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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ARB.P. 772/2021 & I.A. 11645/2021

M/S SAT KARTAR TOUR N TRAVELS, NEW DELHI

..... Petitioner

Through: Mr. Devesh Saxena, Mr. Ashish Garg
and Mr. Rajeev Garg, Advs.

versus

OIL AND NATURAL GAS CORPORATION LIMITED

..... Respondent

Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr. Varun Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

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O R D E R
25.05.2022

1. The present petition has been filed by the appellant under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘A&C Act, 1996’) with the following prayer:

“In view of the above facts and circumstances, it is most respectfully prayed to this Hon’ble Court to:

A) Allow the present Petition and set aside the arbitrary appointment of the sole arbitrator Sh. ABL Shrivastava by the respondent.

B) Quash Clause 16 of the GEM General Terms and Conditions of the agreement in light of the judgment of the Hon’ble Supreme Court in the case of Perkins Eastman Architects DPC & And v HSCL Ltd 20 19 SCC Online SC 1517.

C) Appoint a Sole Arbitrator as per the provisions of Arbitration and Conciliation Act, 1996, to adjudicate the disputes/ difference between the parties;

D) Pass any other order or relief which the Hon’ble Court may deem fit in the interest of Justice in favour of Petitioner.”

Signature Not Verified

Digitally Signed By ASHEESH
KUMAR YADAV
Signing Date: 26/05/2022
19:00:33

2. The case of the petitioner as noted from the petition and contended by Mr. Ashish Garg is that on November 27, 2020, the petitioner was awarded a contract by the respondent company for hiring services of 24 Nos. of SUV category vehicles by way of GEM contract. According to him, the petitioner's representative moves to Bokaro, Jharkhand, in order to complete all the requisite formalities for mobilisation of light passenger vehicles. The petitioners' vehicles were successfully parked outside the Oil and Natural Gas Corporation Limited (for short, 'ONGC') premises for providing the services to the respondent. The petitioner found that there is an ongoing protest outside the gate of ONGC which resulted in being denied entry of the vehicles into the ONGC premises.

3. On February 15, 2021, the respondent terminated the contract by way of a notice. The petitioner made a detailed reply to the said notice denying the claim of the respondent.

4. It is his submission that, on May 12, 2021, the petitioner got issued a legal notice invoking the arbitration clause under the agreement calling upon the respondent to appoint an Arbitrator within a period of thirty days. According to him the respondent i.e., the primary buyer ONGC, New Delhi duly appointed a sole arbitrator Shri ABL Srivastava unilaterally without taking any prior consent from the Petitioner.

5. He submits that the appointment of the learned Arbitrator unilaterally by the respondent is illegal and contrary to the settled law of the Supreme Court as held in ***Perkins Eastman Architects DPC & And v. HSCC Ltd., 2019 SCC Online SC 1517***. He states that this Court needs to appoint a Sole Arbitrator as per the provisions of the A&C Act, 1996 to adjudicate the disputes/differences between the parties.

6. Mr. Garg has taken me through the various documents in support of his contention for the appointment of an Arbitrator.

7. Mr. Sandeep Sethi, learned Senior Counsel appearing for the respondent has taken an objection with regard to the maintainability of the petition before this Court on the ground that in terms of the contract, the seat of Arbitration is at the place from where the contract has been placed by the buyer or at the place of the primary buyer as decided by the primary buyer, the concerned Court shall be the High Court within whose jurisdiction Bokaro falls which can entertain a petition of this nature and not this Court. Mr. Sethi in this regard has drawn my attention to page 4 to contend that the buyer's office is in Bokaro, Jharkhand, and also the contract was placed from Bokaro, Jharkhand. He has also drawn my attention to page 46, Clause 17 (iii), which also contemplates that it is the place from where the contract has been made shall alone have jurisdiction to decide any dispute/differences in respect of the contract. He by drawing my attention to page 59 of the documents would submit that even the acceptance of the contract was from Bokaro, Jharkhand. The termination was also effected by the letter dated February 15, 2021, issued from Bokaro, Jharkhand. He also states the appointment of an Arbitrator cannot be challenged by the petitioner under Section 11 of the A&C Act, 1996. He concedes to the fact that the petitioner may be at liberty if aggrieved with the appointment of the Arbitrator to challenge such appointment in separate proceedings may be under Section 12(5) of the A&C Act, 1996. He has relied upon the judgments of the Supreme Court in ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. & Ors., 2017 (7) SCC 678, BGS SGS SOMA JV v. NHPC Ltd., (2020) 4 SCC 234***, and further ***Brahmani River***

Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462.

8. Mr. Ashish Garg in his rejoinder, submits that this petition shall be considered for the appointment of an Arbitrator. On the issue of jurisdiction, by drawing my attention to the contract document on page 4 submits that ONGC being under the Ministry of Petroleum and Natural Gas, Government of India, which is based in Delhi, this Court shall have the jurisdiction.

9. In other words, Delhi is the place of contract, and as such this Court shall have the jurisdiction. He also states that in various communications a reference is made to the word “Competent Authority” which in fact is based in Delhi and as such this Court shall have jurisdiction.

10. Having heard the learned counsel for the parties, the first issue that needs to be decided is whether this Court shall have jurisdiction to entertain this petition. The relevant arbitration clause on which reliance has been placed by counsel for the parties reads as under:

“ARBITRATION:

In the event of any question, dispute or difference arising under the terms and conditions of the contract placed through GEM, the same shall be referred to the sole arbitration by an officer nominated as Arbitrator by the Primary Buyer of the concerned Buyer Organization. It will be no objection that the arbitrator is a Government Servant and that he had to deal with the matters to which the contract relates or that in the course of his duties as a Government servant he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator shall be final and binding on the parties to the contract. The arbitration shall be governed as per Indian Arbitration and Conciliation Act 1996 as amended up to date. The place for arbitration shall be at the place from where contract has been placed by the Buyer or at the place of Primary Buyer as decided by the Primary Buyer.

In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the Primary Buyer to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

In respect of all contract placed through GeM, the dispute would not be referred or entertained by Micro and Small Enterprise Facilitation Council, Consumer Forum or any other adjudication forum.

All disputes in connection with the Contract, shall be subject to the exclusive jurisdiction of the Court within the local limits of whose jurisdiction, the place from where Contract was issued is situated.”

11. From the above, it is clear that the parties have agreed for the place of arbitration, to be the place from where the contract has been placed by the buyer or at the place of the primary buyer as decided by the primary buyer. The buyer, in this case, is based in Bokaro, Jharkhand and the contract also defines the buyer to be the respondent herein and the service provider as the petitioner.

12. If that be so, it would be the concerned High Court, within whose jurisdiction Bokaro falls, which shall be competent to entertain a petition under Section 11(6) of the A&C Act, 1996.

13. Mr. Garg has referred to the order passed by the learned Arbitrator on July 06, 2021, while holding the proceedings in NOIDA, pursuant to an appointment made in Delhi, to contend, that this Court has jurisdiction to entertain the petition.

14. Mr. Sethi is right to contend that, the place of arbitration has to be decided as per the terms of the contract. In the present case, the stipulation

in the contract is very clear that the place of arbitration shall be the place from where the contract has been issued i.e., Bokaro, Jharkhand. He is justified in placing reliance on the judgment in the case of ***Indus Mobile Distribution Pvt. Ltd. (supra)***, wherein the Supreme Court has held 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."

15. He is also justified in relying upon the judgment in the case of ***Brahmani River Pellets Ltd. (supra)***, wherein the Supreme Court in paragraph 18 has held as under:

"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.”

16. Even in the case of **BGS SGS SOMA JV v. NHPC Ltd.**, (2020) 4 SCC 234, the Supreme Court in paragraph 21 has held as under:

“21. We now examine the second part of the challenge made by the petitioners to the impugned judgment, which relates to the determination of the “seat” of the arbitral proceedings between the parties. The impugned judgment [NHPC Ltd. v. Jaiparkash Associates Ltd., 2018 SCC OnLine P&H 1304 : (2019) 193 AIC 839] of the Punjab and Haryana High Court referred to Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] and Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] , and other judgments of this Court, in order to arrive at the conclusion that the arbitration clause in the present case does not refer to the “seat” of arbitration, but only refers to the “venue” of arbitration. Consequently, the impugned judgment holds that since a part of the cause of action had arisen in Faridabad, and the Faridabad Commercial Court was approached first, the Faridabad Court alone would have jurisdiction over the arbitral proceedings, and the courts at New Delhi would have no such jurisdiction. The correctness of these propositions has been vehemently assailed before us, and it is therefore important to lay down the law on what constitutes the “juridical seat” of arbitral proceedings, and whether, once the seat is delineated by the arbitration agreement, courts at the place of the seat would alone thereafter have exclusive jurisdiction over the arbitral proceedings.

(emphasis supplied)

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“45. It was not until this Court's judgment in Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3

SCC (Civ) 760] that the provisions of Section 20 were properly analysed in the light of the 246th Report of the Law Commission of India titled, “Amendments to the Arbitration and Conciliation Act, 1996” (August, 2014) (hereinafter referred to as “the Law Commission Report, 2014”), under which Sections 20(1) and (2) would refer to the “seat” of the arbitration, and Section 20(3) would refer only to the “venue” of the arbitration. Given the fact that when parties, either by agreement or, in default of there being an agreement, where the Arbitral Tribunal determines a particular place as the seat of the arbitration under Section 31(4) of the Arbitration Act, 1996, it becomes clear that the parties having chosen the seat, or the Arbitral Tribunal having determined the seat, have also chosen the courts at the seat for the purpose of interim orders and challenges to the award.”

(emphasis supplied)

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67. After referring to *Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376]* and *Enercon GmbH [Enercon GmbH v. Enercon (India) Ltd., 2012 EWHC 689 (Comm) : (2012) 1 Lloyd's Rep 519]*, the Court in *Shagang South-Asia (Hong Kong) Trading Co. Ltd. [Shagang South-Asia (Hong Kong) Trading Co. Ltd. v. Daewoo Logistics, 2015 EWHC 194]* held:

“38. In my judgment the approach adopted in *Shashoua v. Sharma [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376]* and in other cases is appropriate in this case also. An agreement that the arbitration is “to be held in Hong Kong” would ordinarily carry with it an implied choice of Hong Kong as the seat of the arbitration and of the application of Hong Kong law as the curial law. Clear words or “significant contrary indicia” are necessary to establish that some other seat or curial law has been agreed.”

(emphasis supplied)

17. Insofar as the reliance placed by Mr. Garg on the order passed by the learned Arbitrator, on July 06, 2021, is concerned, it is clear that the same

was passed for the convenience of the parties as is clear from the wordings of the order that: "*All meetings of the Arbitral Tribunal shall be held at Delhi or at such other place as agreed*" and in fact, the said order was passed through virtual hearing because of the COVID-19 situation. But it would not mean, that the place of arbitration has been changed from Bokaro, Jharkhand. In any case, the learned Arbitrator cannot decide contrary to what has been decided by the parties. Insofar as the submission of Mr. Garg, that the Arbitrator has been appointed by the Competent Authority based in Delhi, and as such, this Court shall have jurisdiction is concerned, the submission is contested by Mr. Sethi by reiterating his plea that the Authority who appointed the Arbitrator is based in Bokaro, Jharkhand. I agree with the submission in view of the documents shown to me by Mr. Sethi. Mr. Garg has not shown one document which would reveal that the authority in Delhi has appointed the Arbitrator. The plea of Mr. Garg is rejected.

18. The present petition filed by the petitioner is not maintainable in this Court. Leaving the petitioner to seek such remedy, before a Court of competent jurisdiction for any relief as deemed fit and appropriate, the present petition is dismissed but with no order as to costs.

I.A. 11645/2021

19. This application has been filed by the applicant/petitioner seeking an interim stay. Since I have dismissed the petition, this application is dismissed as infructuous.

V. KAMESWAR RAO, J

MAY 25, 2022/jg/ds