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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 21.10.2013

+ ARB.P. 436/2012

S.D TECHNICAL SERVICES (P) LTD

..... Petitioner

versus

RAIL COACH FACTORY(KAPURTHALA)

..... Respondent

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. V.N. Sharma, Advocate

For the Respondents: Mr. Jagjit Singh and Mr. Tarak Khanna,
Advocates

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short the Act) for appointment of an arbitrator. Notice in this petition was issued on 16.11.2012. Since then respondent has entered appearance and filed its reply. The reply is short, it takes two objections. The first objection is with regard to the territorial jurisdiction of this court. The Second objection is with regard to its power to appoint an arbitrator in terms of clause 2900 (c) of the IRS.

1.1 It is not disputed by Mr. Singh, the learned counsel for the respondent that the appointment of the arbitrator in terms of clause 2900 (c) of IRS took place after the petitioner had approached this court and notice had been issued in the petition. According to Mr. Singh, the appointment took place on 02.03.2013. In view of the judgment of the Supreme court in the case of

Datar Switchgears Ltd. Vs. Tata finance Ltd. and Anr., (2000) 8 SCC 151
concededly this objection will not sustain.

2. In so far as the issue of jurisdiction is concerned, the petitioner has made an averment in the petition that this court would have jurisdiction to entertain and adjudicate upon the captioned petition in view of the fact that the office of the Railway Ministry is situate in New Delhi. To be noted that after the respondent took an objection to the jurisdiction on the ground that the jurisdiction of this court would be governed by the place of seat of the General Manager of the respondent, the petitioner made averments in the rejoinder based on documents already on record with regard to the cause of action having arisen in Delhi.

2.1 It is the respondent's contention that the General Manager of the respondent, located at Kapurthala, is the authority vested with the power to appoint an arbitrator which having been done, the petitioner would, thus, have to approach the competent court, having regard to the place where the said General Manager's office is situate.

2.2 As indicated above, in response to the aforesaid objection, the petitioner filed a rejoinder wherein, the petitioner has refuted the contention of the respondent by referring to sub clause 'g' of clause 2900(c) of the IRS. In line with the same, Mr. Sharma, who appears for the petitioner has drawn my attention to the documents, which include, the bid document as also the purchase order to demonstrate that, both the bid dated 18.10.2010, and the fax of acceptance dated 24.12.2010, was issued at New Delhi. Mr. Sharma has also referred me to the purchase order dated 06.01.2011, which indicates that it was issued from New Delhi. Pertinently the execution of these documents is not disputed by the counsel for the respondent.

3. Based on the above, the learned counsel for the petitioner has contended that the cause of action has arisen at Delhi, and therefore, this court would have jurisdiction in the matter.

4. Mr. Singh, the learned counsel for the respondent relies upon a full bench judgment of this court in the case of *Hindustan Metal Works Vs. Union of India, 1987(1) Arb. LR 6* and the judgment of the Division Bench in the case of *M/s. Prahlad Rai Dalmia Vs. Union of India, AIR 1986 Delhi 76*. These judgments are referred to by Mr. Singh to contend that it is the seat where the respondent's General Manager is situated which would determine the territorial jurisdiction of this court. Mr. Singh in his usual fairness has not, however, disputed the fact that the cause of action has arisen at Delhi. He, however, says that it is not a relevant criteria which would determine the territorial jurisdiction of this court. Mr. Singh also relies upon the judgment of a Single Judge of this court in *Advance Structural Pvt. Ltd. Vs. Union of India and Ors., 2002 (3) Arb. LR 89 (Delhi)*, in support of his submission.

5. In my view, the issue of jurisdiction would have to be decided in favour of the petitioner for the following reasons. Undoubtedly, the bid and its acceptance was made at Delhi. The purchase order was issued at Delhi. The dispute, admittedly, arises out of the aforementioned purchase order. The petitioner's proposed claims are pivoted on the said purchase order.

5.1 The petitioner claims that purchase order was for supply of air brake set. The petitioner claim's apparently is with regard to the said purchase order.

6. In view of the above, in consonance with the principles analogous to Section 20 of the Code of Civil Procedure, 1908 (CPC), this court would have jurisdiction.

7. The judgments that Mr. Singh relied upon are clearly distinguishable. In ***Hindustan Metal Works*** (supra), the admitted position was that no cause of action arose in Delhi. The issue with regard to whether or not this court would have jurisdiction was decided having regard to the fact that the general superintendence of the North Railways was carried out from its headquarter, at Delhi. Decidedly in that case, the General Manager's Office was found to be located at Delhi, and therefore, the full bench concluded that this court would have jurisdiction in the matter.

7.1 In the case of ***M/s. Prahlad Rai Dalmia*** (supra), the position was no different. No part of cause of action had arisen within the territorial jurisdiction of this court. The dispute between the parties were referred to an arbitrator at Bombay and he had made his award at Bombay.

7.2 The last judgment referred to by Mr. Singh is also indicative of the fact that no part of cause of action arose in Delhi since the tender papers were issued at Allahabad and the tender was accepted at Allahabad.

8. In view of the above, I am inclined to hold in favour of the petitioner that the captioned petition has been filed in the proper court.

9. As indicated above, in so far as the appointment of the arbitrator by the respondent is concerned, the same is ineffective for the reason that the appointment is made after the petitioner had approached this court.

10. Accordingly, the petition is allowed. Mr. Justice Shiv Narayan Dhingra, a retired Judge of this Court (Mobile No.9871300027), is

appointed as an arbitrator. Parties are agreed that the fee schedule and the rule of the Delhi International Arbitration Centre (DIAC) should govern the proceedings. It is ordered accordingly. The counsels and the parties shall appear before the DIAC on 22.11.2013 at 3.00 p.m.

11. Needless to say, the arbitrator will decide the claims and counter claims if any, preferred by the parties before him, in accordance with the law.

12. The petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

OCTOBER 21, 2013

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