

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.287 OF 2015**

General Instruments Consortium Applicant

Vs.

Lanco Infratect Limited Respondent

Mr. H. Toor a/w. Mr. Dilip Rai i/b. Mr. Ajay K. Rao for applicant.
Mr. Anoshak Daver a/w. Ms. Shobhana Waghmare i/b. Mulani and Co. for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 31st JULY, 2017

PC.:

1 This application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the said Act). Applicant is a Sole Proprietary concern and respondent is a company whose shares are listed in the stock exchange.

2 Applicant is a dealer for various parts used in various industries. Respondent placed a purchase order from respondent's Hyderabad office to applicant's Chennai office for purchase and supply of orifice plates and flow nozzles of quantities, specifications, rates and terms and conditions mentioned therein. It is applicant's case that respondent have not paid for 5 invoices in the sum of Rs.15,55,158/-. It is the case of applicant that they had raised various invoices and, except the 5 invoices mentioned in paragraph 3 (v) of the petition, all other invoices have been paid and they were paid in Mumbai. The purchase order at Clause 14

provides as under :

“14. JURISDICTION

Arbitration shall be in accordance with Arbitration and Conciliation Act, 1996. Courts in Delhi shall have exclusive jurisdiction in all matters arising under this PURCHASE ORDER.”

3 It is applicant's case that since supplies were made in Mumbai and payments for some of the invoices were made in Mumbai and part of cause of action arose in Mumbai, Mumbai Court will also have jurisdiction. Mr. Toor submitted that though respondent carries on business in Gurgaon and purchase orders were placed from Hyderabad at applicant's Chennai office, as materials were supplied from Mumbai and part payment was made in Mumbai, this Court will have jurisdiction and Delhi Court cannot have jurisdiction. Mr. Toor relying upon *A.B.C. Laminart Pvt. Ltd. vs. A.P. Agencies Salem*¹, submitted Delhi has nothing to do with this transaction and Delhi Courts will otherwise not have jurisdiction.

4 Mr. Toor, counsel for applicant further submitted that the Apex Court in *Swastik Gases Pvt. Ltd. vs. Indian Oil Corporation Ltd.*² has also held that the Court need not be concerned with the use of words like “exclusive” or “only” or “alone” because if the parties did not have intended Courts in a particular jurisdiction should have exclusive jurisdiction, the parties would not have included the ouster clause in their agreement were it not to carry any meaning at all.

1. 1989 (2) SCC 163

2. 2013 (9) SCC 32

5 Mr. Toor also submitted that the Apex Court in the recent matter of *Indus Mobile Distribution Pvt. Ltd. vs. Datawind Innovations Pvt. Ltd. and Ors.*³ has taken a view different from *A.B.C. Laminart* (supra) but the Apex Court has not considered *A.B.C. Laminart* (supra) and the judgment of the Apex Court passed by the 7 Judges Bench in the matter of *S.B.P. and Co. vs. Patel Engineering Ltd. and Anr.*⁴ Mr. Toor states that the decision of the Apex Court in *Bharat Aluminium Co. Ltd. vs. Kaiser Aluminium Technical Services, Inc.*⁵, paragraph 96, has in effect been misread in this judgment (*Indus Mobile*)

6 I do not agree with Mr. Toor. Paragraphs 20 and 21 of *Indus Mobile* (supra) read 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 and Clause 19 further makes it clear that jurisdiction exclusively vests in the 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 and Another v. Chhattisgarh Investment*

3. 2017 (3) Arb. LR 1 SC

4. 2005 (8) SCC 618

5. 2012 (9) SCC 552

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, 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.

7 The Apex Court has in effect stated that 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 Code of Civil Procedure be attracted. The moment “seat” is determined, the Courts, within whose jurisdiction the seat is, will have exclusive jurisdiction. I am in respectful agreement with the Apex Court.

8 Therefore, the parties having chosen the seat to be Delhi, the Courts in Delhi will have exclusive jurisdiction.

9 In the circumstances, the application be returned to applicant to be filed in the Court having jurisdiction in Delhi. Application accordingly stands disposed.

(K.R. SHRIRAM, J.)