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

+ ARB.P. 75/2016

AMMTYS INTERIOR (INDIA) PROJECTS
PVT.LTD.

..... Petitioner

Through: Mr Vivekanand, Advocate.

Versus

ITMA HOTELS INDIA PVT. LTD.

..... Respondent

Through: Mr Abhik Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.08.2016

VIBHU BAKHRU, J

1. The petitioner has filed the present application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'Act'), *inter alia*, praying that a Sole Arbitrator be appointed.
2. It is stated that the tender for execution of the work described as "*Interior Works of Banquet Hall, Pre-function, banquet entrance lobby and male female washroom, on the first floor at The Park Kochi*" was invited by respondent no.1 through its consultant, M/s Apeejay Surrender Group, having its office at B-II/42, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi. It is stated that the petitioner responded to the invitation to tender and, thereafter negotiations were held between the parties at Delhi at the office of M/s Apeejay Surrender Group (hereafter 'the Consultant') and it was decided to award the contract for the works in question to the

petitioner.

3. It is stated that thereafter Work Order No. 137 dated 27.04.2012 was issued to the petitioner. Subsequently the petitioner was also awarded the work of " *Interior Works of the Restaurants at 27th and 28th Floor including all lobbies, all male female washrooms, on both the floors at The Park Kochi*" and Work Order No. 189 dated 11.08.2012 was issued to the petitioner.

4. The petitioner states that certain disputes have arisen between the parties in relation to the said contract.

5. In view of the disputes, the petitioner invoked the arbitration clause in the aforesaid Work Orders and by a letter dated 07.04.2015 proposed names of three persons and requested the respondent to agree to any one of them for being appointed as a Sole Arbitrator.

6. On receipt of the aforesaid letter, the respondent sent a communication dated 06.05.2015, *inter alia*, stating that the respondent had referred the letter of invocation to its legal counsel.

7. Thereafter, on 18.05.2015 the respondent's counsel issued a notice, *inter alia*, claiming that an excess payment had been made by the respondent and, further rejecting the petitioner's request for appointment of an Arbitrator.

8. The agreements (the Work Orders) between the parties are not disputed. It is also not contested that the disputes between the parties are to be resolved through arbitration. The aforementioned Work Orders contain a similarly worded arbitration clause, which reads as under:-

“21. **ARBITRATION**

In the case of “arbitration clause” in terms of the Contract, in an event both the parties are not able to arrive at a mutually acceptable arbitrator – i.e. in case of disagreement as to the appointment of a single arbitrator then the Arbitration will be of two arbitrators (of considerable experience), one to be appointed by each party which arbitrators shall before taking upon themselves the burden of reference appoint an umpire. The Arbitrators or the Umpire shall have Power to open up, review and revise any certificate, opinion, decision, requisition or notice save in regard to the excepted matters in dispute which shall be submitted to him or them and of which notice shall have been given as aforesaid. The Award of the Arbitrators or the Umpire shall be final and binding on the Parties. This shall be deemed to be a submission to Arbitration within the meaning of the Indian Arbitration & Conciliation Act, 1996.

Terms and conditions mentioned above are applicable in totality, thereby terms and conditions mentioned in your quotation stand NULL & VOID.”

9. The only objection taken by the respondent is that this Court does not have jurisdiction to entertain the present petition.
10. Mr Abhik Kumar, the learned counsel appearing for the respondent contended that this court does not have the jurisdiction in terms of Section 2(1)(e) of the Act as no part of the cause of action has arisen within the jurisdiction of this court. He earnestly contended that the principal office of the respondent is at Kochi; the works were to be executed at Kochi; the venue of arbitration is at Kochi; and the negotiations were also held at Kochi.
11. Mr. Vivekanand, the learned counsel for petitioner, disputed the

above contentions. In the first instance, he submitted that all negotiations in relation to the contract were held by the respondent in Delhi through the Consultant, which has its office at B-II/42, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi. He further submitted that the work orders were also communicated to the petitioner in Delhi.

12. I have heard the learned counsel for the parties.

13. It is apparent from the Arbitration clause that there is no agreement between the parties as to the venue or seat of arbitration and Mr Kumar's contention that the parties had agreed that the venue of the arbitration would be in Kochi (or outside Delhi) is *ex facie* erroneous.

14. It is also not disputed that the e-mails dated 13.02.2012 issued by the Manager Projects of the Consultant were issued from Delhi. The copies of the said e-mails have been annexed with the present petition and the petitioner also filed a requisite affidavit in support of the aforesaid e-mails.

15. Although Mr Kumar submitted that an additional copy of the Work Order(s) was handed over to the petitioner in Kochi, there is no averment to the said effect in the reply filed by the respondent. The Work Orders on the letter head of the respondent indicate its office is at Kochi, however the same has been signed by one Mr D.Bali who is stated to be Senior Vice President of the Consultant, M/s Apeejay Surender Group, and has his office at Delhi. The representative of the petitioner has not signed the Work Orders as the same were received through e-mail. Thus, it is apparent that Work Orders were sent from and received in Delhi.

16. The petitioner has also affirmed that negotiations for the contract were held at the office of the Consultant at B-II/42, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi.

17. A perusal of the Work Orders also indicates that all bills for the works are required to be forwarded to B-II/42, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi.

18. In **A.B.C. Laminart Pvt. Ltd. & Anr v. A.P. Agencies, Salem: (1989) 2 SCR 1**, the Supreme Court explained as under:-

"A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a fight to relief against the defendant."

19. In view of the aforesaid facts, the contention that no part of cause of action has arisen within the territorial jurisdiction of this Court cannot be readily accepted.

20. The Supreme Court in **Alchemist Limited and Anr. v. State Bank of Sikkim and Ors.: (2007) 11 SCC 335** has held:

"....that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition."

21. In view of the above, the respondent's objection qua jurisdiction of this court is rejected. Accordingly, the present application is allowed. Mr Anil Airi, Senior Advocate (Mobile No.9811087578) is appointed as a Sole Arbitrator for adjudication of the disputes between the parties. The fees of

the Arbitrator shall be in terms of the Schedule IV to the Act. The parties shall approach the Arbitrator for fixing the preliminary hearing.

Order *Dasti*.

VIBHU BAKHRU, J

AUGUST 26, 2016

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