

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment deserved on February 02, 2015
Judgment delivered on February 10, 2015

+ **ARB.P. 132/2012 & IA 2794/2014**

M/S LION SERVICES LTD

..... Petitioner

Through Ms.Seema Tiwari, Advocate

versus

M/S DLF PROJECTS LTD

..... Respondent

Through Mr.Rajiv Nayar, Sr. Advocate with
Ms.Meghna Mishra, Ms.F.A. Khan
and Ms.Niyati Kohli, Advocates

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. In the present petition, the petitioner has prayed for appointment of an Arbitrator. Even though the petition has been filed for appointment of arbitrator with regard to eight work orders, it is the case of the petitioner during the submissions that 12 work orders have been issued to the petitioner for providing housekeeping and maintenance service to the respondent. There is no dispute between the parties on this account. It is averred in the petition that this Court has jurisdiction as parties have agreed that the Courts of Delhi would

have exclusive jurisdiction. That apart, it is also submitted by the petitioner that all the parties have their registered office in Delhi.

2. The respondent has filed its reply and taken an objection that this Court has no territorial jurisdiction to decide the present application. The respondent has denied that the parties have agreed for the Courts of Delhi to have exclusive jurisdiction to entertain the petition. The details of the 12 work orders and the objection taken by the respondents are as under:-

S.No.	Work Order Date	Invoice Address	Site Address	Completion Date	Objection
1.	08.01.2007	Jasola, New Delhi	Jasola, New Delhi	31.03.2007	No arbitration clause Barred by limitation
2.	08.01.2007	Gurgaon, Haryana	Gurgaon, Haryana	08.01.2009	No arbitration clause Territorial jurisdiction
3.	08.01.2007	Gurgaon, Haryana	Gurgaon, Haryana	31.03.2007	No arbitration clause Barred by limitation Territorial jurisdiction
4.	25.07.2007	Jasola, New Delhi	Jasola, New Delhi	31.03.2008	Barred by limitation
5.	25.07.2007	Noida, Uttar Pradesh	Noida, Uttar Pradesh	31.03.2008	Barred by limitation Territorial jurisdiction
6.	14.02.2008	Gurgaon, Haryana	Gurgaon, Haryana	31.03.2008	Barred by limitation Territorial jurisdiction
7.	07.04.2008	Gurgaon, Haryana	Gurgaon, Haryana	31.03.2009	Territorial jurisdiction
8.	06.05.2010	Gurgaon, Haryana	Gurgaon, Haryana	31.03.2011	Territorial jurisdiction
9.	11.05.2010	Gurgaon, Haryana	Gurgaon, Haryana	10.05.2012	Territorial jurisdiction
10.	17.06.2010	Gurgaon, Haryana	Gurgaon, Haryana	31.03.2011	Territorial jurisdiction
11.	17.06.2010	Gurgaon, Haryana	Gurgaon, Haryana	17.06.2012	Territorial jurisdiction
12.	17.06.2010	Gurgaon, Haryana	Gurgaon, Haryana	17.06.2012	Territorial jurisdiction

3. A rejoinder to the reply has been filed by the petitioner, wherein on

the objection of this Court having no territorial jurisdiction to entertain the petition, a stand has been taken by the petitioner that it has received the work orders through e-mail at its office at Delhi and has served the respondent at various places in Delhi.

4. Learned counsel for the petitioner during submissions, would reiterate the stand as taken in the petition as well as rejoinder.

5. Mr.Rajiv Nayar, learned Senior Counsel appearing for the respondent would apart from reiterating the objection regarding territorial jurisdiction would also state that there is no arbitration clause in some of the work orders and the claims are barred by limitation. He relied upon the following judgments in support of his contentions:-

(a) Krishna Mittal vs. Municipal Corporation of Delhi & Anr. (2010) 2 Arb. LR 439 (Delhi)

(b) Rattan Singh Associates Pvt. Ltd. vs. Gill Power Generation Co. Pvt. Ltd. 136 (2007) DLT 629

(c) S.K. Khanna vs. M/s Grover Oils Pvt. Ltd. ARB.P. 459/2012 decided on May 14, 2013

(d) A.P. Nirmaan vs. Sindhu Trade Links (2010) 5 RAJ. 185 (Delhi)

6. Having considered the rival submissions of the learned counsel for the parties, it is noted that insofar as work orders at serial No.1, 2 and 3 above are concerned, the same doesn't have an arbitration clause. In view of the fact, the work orders don't have an arbitration clause the present

application for appointment of arbitrator qua those work orders is not maintainable. Further, the petitioner has not shown any correspondence, letter, Telex, Telegrams or other means of communication or exchange of statements of claim and defence in which, the existence of the agreement is alleged by the petitioner and not denied by the respondent. In one notice dated September 23, 2011, the petitioner had taken a stand of initiating the arbitration proceedings through the Court of law for appointment of an Arbitrator to recover the amount. The said notice does not make any reference to any agreement. The present application qua the said orders needs to be rejected.

7. I proceed to deal with the other work orders. Insofar as work order at Serial No. 4 dated July 25, 2007 is concerned, the same is for housekeeping services at DLF Tower, Jasola. The starting date of the work is July 01, 2007 to March 31, 2008. Clause 19 of the work order is the arbitration clause. The first notice issued invoking the arbitration and placed on record is dated May 25, 2011 followed by another notice dated September 23, 2011 which is after the expiry of three years, the limitation period for invocation of arbitration clause in terms of Article 137 under Part II of the Schedule to the Limitation Act, 1963. I agree with the submission made by Mr. Rajiv Nayar in this regard that the petition qua these work orders is barred by limitation. In this regard, I note for benefit the judgment as relied

upon by the respondent in **Krishna Mittal's** case (supra), wherein in para Nos.7 to 10, it has been held as under:-

“7. Since in the present cases the contracts had been completed in the year 2002, petitioners should have invoked the arbitration clauses within three years from the date they became entitled to raise their claims, i.e. in the year 2002. As, in the present cases, there is no subsequent acknowledgment of debt by the respondents as contemplated by Section 18 of the Limitation Act, the period of limitation does not get extended.

8. However, I may clarify that petitioners could have availed of extended limitation if they could show that their claims were either under negotiation or under consideration during this period.

9. In fact, the Supreme Court in [Shree Ram Mills Ltd. vs. Utility Premises \(P\) Ltd.](#) reported in (2007) 4 SCC 599 has held that if the disputes under a contract are under negotiation or consideration, then the limitation for arbitration purpose would be deemed to have not commenced. But in the present case, petitioner has not filed any evidence to show that petitioners' claims were being considered by the respondents during the period 2002 to 2008.

10. Consequently, in my opinion, the claims of the petitioners as sought to be referred by the present petitions are not 'live claims' but 'stale claims' as they

are ex facie barred by limitation. Accordingly, present petitions are dismissed but with no orders as to costs.”

8. Insofar as other work orders from Serial No. 5 to 12 are concerned, the respondent has raised a plea of territorial jurisdiction. According to them, all these work orders were for doing housekeeping services at Gurgaon (Haryana) and Noida (Uttar Pradesh). I note that the petitioner has filed this application on a plea that Parties have agreed that this Court has exclusive jurisdiction to entertain the petition besides all the parties have registered offices in Delhi within the jurisdiction of this Court. On an objection taken by the respondent regarding territorial jurisdiction of this Court to entertain the present petition, the petitioner in its rejoinder taken an additional plea that since the petitioner has received the work orders through e-mail at its office in Delhi and the petitioner had served the respondent at various places in Delhi and NCR, this Court has jurisdiction.

9. It needs to be considered, whether the existence of a registered office of the petitioner and receipt of e-mail by the petitioner at Delhi would confer jurisdiction on this Court to entertain the present application.

10. Before I venture to decide the issue, suffice to state the petitioner has itself shown the respondent carrying out its business from Gurgaon in the memo of parties.

11. It is a conceded position that as per the work orders the work of

housekeeping was carried out at Gurgaon/Noida. Suffice to state, the contract of housekeeping was not performed at Delhi. It is also noted that the arbitration clause does not specify the place of arbitration. It cannot be said that the place of arbitration would be at Delhi, if at all an arbitrator is appointed. On that count, jurisdiction cannot be conferred on this Court to entertain this application.

12. Keeping in view the position under Section 20 of CPC, it can still be held that since the respondent herein is based in Gurgaon, it would be the Court having territorial jurisdiction over Gurgaon which can entertain the application of this nature. The cause of action as understood to mean every fact if traversed would be necessary for the petitioner to prove in order to support his case for seeking a relief. The claim of the petitioner as seen from the notices is for recovery of money for the work executed at Gurgaon and Noida. The factum of receipt of work order in Delhi or for that matter the registered office of the petitioner being in Delhi are not relevant facts for the petitioner to claim relief.

13. Further, the issue of jurisdiction is no more *res-integra*. This issue stands settled by the judgment of this Court in ***Rattan Singh's*** case (supra), wherein in para Nos.33 to 37 has held as under:-

“33. In the instant case, even if it was to be assumed that the agreement had been executed at Delhi, yet this Court

would not be the proper court to exercise jurisdiction in this matter inasmuch as the contract has not been performed at Delhi. The respondent is located at Punjab. The records relating to the performance of the contract and the transactions in question would be located outside the jurisdiction of this Court and the respondent admittedly has his office at Batala in Punjab which is the only office with which the plaintiff has transacted business. Therefore, even on application of the doctrine of forum non-conveniens, the petitioner would merit being sent to the courts of competent jurisdiction at Punjab.

34. The issue relating to the place where a cause of action has accrued so as to confer jurisdiction on a Court to adjudicate upon a petition under Section 9 of the Arbitration & Conciliation Act, 1996 has arisen for consideration before this court on earlier occasions as well. In *M/s Engineering Projects (India) Ltd. Vs. M/s Greater Noida Industrial Development & Anr.* reported at *ILR (2004) II Delhi 88*, the Court considered several judgments and arrived at a conclusion that it is the place where the cause of action has substantially arisen which would confer jurisdiction on the court to adjudicate upon the subject matter of the lis. It was held that primacy has to be given to such place where the cause of action has mainly or substantially or predominantly arisen in preference to or exclusion of a place where it has

incidentally or partially arisen. This, the court held, has a great pragmatic purpose and ensures convenience of investigation and minimization of expenses. It was noticed that the forum of convenience from the perspective of the plaintiff has been looked askance at. A fortiori, where the defendant does not have its principal or concerned office and the cause of action has not substantially and overwhelmingly arisen at that particular place, courts situated there should decline to exercise jurisdiction in preference to the court possessing an umbilical connection with the cause of action. This will root out the pernicious practice of forum shopping. Courts exercising jurisdiction in the context of the Arbitration and Conciliation Act should be mindful and vigilant in this regard also because Section 42 thereof bars all other courts from exercising jurisdiction over any further petitions/applications.

35. I find that before this Court, there is nothing in the agreement or in any correspondence which would even remotely suggest or support the submission that the agreement was made, signed or executed at Delhi. It is not even contended on behalf of the petitioner that any part of the contract was to be executed at Delhi. No correspondence has been addressed by the petitioner to the respondent to any address in Delhi. There is no material to indicate that the petitioner dealt with any officer of the respondent at Delhi or with any address of the respondent

at Delhi.

14. Translating the aforesaid conclusion, in the facts of this case, it is clear that contracts were executed in Noida/Gurgaon. The notices issued by the petitioner were to the offices of the respondents situated in Gurgaon/Mumbai. In other words, no communication was addressed to the respondent to any address in Delhi. Suffice to state, no part of cause of action has arisen in Delhi.

15. In view of the above discussion, this petition is dismissed.

16. Liberty is given to the petitioner to approach the competent Court for the relief sought in this petition.

17. No costs.

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Dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

FEBRUARY 10, 2015/km