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

+ **ARB.P. 357/2016**

AIR LIQUIDE NORTH INDIA PVT LTD Petitioner

Through : Mr Nitin Nayyar, Advocate.

Versus

SHREE SHYAM PULP & BOARD MILS LTD Respondent

Through : Mr Deepak K. Vijay, Advocate with
Ms Neeru Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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20.09.2016

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an Arbitrator be appointed for adjudicating the disputes between the parties.

2. The petitioner and the respondent had entered into a "Sales and Purchase Agreement For Supply of Industrial Gases" (hereafter 'the Agreement') in April/March 2011 (the Agreement was signed on behalf of the petitioner on 04.04.2011 and on behalf of the respondent on 28.03.2011). In terms of the Agreement, the respondent agreed to purchase industrial gas from the petitioner exclusively and the petitioner also agreed to provide storage systems for the industrial gas. The petitioner claims that certain disputes have arisen in relation to the Agreement.

3. The learned counsel appearing for the respondent does not dispute the execution of the Agreement, however, he has raised two objections.

3.1 First, he submits that this Court does not have jurisdiction to entertain the present petition. According to him, no part of the cause of action has arisen within the territorial jurisdiction of this Court and therefore, this Court would not have jurisdiction to entertain the present petition. He submits that the plant in question was to be erected at Kashipur, Uttarakhand and the Agreement clearly indicates that the respondent is located at “5 Km. stone on Moradabad Road, Kashipur, Uttarakhand”. He also referred to the decisions of co-ordinate benches of this Court in **Inox Air Products Ltd. vs Rathi Ispat Ltd.:** AIR 2007 Delhi 53 and **Ge Countrywide Consumer Financial Services Limited vs. Mr Surjit Singh Bhatia:** 2006 IV AD (DELHI) 485 in support of his contention that mere situs of arbitration would not confer jurisdiction on a court, if no part of the cause of action had arisen within the territorial jurisdiction of the court.

3.2 Second, he submitted that the letter dated 15.10.2015 invoking the arbitration clause is not in terms of the Agreement as the said letter is not addressed to the Federation of Indian Chambers of Commerce and Industry, New Delhi (hereafter ‘FICCI’).

3.3 He further submits that a FIR has also been lodged against the petitioner in Uttarakhand where the respondent’s plant is located.

4. Learned counsel for the petitioner countered the aforesaid objections and submitted that the arbitration clause does not contemplate FICCI to be the appointing authority. He further submits that this Court would have

jurisdiction to entertain the present petition as the seat of arbitration is in Delhi.

5. I have heard learned counsel for the parties.

6. There is no dispute between the parties as to the existence of the arbitration agreement. The relevant clause is set out below:-

“12.1 In the case of any dispute or difference arising between seller and buyer as to the construction of the contract or the rights, duties or obligations of either party thereunder or any matter arising out of or concerning the same, which cannot be solved amicably, every such dispute or matter in difference shall be settled by arbitration before a sole arbitrator, agreeable to both parties, from the Federation of Indian Chambers of commerce and industry, (FICCI), New Delhi and the decision of the arbitrator shall be final and binding upon the parties.

12.2 The arbitration shall be conducted in the English language in Delhi and shall be in accordance with the Arbitration Act and the rules framed there under and in force at the time.

12.3 This agreement will be governed by the laws of India and both the parties hereby submit to the exclusive jurisdiction of the Courts of Delhi only.”

7. A plain reading of the arbitration clause indicates that not only the venue of arbitration is in Delhi but the parties have also agreed that the courts in Delhi shall have the exclusive jurisdiction in respect of the disputes. The issue whether the court where the seat of arbitration is situated would have jurisdiction is no longer *res integra*. In **Bharat Aluminium**

Company v. Kaiser Aluminium Technical Services Inc.: 2012 (9) SCC

552, the Supreme Court had observed as under:

“We are of the opinion, the term "subject matter of the arbitration" cannot be confused with "subject matter of the suit". The term "subject matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the Learned Counsel for the Appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order Under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of

which the dispute resolution, i.e., arbitration is located.”

8. The aforesaid judgment has also been followed by a division bench of this Court in **Ion Exchange (India) Ltd. v. Panasonic Electric Works Co. Ltd.**: 208 (2014) DLT 597 (DB).

9. It is thus clear that not only does this Court have the jurisdiction to entertain this petition but in view of clause 12.3 of the Agreement, no other Court except Courts at Delhi would have jurisdiction in respect of the disputes between the parties.

10. The decisions in ***Inox Air Products Ltd. vs Rathi Ispat Ltd*** (*supra*) and ***Ge Countrywide Consumer Financial Services Limited vs. Mr Surjit Singh Bhatia*** (*supra*) were rendered prior to the decision of the Supreme Court in ***Bharat Aluminium*** (*supra*); therefore, the view that situs of arbitration would not confer jurisdiction on the courts having territorial jurisdiction over the situs of arbitration proceedings, is no longer good law.

11. The second contention that the letter of invocation of arbitration was required to be sent to FICCI is also bereft of any merit. A plain reading of clause 12.1 of the Agreement indicates that the parties had agreed to refer the disputes to a sole arbitrator “agreeable to both parties”; thus, it was for the parties to mutually agree on appointment of a sole arbitrator. Although the parties had agreed that the arbitrator would be from FICCI; but FICCI was not the appointing authority as contended on behalf of the respondent.

12. It is also relevant to refer to the letter dated 15.10.2015 wherein, the petitioner had called upon the respondent to give its mutual consent “in

pursuance of and in adherence to the above referred (sic) arbitration clause, for appointment of a sole arbitrator, from the Federation of Indian Chambers of commerce and industry (FICCI), New Delhi for adjudication of all the outstanding and issues/disputes” between the parties. Thus, the petitioner had called upon the respondent to mutually agree to an arbitrator in terms of the arbitration clause. Admittedly, no such agreement was reached between the parties.

13. In view of the above, the petition is allowed. It is directed that an Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DAC). The representatives of the parties shall appear before the Co-ordinator, DAC on 04.10.2016 at 11:00 AM. The arbitration shall be conducted under the aegis of DAC and in accordance with its Rules.

14. The petition is disposed of.

SEPTEMBER 20, 2016

pkv

VIBHU BAKHRU, J