



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Arb P No.21/2021

Reserved on: 06.02.2026
Pronounced on: 13.02.2026
Uploaded on: 13.02.2026

M/s S.D.Bhat Through Proprietor
Shamusdin Bhat alias S.d.Bhat, Age 55 years,
S/o Ghulam Mohammad Bhat R/o Basholi, Hut (J&K)
A/p VPO Khairi, The: Dalhouse,
District Chamba, Himachal Pradesh-176325

....Petitioner(s)

Through:- Mr. Pranav Sharma, Advocate

Versus

1. Hindustan Construction Company Ltd (HCC Ltd)
Through its chairman and Managing Director,
Hincon House, Lal Bhadur Shastri Marg,
Vikhroli West Mumbai-400083, India
2. Chairman and Managing Director,
Hindustan Construction Company Ltd (HCC Ltd)
Hincon House, Lal Bhadur Shastri Marg,
Vikhroli West Mumbai-400083, India

...Respondent(s)

Through: Mr. Mohinder Singh Advocate with
Mr. Moti Sharma, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. This is a petition by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”] for appointment of an independent arbitrator.



2. The petitioner is a Class-A Govt. Contractor having more than twenty years' experience in the field. He claims to have been engaged as Sub-contractor by the respondent-corporation for architectural work of Chutuk Power Station, Kargil (J&K) in the year 2011. The work was governed by an agreement dated 5.07.2011, executed between the parties. This was in the shape of a Work Order along with Bill of Quantity and Standard conditions of sub-contract. Clause 32 of the Work Order/agreement contained an arbitration clause.
3. In view of the dispute having arisen between the petitioner and the respondents, the petitioner claims to have invoked the arbitration clause and approached the respondents for settlement. The respondent did not accede to the request of the petitioner, thereby giving him a cause of action of action to approach this court for appointment of an arbitrator in terms of Section 11(6) of the Act.
4. The petition is opposed by the respondents, who have, in their objections, raised *inter alia* the issue of maintainability of this petition before this Court on the ground of want of jurisdiction. It is the contention of the respondent that it is clearly provided in the arbitration clause, the seat of arbitration is at Mumbai and the Sub-contract is governed as per the laws of India and the jurisdiction of only Mumbai Courts shall apply. It is, thus, argued



that in the face of aforesaid clear stipulation in the arbitration clause, the Courts in Jammu shall have no jurisdiction to deal with any matter relating to the arbitration in terms of Arbitration Clause contained in the Sub-contract entered into between the parties.

5. Per *contra*, learned counsel appearing for the petitioner would argue that the arbitration clause only fixes the venue of arbitration and not the seat of arbitration and, therefore, the application under Section 11 of the Act is maintainable before this Court, for, the work has been executed and the cause of action has accrued within the territorial jurisdiction of this Court.
6. Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is, “*whether this Court lacks jurisdiction to entertain an application under Section 11 of the Act and refer the parties to arbitration by appointment of an independent arbitrator?*”
7. Before proceeding to determine the aforesaid question, it would be appropriate to set out Clause 32 of the Sub-contract hereunder:-

“32. Settlement of Disputes:

If a dispute of any kind whatsoever arises between the contractor and the subcontractor or the execution of the subcontract works, whether during the execution of th subcontract works or after their completion and whether before or after repudiation or other termination of the subcontract, then the contractor or the subcontractor may give a notice of such dispute to the other party,



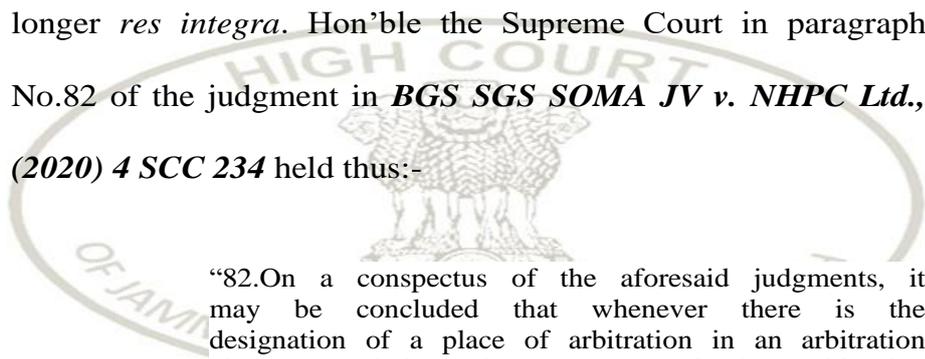
in which case the parties shall attempt for the next fifty six days to settle such dispute amicably through offices of project manager/project controller/GM-subcontractor of HCC before the commencement of arbitration. Such notice shall state that it is made pursuant to this clause. Any dispute which has not been amicably settled within fifty six days after the day on which such notice is given shall be finally settled in accordance with the Arbitration & Conciliation Act 1996 by sole Arbitrator to be nominated by the Chairman & Managing Director of HCC, Mumbai. The Arbitration may be commenced prior or after completion of the subcontractor works, provided that the obligation of the contractor and the subcontractor has not been altered by reason of the arbitration being conducted during the progress of the subcontract works. **The venue shall be at Mumbai. This subcontract is governed as per the Laws of India and the jurisdiction of only Mumbai court shall apply.”**

8. From a plain reading of the arbitration clause reproduced herein above, it transpires that the parties have agreed that the venue of arbitration shall be at Mumbai. They have also agreed that the subcontract would be governed as per the laws of India and Mumbai Courts alone shall have the jurisdiction.
9. Although, the arbitration clause makes mention of ‘**venue of arbitration**’ and does not refer to ‘**seat of arbitration**’, yet when this clause “venue shall be at Mumbai” is read with the next clause in the arbitration agreement i.e. “*jurisdiction of only Mumbai Courts shall apply*”, the intention of the parties is clearly manifested that they intended Mumbai to be the ‘**seat of arbitration**’. Had the word “venue” been used distinctively from the seat of arbitration in the arbitration clause, we could have given different meaning to the ‘*venue*’ and the ‘*seat of arbitration*’.



10. In these circumstances, the word “venue” used in the arbitration clause must be read to mean ‘seat of arbitration’. Once it is conceded that the seat of arbitration agreed to by the parties is at Mumbai and the parties have also agreed to restrict the jurisdiction for arbitration only to the Courts at Mumbai, this Court would lack jurisdiction to entertain an application under Section 11(6) of the Act and appoint an arbitrator to adjudicate the dispute between the parties.

11. The issue, which is raised before this Court, by the parties is no longer *res integra*. Hon’ble the Supreme Court in paragraph No.82 of the judgment in **BGS SGS SOMA JV v. NHPC Ltd., (2020) 4 SCC 234** held thus:-



“82.On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings.



In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”

12. It is, thus settled that whenever there is mention of place of arbitration in an arbitration clause as being the venue of arbitration proceedings, it would really mean the seat of arbitral proceedings. This is so because the expression “arbitration/ arbitral proceedings” does not refer to individual hearing but conveys that entire arbitration process including making of the award shall be conducted at the place referred to as ‘venue’. It is also well settled that where the parties have anchored the arbitral proceedings to one fixed location or places, it would clearly indicate that the parties have intended such place to be the seat of arbitration. This is more so when there is no other significant contrary indicia that such place is merely a ‘venue’ and not the ‘seat of arbitration’.

13. In **BGS SGS SOMA (supra)**, the Supreme Court laid down a three condition test to determine as to whether the term “venue” used in arbitration clause can be construed as ‘seat’ of arbitration. These three conditions read as under:

- “i) The arbitration agreement or clause in question should designate or mention only one place;



- ii) 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;
- iii) There must be no other significant contrary indicia to show that the place designated is merely the venue and not the seat.”

14. If these three conditions are fulfilled then the place that has been designated in the arbitration clause as ‘venue’ would be considered the ‘seat’ of arbitration. When we apply these three conditions test to the arbitration clause in question, we find that it fulfills all the three conditions.

15. The arbitration clause designates only Mumbai as the venue of arbitration and no other place and, therefore, condition No.(i) is fully met.

16. The arbitration clause fixes Mumbai as the only venue for arbitration proceedings without making any scope for change. In short, the venue of arbitration proceedings at Mumbai is fixed one and all arbitration proceedings culminating into passing of the arbitral award are agreed to be held at Mumbai. The expression “venue shall be at Mumbai” has been used in the context of arbitration proceedings only and, therefore, leaves no manner of doubt that as per the arbitration clause in question, the venue for conducting the arbitration proceedings is at Mumbai



and at no other place. Condition No.(ii) is also fully met in the instant case.

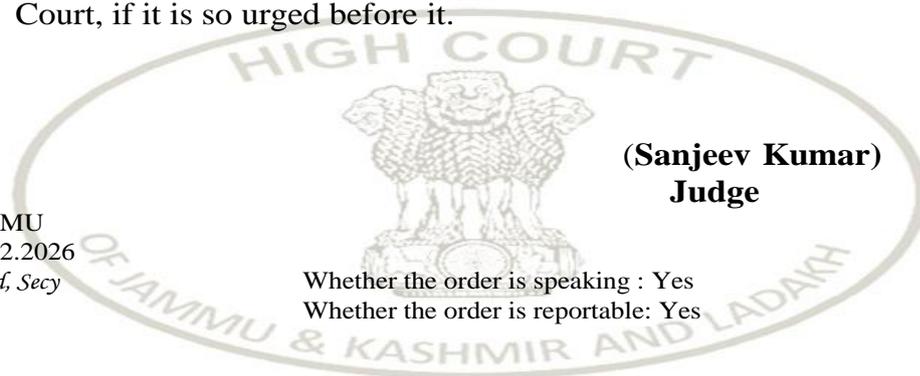
17. From a reading of the arbitration clause and the other clauses of the subcontract in question, this Court could not find any significant contrary indicia which would indicate that the place designated i.e. Mumbai is merely a venue and not the seat. Rather, the last lines of the arbitration clause make the things abundantly clear when these lines unequivocally provide that the arbitration would be governed by the laws of India and the jurisdiction shall be restricted to the Mumbai Courts only. This way condition No.(iii) of the test laid down in **BGS SGS SOMA (supra)**, too, is fulfilled.
18. In view of the legal position adumbrated herein above, I find merit in the preliminary objection to the maintainability of this application raised by Mr. Mohinder Singh, learned counsel appearing for the respondents. That apart, Mr. Mohinder Singh has also brought to my notice an order dated 02.02.2024 passed by the then Chief Justice of this Court while hearing a similar application. The arbitration Clause 15.4 of the work order/agreement executed between the parties in the said case also contained a similar arbitration clause fixing the venue of arbitration at Mumbai and restricting jurisdiction of the Mumbai



Courts only. The learned Chief Justice did not entertain the application and dismissed the same for want of jurisdiction.

19. In view of the aforesaid discussion, I am convinced that this Court lacks jurisdiction to entertain this application and appoint an arbitrator. This application is, accordingly, dismissed. The petitioner shall, however, be at liberty to approach the Court of competent jurisdiction. Regarding delay, it is appropriate to observe that competent Court shall certainly consider the time taken by the petitioner in pursuing the present case before this Court, if it is so urged before it.

JAMMU
13.02.2026
Vinod, Secy



**(Sanjeev Kumar)
Judge**

Whether the order is speaking : Yes
Whether the order is reportable: Yes