

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 2 of 2024

Appellant :- North Eastern Railway

Respondent :- Calstar Steel Ltd.

Counsel for Appellant :- Vivek Kumar Singh

Counsel for Respondent :- Hari Om Ojha

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

1. This appeal is directed against order dated 20.10.2023 passed by Commercial Court, Gorakhpur, whereby, the application filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 has been ordered to be returned for being presented before the Court of competent jurisdiction.

2. The appellant, aggrieved of the award dated 17.01.2022, filed the application under Section 34 of the Act before the Commercial Court, Gorakhpur. An application was filed by the respondent, *inter alia*, questioning the territorial jurisdiction of the Court in entertaining the said application under Section 34 of the Act. Submissions were made that on 06.12.2007, Railway Board had issued tender for manufacture and supply of Pre-stressed Monoblock Concrete Sleepers. The tender documents were issued by Railway Board, New Delhi. The tender was submitted by various suppliers including the respondent, which bid was accepted by the Railway Board, New Delhi. On 12/15.09.2008, the Railway Board, New Delhi issued detailed letter of acceptance and clause 23 and 24 of the letter of acceptance, deals with the laws governing the contract and jurisdiction, whereby it was specifically provided that the Courts of place from where the tender documents and acceptance of the tender were issued, shall alone have jurisdiction to decide any disputes arising out of or in respect of the order and as the tender documents were issued and acceptance of tender was made from New Delhi, only the Courts at New Delhi had the jurisdiction in respect of the application and therefore, the application deserves to be dismissed for lack of territorial jurisdiction.

3. The objection was contested by the appellant, *inter alia*, on the grounds that the main party to the dispute was North-Eastern Railways, whose headquarter is at Gorakhpur, the payment for the contract was made at Gorakhpur and the parties are situated at Gorakhpur and therefore, the Court at Gorakhpur had the jurisdiction. Further, submissions have been made that in terms of provisions of Section 6 of the Commercial Courts Act, 2015 also the Court at Gorakhpur had the jurisdiction.

4. The Commercial Court, after hearing the parties, came to the conclusion that the

tenders were invited at New Delhi and from there only, the acceptance was issued and therefore, the part cause of action arose at New Delhi and as the parties had agreed for excluding the jurisdiction of other Courts, even if a part cause of action had arisen at Gorakhpur, on account of such exclusion, Courts at New Delhi only had the territorial jurisdiction and consequently, passed the order impugned.

5. Learned counsel for the appellant made submissions that the Commercial Court failed to consider the fact that part cause of action had arisen at Gorakhpur and therefore, the jurisdiction before the said Court does lie. However, only on account of the fact that clause 24 provided for jurisdiction of Courts and that also did not specify the place, the exclusion of jurisdiction of the Courts at Gorakhpur is not justified.

6. Learned counsel for the respondent supported the order impugned. Submissions were made that the law on the aspect is well settled wherein though the jurisdiction cannot be conferred on any Court, however, if more than one Courts have jurisdiction pertaining to the subject matter of the dispute, the jurisdiction of the other Courts except one can be excluded. Submissions were made that the clause governing the jurisdiction of the Courts in the agreement is specific and therefore, the order impugned does not call for any interference. Reliance was placed on **Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and others** : (2017) 7 SCC 678.

7. We have considered the submissions made by learned counsel for the parties and perused the material available on record.

8. It is not in dispute that the tender documents were issued from New Delhi and acceptance of tender has also been issued from New Delhi. The admitted clause 24 of the letter of acceptance, *inter alia*, reads as under:

"24. Jurisdiction of Courts-

The Courts of the place from where the tender documents and acceptance of tender has been issued shall alone have jurisdiction to decide any disputes arising out of or in respect of the order."

9. A perusal of the above clause would reveal that the Courts of the place from where the tender documents and acceptance of tender have been issued shall alone have jurisdiction to decide any disputes arising out of or in respect of the order.

10. The use of the phrase 'shall alone' in the said clause clearly reflects the intention of the parties in excluding the jurisdiction of other Courts except the place from where the tender documents and acceptance of tender documents have been issued, which, admittedly, in the present case, is New Delhi only.

11. Hon'ble Supreme Court in **Indus Mobile Distribution Private Limited (supra)**, after referring to various judgments on the issue, *inter alia*, laid down as

under:

*"21. It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see **Swastik Gases Private Limited v. Indian Oil Corporation Limited**, (2013) 9 SCC 32. This was followed in a recent judgment in **B.E. Simoese Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited**, (2015) 12 SCC 225. 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 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. Appeals are disposed of accordingly."*

12. So far as reliance placed on Section 6 of the Act of 2015 is concerned, the said Section deals with the jurisdiction of the Commercial Courts, whereby, the Commercial Courts have been empowered to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction. The explanation provides that a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of Sections 16 to 20 of the C.P.C. The said provision is only enabling provision and it cannot be said that on account of the said provision, irrespective of the *inter se* agreement between the parties excluding the jurisdiction of Court, based on their territorial situs, the Court at Gorakhpur would have jurisdiction.

13. In view of the above discussion and the settled law, no case for interference in the order passed by the Commercial Court is made out. The appeal is, therefore, **dismissed**.

Order Date :- 1.4.2024

P.Sri./Mukesh Pal

(Vikas Budhwar, J) (Arun Bhansali, CJ)