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

\+ *Reserved on: 27th August, 2019*
Pronounced on: 26th September, 2019

FAO (OS) (COMM) 92/2019 and C.M. No. 19356/2019

INDIAN OIL CORPORATION LTD ..... Appellant

Through: Mr. Abhinav Vashisht, Senior Advocate along with Ms. Tannishtha Singh, Ms. Priya Singh & Ms. Akshita Sachdeva, Advocates.

versus

FEPL ENGINEERING (P) LTD & ANR ..... Respondents

Through: Mr. Rajesh Sharda, Mr. Saket Gogia & Ms. Damini K, Advocates.

CORAM: JUSTICE VIPIN SANGHI
JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J

1. The present appeal under Section 13(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 (hereinafter 'Commercial Courts Act') read with Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Arbitration Act') impugns the judgment dated 5th April 2019 passed by the learned Single Judge in OMP (Comm) No. 140/2019.

2. The petition [O.M.P (COMM) No. 140/2019] was filed under Section 34 of the Arbitration Act, assailing the Arbitral award dated 14th December 2018, passed by the Maharashtra Micro and Small Enterprises Facilitation

Council, Konkan Region, Thana (hereinafter "MSME Council"). The learned Single Judge dismissed the aforesaid petition on the ground that this Court does not have the territorial jurisdiction to entertain the petition. Since the learned Single Judge has not examined merits of the case and has decided the petition only on the ground of jurisdiction, the scope of the present appeal lies in narrow compass and is restricted to evaluation of the legality of the impugned order on the issue of jurisdiction of this Court.

Brief Facts:

3. The bare essential facts that are necessary for disposing of the present appeal are as follows:

3.1. Pursuant to a Notice Inviting Tender issued by the Appellant for "*Supply, Installation, Testing, Commissioning and 5 years AMC of 1000 KW Grid Interactive Solar Power System at Gujarat Refinery"*, a purchase order was issued to the Respondent for Rs. 4,95,00,000/- (Rupees Four Crore Ninety-Five Lac Only). Certain disputes arose between the parties and on 6th March 2017, Appellant issued a Show Cause Notice as to why the Respondent should not be debarred from entering into any contracts with the Appellant because of its failure to comply with the terms of contract. Respondent, being governed by the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the "MSME Act") filed a petition under Section 18 of the said Act. Taking cognizance thereof, on 23rd May 2017, the MSME Council as per the scheme of the Act initiated conciliation proceedings between the parties. However, on account of failure of the Council to resolve the disputes

between the parties, the same were concluded on 12th July 2018. On the same date an order on *Roznama* was passed, whereby, the MSME Council assumed jurisdiction to resolve the disputes through Arbitration in terms of Section 18(3) of the MSME Act. The said proceedings were terminated on 14th December 2018, resulting in the impugned Award being passed in favour of the Respondent.

3.2. On 9th January 2019, Appellant filed a Writ Petition being W.P. No. 769 of 2019 before the High Court of Bombay titled as "***Indian Oil Corporation Limited v. Maharashtra Micro and Small Enterprise Facilitation Council, Konkan Region, Thane***", challenging the conduct of arbitration proceedings by the MSME Council. The said petition is stated to be presently pending. On 20th March 2019, Appellant preferred the petition under Section 34 of the Arbitration Act before this Court impugning the award and the same has been dismissed by judgment dated 5th April 2019, impugned in the present appeal.

Impugned Judgment

4. Learned Single Judge, while referring to Clause 34 and 35 of the General Purchase Conditions (GPC), has held that this Court lacks territorial jurisdiction to entertain the petition, as under said clauses, no exclusive seat of arbitration has been agreed upon by the parties. It is also observed that since there were certain blanks in the aforesaid Clauses, it cannot be inferred that the parties vested exclusive jurisdiction to the Courts at New Delhi. The decisions in ***Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd., (2013) 9 SCC 32*** and ***Indus Mobile Distribution Pvt. Ltd. vs. Datawind***

Innovations Pvt. Ltd. & ***Ors., (2017) 7 SCC 678,*** were held to be inapplicable to the facts of the present case. Further, while referring to the provisions of the MSME Act, learned Single Judge held that the Courts at Thane, Maharashtra, would have exclusive jurisdiction to entertain the present petition. For ready reference and clarity, the relevant portion of the impugned judgment is reproduced hereunder:

> *"5. I am unable to agree with the submission made by the learned senior counsel for the petitioner for more than one reason.*
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> *6. At first, it is seen that Clauses 34 and 35 of the GPC relied upon by the* ***learned senior counsel for the petitioner do not provide for an exclusive 'Seat of arbitration' nor vest exclusive jurisdiction in this Court. Clause 34 infact, leaves the Venue of arbitration as blank 'or' at New Delhi****. Therefore, the parties were to decide on the Venue of arbitration in terms of Clause 34 GPC.*
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> *7.* ***By not filling up the blank in Clauses 34 of the GPC, it is apparent that the parties did not arrive at a consensus or a determination on the Venue leave alone the Seat of arbitration****.*
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> ***8. Equally, in Clause 35 of the GPC, the blank was again not filled up by the parties, clearly showing that the parties either could not arrive at a consensus on vesting exclusive jurisdiction to any Court or did not deem it appropriate to do the same. Merely because an alternate was given for the Venue of arbitration to be at Delhi or the Court(s) at Delhi to have jurisdiction would not mean that the parties had, infact, arrived at an consensus agreement to vest exclusive jurisdiction in this Court.***
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> *9. In view of the above, the judgments of the Supreme Court in* ***Swastik Gases*** *(supra) and* ***Indus Mobile*** *(supra), would have no application.*

10. This is more so because the Purchase Order in question, dated 10.03.2016, has been issued by the Petitioner from its Vadodara office to the respondent at Navi Mumbai. The supply under the Purchase Order was to be made at Gujarat. ***Therefore, no part of the cause of action has arisen at Delhi****.*

11. Most importantly, the Impugned Award has been passed by MSME Council in exercise of its powers under Section 18 of the MSMED Act, which is reproduced hereinbelow:

> *"18. Reference to Micro and Small Enterprises Facilitation Council-(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under Section 17, make a reference to the Micro and Small Enterprises Facilitation Council.*
>
> *(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Section 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.*
>
> *(3) Where the conciliation initiated under sub section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration & Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in Sub-Section 7 of the Act.*

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and small Enterprises Facilitation Council or the Centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this Section in a dispute between the supplied located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference."

12. ***A reading of the above provision would show that the MSME Council, where the supplier is located, shall have jurisdiction in the matter****. In exercise of this power, MSME Council at Thane exercised its jurisdiction in the present dispute.* ***The Seat of arbitration, therefore, would be at Thane, Maharashtra*** *and even applying the judgment of the Supreme Court in Indus Mobile (supra), it would only be the Courts at* ***Thane which will have exclusive jurisdiction to entertain the present petition****.*

13. To hold, otherwise, would infact run counter to the mandate of the MSMED Act. The MSMED Act being a special legislation dealing with;-the Micro, Small and Medium Enterprises, would certainly have precedence over the general law, that is the Arbitration and Conciliation Act, 1996."

(emphasis supplied)

5. Before dealing with the contentions of the parties it is also apposite to refer to the relevant clauses of the GPC that have been noticed in the impugned judgment and the same are set out herein below:

*"**34.0 ARBITRATION AND GOVERNING LAW***

34.1 Arbitration*: All disputes or differences which may arise*

out of or in connection with or are incidental to the Agreement(s) including ***any dispute or difference regarding the interpretation of the terms and conditions of any clause thereof which cannot be amicably resolved between the parties may be referred to Arbitration of a person selected by the Vendor out of a panel of three persons nominated, by the General Manager of the Unit or Project of Indian Oil Corporation Ltd. to which the Contract relates****. The arbitration proceedings shall be governed by and conducted in accordance with the Arbitration and Conciliation Act, 1996.* ***The venue of the arbitration shall be [……] or New Delhi, India****.*

34.2 Governing Law*: The Agreement(s) shall be construed in accordance with and governed by the laws of India. IOCL shall warrant that the terms and conditions of the Purchase Order shall be valid under existing Indian, laws.*

35.0 JURISDICTION

35.1 Notwithstanding any other Court or Courts having jurisdiction to decide the disputed issue, and without prejudice to the provisions or generality of the Arbitration clause, ***jurisdiction to decide the in all matters touching or affecting any arbitration, or arising out of or in relation to or under or in accordance with the Arbitration and Conciliation Act, 1996 or otherwise under or with reference to the Contract shall vest exclusively in the court(s) of competent civil jurisdiction at [where the contract(s)/Purchase Order shall be signed on behalf of IOCL] or at New Delhi and only the said. Court(s) shall have the jurisdiction to entertain and try any such actions and/or proceedings to the exclusion of all other Courts****, provided that nothing herein stated shall be deemed to any wise authorize any party to seek resolution of any dispute(s) otherwise than the recourse to arbitration in accordance with the provisions of the Arbitration clause herein. Provided always that an award rendered in any arbitration proceedings arising out of or in relation to the Contract may be enforced or executed in any other country or jurisdiction*

including without limitation a. country in which any party against whom the award is to be enforced or executed is and a country in which the assets of any such party are located."

(emphasis supplied)

Contentions of the Parties

6. Mr. Abhinav Vashisht, learned Senior Counsel appearing on behalf of the Appellant contended that the learned Single Judge has wrongly interpreted Clause 34 & 35 of GPC. He argued that by keeping blanks in the aforesaid Clause, it implies that the parties agreed to expressly vest exclusive jurisdiction to the Courts at Delhi, as no other place of jurisdiction finds mention in the said Clauses. It was further contended that the impugned order is erroneous both on facts and law, inasmuch as the learned Single Judge has wrongly interpreted the concept of 'SEAT' in respect of arbitration proceedings. Mr. Vashisht urged that the provisions of the MSME Act referred to in the impugned order are applicable only to dispute resolution proceedings i.e. Conciliation and/or Arbitration and after conclusion of the dispute resolution proceedings under Section 18 (4) of the MSME Act, the MSME Council does not have jurisdiction in respect of proceeding(s) that may be undertaken thereafter, and jurisdiction of the court has to be ascertained in accordance with the agreement between the parties.

7. Mr. Rajesh Sharda, learned Counsel for the Respondent on the other hand argued that the findings of the learned Single Judge are correct, and this Court does not have territorial jurisdiction to entertain the petition filed under Section 34 of the Arbitration Act. He referred to the orders passed by the Bombay High Court in Writ Petition No. 769/2019, particularly the order dated 15th March 2019, to contend that since the Petitioner invoked

jurisdiction of the Bombay High Court, and has filed the aforesaid writ petition to decide the issues arising out of the arbitration proceedings conducted by the MSME Council, this Court cannot assume jurisdiction to decide the objections against the impugned award, under Section 34 of the Arbitration Act. He further argued that Clauses 34 and 35 of GPC do not provide any exclusive 'SEAT' for arbitration. The Purchase Order was issued from the office at Vadodra, to the office of Respondent at Navi Mumbai. Supply was made to the Appellant at Gujarat Refinery. Thus, no cause of action arose within the territorial jurisdiction of this Court. He also relied upon Section 18 of the MSME Act to contend that the proceedings under the said Act can only be initiated where the supplier is located.

Analysis and Finding

8. We have given our thoughtful consideration to the rival contentions of the parties.

9. While interpreting the afore-noted Clauses, the learned Single Judge has held that this Court does not have the territorial jurisdiction to entertain the petition under Section 34 of the Arbitration Act. The reasoning employed by the Learned Single Judge can be summarized in the following words:

> a) The aforesaid Clauses (34 and 35) **do not provide any exclusive "seat of arbitration" nor vest exclusive jurisdiction to Courts in Delhi. Clause 34 leaves the venue of arbitration as blank or at New Delhi.** Therefore, the parties have not decided on an exclusive venue of arbitration in terms of Clause

34 of the GPC.

b) **Clause 35 of GPC also has blanks, which exhibits that parties could not arrive at a consensus of vesting exclusive jurisdiction to any Court. Merely because an alternate has been given, does not vest exclusive jurisdiction in this Court.**

c) **Swastik Gases Pvt. Ltd.** (supra) and **Indus Mobile Distribution Pvt. Ltd** (supra) have no application and the transaction between the parties and the documents do not show that any cause of action has arisen in Delhi.

d) Clause 18 of MSME Act shows that the jurisdiction of the MSME Council is on the basis of the location of the supplier. In the instant case, the MSME Council at Thane exercised its jurisdiction. **The seat of arbitration was at Thane and accordingly in terms of the judgement of Indus Mobile (supra), the Courts at Thane would have the exclusive jurisdiction.**

e) Any interpretation would be contrary to the mandate of MSME Act.

10. An analysis of the impugned judgement reveals that the learned Single Judge was persuaded to reject the petition, primarily for the reason that the Clauses, referred to above, contain certain blanks, with respect to the seat and venue of Arbitration. The learned Single Judge held that since the

relevant portion of the said Clauses is blank, it demonstrates that the parties could not arrive at a consensus on vesting exclusive jurisdiction to any Court.

11. We do not agree with the aforesaid findings. The fact that the parties did not fill the blanks, would be a measure of significance, but to the contrary. The contracting parties had the option to agree to the venue of the arbitration as also to decide the Court of competent jurisdiction [i.e. the place/seat of arbitration], other than "New Delhi". Since that option was not exercised by the parties and they proceeded to sign the agreement without filling the blanks, it manifests that the parties elected to display express agreement for exclusive jurisdiction to be vested in Courts at New Delhi. The conjunction "or" used in Clauses 34 and 35 loses its significance and becomes redundant. As a corollary, the Clause relating to the 'VENUE' of arbitration can only be construed to mean that the parties agreed that the 'VENUE' for arbitration shall be at New Delhi. Likewise, the jurisdiction clause would also have to be read and interpreted in the same way. The words "shall vest exclusively in the Court" preceding the space intentionally kept blank, distinctly and unmistakeably shows the agreement between the parties to confer jurisdiction in courts at New Delhi.

12. Learned Single Judge's assumption that there was no consensus is based on conjecture, and is contrary to the principles of interpretation of Contracts. It is a well-settled principle of interpretation that the clauses of the Contract have to be read and interpreted upon a plain reading. The explicit terms of a contract are always the final word with regards to the intention of the parties

and the multi-clause contract *inter se* the parties has to be understood and interpreted in a manner that any view, on a particular Clause of the contract, should not do violence to another part of the contract. [Ref: Principles relating to interpretation of commercial contracts have been extensively discussed by the Apex Court in ***Nabha Power Ltd. v Punjab State Power Corporation Ltd. (PSPCL)*** (2018) 11 SCC 508; followed in ***Adani Power (Mundra) Ltd. v Gujarat Electricity Regulatory Commission*** AIR 2019 SC 3397]. The clauses, to our mind, convey in their meaning, with absolute certainty, the intention of the parties. The problem in interpretation can arise when the intent is not so visible in the obvious expression. Since the name of a State/City is blank, the name of one of the agreed cities [New Delhi] appearing after the conjunction "or" would convey accord between the parties not to agree on any other place but the one mentioned in the clause. Interpreting the "blanks" to mean that parties were not *ad idem*, would amount to disregarding the test of business efficacy. This is because the placeholder that was not filled does not render the clause unworkable. The clause remains legally enforceable. It is also to be noted that filling in the name of another city before conjunction 'or' would have rendered the exclusivity of jurisdiction ambiguous. "New Delhi" was certainly one of the firmed-up choice of venue and seat, agreed between the parties. Introduction of another place was certainly a selection that the parties could have made, but since parties did not avail this opportunity, it only means that the agreed place was preserved as final.

13. As a result of the foregoing discussion, the judgements of the Supreme Court in ***Swastik Gases*** (supra) and ***Indus Mobile*** (supra) would be relevant

and applicable.

14. In the case of ***Swastik Gases*** (supra), the Supreme Court held that where the ouster is included in an agreement between the parties, it conveys the intention to exclude the jurisdiction of Courts other than those mentioned in the agreement. The Supreme Court also held that absence of the use of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is not decisive, and does not make any material difference in deciding the jurisdiction of a Court. The intention of the parties has to be gathered from the Clauses appearing in the agreement.

15. In ***Indus Mobile*** (supra), the Supreme Court has succinctly highlighted the difference between the 'VENUE' and 'SEAT' of arbitration. The Supreme Court held that merely because the arbitrator chooses to hold arbitration at a VENUE different from the SEAT of arbitration, it shall not confer territorial jurisdiction on the Courts where the VENUE of arbitration exists. The relevant paras of the said judgement read as under:

> ***"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."*
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> (emphasis supplied)

16. Further, in the said judgement, the Supreme Court also held that under the law of arbitration, unlike the Courts to which Code of Civil Procedure applies, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties in the arbitration clause. The relevant paras explaining the above concept are 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****.*
>
> ***20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts****. For an exhaustive analysis of the case law, see* ***Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157]*** *This was followed in a recent judgment in* ***B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. [B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427]*** *Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the*

*country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [**Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744**] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly."*

(emphasis supplied)

17. It is also pertinent to take note of the decision in ***M/s Devyani International Limited v. Siddhivinayak Builders and Developers, 2017 SCC Online Del 11156***, wherein it has been held as under:-

***"6.** As far as the issue of jurisdiction is concerned, reference may be had to the arbitration clause in the Agreement being Clause 11.1 which reads as follows:—*

> ***11. ARBITRATION***
> *11.1 Any dispute or difference arising between the parties shall be resolved amicably at the first instance. Unresolved disputes, controversies, contests, disputes, if any shall be submitted to arbitration to a sole arbitrator. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act 1996 along with the Rules there under and any amendments thereto. The arbitration shall be conducted in English. The decision/award of the arbitrator shall be final/conclusive and binding on the Parties; **The seat of the arbitration shall be at New Delhi**.*

***7.** Clause 12 of the Agreement reads as follows:*

> *"12. **GOVERNING LAW***
> *12.1 This Agreement shall be construed, interpreted*

and applied in accordance with, and shall be governed by, the laws applicable in India… ***The courts at Mumbai shall have the exclusive jurisdiction to entertain the dispute or suit arising out of or in relation to this Agreement****."*

8. *In view of the clause 11.1 above,* ***it is obvious that the seat of arbitration is Delhi.*** *In this context reference may be had to the judgment of the Supreme Court in* ***Indus Mobile Distribution Private Ltd. v. Datawind Innovations Pvt. Ltd., (2017) 7 SCC 678****, the Supreme Court held as follows:*

*"****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****.*

9. *In the light of the above legal position,* ***it is manifest that the Agreement records that the seat of arbitration shall be Delhi. In view of the above legal position the courts at Delhi would have exclusive jurisdiction to adjudicate the dispute between the parties. The reliance of the learned counsel for the respondent***

on clause 12 of the agreement is misplaced due to the clear terminology used in clause 11.1 of the agreement, i.e. "seat of arbitration shall be Delhi."

18. Thus, in view of the aforesaid decisions of the Supreme Court and the principles laid down therein, it clearly emerges that Section 20 (1) and Section 20 (2) of the Arbitration Act, would be applicable to the place where seat/place of arbitration is fixed under the Contract. The venue relates to convenience of parties, and in such a case, Section 20 (3) of the Arbitration Act is applicable.

19. The maxim "*expressio unius exclusio alterius*" referred to in the aforesaid judgement, is also attracted to the facts of the present case. The aforesaid maxim means "the explicit mention of one (thing) is the exclusion of another". In the present case since the parties made a provision in the agreement to have the venue of the arbitration at New Delhi and also provided the seat by vesting jurisdiction in the Courts at New Delhi, it would be construed to mean that the jurisdiction of the other Courts has been intentionally excluded. In fact, as discussed above, the jurisdiction clause does use the word "exclusively", in Clause No. 35. Thus, even if there was any element of ambiguity or doubt with respect to intention of the parties regarding "exclusivity", the same gets settled by conscious decision of the parties not to fill in the blank. In this case the venue shifted to Thane not on account of an agreement between the parties, but just because the supplier was located in a jurisdiction that fell with the domain of the regional MSME council. That does not however mean that the arbitration was seated at Thane. For jurisdiction, the clause agreed between the parties continues to

be valid and binding.

20. In the present case, both the VENUE as well as the SEAT (by way of the jurisdiction clause) has been agreed to be at New Delhi. We, therefore, have no hesitation to say that the Courts at Delhi would have the jurisdiction to entertain the petition challenging the award passed by the MSME Council. Since the parties agreed to confer exclusive jurisdiction to Courts at New Delhi, notwithstanding the fact that the purchase order in question dated 10th March 2016, was issued by the Petitioner from its Vadodra Office to the Respondent at Navi Mumbai, and even if no cause of action has arisen in Delhi, the Courts of Delhi would have jurisdiction to entertain the petition under Section 34 of the Arbitration Act. This is pertinently because in ***Indus Mobile*** (supra) as noted in para 19 of the judgement, the Court has held that Section 16 to 21 of CPC would not be attracted. Thus notwithstanding the fact that cause of action may not have arisen in New Delhi, since the Seat has been agreed to be in Delhi, the courts here would have the jurisdiction to entertain the petition under section 34 of the Arbitration Act.

21. There is yet another aspect, which needs to be dealt with at the present stage. Section 18 of the MSME Act provides that the provisions of the Arbitration and Conciliation Act 1996 shall apply to the dispute between the parties. Learned Single Judge has decided the 'SEAT' of arbitration in the present case, on the basis of Section 18 of the MSME and has held that exclusive jurisdiction would be with the Courts at Thane.

22. Section 18 of the MSME Act, reads as under:

"18. Reference to Micro and Small Enterprises Facilitation Council.—

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a **dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.**

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference."

(Emphasis supplied)

23. Undoubtedly, the MSME Act is a special legislation dealing with Micro, Small and Medium Enterprises and would have precedence over the general law. There are decisions of several Courts holding that the provisions of MSME Act would override the provisions of the Contract between the parties. However, we are not engaged with the said controversy and, in fact, we had made it clear to the learned counsel for the Appellant, during the course of arguments, that the questions relating to the jurisdiction of the MSME Council to act as an Arbitrator and other similar issues will not be examined by us, as the learned Single Judge has not considered any of those aspects and has decided the objection petition only on the ground of territorial jurisdiction. However, this does not mean that the jurisdiction clause agreed between the parties has to be given a go-by. The overriding effect of the MSME Act, cannot be construed to mean that the terms of the agreement between the parties have also been nullified. Thus, jurisdiction of the MSME Council which is decided on the basis of the location of the supplier, would only determine the 'VENUE', and not the 'SEAT' of arbitration. The 'SEAT' of arbitration would continue to be governed in terms of the arbitration agreement between the parties, which in the present case as per jurisdiction Clause No. 35 is New Delhi. As a result, in terms of the decision of the Supreme Court in ***Indus Mobile*** (supra), it would be the Courts at New Delhi that would have exclusive jurisdiction to entertain the petition under Section 34 of the Act.

24. The writ petition filed by the Appellant before the Bombay High Court was against the MSME Council, and filing of the said petition would not oust the jurisdiction of the Court to deal with petition under Section 34 of

the Amendment Act and accordingly, the contention of the Respondent that the filing of the aforesaid writ petition bars the Appellant to approach this Court is rejected.

25. In view of the above, we set aside the impugned judgement and restore the present petition to its original number. The learned Single Judge shall now decide the petition on merits and for this purpose, the parties are directed to appear before the learned Single Judge on 17th October 2019, subject to the orders of Hon'ble the Judge In-Charge (Original Side).

SANJEEV NARULA, J.

VIPIN SANGHI, J.

SEPTEMBER 26, 2019
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