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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./16/2025

M/S TECHNO STEEL AND CRAFT INDUSTRIES AND ANR
HAVING ITS REGISTERED OFFICE AT G. N. BORDOLOI ROAD, AMBARI,
GUWAHATI, REPRESENTED BY ITS PRORRIETOR, SRI PLABAN DAS.

2: PLABAN DAS
S/O LATE NARAYAN DAS
HOUSE NO. 3
G.N. BORDOLOI ROAD
AMBARI
GUWAHATI
DIST- KAMRUP (M)
ASSA

VERSUS

THE UNION OF INDIA AND 6 ORS.
THROUGH THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY
OF SHIPPING, TRANSPORT BHAWAN, PARLIAMENT STREET, NEW DELHI-
110001

2:THE INLAND WATERWAYS AUTHORITIES OF INDIA
MINISTRY OF SHIPPING
GOVERNMENT OF INDIA
H.O.A-13
SECTOR-1
NOIDA-201301
UTTAR PRADESH

3:THE CHAIRMAN
INLAND WATERWAYS AUTHORITIES OF INDIA
MINISTRY OF SHIPPING
GOVERNMENT OF INDIA
H.O.A-13
SECTOR-1

NOIDA-201301
UTTAR PRADESH

4:THE DIRECTOR
INLAND WATERWAYS AUTHORITIES OF INDIA
MINISTRY OF SHIPPING
GOVERNMENT OF INDIA
H.O.A-13
SECTOR-1
NOIDA-201301
UTTAR PRADESH

5:THE DEPUTY DIRECTOR
INLAND WATERWAYS AUTHORITIES OF INDIA
MINISTRY OF SHIPPING
GOVERNMENT OF INDIA
H.O.A-13
SECTOR-1
NOIDA-201301
UTTAR PRADESH

6:THE CHIEF ENGINEER
INLAND WATERWAYS AUTHORITIES OF INDIA
MINISTRY OF SHIPPING
GOVERNMENT OF INDIA
H.O.A-13
SECTOR-1
NOIDA-201301
UTTAR PRADESH

7:THE DIRECTOR
ENGINEER -IN- CHARGE
INLAND WATERWAYS AUTHORITIES OF INDIA
REGIONAL OFFICE
PANDU PORT COMPLEX
PANDU
GUWAHATI-781012
ASSA

Advocate for the Petitioner : MS. RUKMINI BARUA, MS. PADMINI BARUA

Advocate for the Respondent : DY.S.G.I., MR H GUPTA (C.G.C),MS. I DAS(R-2 TO 7),MR.
SURAJIT DUTTA (R-2 TO 7)

- B E F O R E -

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Ms. P. Baruah,
Advocate

Advocate for the respondents : Mr. S. Dutta, Sr. Advocate
Ms. I. Das, Advocate

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : 12.06.2026

Whether the pronouncement is of the operative part of the judgment? : No

Whether the full judgment has been pronounced? : Yes

JUDGMENT AND ORDER

Heard Ms. P. Baruah, learned counsel for the petitioner. Also heard Mr. S. Dutta, learned Senior Counsel assisted by Ms. I. Das, learned counsel for the respondents.

2] This arbitration petition under section 11(6) has been filed by the petitioners seeking direction from the Court for appointment of an arbitrator as the respondents have failed to concur on the request made by the petitioners for appointment of an arbitrator.

3] The petitioner No.1 is a proprietary concern registered under the Directorate of Industries, Assam as a Small Scale Industrial Unit having its registered office at G.N. Bordoloi Road, Ambari, Guwahati in the district of

Kamrup(Metro), Assam and being so, is entitled to the rights and privileges guaranteed under the Constitution of India and other legal rights granted by various Acts, Rules, Statutes, Notifications presently being in force. The petitioners are engaged in shipbuilding activity and has its shipbuilding yard at Panikheti and had entered into agreements with the Inland Waterways Authority of India vide agreements dated 05.08.2008 and 14.03.2008 in pursuant to work orders dated 09.07.2008 and 27.02.2008 for designing, construction and delivery of two floating steel pontoons at Nemati, Dibrugarh and Tezpur respectively within seven months from the date of issuance of the work order.

4] According to the petitioners, the Delivery of the two pontoons at Tezpur was made on 12.06.2010 and taking into consideration the work order dated 27.02.2008, the actual delivery according to the petitioners was on 26.09.2008 and therefore, there was a delay of 496 days. The delivery of pontoons at Nemati and Dibrugarh was made on 21.01.2011 and the original date of delivery was subsequently extended to 27.08.2009 and accordingly, there was a delay of 511 days. It is submitted that all the deliveries were made and final bills were submitted, the authorities of the Inland Waterways Authority of India while making bills had deducted and withheld 10% of the total value of each of the three contracts as liquidated damages for the delay. According to the petitioners, the liquidated damages applicable on the three contractors are as under:

“i) Contract for construction and supply of Pontoons at Tezpur- Rs.12,72,960/-

ii) Contract for construction and supply of Pontoons at Nemati- Rs. 17,77,000/-

iii) Contract for construction and supply of Pontoons at Dibrugarh- Rs.17,77,000/-”

5] The petitioners by communication dated 07.04.2011 stated in detail as to why the liquidated damages should not be imposed and requested the authorities of the Inland Waterways Authority of India to pay the deducted amount of 10% of the total value and accordingly, the petitioners were requested to furnish adequate documentary proof to substantiate and establish that the delay was beyond their control. The said communication was duly forwarded by the Director of Inland Waterways Authorities of India for waiver of liquidated damages by its letter dated 17.06.2013 to the Chief Engineer (Civil), Inland Waterways Authorities of India.

6] According to the petitioners, the amount withheld from the final bill as liquidated damages was not paid in spite of recommendations of a waiver for liquidated damages by the Engineer in Charge in terms of the Contract Agreement, the petitioners instituted a writ petition being WP(C) No.1066 of 2014 before the High Court seeking a direction to release the 10% amount of the liquidated damages with reference to the letter of the Engineer in Charge dated 17.06.2013. The said writ petition on the grounds and reasons mentioned and relying upon the judgment of the Apex Court rendered in *State of Goa vs. Praveen Enterprises* reported in (2012) 12 SCC 581 referred the parties to arbitration, leaving the parties to take recourse to their remedies by way of arbitration and refer their disputes to the arbitrator for failing agreement and would be at liberty to take recourse to the provisions of Arbitration and Conciliation Act, 1996.

7] An appeal was filed against the said judgment and order. While preparing

the appeal there was a delay of 242 days and therefore, the Interlocutory Application was filed being I.A.(Civil) No.1751 of 2024. The delay was duly condoned. However, the writ appeal was dismissed upholding the findings of the Coordinate Bench.

8] Thereafter, the petitioners by a notice dated 04.03.2025 under section 21 called upon the respondents to concur of the arbitrator named in the notice within a period of 30 days.

9] The Inland Waterways Authority of India in turn by reply dated 12.04.2025 suggested three names as arbitrators in the matter. In their reply by referring to clause 21.1(ii) of the Contract Act, it was stated that the "venue" of arbitration shall be at "Noida".

10] The petitioners again reply to the communication dated 12.04.2025 intimated that as the petitioners do not have any knowledge about the credentials in respect of conducting arbitration proceedings insofar as the names suggested by the respondents are concerned, therefore, they would not like to be compelled to select a person from the list suggested by the respondents to act as an arbitrator and therefore, they intimated that it would be appropriate to import the procedure under section 11(5) of the said Arbitration and Conciliation Act. Accordingly, this petition has been filed.

11] The respondents have filed their objections and have raised the question of jurisdiction insofar as this Court is concerned. According to the respondents in

the agreement the "venue" for arbitration proceeding was fixed at "Noida".

12] From the pleadings and the arguments made before this Court, it is apparent that the question will be decided before the Court is whether in view of the "venue" for arbitration being specified as "Noida" in terms of the clause 21.8 of the agreement this Court will have jurisdiction to entertain this petition under section 11 of the Arbitration and Conciliation Act of 1996.

13] It is the submission of the learned counsel for the petitioner that the "place" of arbitration is to be determined as per Section 20 of the Act of 1996. In terms of the agreement, it is only the "venue" for arbitration which is agreed to by the parties to be at "Noida". However, that would not determine the "place" or a "seat" of arbitration. There was no agreement between the parties with regard to the "seat" or the "place" of arbitration. Therefore, recourse to section 11 has been taken by filing this arbitration petition and the "venue" for arbitration will not ordinarily determine the "seat" of arbitration. The "seat" of arbitration has to be decided by the parties themselves and on the plain reading of the agreement the same is not done. Therefore, the petition under section 11 of the Act has been filed and since no "seat" or "place" of arbitration has been decided by the parties, this Court has jurisdiction under section 11 of the Act.

14] The further submission of the learned counsel for the petitioners is that the petitioners had earlier approached the writ court for enforcement of their claims for release of liquidated damages. In that proceedings before the High Court, there was no objection raised by the respondents regarding the

jurisdiction of the Court and the Coordinate Bench of this Court by having recourse to Section 8 has referred both parties to arbitration and which order was upheld by the Court. Therefore, it is not open to the respondents at this stage to raise this objection that this Court does not have the jurisdiction under section 12.

15] The learned counsel for the petitioners has placed reliance on the following judgments in support of their contentions:

“1. Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc, (2012) 9 SCC 552.

2. Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited, (2017) 7 SCC 678.

3. Mankastu Impex Private Limited vs. Airvisual Limited, (2020) 5 SCC 399.

4. Aarka Sports Management Pvt. Ltd. vs. Kalsi Buildcon Pvt. Ltd., 2020 SCC OnLine Del 2077.

5. Ravi Ranjan Developers Pvt. Ltd. vs. Aditya Kumar Chatterjee, 2022 SCC OnLine SC 568.

6. SBI General Insurance Company Ltd. vs. Krish Spinning, (2024) 12 SCC 1.”

16] The respondents on the other hand, have objected to the contentions raised by the petitioners. It is submitted that the “venue” being clearly decided by the parties in the agreement to be at “Noida”. Therefore, it is to be accepted that the Courts having jurisdiction over “Noida” including the Delhi High Court is the appropriate Court before which this petition under Section 11(6) ought to

have been filed.

17] It is submitted that notwithstanding the objections not being raised before the Gauhati High Court in the earlier round of litigation when the writ petition was filed that would not restrain the respondents from raising the objections before this Court as this is a petition under section 11(6) and in view of the clause i.e. Clause 21.8 that the “venue” of arbitration has been fixed at “Noida”. Therefore, the parties have already agreed to the “venue” and there is no scope for this Court to entertain this present petition in the present form and the petitioners should be directed to withdraw this petition and file appropriate petition before Delhi High Court or any other competent Courts having jurisdiction over “Noida”.

18] The further argument of the respondents is that this petition is barred by limitation as the dispute between the parties arose as far back as 2011 and they have approached this Court only in 2025 and therefore, it is apparent that the petitioners were not diligent in pursuing their remedies and the petition be dismissed as not maintainable only on the question of limitation.

19] In support of their contentions the learned counsel for the respondents has referred to the following judgments:

“1. *Brahmani River Pellets Limited Vs. Kamachi Industries Limited, (2020) 5 SCC 462;*

2. *Central Organisation For Railway Electrification Vs. ECI SPIC SMO MCML (JV) a*

Joint Venture Company, (2025) 4 SCC 641.”

20] The complete agreement not being placed before the Court, the petitioners have brought it by way of additional pleadings.

21] The learned counsel for the parties have been heard and the pleadings available on record have been carefully perused.

22] At the outset it is necessary to refer to the relevant clause in the agreement being clause 21:

“21. ARBITRATION

21.1 Except as otherwise provided herein before, all questions, disputes or difference in respect of which the decision has not been final and conclusive arising between the contractor and the authority in relating to or in connection with contract shall be referred for arbitration in the manner provided as under and to the sole arbitrator appointed as follows:

(i) Either of the parties may give to the other notice in writing of the existence of such question dispute or difference.

(ii) Within thirty (30) days of receipts of such notice from either party the Engineer-in-charge of work at the time of such dispute shall send to the contractor a panel of three persons and three after the contractor within fifteen (15) days of receipt of such panel communicate to the Engineer-in-charge the name of one of the person from such panel and such a person shall then be appointed a sole arbitrator by the Chairman IWAI. However, the arbitrator so appointed shall not be an officer or the employee of the inland waterways authority of India.

(iii) Provided that if the contractor fails to communicate the selection of a name

out of the panel so forwarded to him the Engineer-in-charge than after the expiry at the aforesaid stipulated period the Chairman IWAI shall without delay select one person from the aforesaid panel and appoint him as the sole arbitrator.

21.2 The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, then the chairman shall appoint another person to act as sole arbitrator, such person shall be entitled to proceed with the reference from the stage at which the predecessor left it

21.3 The award of the arbitrator shall be final and binding the arbitrator shall decide in what proportion the arbitrator's fees, as well as the cost of Arbitration proceeding shall be borne by either party.

21.4 The arbitrator with the consent of the parties can enlarge the time, from time to time to make and publish his award.

21.5 A notice of the existence in question dispute or difference in connection with the contract unless served by either party within 30 days of the expiry of the defects liability period, failing which all rights and claim under this contract shall be deemed to have been waived and thus forfeited and absolutely barred

21.6 Where the amount of claim is Rs. 1,00,000 (Rs. ONE LAKH ONLY) and above the arbitrator shall give reasons for the award for each item of Rs 75000 & more.

21.7 The work under this contract shall continue during arbitration proceedings and no valid payments due from or payment by the authority shall be withheld on account of such proceedings except to the extent, which may be in dispute.

21.8 The Arbitration and Conciliation Act 1996 together with any statutory modifications or re-enactment thereof and the rules made there under for being in force shall apply to the arbitration proceeding under this clause.

NOTE: In case of contract with another public sector undertaking the clause 21.1 to 21.8 shall stand deleted and the following arbitration clause shall apply:

"Except as otherwise provided in case of a contract with a Public Sector

Undertaking if at any time any question dispute or difference whatsoever arises between the parties upon or in relation to, or in connection with this agreement, the same shall be settled by arbitration in term of the Ministry of Industry, department of Public/enterprises O.M. No. 3/5/93-PMA dt. 30.06.93 or any modification/amendments thereof."

The Arbitrator shall have the power to enlarge the term to rate the award with the consent of the parties provided always that the commencement or continuation of the arbitration proceeding shall not result in cessation or suspension of any of other rights and obligations of the parties of any payments due to them hereunder.

The venue of the arbitration proceedings shall be at Noida. It is further clarified that both the parties to this agreement hereby undertake not to have recourse to civil court to solve any of their dispute whatsoever, arising out of this agreement except through arbitration."

23] Before referring to the judgments pressed into service, it is necessary to refer to the relevant sections of the Arbitration and Conciliation Act of 1996.

"2. Definitions.—(1) In this Part, unless the context otherwise requires,—

(e) "court" means—

(i) in the case of an arbitration other than international 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 the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decree or courts subordinate to that High Court."

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 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.*

42. Jurisdiction.—*Notwithstanding anything contained elsewhere in this Part or in 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 a 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 in no other Court.*

43. Limitations.—(1) *The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.*

(2) *For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 21.*

(3) *Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.*

(4) *Where the Court orders that an arbitral award be set aside, the period between*

the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.”

24] In order to appreciate the issues raised here, it is necessary to examine the judgments pressed into service:

In *Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc*, (2012) 9 SCC 552 the Apex Court held that interpretation of Section 20 of the Arbitration and Conciliation Act and distinction between “Seat” and “Venue”- Section 20(1) and 20(2) refers to “Seat” of arbitration and Section 20(3) refers to “Venue” of arbitration. The relevant paragraphs are extracted below:

“98. We now come to Section 20, which is as under:

“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 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.”

A plain reading of 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, be it Delhi, Mumbai, etc. In the absence of the parties' agreement thereto, Section 20(2) authorises the tribunal to determine the place/seat of such arbitration. Section 20(3) 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.

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.

100. True, that in an international commercial arbitration, having a seat in India, hearings may be necessitated outside India. In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but it would not have the effect of changing the seat of arbitration which would remain in India. The legal position in this regard is summed up by Redfern and Hunter, The Law and Practice of International Commercial Arbitration (1986) at p. 69 in the following passage under the heading "The Place of Arbitration":

"The preceding discussion has been on the basis that there is only one 'place' of arbitration. This will be the place chosen by or on behalf of the parties; and it will be designated in the arbitration agreement or the terms of the reference or the minutes of proceedings or in some other way as the place or 'seat' of the arbitration. This does not mean, however, that the Arbitral Tribunal must hold all its meetings or hearings at the place of arbitration. International commercial arbitration often involves people of many different nationalities, from many different countries. In these circumstances, it is by no means unusual for an Arbitral Tribunal to hold meetings—or even hearings

—in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses.... It may be more convenient for an Arbitral Tribunal sitting in one country to conduct a hearing in another country—for instance, for the purpose of taking evidence.... In such circumstances, each move of the Arbitral Tribunal does not of itself mean that the seat of arbitration changes. The seat of the arbitration remains the place initially agreed by or on behalf of the parties.”

This, in our view, is the correct depiction of the practical considerations and the distinction between “seat” [Sections 20(1) and 20(2)] and “venue” [Section 20(3)]. We may point out here that the distinction between “seat” and “venue” would be quite crucial in the event, the arbitration agreement designates a foreign country as the “seat”/“place” of the arbitration and also selects the Arbitration Act, 1996 as the curial law/law governing the arbitration proceedings. It would be a matter of construction of the individual agreement to decide whether:

(i) the designated foreign “seat” would be read as in fact only providing for a “venue”/“place” where the hearings would be held, in view of the choice of the Arbitration Act, 1996 as being the curial law, or

(ii) the specific designation of a foreign seat, necessarily carrying with it the choice of that country's arbitration/curial law, would prevail over and subsume the conflicting selection choice by the parties of the Arbitration Act, 1996.”

25] In *Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited*, (2017) 7 SCC 678 the Apex Court held that Section 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”. The relevant paragraph of the said judgment is extracted below:

“18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] 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.”

26] In *Mankastu Impex Private Limited vs. Airvisual Limited, (2020) 5 SCC 399* the Apex Court held that it is well settled that “seat” of arbitration and “venue” of arbitration cannot be used interchangeably. It has also been well 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 relevant paragraph is extracted below:

“20. It is well settled that “seat of arbitration” and “venue of arbitration” cannot be used interchangeably. 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.”

27] In *Aarka Sports Management Private Limited vs. Kalsi Buildcon Private Limited, (2020) SCC OnLine Del 2077*, the Delhi High Court held that if the parties have not determined the “seat” of arbitration, the same shall be

determined by the Arbitral Tribunal. If the parties have not agreed on the “seat” of arbitration, the Court competent to entertain an applicant under Section 11 of the Arbitration and Conciliation Act would be the “Court” as defined in Section 2(1)(e) of the Act read with Sections 16 to 20 of the Code of Civil Procedure. The relevant paragraphs are extracted below:

“24. Section 20 (1) of the Arbitration and Conciliation Act empowers the parties to determine the seat of arbitration. The parties are at liberty to choose a neutral seat of arbitration where neither the cause of action arose nor the parties reside or work and Sections 16 to 20 of the Code of Civil Procedure would not be attracted.

25. Once the seat is determined, the Court of that place shall have exclusive jurisdiction to deal with all matters relating to arbitration agreement between the parties.

26. If the parties have not determined the seat of arbitration, the seat of arbitration shall be determined by the Arbitral Tribunal under Section 20(2) of the Arbitration and Conciliation Act.

27. If the parties have not agreed on the seat of the arbitration, the Court competent to entertain an application under Section 11 of the Arbitration and Conciliation Act would be the “Court” as defined in Section 2(1) (e) of the Act read with Sections 16 to 20 of the Code of Civil Procedure.”

28] In *Ravi Ranjan Developers Pvt. Ltd. vs. Aditya Kumar Chatterjee*, 2022 SCC OnLine SC 568, the Apex Court held that 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, 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. The relevant paragraphs are extracted below:

“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, 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.

43. This Court has perused the Development Agreement. The contention of the Respondent in the Affidavit in Opposition, that the parties to the arbitration agreement had agreed to submit to the jurisdiction of Calcutta High Court, is not correct. The parties to the arbitration agreement only agreed that the sittings of the Arbitral Tribunal would be in Kolkata. Kolkata was the venue for holding the sittings of the Arbitral Tribunal.

44. In Union of India v. Hardy Exploration and Production (India) Inc.⁶ a three Judge Bench of this Court held that the sittings at various places are relatable to venue. It cannot be equated with the seat of arbitration or place of arbitration, which has a different connotation.

45. In Mankastu Impex Private Limited v. Airvisual Limited⁷ a three Judge Bench of which one of us (Hon. A.S. Bopanna, J) was a member, held:

“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) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 :

(2014) 3 SCC (Civ) 59], the Supreme Court held that : (SCC pp. 43 & 46, paras 97 & 107)

“[T]he 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.”

20. It is well settled that "seat of arbitration" and "venue of arbitration" cannot be used interchangeably. 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.”

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 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 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.

49. These appeals are therefore, allowed and the impugned orders of appointment of Arbitrator and dismissal of the review application are set aside. The appointment of the learned Arbitrator is set aside on the ground that the order of his appointment is without jurisdiction and in view of the objection to his appointment raised by the Appellant. It is made absolutely clear that this order is not to be construed as any aspersion on the learned Arbitrator appointed by the Calcutta High Court, or the manner in which he has conducted the proceedings so far.

50. Since the meetings of the Arbitral Tribunal are to be held in Kolkata, this Court deems it appropriate to appoint Justice Bhaskar Bhattacharya, Former Chief Justice of the High Court of Gujarat as Sole Arbitrator, to decide the disputes between the parties. The parties have consented to the appointment of Justice Bhaskar Bhattacharya.”

29] In *Brahmani River Pellets Limited (supra)* the Apex Court held that the parties had agreed that the “venue” of arbitration shall be “Bhubaneswar”. The Apex Court held that, having regard to the parties’ agreement designating Bhubaneswar as the “venue” of arbitration, the intention of the parties was to

exclude the jurisdiction of all other Courts. Notwithstanding this agreement, the Madras High Court assumed jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996, which the Apex Court found to be unsustainable in law. This was held to be erroneous by the Apex Court in view of the specific agreement between the parties that the “venue” for arbitration shall be at “Bhubaneswar”. It was further held that a clause of such nature agreed upon between the parties would not be hit by Section 23 of the Contract Act, as it is neither forbidden by law nor opposed to public policy. The relevant paragraphs are extracted below:

“15. As per Section 20 of the Act, parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court which has jurisdiction out of two or more competent courts having jurisdiction. This has been made clear in the three-Judge Bench decision in Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157]

15.1. In the said case, respondent Indian Oil Corporation Ltd. appointed M/s Swastik Gases (P) Ltd. situated at Jaipur, Rajasthan as their consignment agent. The dispute arose between the parties as huge quantity of stock of lubricants could not be sold by the applicant and they could not be resolved amicably. In the said matter, Clause 18 of the agreement between the parties provided that the agreement shall be subject to the jurisdiction of the courts at Kolkata.

15.2. The appellant Swastik invoked Clause 18 — arbitration clause and filed application under Section 11(6) of the Act before the Rajasthan High Court for appointment of arbitrator. The respondent contested the application made by Swastik inter alia by raising the plea of lack of territorial jurisdiction of the Rajasthan High Court in the matter. The plea of Indian Oil Corporation was that the agreement has been made subject to jurisdiction of the courts at Kolkata and the

Rajasthan High Court lacks the territorial jurisdiction in dealing with the application under Section 11(6) of the Act.

15.3. The Designated Judge held [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., 2011 SCC OnLine Raj 2758 : (2012) 3 RLW 2241] that the Rajasthan High Court did not have territorial jurisdiction to entertain the application under Section 11(6) of the Act and gave liberty to Swastik to file the arbitration application in the Calcutta High Court which order came to be challenged before the Supreme Court.

15.4. Pointing out that the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used in the agreement and use of such words is not decisive and non-use of such words does not make any material difference as to the intention of the parties by having Clause 18 of the agreement that the courts at Kolkata shall have the jurisdiction, the Supreme Court held as under : [Swastik Gases (P) Ltd. case [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , SCC pp. 47-48, paras 31-33]

“31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What the appellant says is that part of cause of action has also arisen in Jaipur and, therefore, the Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of Clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of Clause 18 of the agreement, the jurisdiction of the Chief Justice of the Rajasthan High Court has been excluded?

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to

jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement— is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.

33. The above view finds support from the decisions of this Court in Hakam Singh v. Gammon (India) Ltd. [Hakam Singh v. Gammon (India) Ltd., (1971) 1 SCC 286] , A.B.C. Laminart (P) Ltd. v. A.P. Agencies [A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163] , R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd. [R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd., (1993) 2 SCC 130] , Angile Insulations v. Davy Ashmore (India) Ltd. [Angile Insulations v. Davy Ashmore (India) Ltd., (1995) 4 SCC 153] , Shriram City Union Finance Corpn. Ltd. v. Rama Mishra [Shriram City Union Finance Corpn. Ltd. v. Rama Mishra, (2002) 9 SCC 613] , Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd. [Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd., (2004) 4 SCC 671] and Balaji Coke Industry (P) Ltd. v. Maa Bhagwati Coke Gujarat (P) Ltd. [Balaji Coke Industry (P) Ltd. v. Maa Bhagwati Coke Gujarat (P) Ltd., (2009) 9 SCC 403 : (2009) 3 SCC (Civ) 770]."

(emphasis supplied)

16. In *Swastik [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157]*, the Supreme Court held that clause like Clause 18 of the agreement will not be hit by Section 23 of the Contract Act and it is not forbidden by law nor it is against public policy. It was so held that as per Section 20 of the Act, parties are free to choose the place of arbitration. This "party autonomy" has to be construed in the context of choosing a court out of two or more courts having competent jurisdiction under Section 2(1)(e) of the Act.

18. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in *Swastik [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157]*, non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference.

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

30] These judgments were extensively referred to and discussed by the Apex Court in *BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234* had dealt elaborately with the distinction between the "seat" of arbitration and the "venue" of

arbitration.

In this judgment the Apex Court had delved into the concept of "juridical seat" of the arbitration proceedings and the importance of this "seat". In view of the fact that an arbitral award is now required to state not only the date on which it is made but also the "place" of arbitration as determined in accordance with Section 20 of the Arbitration and Conciliation Act, 1996, the specification of the "place" of arbitration has assumed significant legal importance. The Apex Court held that the definition of "Court" contained in Section 2(1)(c) of the Arbitration Act, 1940, has substantially been retained under the Arbitration and Conciliation Act, 1996, albeit in a narrowed form, so as to include only the Principal Civil Court of original jurisdiction in a district and the High Court exercising its ordinary original civil jurisdiction. Thus, the concept of the "juridical seat" of arbitral proceedings, and its nexus with the jurisdiction of the courts empowered to supervise such proceedings, including the adjudication of challenges to arbitral awards, remained uncertain. Consequently, the contours of this doctrine had to be developed by the Courts on a case by case basis, with due regard to establish international arbitral practice. Thereafter, the Apex Court had referred to and examined both Indian and foreign judicial precedents. Upon a consideration of the relevant foreign judicial authorities, the Apex Court held that, where a particular place is expressly designated as the "venue" of arbitration, and no alternative place is designated as the "seat" of arbitration, coupled with the applicability of a supranational set of arbitral rules and the absence of any significant contrary indicia, the inescapable conclusion is that the designated "venue" constitutes the "juridical seat" of the arbitral proceedings. The Apex Court also discussed the judgment of *Brahmani River Pallets (supra)*

and *Indus Mobile Distribution Private Limited (supra)* in this context. Upon examining the matter in its entirety, the Apex Court held as under:

“**81.** Most recently, in *Brahmani River Pellets [Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 : 2019 SCC OnLine SC 929 at para 15]*, this Court in a domestic arbitration considered Clause 18 — which was the arbitration agreement between the parties — and which stated that arbitration shall be under Indian Arbitration and Conciliation Act, 1996, and the venue of arbitration shall be Bhubaneswar. After citing several judgments of this Court and then referring to *Indus Mobile Distribution [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760]*, the Court held : (*Brahmani River Pellets case [Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 : 2019 SCC OnLine SC 929 at para 15]*, SCC pp. 472-73, paras 18-19)

“18. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the “venue” of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in *Swastik [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157]*, non-use of words like “exclusive jurisdiction”, “only”, “exclusive”, “alone” is not decisive and does not make any material difference.

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

is liable to be set aside.”

31] The *BGS SGS SOMA JV (supra)* and the *BALCO Employees' Union v. Union of India* reported in (2002) 2 SCC 333 judgments were also came to be considered again in *BBR (India) Private Limited vs. S.P. Singla Constructions (P) Ltd.* reported in (2023) 1 SCC 693. The question before the Court was whether the “jurisdictional seat” of arbitration once fixed under section 20(2) read with Section 42 and 2(1)(e) of the Act of 1996 can be changed and if so, the circumstances under which such alteration may be permitted. The judgment while examining the matter had extensively referred to the earlier precedents, more particularly the judgments of *BALCO (supra)* and *BGS SGS SOMA JV (supra)*. In this judgment, the Apex Court held that the legislature had given jurisdiction to two Courts: the Court which should have jurisdiction where the cause of action is located; and the Court where the arbitration takes place. This is necessary as, on some occasions, the agreement may provide the “seat” of arbitration that would be neutral to both the parties. The Courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. The “seat” of arbitration need not be the place where any cause of action has arisen, in the sense that the “seat” of arbitration may be different from the place where obligations are/had to be performed under the contract. In such circumstances, both the Courts should have jurisdiction viz. the Courts within whose jurisdiction “the subject-matter of the suit” is situated and the Courts within whose jurisdiction the dispute resolution forum, that is, where the Arbitral Tribunal is located. Turning to Section 20 of the Act, sub-section (1) in clear terms states that the parties can agree on the “place” of arbitration. The word “free” has been used to emphasise the autonomy and

flexibility that the parties enjoy to agree on a "place" of arbitration which is unrestricted and need not be confined to the place where the "subject-matter of the suit" is situated. Sub-section (1) to Section 20 gives primacy to the agreement of the parties by which they are entitled to fix and specify "the seat of arbitration", which then, by operation of law, determines the jurisdictional Court that will, in the said case, exercise territorial jurisdiction. It was held that Sub-section (2) comes into the picture only when the parties have not agreed on the "place" of arbitration as "the seat". [Section 20(2) also applies when "the seat" as mentioned in the agreement is only a convenient venue.] In terms of sub-section (2) of Section 20 the Arbitral Tribunal determines the "place" of arbitration. The Arbitral Tribunal, while doing so, can take into regard the circumstances of the case, including the convenience of the parties. Sub-section (3) of Section 20 of the Act enables the Arbitral Tribunal, unless the parties have agreed to the contrary, to meet at any place to conduct hearing at a place of convenience in matters, such as consultation among its members, for the recording of witnesses, experts or hearing parties, inspection of documents, goods, or property. It was held that the "seat" once fixed by the Arbitral Tribunal under section 20(2) should remain static and fixed, whereas the "venue" of arbitration can change and move from the "seat" to a new location. It was held that the "venue" of arbitration is neither constant nor stationary and may be shifted or changed in accordance with Section 20(3) of the Arbitration and Conciliation Act, 1996. The change of "venue" does not result in the change or relocation of the "seat" of arbitration. The Apex Court ultimately held that the "place" or "venue" fixed for arbitral proceedings under Section 20(2) of the Arbitration and Conciliation Act, 1996, constitutes the "juridical seat" of arbitration, and that the courts having jurisdiction over such juridical seat shall

have exclusive jurisdiction in respect of matters arising therefrom. It was held by the Apex Court that once the "juridical seat" of arbitration is fixed in terms of Section 20(2) of the Arbitration and Conciliation Act, 1996, it cannot be changed except by express or mutual consent of the parties to the arbitration. It was held that the appointment of a new arbitrator who holds arbitration proceedings at a different location would not change the "juridical seat" which has already been fixed by the earlier or by the first arbitrator. The "place" of arbitration in such an event should be treated as a "venue" where the arbitration proceedings are to be held. The Apex Court held that the principles relating to international arbitration as discussed in *BALCO (Supra)* and *BGS SGS SOMA JV (Supra)* have also been applied to domestic arbitrations.

32] The law with regard to the "place" and "jurisdiction" of arbitration as discussed in the judgments referred above has again been summarized in *Arif Azim Co. Ltd. v. Micromax Informatics FZE* reported in (2025) 9 SCC 750. It was held that the *Shashoua* principle as determined in the case of *Roger Shashoua (1) v. Sharma* reported in [2009] EWHC 957 (Comm) has been accepted to be a principle to determine whether "venue" is to be construed as a "seat". In *Roger Shashoua (supra)*, the Queen's Bench Division of the High Court of England and Wales held that where there is an express designation of the arbitration "venue" as "London," and no designation of any alternative place as the "seat," coupled with the applicability of a supranational body of arbitral rules governing the proceedings and the absence of any significant contrary indicia, the inexorable conclusion is that such "venue" is, in fact, the "juridical seat" of the arbitration. It was observed that, in arbitration agreements, it is often more likely that the law governing the arbitration agreement coincides with the curial law, and that

any express stipulation of the curial law would assist in the determination of the “juridical seat” of the arbitration.

33] The Apex Court in *Roger Shashoua (2) vs. Mukesh Sharma* reported in (2017) 14 SCC 722 held that the principle enunciated in *Roger Shashoua (1)* has been expressly approved by the Five Judge Bench decision of the Apex Court in *BALCO (supra)*. Therefore, in the facts of that case, it was held that the mention of “London” in the arbitration agreement was not merely as a location but as a “juridical seat”. The Apex Court in *Arif Azim Co. Ltd. (supra)* wherein it was held that where an arbitration agreement designates a “place” of arbitration as the “venue” of the arbitral proceedings, such place is, in effect, the “seat” of arbitration. This is because the expression “arbitral proceedings” does not refer to individual hearings but rather the whole arbitration process including the making of the award. It was held that where the parties have anchored the “arbitral proceedings” to a fixed location or place, it would indicate their intention that such place is to be treated as the “seat” of arbitration, and where the place designated as the “venue” in the arbitration agreement is not accompanied by any other significant contrary indicia suggesting that it is merely a “venue”, such place shall be construed as the “seat” of the “arbitral proceedings”. Therefore, the Apex Court in *Arif Azim Co. Ltd. (supra)* laid down three tests to determine when the “venue” can be construed as a “seat” of arbitration under:

1. The arbitration agreement or the clause in question should designate or mention only one place;

2. Such place must have anchored the “arbitral proceedings” i.e. the “arbitral proceedings” must have been fixed to that place alone without any scope of change;
3. There should be no other significant contrary indicia to show that the place designated is merely the venue and not the seat.

Where these aforesaid conditions are fulfilled, then the place that is designated as a “venue” can be construed to be the “seat” of arbitration.

34] Coming to the facts of the case in the present proceedings, on a plain reading of the arbitration clause available in the agreement between the parties to the present proceedings, it is clear that the said clause stipulates “*the venue of the arbitration proceedings shall be at Noida*”. Further, reading of the agreement including the arbitration clause does not reveal that there is any other clause which operates as contra indicia that the parties have not agreed for the “seat” of arbitration to be at “Noida” but at some other place. No such indication is discernible from a plain reading of the contract. Therefore, in view of the law laid down by the Apex Court in the judgments as discussed above, this Court will have to hold that in terms of the agreement, the parties have decided to agree that the “arbitral seat” will be at “Noida” in terms of Section 20(1). Merely because of the use of the term “venue” would not be sufficient to indicate that the “arbitral seat” between the parties has not been fixed as decided at “Noida” inasmuch as there are no contrary indications upon a plain reading of the agreement including the arbitration clause that the “venue” is merely a “place” or one of such place where arbitration proceeding will be

conducted and therefore, not the "juridical seat" of arbitration.

35] The filing of the writ petition by the petitioner before the Gauhati High Court being WP(C) No. 1066/2014 was with regard to the direction to the respondents to pay the liquidated damages which were deducted from the bills raised by the respondents. It was submitted before the Court that while the writ petition came to be disposed of relegating the parties to take recourse to arbitrate as prescribed under the agreement, there was no objection raised by the respondents before the writ Court that it did not have the jurisdiction in terms of the agreement by and between the parties. This submission of the petitioner also must fail in view of the judgments rendered by the Apex Court particularly in *BGS SGS SOMA JV (supra)*, inasmuch as that there is no dispute between the parties that there is no application under Section 9 or Section 17 or any other application under the Arbitration and Conciliation Act of 1996 in connection with or arising out of the disputes by and between the parties that was filed before any Court in the State of Assam. Had such an application been filed, and had the respondents raised no such objection as to jurisdiction been raised by the respondents, then present petitioner's submission might perhaps have had some substance. There being no such petition filed by the petitioner or by the respondent under the Arbitration and Conciliation Act, 1996 before any Court in Assam, the mere fact of filing a writ petition by the petitioner seeking a direction for release of the liquidated damages and no objection as to jurisdiction been raised by the respondents cannot be construed that there is no intention between the parties to fix "Noida" as the "seat" of arbitration, more particularly when no such direction was issued by the Coordinate Bench and the parties were relegated to take recourse to arbitrate as per the clause of

arbitration in the agreement.

36] That being so, it has to be accepted that "Noida" is the "juridical seat" of arbitration as agreed up by the parties and therefore, only the Courts having jurisdiction over "Noida" shall be the Courts competent to exercise jurisdiction as contemplated under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996, and such Courts alone shall have jurisdiction to decide questions forming the subject matter of the arbitration, including petitions under Section 11(6) of the Act. In that view of the aforesaid, it is to be held that this Court does not have the jurisdiction to entertain this application under Section 11(6) of the Act and in light of the law, succinctly laid down by the Apex Court in this regard, this arbitration petition therefore, stands dismissed.

37] The petitioners will have liberty to go and approach the appropriate Courts having jurisdiction over "Noida" to file their petition for appointment of arbitrators.

JUDGE

Comparing Assistant