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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 583/2016

LIBRA EARTHMOVERS

..... Petitioner

Through: Mr. Pradeep Jain with Mr. Shubhankar
Jha, Advocates.

versus

BEML LIMITED

..... Respondent

Through: Mr Pratyush Miglani with Mr. Karan
Sethi, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

15.12.2016

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1. There are two objections raised by learned counsel for the Respondent to the appointment of an Arbitrator prayed for by the Petitioner in the present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 ('Act').

2. The first objection is that the Petitioner is trying to combine claims under two different agreements and seeking a common Arbitrator. The second is that under one of the contracts, the venue of the arbitration has been agreed to be in Bangalore and therefore, this Court has no jurisdiction to appoint an Arbitrator as far as that agreement is concerned.

3. There are two agreements between the parties. One is the dealership agreement dated 15th September 2006 entered into between them whereby

the Petitioner, , Libra Earthmovers, ('Libra'), was appointed as authorized dealer of the Respondent, BEML Limited ('BEML') which has its registered office in Bangalore but its regional office in New Delhi. The said dealership agreement was executed in Delhi with the General Manager of BEML executing on its behalf. The Petitioner also has its registered office in Delhi. The dealership was to be for all districts of Delhi, Haryana and Uttranchal. This agreement contains the following arbitration clause:

“21. Arbitration

In the event of any dispute or difference arising out of or in relation to this agreement, the same shall be resolved mutually by the parties, failing which the dispute or difference shall be referred to a sole Arbitrator to be appointed by BEML and the arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 and the award passed by the Arbitrator shall be final.”

4. As far as the above arbitration clause is concerned, the Respondent has no objection to the appointment of an Arbitrator as long as the claim arising out of the above agreement is referred separately.

5. Now coming to the second agreement, it is in the form of a work order dated 10th November 2008 to which is annexed an Annual Maintenance Contract ('AMC') requiring the Petitioner to maintain Bulldozers and Excavators of the Respondent, BEML, at the site of the Municipal Corporation of Delhi ('MCD') for a period of six years. Admittedly this contract was to be performed in Delhi. The work order was also issued in Delhi by the Regional Office of BEML.

6. The AMC contains, *inter alia*, the following clauses:

“19. The legal jurisdiction shall be Delhi only.

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21. **ARBITRATION:** If BEML and contractor are not able to resolve any dispute amicable within a reasonable period of time, such dispute shall be referred to a sole arbitrator to be appointed by BEML and proceedings before the Arbitrator shall be governed by provisions of Arbitration and Conciliation Act, 1996 in which event the arbitration proceedings shall be held at Bangalore and Arbitrator shall be required to give reasoned award.”

7. Referring to the above Clause 21, the learned counsel for the Respondent contends that the venue of the arbitration is Bangalore. He relies on the decision in *Aerens Gold Souk International Limited v. Parthas Textiles* 2011 SCC Online Ker 3523 to urge that this Court would, therefore, not have jurisdiction to entertain this petition.

8. There is difficulty in accepting the submission of the Respondent that the venue of arbitration *per se* determines the jurisdiction of the Court. This is because both Clauses 19 and 21 of the above AMC have to be reconciled. Clause 19 reflects the express agreement between the parties that the Courts in Delhi would alone have jurisdiction. In this context, the concept of the 'seat' of arbitration is important as explained by the Supreme Court in *Enercon (India) Ltd. v. Enercon GmbH* (2014) 5 SCC 1. The concept of seat is relevant for determining which Court has jurisdiction to supervise the arbitration. Once the parties have agreed that the Courts in Delhi would have an exclusive jurisdiction, then it is not possible that such Court in Delhi would be able to supervise the arbitration taking place in Bangalore. This is

also inconsistent with the parties having expressly agreed in Clause 19 of the same AMC that the jurisdiction shall be of the courts in Delhi only.

9. As far as the dealership agreement dated 15th September 2006 is concerned, there is no difficulty at all when there is no such requirement to the arbitration having to take place in Bangalore. The Respondent is right in pointing out that the Petitioner has two separate claims, one arising under the dealership agreement and the second under the AMC. However, that difficulty can be easily overcome by requiring two separate references in respect of claims of the Petitioner one arising out of each agreement. The same Arbitrator could deal with the claims arising out of both the agreements.

10. The Respondent's regional office in Delhi has executed both agreements. The obligation under both the contracts were to be discharged in Delhi. In the circumstances, there is no reason why the Respondent should be prejudiced if the venue of the arbitration is in Delhi, notwithstanding Clause 21 of the AMC. This is the only way that the arbitration clauses in both the agreements can be reconciled with Clause 19 of the AMC concerning the exclusive jurisdiction of the courts in Delhi. The objections of the Respondent are accordingly rejected.

11. The Court directs that there shall be two separate references to arbitration, i.e., one being the dispute between the parties arising out of the dealership agreement dated 15th September 2006 and the other being the dispute arising out of the AMC appended to the Work Order dated 10th

November 2008.

12. The Court accordingly appoints Justice M.L. Mehta, a former Judge of this Court (Mobile No. 9910384620) as an Arbitrator to adjudicate the disputes between the parties including claims and counter-claims of the parties. There will be two references: one of the claims and counter-claims under the Agreement dated 15th September 2006 and the other under the AMC appended to the Work Order dated 10th November 2008. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules. The learned Arbitrator will comply with the requirements of the Act as amended with effect from 23rd October 2015 before commencement of the arbitration.

13. The petition is disposed of in the above terms. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

S.MURALIDHAR, J

DECEMBER 15, 2016

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