the High Court under Section 11(6) of the Act, 1996. The exclusive jurisdiction has been conferred to the Courts at Ahmedabad, the subject matter of the Lease Agreement, which is the main agreement containing arbitration clause, is located at Ahmedabad; the agreement was signed at Ahmedabad between the parties; the agreement was executed and stamped in the State of Gujarat; the respondent is situated in Ahmedabad and the petitioner has its corporate headquarters in Ahmedabad.

41. In light of the language of the agreement and the abovenoted facts related to the case, this Court is of the considered view that "venue" at Bangalore is merely a

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convenient location for holding of arbitration proceedings and the Courts at Ahmedabad selected as having exclusive jurisdiction in all disputes arising out of the Lease Agreement, should be considered as the "seat of arbitration".

42. For the above discussion, the judgments relied by the learned counsel for the respondent to dispute the territorial jurisdiction of this Court under Section 11(6) of the Act, 1996 to entertain application for appointment of Arbitrator is hereby turned down.

43. As the parties have not been able to reach at an agreement to the name of the Arbitrator for resolving the disputes arising out of the said contract, I proceed to pass following :

O R D E R

(i) Petition is **ALLOWED**.

(ii) Shri Dr. Justice Ashokkumar C. Joshi, Former Judge, High Court of Gujarat is appointed as sole Arbitrator to resolve the disputes between the parties in accordance with the Arbitration Centre (Domestic and

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International), High Court of Gujarat Rules, 2021. Both parties would be governed by said Rules.

(iii) Registry is directed to communicate this order to the sole arbitrator forthwith by speed post.

(iv) No order as to costs.

Sd/-
(SUNITA AGARWAL, CJ)

AMAR SINGH

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