

Sr. No.04

Suppl. List.

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

Arb P No.17/2023

M/S Inam and Co. Through Inam Farooq ...Appellant(s)/Petitioner(s)

Through: Mr. M.A. Makhdoomi, Advocate with  
 Mr. Abdul Manan, Advocate

**Vs.**

Airport Authority of India and anr. (Central ...Respondent(s)  
 Government)

Through: Mr. M.M. Dar, Advocate

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**ORDER**

**23-02-2024**

01. Heard Mr. M.A. Makhdoomi, who is assisted by Mr. Abdul Manan, learned counsel for the petitioner as also Mr. M.M. Dar, learned counsel for the respondents.
02. The present petition has been filed for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 to settle the dispute which according to the petitioner has arisen in respect of a contract entered between the parties on 16<sup>th</sup> July 2015 for execution of the work of **“Waterproofing Treatment of Flat Roof Terrace & Gutter of Centaur Lake View Hotel, Srinagar”**.
03. According to the petitioner, while competing in the tendering process, the contractual obligations were spelled out in the contract agreement, which the parties to the contract were obliged to adhere to, which petitioner had adhered to.

04. It has been submitted that dispute arose relating to non-completion of work due to reasons beyond his control. It has been submitted that due to shortage of funds, he could not complete the work, though he was willing to execute the work, and as such, he requested the respondent authorities to appoint the Dispute Redressal Committee as per the contract to adjudicate the dispute and release the payment which are due to him and for the loss he incurred in connection with the aforesaid work.
05. According to the petitioner, the said request of the petitioner to refer the dispute to the “**Dispute Redressal Committee**” has not fructified. The authorities on the other hand informed the petitioner that they are looking into the matter but in reality did not take any concrete steps compelling the petitioner to file this application for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act to resolve the dispute which has arisen between the parties.
06. This application has been contended by the respondents by filing objections.
07. It has been submitted by Mr. M.M. Dar, learned counsel for the respondents that as per the agreement executed between the parties as provided under Article 4.1 of the agreement, the jurisdiction to entertain the subject matter lies with Delhi Court which alone shall have exclusive jurisdiction over the same and accordingly, the present petition is not maintainable before this Court.
08. As regards this plea taken by the respondents, learned counsel for the petitioner submits that the aforesaid Article 4.1 has to be read with

**Clause 25 of the General Condition of the Contract** which specifically provides that if any dispute arises, it has to be referred to the arbitrator and the cause of action solely arises within the Union Territory of Jammu and Kashmir and as such, since the cause of action has arisen within the UT of J&K, this Court would have jurisdiction to entertain this petition.

09. Heard the learned counsel for the parties and perused the material on record.
10. Clause 4.1 of the **Settlement of Disputes** which is a part of the agreement entered between the parties reads as follows:-

*“ It is specifically agreed by and between the parties that all the differences or disputes arising out of the Agreement of touching the subject matter of the Agreement shall be decided by process of settlement and arbitration, as specified in Clause 25 of the General Condition of the Contract and the provision of the India Arbitration Act, 1996 (Jammu & Kashmir Arbitration and Conciliation Act 1997) shall apply Delhi Court alone shall have exclusive jurisdiction over the same”.*

11. Therefore, even if any cause of action to the dispute between the parties arises in Jammu and Kashmir, which has to be resolved by way of arbitration, all the matters relating to the dispute including matters pertaining to arbitration shall be within the exclusive jurisdiction of Delhi Court in view of above Clause 4.1.
12. In this regard, one may refer to the decision of Hon'ble Supreme Court in **BGSSGS SOMA JV v. NHPC, (2020) 4 SCC 234**, relevant paragraph of which reads as follows:-

*“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 246<sup>th</sup> 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 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.”*

13. In view of the law laid down by the Hon’ble Supreme Court in the aforesaid decision, since as per the agreement between the parties, Delhi Court has exclusive jurisdiction to the exclusion of this Court, the present petition before this court is not maintainable.
14. Accordingly, the present application is closed as this Court does not have jurisdiction to examine any matter relating to the aforesaid dispute including appointment of arbitrator. The petitioner would be at liberty to approach the competent Delhi Court in terms of Article 4.1 (Settlement of Disputes) for redressal of his grievances.
15. **Disposed of** along-with all connected CMPs.

**(N. KOTISWAR SINGH)**  
**CHIEF JUSTICE**

**SRINAGAR**  
**23-02-2024**  
Shameem H.

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