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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 450/2016

STARCON INFRA PROJECTS (I)
PRIVATE LIMITED

..... Petitioner

Through : Mr Amit Bhatia, Advocate.

versus

UNITY INFRA PROJECTS LIMITED

..... Respondent

Through : Mr A.G. Garg, Mr Sidharth Rathore
and Ms Shweta Garg, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.09.2016

1. The petitioner has filed the present petition under Section 11 of the Arbitration & Conciliation Act, 1996(hereafter 'the Act') seeking appointment of an Arbitrator for adjudication of the disputes that have arisen between the parties in respect of certain work orders issued by the respondent.
2. The relevant clauses relating to jurisdiction and dispute resolution in the work orders in question, are similarly worded. The said clauses are reproduced below:

"JURISDICTION

The supply order & all other matters & subject arising in all respect shall be construed and operative in conformity with Indian laws and shall be subject to the Jurisdiction of Courts in Mumbai only.

ARBITRATION

For any decisions on arbitration, VCMD of UIL shall be the final authority.”

3. The learned counsel appearing for the respondent does not dispute that all disputes arising in relation to the work orders in question are required to be adjudicated by arbitration. He, however, submits that this Court would have no jurisdiction to entertain the present petition as in terms of the relevant clause, the courts at Mumbai have the exclusive jurisdiction in respect of the subject matter of the contract between the parties.

4. The aforesaid controversy is fully covered by a recent decision of the Supreme Court given in **Swastik Gases Private Limited v. Indian Oil Corporation Limited**: (2013) 9 SCC 32, wherein it has been clarified that where contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the subject dispute, the other courts would be excluded. The relevant extract of the said judgment reads as under :-

“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.”

5. In view of the above, the present petition is dismissed with liberty to the petitioner to approach the Courts at Mumbai.

VIBHU BAKHRU, J

SEPTEMBER 01, 2016

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