

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ARB-130-2014 (O&M)

Date of decision:- 21.02.2015

M/s Hind Motors Mohali Private Limited

...Petitioner

Versus

Volkswagen Group Sales India Private Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

Present: Mr. Anand Chhibbar, Senior Advocate,
with Ms. Harpriya Khaneka, Advocate,
for the petitioner.

Mr. Ashwani Kumar Chopra, Senior Advocate,
with Mr. Manish Jain, Advocate,
and Ms. Rupa Pathania, Advocate,
for the respondent.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act).

2. The arbitration agreement is admitted. The only question is whether the parties had agreed that the exclusive jurisdiction even after by an application under Section 11 of the Act would be the Courts of Mumbai.

3. Articles 31 and 32 of the agreement read as under:-

“Article 31 – Jurisdiction

This Agreement shall be construed as having been executed in the City of Mumbai and it is agreed that the rights and liabilities of the Parties hereto their heirs, executors, administrators, successors and assignors in case a dispute arises shall be subject to exclusive jurisdiction of the Courts of Mumbai.

Article 32 – Arbitration

1) This Agreement shall be construed as having been executed in the City of Mumbai and it is agreed that the rights and liabilities of the Parties hereto in case a dispute arises shall be subject to exclusive jurisdiction of the Courts of Mumbai. It is further agreed that in any event, service of any process shall be affected against the Company, only if made at the registered office of the Company at Mumbai.

2) All and any disputes and claims arising out of or relating in any manner to this Agreement or the breach, termination, non-performance, interpretation or validity thereof, shall first be discussed in good faith by officers duly nominated for the purpose by each party, with a view to resolving the same. The Parties consent to a single, consolidated arbitration for all disputes that may at the time exist.

3) All and any disputes and claims as aforesaid, which cannot be fully and satisfactorily resolved or settled by the parties as aforesaid, shall at the request of either party, be submitted to, and be settled by arbitration of the sole arbitrator and if there is no concurrence on the appointment of the sole Arbitrator then it must be resolved by appointing 3 (three) arbitrators in accordance with the Arbitration and Conciliation Act, 1996 or any other statute as may be in force for the time being.

4) The arbitration proceedings shall take place in Mumbai, India, and the language of the arbitration proceeding, the award, and all documents filed or submitted in connection therewith shall be in the English language. A written transcript of the proceedings shall be made and furnished to the parties.

5) The arbitration award shall be reasoned, final and binding on all the Parties thereto.”

4. It is clear that the parties in fact emphasized that exclusive jurisdiction with respect to the disputes would be the Courts in Mumbai.

This has been emphasized more than once in Articles 31 and 32. All the

rights and liabilities of the parties arising from arbitration are to be subject to the exclusive jurisdiction of the Courts in Mumbai. This provision in Article 31 is reiterated even in the arbitration clause itself.

5. The only question is whether this Court has jurisdiction to interfere. Article 32 makes it clear that even in respect of the proceedings pursuant to or in respect of the Act are subject to the exclusive jurisdiction of the Courts in Mumbai.

6. In these circumstances, even assuming that this Court has jurisdiction, the parties must be relegated to adopting proceedings in Mumbai. As I mentioned earlier, the respondent has already filed an application under Section 11 of the Act in the Bombay High Court.

7. Mr. Chopra's reliance upon the judgement of the Hon'ble Supreme Court in Swastik Gases Private Limited Vs Indian Oil Corporation Limited, 2013(9) Supreme Court Cases 32 is well founded. The clause in that case was as under:-

"8. The jurisdiction Clause 18 in the agreement is as follows:

18. Jurisdiction

The agreement shall be subject to jurisdiction of the courts at Kolkata."

The Supreme Court held as under:-

"32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like 'alone', 'only', 'exclusive' or 'exclusive jurisdiction' have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties - by having clause 18 in the agreement - is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means

that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.”

8. In the clause before the Hon’ble Supreme Court, the words “exclusive” and “exclusive jurisdiction” were not even used. These words are incorporated in Articles 31 and 32 of the agreement between the parties.

9. In these circumstances, the petition is dismissed only on the ground that the parties ought to file proceedings before the Courts in Mumbai.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

21.02.2015

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