

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 30 of 2016****Judgment Reserved on 04-07-2017****Judgment delivered on 14-07-2017**

1. Vijay Kumar Agrawal S/o S/o B. L. Agrawal, Aged About 50 Years Agrasen Path, Ramgarh Cantt, Near Shiv Mandir, Ramgarh 829122
2. Raj Kumar Agrawal, S/o B. L. Agrawal, Aged About 48 Years, H. No. 440 (Indra Nagar & Village Korba Ps Korba, Near Shiv Mandir Korba 495678

---- Appellants**Versus**

1. Tata Motors Finance Ltd. A Company Incorporated Under The Provisions Of The Indian Companies Act, 1956, having Its registered Office At Building A, 2nd Floor, Lodha 1, Think Techno Campus, Off. Pokharan Road 2, Thana (West) 400607
2. Tata Motors Finance Limited, Having Its Local Office At Shivam Motors, Sirgitti, Industrial Area, Bilaspur (Chhattisgarh).....(Non Applicants)

---- Respondents**And****ARBA No. 31 Of 2016**

1. Vijay Kumar Agrawal S/o B. L. Agrawal, Aged About 50 Years Agrasen Path, Ramgarh Cantt Near Shiv Mandir, Ramgarh 829122
2. Raj Kumar Agrawal, S/o B. L. Agrawal, Aged About 48 Years H. No. 440 (Indra Nagar & Village Korba Ps Korba, Near Shiv Mandir Korba 495678

---- Appellants**Vs**

1. Tata Motors Finance Ltd. A Company Incorporated Under The Provisions Of The Indian Companies Act, 1956, Having Its Registered Office At Building A, 2nd Floor Loodha 1- Think Techno Campus Off. Pokharan Road 2, Thana West 400607

2. Tata Motors Finance Limited, Having Its Local Office At Shivam Motors, Sirgitti, Industrial Area, Bilaspur (Chhattisgarh)

---- Respondents

And

ARBA No. 32 Of 2016

1. Vijay Kumar Agrawal S/o B. L. Agrawal, Aged About 50 Years Agrasen Path, Ramgarh Cantt Near Shiv Mandir, Ramgarh 829122
2. Raj Kumar Agrawal, S/o B. L. Agrawal, Aged About 48 Years H. No. 440 (Indra Nagar & Village Korba Ps Korba, Near Shiv Mandir Korba 495678

---- Appellants

Vs

1. Tata Motors Finance Ltd. S/o A Company Incorporated Under The Provisions Of The Indian Companies Act, 1956, Having Its Registered Office At Building A, 2nd Floor, Lodha 1-Think Techno Campus, Off. Pokharan Road 2, Thana (West) 400607
2. Tata Motors Finance Limited, Having Its Local Office At Shivam Motors, Sirgitti, Industrial Area, Bilaspur (Chhattisgarh)

---- Respondents

And

ARBA No. 33 Of 2016

1. Vijay Kumar Agrawal S/o B. L. Agrawal, Aged About 50 Years Agrasen Path, Ramgarh Cantt Near Shiv Mandir, Ramgarh 829122
2. Raj Kumar Agrawal, S/o B. L. Agrawal, Aged About 48 Years H. No. 440 (Indra Nagar & Village Korba Ps Korba, Near Shiv Mandir Korba 495678

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Vs

1. Tata Motors Finance Ltd. A Company Incorporated Under The Provisions Of The Indian Companies Act, 1956, Having Its Registered Office At Building A, 2nd Floor, Lodha 1-Think Techno Campus, Off. Pokharan Road2, Thana (West)

400607

2. Tata Motors Finance Limited, Having Its Local Office At Shivam Motors, Sirgitti, Industrial Area, Bilaspur (Chhattisgarh)

---- Respondents

And

ARBA No. 34 Of 2016

1. Vijay Kumar Agrawal S/o B. L. Agrawal, Aged About 50 Years Agrasen Path, Ramgarh Cantt Near Shiv Mandir, Ramgarh 829122
2. Raj Kumar Agrawal, S/o B. L. Agrawal, Aged About 48 Years H. No. 440 (Indra Nagar & Village Korba Ps Korba, Near Shiv Mandir Korba 495678

---- Appellants

Vs

1. Tata Motors Finance Ltd. A Company Incorporated Under The Provisions Of The Indian Companies Act, 1956, Having Its Registered Office At Building A, 2nd Floor, Lodha 1 Think Techno Campus, Off. Pokharan Road 2, Thana (West) 400607
2. Tata Motors Finance Limited, Having Its Local Office At Shivam Motors, Sirgitti, Industrial Area, Bilaspur (Chhattisgarh)

---- Respondents

And

ARBA No. 35 Of 2016

1. Vijay Kumar Agrawal And Others S/o B. L. Agrawal, Aged About 50 Years Agrasen Path, Ramgarh Cantt Near Shiv Mandir, Ramgarh 829122
2. Raj Kumar Agrawal, S/o B. L. Agrawal, Aged About 48 Years H. No. 440 (Indra Nagar & Village Korba Ps Korba, Near Shiv Mandir Korba 495678

---- Appellants

Vs

1. Tata Motors Finance Ltd. A Company Incorporated Under The Provisions Of The Indian Companies Act, 1956 Having

Its Registered Office At Building A, 2nd Floor, Lodha 1 Think Techno Campus, Off. Pokharan Road 2, Thana (West) 400607

2. Tata Motors Finance Limited, Having Its Local Office At Shivam Motors, Sirgitti, Industrial Area, Bilaspur (Chhattisgarh)

---- Respondents

And

ARBA No. 36 Of 2016

1. Vijay Kumar Agrawal S/o B. L. Agrawal, Aged About 50 Years Agrasen Path, Ramgarh Cantt Near Shiv Mandir, Ramgarh 829122
2. Raj Kumar Agrawal, S/o B. L. Agrawal, Aged About 48 Years H. No. 440 (Indra Nagar & Village Korba Ps Korba, Near Shiv Mandir Korba 495678

---- Appellants

Vs

1. Tata Motors Finance Ltd. A Company Incorporated Under The Provisions Of The Indian Companies Act, 1956, Having Its Registered Office At Building A, 2nd Floor, Lodha 1 Think Techno Campus, Off. Pokharan Road 2, Thana (West) 400607
2. Tata Motors Finance Limited, Having Its Local Office At Shivam Motors, Sirgitti, Industrial Area, Bilaspur (Chhattisgarh)

---- Respondents

And

ARBA No. 37 Of 2016

1. Vijay Kumar Agrawal S/o B. L. Agrawal, Aged About 50 Years Agrasen Path, Ramgarh Cantt Near Shiv Mandir, Ramgarh 829122
2. Raj Kumar Agrawal, S/o B. L. Agrawal, Aged About 48 Years H. No. 440 (Indra Nagar & Village Korba Ps Korba, Near Shiv Mandir Korba 495678

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Vs

1. Tata Motors Finance Ltd. A Company Incorporated Under The Provisions Of The Indian Companies Act, 1956, Having Its Registered Office At Building A, 2nd Floor, Lodha 1-Think Techno Campus, Off. Pokharan Road 2, Thana (West) 400607
2. Tata Motors Finance Limited, Having Its Local Office At Shivam Motors, Sirgitti, Industrial Area, Bilaspur (Chhattisgarh)

---- Respondents

For Appellants : Shri Sushobhit Singh, Advocate

For Respondents : Shri Rajeev Bharat & Shri Ashish Surana, Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

C A V Order

(1) In order to resolve the dispute arisen between the parties by way of arbitration, Arbitral Tribunal was constituted in accordance with Loan cum Hypothecation cum Guarantee agreement dated 26.09.2012 and ultimately Arbitral Tribunal delivered an award on 12th June, 2014 directing the petitioner to make payment of awarded amount along with interest.

(2) Feeling aggrieved and dissatisfied with the award, appellants herein filed an application under Section 34 (2) of the Arbitration & Conciliation Act, 1996 (henceforth "Act, 1996") before the District Judge, Bilaspur in which after notice, respondent herein filed an application under Order 7 Rule 11 read with Section 151 of the Civil Procedure Code (henceforth "Code") that the Court at Mumbai has exclusive jurisdiction to entertain an application under Section 34 (2) of the Act, 1996 in view of Clause 24.1 of the agreement, therefore, application filed under Section 34(2) of the Act, 1996 is

liable to be rejected.

(3) Learned District Judge, Bilaspur, by its impugned Order dated 12.02.2016 granted the application under Order 7 Rule 11 of the Code and dismissed the application under Section 34 (2) of the Act, 1996 leading to filing of this appeal under Section 37(c) of the Act, 1996.

(4) The above mentioned all the arbitration appeals are filed under Section 37 of the Arbitration and Conciliation Act, 1996 (henceforth 'Act, 1996') by both the appellants namely Vijay Kumar Agrawal & Raj Kumar Agrawal, respectively and since the common question of law is involved in all three arbitration appeals, therefore, they were heard analogously and being decided by this common order.

(5) Learned Counsel appearing for the appellants would submit that the learned District Judge has committed jurisdictional error in granting application under Order 7 Rule 11 of the Code as the cause of action and the subject matter of dispute vehicle in question was seized by the respondents within the jurisdiction of Bilaspur Court and sold it in auction by the respondents at Bilaspur (Chhattisgarh) and therefore, Bilaspur Court has the jurisdiction to entertain an application under Section 34 (2) of the Act, 1996. He would further submit that the parties by way of agreement can not confer or ouster jurisdiction on a Civil Court on their own sweet will. He relied upon the decision of the Supreme Court in the matter of

ABC Laminart Pvt. Ltd. & another Vs. A.P. Agencies, Salem¹

in support of his submission.

(6) Per contra, learned counsel appearing for the respondents while supporting the impugned order would submit that the petitioner has entered into agreement with open eyes in which there is exclusive jurisdiction clause in the contract agreement, therefore, jurisdiction of the Courts and Tribunals at other places is expressly excluded and the Mumbai Court mentioned in the agreement will only have the jurisdiction over the matter and, therefore, learned District Judge is absolutely justified in allowing the application under Order 7 Rule 11 and holding that Bilaspur Court has no jurisdiction to entertain the application under Section 34 (2) of the Act, 1996 for setting aside of the *ex parte* award therefore, appeal filed by the appellant deserves to be dismissed.

(7) I have heard learned counsel appearing for the parties, and considered their rival submissions made hereinabove and the documents appended thereto with utmost circumspection.

(8) In order to resolve the dispute, it would be appropriate to notice Clauses 23.1 and 28.1 of the Loan cum Hypothecation cum Guarantee agreement dated 26.09.2012, which contain arbitration & jurisdiction clauses, which reads thus:-

“23.1. Arbitration :- All dispute, differences and/or claims arising out of this Loan Agreement or as to the construction, meaning or effect hereof or as to the rights and liabilities of the parties hereunder shall be

¹ AIR 1989 SC 1239

settled by arbitration to be held in Mumbai in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall

be referred to a person to be appointed by the Lender. In the event of death, refusal, neglect, inability, or incapability of the person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned.

24.1. **Jurisdiction:-** Subject to the provisions of clause 23 above, any suit, petition, reference or other filing permitted or required to be made pursuant to the Arbitration and Conciliation Act, 1996 in respect of the matters arising out of this Agreement including, without limitation, a petition for appointment of an arbitrator or arbitrators under Section 11 of the Arbitration and Conciliation Act, 1996 shall be instituted only in competent courts at Mumbai.”

(9) A focused perusal of clause 24.1 of the agreement would show that the parties have agreed to settle all disputes arising out of the agreement at competent court at Mumbai in accordance with the provisions of the Act, 1996 and thereby submitted to the jurisdiction of Mumbai Court.

(10) At this stage, it would be appropriate to notice principle of law laid down in this behalf particularly the issue of exclusive jurisdiction by their Lordships of the Supreme Court, which may be noticed herein profitably and gainfully.

(11) In **Swastik Gases Private Limited Vs. Indian Oil**

Corporation Limited², their Lordships of the Supreme Court have held that where the contract specifies the jurisdiction of the courts at a particular place, then that court will have the jurisdiction and it is not hit by Sections 23 & 28 of the Contract Act and held as under:-

31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11 (12)(b) and Section 2 (e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of clause 18 of the agreement, the jurisdiction of Chief Justice of the Rajasthan High Court has been excluded.

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. 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.”

(Emphasis supplied)

(12) Following the principle of law laid down in **Swastik Gases Private Limited** (supra), in the matter of **State of West Bengal Vs. Associated Contractors**³, again three judge Bench of the Supreme Court noticing the earlier judgment of that court held that where an agreement between the parties restricted jurisdiction to only one particular court, that court alone would have jurisdiction to resolve the dispute.

(13) The decisions rendered in the matter of **Swastik Gases Private Limited** (supra) & **State of West Bengal** (supra), have been followed with approval by their Lordships of the Supreme Court in the matter of **B.E. Simoesse Von Staraburg Niedenthal and another Vs. Chhattisgarh Investment Limited**⁴ held as

3 (2015) 1 SCC 32

4 (2015) 12 SCC 225

under:-

“11. In a very recent judgment delivered on 10-9—2014 in *State of W. B. v. Associated Contractors*, the three-Judge Bench (speaking through one of us, Rohinton Fali Nariman, J.), noticing the decisions of this Court in *FCI v. A.M. Ahmed & Co.* (SCC para 6); *Neycer India Ltd. v. GMB Ceramics Ltd.* (SCC para 3) with reference to Section 31(4) of the Arbitration Act, 1940 and the decisions of this Court in *Jatinder Nath v. Chopra Land Developers (P) Ltd.* (SCC para 9); *Rajasthan SEB v. Universal Petrol Chemicals Ltd.* (SCC paras 33 to 36) and *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.* (SCC para 32), held that where the agreement between the parties restricted jurisdiction to only one particular court, that court alone would have jurisdiction as neither Section 31(4) nor Section 42 (of the 1996 Act) contains a non obstante clause wiping out a contrary agreement between the parties. On the basis of above decisions, it was further held that applications preferred to courts outside the exclusive court agreed to by parties would also be without jurisdiction.

12. In light of the legal position exposited in *Swastik Gases (P) Ltd. And Associated Contractors* and having regard to Clause 13 of the agreement, as noted above, the jurisdiction of the District Judge, Raipur is ousted and, therefore, he cannot be said to have any jurisdiction in dealing with the matter. The only competent court of

jurisdiction in the court at Goa.”

(14) Recently, in the matter of **Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited**⁵, their Lordships of the Supreme Court have again considered the issue of exclusive jurisdiction clause and held as under:-

“20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction – that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

21. It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases Private Limited v. Indian Oil Corporation Limited*, (2013) 9 SCC 32. This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment*

5 2017 SCC OnLine SC 442

Limited, (2015) 12 SCC 225. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, in the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly.”

(15) In the matter of **Indus Mobile Distribution Private Limited** (supra) their Lordships of the Supreme Court further held that under law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause; and further held that where more than one court has jurisdiction, it is open for parties to exclude all other courts.

(16) After noticing the principle of law laid down in the aforesaid cases qua exclusive jurisdiction clause, it would appear that in the present case, there is exclusive jurisdiction clause in the contract agreement in shape of Clause 24.1, which makes it clear that jurisdiction exclusively vests in Mumbai Court.

(17) Thus, in view of the above legal position and the facts of the present case, it is apparent that contract agreement provides for exclusive jurisdiction clause vesting jurisdiction at Mumbai Court for all practical purposes and when the exclusive jurisdiction clause

is available in a contract/agreement, the jurisdiction of Courts and Tribunals at other places have been expressly excluded and the place mentioned in the agreement/contract will only have the exclusive jurisdiction over the matter and following the principle of law laid down in the matter of **Swastik Gases Private Limited** (supra), **State of West Bengal** (supra, **B.E. Simoesse Von Staraburg Niedenthal and another** (supra) and **Indus Mobile Distribution Private Limited** (supra), this court is of the considered opinion, that the learned District Judge is absolutely justified in rejecting the application filed by the petitioner under Section 34(2) of the Act, 1996 as the Bilaspur Court has no jurisdiction to entertain the said application and the decision {**ABC Laminart Pvt. Ltd. & another (Supra)**} relied upon by counsel for the petitioner is clearly inapplicable and distinguishable to the facts of the present.

(18) As a fallout and consequence of the aforesaid discussion, the arbitration appeals being devoid of substance are liable to be and are hereby dismissed. No order as to costs. However, this will not bar the appellants to move application under Section 34(2) of the Act, 1996 before the appropriate Court having jurisdiction over the subject matter.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

