

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.03.2017

+ **FAO(OS) 222/2015 & CM 7578/2015**
+ **FAO(OS) 223/2015 & CM 7581/2015**
+ **FAO(OS) 224/2015 & CM 7584/2015**

PUNJ LLOYD LTD

..... Appellant

versus

GVK POWER (GOINDWAL SAHIB) LIMITED

..... Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Rajiv Nayar and Mr A. S. Chandhiok, Senior Advocates
with Mr Rishi Agrawala, Mr Akshay R., Mr Karan Luthra,
Mr Mayank Bamniyal and Mr Ritesh Kumar

For the Respondent : Mr Kapil Sibal and Mr Parag P Tripathi, Senior Advocates with
Ms Kanika Singh, Ms Heena Khan, Mr Arunabh Ganguli and
Mr Salim A. Imamdar

+ **FAO(OS) 221/2015 & CM 7526-27/2015**
+ **FAO(OS) 231/2015 & CM 7715-16/2015**
+ **FAO(OS) 232/2015 & CM 7717-18/2015**

GVK POWER (GOINDWAL SAHIB) LTD

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For the Appellant : Mr Kapil Sibal and Mr Parag P Tripathi, Senior Advocates with
Ms Kanika Singh, Ms Heena Khan, Mr Arunabh Ganguli and
Mr Salim A. Imamdar

For the Respondent : Mr Rajiv Nayar and Mr A. S. Chandhiok, Senior Advocates
with Mr Rishi Agrawala, Mr Akshay R., Mr Karan Luthra,
Mr Mayank Bamniyal and Mr Ritesh Kumar

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. These six appeals arise out of a common judgment dated 21.04.2015 and a common order of the same date passed by a learned Single Judge of this Court in OMP Nos. 24/2015, 25/2015 and 27/2015 which had been filed by Punj Lloyd Limited (PLL) seeking interim reliefs under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act').

2. The said three petitions were in respect of three separate agreements between PLL and GVK Power (Goindwal Sahib) Limited (GVK). All the three agreements had been entered into on 14.09.2009. GVK had appointed PLL as a sub-contractor in respect of a contract that GVK had been awarded by the State of Punjab for building, owning and operating a coal fired electricity power plant consisting of 2x270 MW Units at Goindwal Sahib, Tarn Taran District, Punjab. One agreement was for balance of plant supplies ex-works for steel and cement for the sum of Rs 257 crores. This

agreement formed the subject matter of OMP 27/2015 and ultimately FAO(OS) 223/2015. The second agreement which was also of 14.09.2009 related to the balance of plant supplies ex-works for a sum of Rs 448 crores. This agreement formed the subject matter of OMP 24/2015 and FAO(OS) 224/2015. The third agreement which was again of 14.09.2009 was for construction and services for the sum of Rs 250 crores. This formed the subject matter of OMP 25/2015 and FAO(OS) 222/2015.

3. As part of each of these agreements, GVK was to give an advance by way of mobilization of 10% of the contract value to PLL and the same was adjustable against future running bills. Against the mobilization advances so given, PLL was to give bank guarantees to the extent of the mobilization advances in favour of GVK. In addition, PLL was also required to give performance bank guarantees in favour of GVK representing 2% of the contract values. Consequently, the following bank guarantees were furnished by PLL issued by different banks in favour of GVK:-

(A) In respect of the agreement for balance of plant supplies ex-works for steel and cement for Rs 257 crores.

(i) Advance bank guarantee dated 31.08.2012 for Rs 25.70 crores; and

- (ii) Performance bank guarantee dated 29.01.2013 for Rs 5.14 crores
- (B) In respect of the agreement for balance of plant supplies ex-works for Rs 448 crores.
 - (i) Advance bank guarantee dated 31.08.2012 for Rs 44.80 crores; and
 - (ii) Performance bank guarantee dated 29.01.2013 for Rs 8.96 crores.
- (C) In respect of the agreement for construction and services for Rs 250 crores.
 - (i) Advance bank guarantee dated 31.08.2012 for Rs 25 crores;
 - (ii) Advance bank guarantee dated 29.05.2012 for Rs 30 crores; and
 - (iii) Performance bank guarantee dated 29.01.2013 for Rs 5 crores.

4. By virtue of the common judgment dated 21.04.2015, the learned Single Judge took the view that the said petitions (OMP Nos. 24/2015, 25/2015 and 27/2015) could not be entertained by this Court as it lacked territorial jurisdiction. It was, however, left to PLL to approach the appropriate Court for reliefs in accordance with law. The petitions were accordingly dismissed on the ground of lack of territorial jurisdiction with

costs of Rs 50,000/- in each of the petitions. FAO(OS) Nos. 222/2015, 223/2015 and 224/2015 have been filed by PLL, being aggrieved by the common judgment dated 21.04.2015.

5. GVK is aggrieved by the common order dated 21.04.2015 which was pronounced after the said common judgment. A request had been made by the learned counsel for PLL, after the said judgment was pronounced, that the same be kept in abeyance for a short period to enable PLL to seek further reliefs. Consequently, by virtue of the common order dated 21.04.2015, the learned Single Judge suspended the said judgment till 28.04.2015. The effect of which was that the interim order passed by the Court earlier on 05.01.2015 would continue till 28.04.2015, subject to the bank guarantees in question being kept alive. GVK is aggrieved by this order inasmuch as, according to them, once the learned Single Judge found that it had no jurisdiction in respect of the petitions under Section 9 of the said Act, the learned Single Judge ought not to have passed any order extending the interim relief which had operated till then. FAO(OS) Nos. 221/2015, 231/2015 and 232/2015 have been preferred by GVK against the order dated 21.04.2015.

PLL'S appeals: FAO(OS) 222/2015, 223/2015, 224/2015

6. We shall first deal with the appeals filed by PLL in which the main issue is with regard to territorial jurisdiction of this Court. As a matter of background, it may be pointed out that the commencement date of the contracts between PLL and GVK was 01.12.2009. The disputes between the parties arose because, according to PLL, the commencement of commercial operations was delayed due to non-availability of coal which, according to PLL, was not its obligation but that of GVK. It was alleged that since GVK was unable to arrange the coal on account of its coal mine allocation being cancelled pursuant to the order of the Supreme Court and also on account of GVK's own financial difficulties, the delay had occurred. It appears that on 24.12.2014, three letters, one in respect of each of the agreements was sent by GVK to PLL claiming liquidated damages in the aggregate sum of Rs 1443 crores on account of the alleged delay in milestone achievement as well as in overall completion. The three letters also indicated that if the amounts were not paid along with interest @ 15% per annum within seven days from the date of the receipt of the notices, GVK would be constrained to take appropriate legal action. PLL, of course, sent its replies to the three letters on 31.12.2014 disputing its liability.

7. Notices of caveats, having been filed in Hyderabad and in this Court by GVK in respect of the bank guarantees, were received by PLL. We need not elaborate any further on the merits of the claim with regard to liquidated damages inasmuch as in these appeals we are only concerned with the issue of territorial jurisdiction.

8. Before the learned Single Judge GVK submitted that this Court did not have territorial jurisdiction to entertain the petitions under Section 9 of the said Act inasmuch as no cause of action had arisen in Delhi. Clause 13 in each of the bank guarantees provided as under:-

“In the event of any dispute or claim, the jurisdiction shall be of Hyderabad Courts.”

It was also submitted that the stamp papers on which the bank guarantees were drawn up were purchased at Hyderabad. Furthermore, it was contended on behalf of GVK that each of the arbitration clauses in the three agreements clearly stipulated that ‘the arbitration shall be conducted in Hyderabad, India’. Thus, it was submitted that the courts at Hyderabad would have supervisory jurisdiction, vis-à-vis the arbitration proceedings and, therefore, the Section 9 petitions could have been filed in the courts at Hyderabad and not in Delhi. It was also submitted that the arbitration

clause as well as Clause 13 in the bank guarantees clearly indicated that the parties had consciously exercised the choice of jurisdiction and that only the courts at Hyderabad would have jurisdiction as per the said choice. It was further submitted that, in any event, the subject matter of the dispute, that is, the works to be executed, were relatable to Goindwal Sahib, district Tarn Taran in Punjab and had no connection with Delhi.

9. On the other hand, the learned counsel appearing on behalf of PLL submitted both before the learned Single Judge as also before us that each of the agreements contained the clause with regard to manner of payment.

That clause was Clause 4.9 which reads as under:-

“4.9 Manner of Payment. Unless otherwise agreed by the Parties in writing, all payments made by the Owner to the Contractor will be by electronic funds transfer to a bank account notified in writing by the Contractor to the Owner.

The reference to the ‘owner’ is to GVK and that of the ‘contractor’ to PLL. Payments were to be made for the works under the said agreement by GVK to PLL by electronic funds transfer to bank accounts notified by PLL. It was submitted that the State Bank of Hyderabad, Commercial Branch Janpath, New Delhi and some other accounts of Delhi were notified by PLL on 10.12.2009 and all payments were made into these accounts by GVK amounting to a sum of Rs 819 crores. It was, therefore, submitted that since

the payments were made into these accounts at New Delhi, this Court would have jurisdiction.

10. It was also submitted on behalf of PLL that under the three agreements, all the notices were required to be issued by GVK to PLL at its address in New Delhi. In fact, even the letters dated 24.12.2014 which, in effect, led to the filing of the Section 9 petitions were addressed by GVK to PLL at New Delhi. It was further submitted that even the bank guarantees were issued by the concerned banks from New Delhi. It may, however, be pointed out that though the letters dated 24.12.2014 had been issued by GVK to PLL, there was no invocation of the bank guarantees. But, apparently, PLL was apprehensive that GVK might invoke and encash the bank guarantees and it is for this reason that the said petitions under Section 9 of the said Act were filed in the nature of *quia timet* actions.

11. It was also submitted on behalf of PLL that this Court would have jurisdiction under Section 20(c) of the Code of Civil Procedure, 1908 as part of the cause of action had arisen in Delhi. References were made to **Swastik Gases Private Limited v. Indian Oil Corporation Limited: (2013) 9 SCC 32** as also to **Bharat Aluminium Company v. Kaiser Aluminium Technical Services INC: (2012) 9 SCC 552** (hereafter referred to as

‘**BALCO**’). It was also submitted that while the Court, within whose jurisdiction the seat or place of arbitration was located, would certainly have jurisdiction, the Court within whose jurisdiction the ‘subject matter of the suit was situated, would also have jurisdiction’. It was also submitted that, on going through the agreements between the parties, it could not be said that the parties had intended to exclude the jurisdiction of the courts in Delhi.

12. Furthermore, it was submitted on behalf of PLL that since it was not a party to the bank guarantees, which were contracts between the banks and GVK, the jurisdiction clause (i.e., Clause 13) in the bank guarantees would not apply to the disputes between PLL and GVK.

13. The learned Single Judge discussed several judgments which were cited before him, which included the following:-

- (i) **M. Venkatasamiappa v. Srinidhi:** 63 LW 468 (Madras) (DB);
- (ii) **N.D. Sud v. Union of India:** ILR (1973) II DEL 503 (DB);
- (iii) **Ram Rattan Bhartia v. Food Corporation of India:** ILR (1978) I Delhi 308 (FB);
- (iv) **South East Asia Shipping Co. Ltd. v. Nav Bharat:** (1996) 3 SCC 443;

- (v) *Balaji Coke Industry Pvt. Ltd. v. Maa Bhagwati Coke Gujarat Pvt. Ltd.:* (2009) 9 SCC 403;
- (vi) *Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd.:* (2013) 9SCC 32;
- (vii) *Bharat Aluminium Company v. Kaiser Aluminium Technical Services INC:* (2012) 9 SCC 552; and
- (viii) *State of West Bengal v. Associated Contractors:* 2015 (1) SC 32.

After analyzing the aforesaid decisions in detail, the learned Single Judge summarised the legal position, with which we are in agreement, as under:-

“33. To summarise the legal position:

- (i) Although Section 2 (1) (e) of the Act defines the word ‘Court’ occurring in Section 9 to mean the Court “having jurisdiction to decide the questions forming subject matters of the arbitration if the same had been a subject matter of a suit”, it also includes Courts within whose jurisdiction the cause of action arises or the Respondent resides or carries on business as long as it is “relevant in relation to the subject matter of the reference”.
- (ii) Only such transactions between the parties which relate to the subject matter would confer jurisdiction in the Court within whose territory they take place. For e.g., the mere fact that a bank guarantee is executed at a place would not by itself confer jurisdiction on the Court of that place to entertain a suit seeking injunction against its invocation.
- (iii) The decision in **BALCO** draws a distinction between the “subject-matter of the arbitration” and the “subject-matter of the suit” and states that one should not be confused with the other. It recognises the jurisdiction of two Courts. One is the Court

having supervision over the arbitral proceedings and the other the Court within whose jurisdiction the subject-matter of the suit is situated.

(iv) Where the contract specifies the jurisdiction of the court at a particular place and such court has jurisdiction to deal with the subject matter, an inference may be drawn that the parties intended to exclude all other courts.

(v) Under Section 42 of the Act, if an application under Section 9 is made to a court having jurisdiction, then all subsequent applications both arising out of the arbitration agreement and the arbitral proceedings shall be made to that Court alone “and in no other Court.” An application made to a court without subject matter jurisdiction would be outside Section 42.”

14. In fact, the counsel appearing on both sides agreed that the legal principles have been correctly culled out from the abovementioned decisions by the learned Single Judge. However, the learned counsel for PLL submitted that the same have not been correctly applied to the facts and circumstances of the present case.

15. The learned Single Judge thereafter examined the prayers in the petitions which were essentially four in number. By way of sample, the prayers in OMP 25/2015 are set out hereunder:-

“a) Restrain the Respondent from taking any coercive steps against the Petitioner in respect of Agreement for balance of plant supplies Ex-works dated 14.9.2009;

b) Direct status quo in respect of the Bank Guarantee No.007BG00132413 dated 31.8.2012 for Rs. 25.0 crores issued by ICICI Bank Ltd. ("Advance Bank Guarantee 1"), Bank Guarantee 2158IGPER002712 dated 29.05.2012 for Rs. 30.0 crores issued by ICICI Bank Ltd. ("Advance Bank Guarantee 2") and Bank Guarantee bearing NO.5073213BG0000181 dated 29.1.2013 for Rs. 5.0 crores ("Performance Bank Guarantee"); issued by State Bank of Patiala and restrain the Respondent from en-cashing/invoking the Bank Guarantee No.007BG00132413 dated 31.8.2012 for Rs. 25.0 crores issued by ICICI Bank Ltd. ("Advance Bank Guarantee 1"), Bank Guarantee 2158IGPER002712 dated 29.05.2012 for Rs. 30 crores issued by ICICI Bank Ltd. ("Advance Bank Guarantee 2") and Bank Guarantee bearing No.5073213BG0000181 dated 29.1.2013 for Rs. 5.0 crores ("Performance Bank Guarantee") issued by State Bank of Patiala;

c) Direct an independent agency to measure the work done by the Petitioner and restrain the Respondent from hindering/restraining the Petitioner's egress and ingress into the plant and the authority of the Petitioner to access the men and material lying at the site;

d) Direct the Respondent to provide a security of Rs. 250.0 cores against the material lying at site in order to procure status quo between the parties;

e) Pass such other and further order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

The learned Single Judge, after referring to the said prayers and the pleadings, observed that the apprehension of PLL regarding the possible 'coercive steps' in terms of prayer (a) was in connection with the bank guarantees which, PLL thought, could be invoked by GVK at any time after

the letters dated 24.12.2014. Prayer (b) clearly concerned the possible invocation of the bank guarantees. Analyzing these two prayers from the standpoint of the apprehension that PLL had with regard to the invocation and encashment of the bank guarantees, the learned Single Judge noticed the provisions of Clause 13 in each of the bank guarantees which stated that in the event of any dispute or claim, the jurisdiction shall be of Hyderabad courts. It was pointed out that the proforma of the bank guarantees had been appended to each of the agreements as 'Appendix J-1'. Clause 13 of the proforma in the bank guarantees itself stipulated that in the event of any dispute or claim, the jurisdiction shall be of Hyderabad courts. A plea had been raised both before the learned Single Judge as also before us that Clause 13 of the bank guarantees could not be invoked because PLL was not a party to the bank guarantees. The bank guarantees were independent contracts between the banks and GVK. Consequently, if there were any disputes between them with regard to the bank guarantees, the jurisdiction was to be of Hyderabad courts. It did not, in any manner, affect PLL which was not a party to those bank guarantees.

16. However, the learned Single Judge rejected this plea and, in our view, rightly. This is so because Clause 13 of the bank guarantees was

taken from the proforma for bank guarantees in 'Appendix J-1' to the said agreements. These agreements were between PLL and GVK and the fact that the proforma had a stipulation with regard to jurisdiction insofar as the bank guarantees were concerned clearly indicated the intention of the parties was to ensure that even disputes with regard to the bank guarantees were to be resolved in the Hyderabad courts. It is in this backdrop that the learned Single Judge concluded that even if a part of the cause of action in relation to the bank guarantees could be said to have arisen within the jurisdiction of this Court (because the bank guarantees were issued from New Delhi), the parties had made a conscious choice as to the Court which would have jurisdiction in relation to the disputes arising out of the bank guarantees. This choice, in our view, is also reflected in the three agreements between GVK and PLL which, *inter alia*, stipulates that the arbitration in respect of disputes between them arising out of the agreements shall be conducted in Hyderabad, India.

17. The learned Single Judge also observed that in terms of the agreements, the seat or place of arbitration had been chosen to be Hyderabad. Consequently, in terms of the decision in **BALCO** (supra), the courts at Hyderabad would have supervisory jurisdiction over the arbitral

proceedings. Clause 13 of the bank guarantees also evidences the conscious choice of the parties that in relation to disputes arising out of the bank guarantees, the courts at Hyderabad would have jurisdiction. It appears that GVK, being the common factor in the three agreements with PLL and the bank guarantees issued by banks, had insisted that only the courts at Hyderabad would have jurisdiction and this was agreed upon by PLL. This agreement and intention is reflected both in the arbitration clause requiring that the arbitration shall be conducted in Hyderabad, India and in Clause 13 of the proforma for bank guarantees as also of the actual bank guarantees based on that proforma that disputes or claims would be resolved by courts at Hyderabad.

18. We may note, as indeed the learned Single Judge had done, that in *Swastik Gases Private Limited* (supra), it had been indicated that it is not necessary to use the words such as ‘alone’ or ‘only’ in a jurisdiction clause to arrive at the conclusion that other courts have been excluded. It would be apposite if we set out the relevant portions of the Supreme Court decision in *Swastik Gases Private Limited* (supra):-

“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. (per Lodha, J.)”

“37. In my opinion, the very existence of the exclusion of jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like “only”, “exclusively”, “alone” and so on are not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement. Therefore, I agree with the conclusion that jurisdiction in the subject matter of the proceedings vested, by agreement, only in the Courts in Kolkata. (per Madan B. Lokur, J.)”

19. It will be instructive to note that the clause under consideration in

Swastik Gases Private Limited was as under:-

“The agreement shall be subject to jurisdiction of the Courts at Kolkata.”

20. At this juncture, it would also be appropriate if we set out paragraph 96 of the Constitution Bench decision of the Supreme Court in ***BALCO***, which reads as under:-

“96. Section 2(1)(e) of the Arbitration Act, 1996 reads as under:

“2. **Definitions** .— (1) In this Part, unless the context otherwise requires –

(a) -(d) * * *

(e) “**Court**” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;”

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.”

21. It is clear from **BALCO** that the expression ‘subject matter of arbitration’ is not the same thing as ‘subject matter of the suit’ as appearing in Section 2(1)(e) of the said Act. It has been pointed out that the expression ‘subject matter’ in Section 2(1)(e) has reference and connection

with the process of dispute resolution and that its purpose is to identify the courts having supervisory control over the arbitration proceedings. It has been clearly pointed out that the Legislature intentionally gave jurisdiction to two courts – the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. In other words, the place or seat of arbitration would give jurisdiction to the courts at that place. In the present case, we note that the three agreements between GVK and PLL clearly specify the place of arbitration to be Hyderabad. In other words, the parties intended that the supervisory jurisdiction in relation to the arbitration proceedings would be of the courts at Hyderabad and not Delhi. This intention is further fortified by the introduction of Clause 13 in the bank guarantees where, once again, there is an indication of the conscious choice of parties with regard to the courts which were to have jurisdiction even in respect of the bank guarantees. In our view, the intendment of the parties to be gathered from the agreements, the proforma of the bank guarantees and the bank guarantees themselves is clear and that is that the courts at Hyderabad alone would have jurisdiction in matters/disputes between the parties whether it be between GVK and PLL under the said agreements or GVK and the banks under the bank guarantees.

22. Thus, while the courts at Tarn Taran, in view of the fact that the works were to be executed there or the courts in Delhi in view of the fact that the bank guarantees were issued at Delhi or even assuming that Delhi had jurisdiction because payments were made into the accounts in Delhi, would normally have had jurisdiction but the intendment of the parties is clear that the courts at Hyderabad should exclusively deal with the disputes between them.

23. Another aspect which was pointed out by the learned Single Judge is of Section 42 of the said Act. The said provision stipulates that notwithstanding anything contained elsewhere in Part I of the said Act or in any other law for the time being in force, where in respect of an arbitration agreement any application under Part I has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court. In other words, if the Court at Delhi were to entertain the OMPs filed by PLL, then only this court would have jurisdiction, including supervisory jurisdiction over all arbitral proceedings for all times to come insofar as the three

agreements between the parties are concerned. But, as the parties had agreed that the arbitration shall be conducted in Hyderabad, India, they consciously chose the place of arbitration which, in turn, indicated that the supervisory courts would be at Hyderabad. If this Court were to exercise jurisdiction, then the intendment of the parties would be overridden, which would completely defeat the provisions of Section 20(1) of the said Act as also the agreement between the parties. We may point out that agreeing on a place of arbitration is not limited to the arbitration having its seat at that place, but it carries the adjunct that the courts at that place would exercise supervisory jurisdiction insofar as arbitral proceedings are concerned. Therefore, we also agree with the following conclusion arrived at by the learned Single Judge:-

“38. For the purposes of Section 42 of the Act, if this Court were to entertain the present petitions it would mean that any subsequent application, including one that challenges an interim or final Award or an interlocutory order of the Arbitral Tribunal under Section 17 of the Act, would have to be filed in this Court alone. That would be contrary to the intention of the parties to exclude the jurisdiction of all courts other than those at Hyderabad. This is an additional reason for the Court to decline to entertain these petitions.”

24. In view of the foregoing, we do not find any error in the impugned judgment dated 21.04.2015 and in the decision of the learned Single Judge

in dismissing the petitions under Section 9 of the said Act on the ground of lack of territorial jurisdiction. No interference whatsoever is called for insofar as the judgment dated 21.04.2015 is concerned. FAO(OS) Nos. 222/2015, 223/2015 and 224/2015 are dismissed.

25. We now come to the FAO(OS) Nos. 221/2015, 231/2015 and 232/2015 filed by GVK being aggrieved by the order dated 21.04.2015 which was passed after the judgment dated 21.04.2015 had been pronounced. By virtue of the said order, the learned Single Judge had suspended the operation of the judgment till 28.04.2015. However, that order has worked itself out inasmuch as the present six appeals were filed before us and on 28.04.2015, the senior counsel appearing on behalf of the GVK had made a clear statement, on instructions, that till a decision is rendered (in all these appeals), the bank guarantees in question shall not be invoked. Therefore, in a sense, the appeals, being FAO(OS) Nos. 221/2015, 231/2015 and 232/2015 have become infructuous and, in any event, no orders are necessary thereon.

26. Consequently, this set of six appeals is disposed of as follows:-

(i) FAO(OS) Nos. 222/2015, 223/2015 and 224/2015 are dismissed;

(ii) FAO(OS) Nos. 221/2015, 231/2015 and 232/2015 are disposed of as having become infructuous. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MARCH 08, 2017
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