

Court No. - 77

Case :- ARBITRATION AND CONCILI.

APPL.U/S11(4) No. - 78 of 2020

Applicant :- Dheeraj Lal Gupta And Another

**Opposite Party :- Mypreferred Transformation
And Hospitality Pvt. Ltd.**

Counsel for Applicant :- Aklank Kumar Jain

Counsel for Opposite Party :- Ashish Mishra

Hon'ble Pankaj Bhatia,J.

**Re: Civil Misc. Recall Application No. 1 of
2021.**

Heard Sri Ashish Mishra, counsel for the applicants/Opposite Party, Sri H.N. Singh, Senior Advocate assisted by Sri Aklank Jain, Counsel for the Arbitration applicant and perused the record.

The present application has been filed seeking recall of the order dated 23.11.2020.

Counsel for the applicants, Sri Ashish Mishra argues that in terms of the arbitration clause contained in Clause 15 of the agreement in between the parties, it was specifically decided that the place of arbitration would be New Delhi, India and the language of arbitration shall be English.

In view of the said specific clause, he argues that part of cause of action as provided under the Code of Civil Procedure arises at Allahabad, however, in view of the specific agreement in between the parties, as contained in Clause 15.3 of the agreement, it is only the Court at New Delhi who has power to appoint seat/venue of arbitration in view of the Supreme Court

judgment in the case of *Brahmani River Pellets Limited Vs. Kamachi Industries Limited (2020) 5 Supreme Court Cases 462, BGS SGS SOMA JV Vs. NHPC Limited, (2020) 4 Supreme Court Cases 234* as well as judgment of the Supreme Court in the case of *Indus Mobile Distribution Private Ltd. Vs. Datawind Innovations Private Ltd., (2017) 7 Supreme Court Cases 678*.

In aforesaid cases, the Supreme Court had the occasion to consider the scope of the agreement in between the parties with regard to fixation of seat/venue of the arbitration and the Supreme Court specifically held that once the seat of venue or arbitration is decided in between the parties, the venue/seat shall have the jurisdiction with regard for redressal of the dispute in between the parties. The Supreme Court also considered that the cause of action, as provided under the Code of Civil Procedure, will not have any effect once the seat or venue of arbitration is decided in between the parties.

I am bound by the said judgments and in view of the fact that Clause 15.3 of the Arbitration agreement clearly stipulates the place of arbitration in New Delhi, as such, the recall application is allowed and order dated 23.11.2020 is recalled.

In the light of aforesaid order, the arbitration application is **disposed off** finally.

The parties shall be free to approach the appropriate Court i.e. Court at New Delhi for appointment of Arbitrator in accordance with law.

Order Date :- 8.2.2021/vinay