

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.6219 of 2014

Date of Decision:1.3.2016

M/s Mahashiv Promotoers Private Limited

---Petitioner

vs.

**Haryana State Roads and Bridges Development Corporation Limited
and another**

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Tribhuvan Dahiya, Advocate
for the petitioner

Ms. Monica Jalota, Advocate
for respondent No. 1

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition lays challenge to order dated 28.8.2014 (Annexure P-8) passed by the District Judge, Panchkula, whereby application (Annexure P-6) filed by the petitioner to challenge territorial jurisdiction of the Court at Panchkula to entertain the objection petition, was dismissed.

The brief backdrop of the case is that the respondents issued a notice inviting bid for appointment as entrepreneur/agent for collection of toll at toll point No. 2 Gurgaon-Pataudi-Rewari Road KM 24 near Gurgaon. The petitioner submitted tender in pursuance of notice inviting bid. Bid of the petitioner was accepted and an agreement was executed between the parties. A dispute arose between the parties in regard to location of toll barrier which was referred to an Arbitrator in pursuance of an arbitration clause. The Arbitrator passed an award against which the petitioner filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) by way of petition bearing No. 2/Arbi/16.4.2014 in the Court of District Judge, Gurgaon. Respondent No. 1 filed an objection petition ARB No. 13 dated 18.4.2014 in the Court of District Judge, Panchkula. On receipt of notice of the objection petition preferred by the respondent, the petitioner filed an application dated 18.7.2014 (Annexure P-6) under Section 21 (1) of the Code of Civil Procedure (in short “CPC”) for dismissal of the objection petition for want of jurisdiction. On receipt of reply from the respondent, the said application was dismissed by the District Judge, Panchkula vide impugned order dated 28.8.2014.

Counsel for the petitioner would contend that dispute between the parties pertains to collection of toll at toll point No. 2 Gurgaon-Pataudi-Rewari Road, therefore, cause of action accrued within the territorial jurisdiction of Court at Gurgaon and thus an objection petition against the award would be competent in the Court of District Judge, Gurgaon. It is further submitted that the objection petition preferred by the petitioner was filed prior in time to the objection petition preferred by respondent No. 1

and once the court at Gurgaon is seized of the matter, the order passed by the District Judge, Panchkula cannot be allowed to sustain. It is further argued that the judgment relied upon by court below *M/s Swastik Gases P. Limited vs. Indian Oil Corporation Limited 2013(9) SCC 32* has got no bearing on the facts of the case in hand because in the said case, the agreement contains jurisdictional clause 18 to the effect that the agreement shall be subject to jurisdiction of the courts at Kolkata and in those circumstances, it was held that in view of intention of the parties explicitly contained in the agreement, territorial jurisdiction of the courts other than that of Kolkata is excluded. The last submission made by counsel is that in absence of any such clause in regard to jurisdiction of a particular court in the agreement between the parties to present lis, the respondents cannot derive any advantage to their contention from the ratio laid down in *Swastik Gases P. Limited's case (supra)*. On the contrary, in support of his contentions, he has referred to judgment of the Apex Court *Dresser Rand S.A. vs. Bindal Agro Chem Limited and another (2006) 1 Supreme Court Cases 751*, wherein while dealing with clause 27.4.2 of the general condition of purchase, it was held that contention of the petitioner that there was an arbitration agreement between the parties is erroneous and baseless assumption as the tender document or the invitation to bid of BINDAL (containing the “instructions to bidders” and the “General Conditions of Purchase”) by itself is neither an agreement nor a contract.

Counsel for respondent No. 1, on the contrary, has submitted that in the notice inviting bid and instructions to bidders, certain conditions have been incorporated and one of the conditions laid therein is to the

I have heard counsel for the parties and perused the records.

“The following documents shall be deemed to form and be construed as part of this contract agreement in the following order of priority:-

- i) xxx xxx xxx
- ii) xxx xxx

In *Swastik Gases P. Limited's case (supra)*, the agreement contained a specific clause in regard to jurisdiction of the court at Kolkata, therefore, it was held that jurisdiction of any other court or the courts in Rajasthan is excluded in view of clause 18 of the agreement. In the case at

hand, the judgment in *Swastik Gases P. Limited's case (supra)* can be applied with equal force for the notice inviting bid and instructions to bidders contained a specific clause in regard to jurisdiction of the court at Panchkula that has been made an integral part of the agreement between the parties. In this view of the matter, I find myself unable to accept the submissions made by counsel for the petitioner that either the court at Gurgaon has jurisdiction to decide the objections or the District Judge, Panchkula has committed any error much less illegality in dismissing the application raising objection in regard to territorial jurisdiction of the court at Panchkula.

For the foregoing reasons, the petition is dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

1.3.2016
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