

\$~24

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

+ **FAO(OS) 375/2016**

M/S TAURANT PROJECTS LTD Appellant

Through : Mr Raman Gandhi

versus

M/S MAHARASHTRA NATURAL GAS LTD Respondent

Through : None

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

ORDER

22.02.2017

%

CM 7215/2017

This is an application seeking early hearing. On the previous date, that is, on 30.01.2017, when this matter was listed for hearing, an adjournment was sought on behalf of the appellant on the ground that Mr Gandhi, who had to argue on behalf of the appellant, was unwell.

Consequently, the matter was adjourned to 24.04.2017. The present application has been filed primarily because the time is ticking for the filing of a petition under Section 34 of the Arbitration and Conciliation Act, 1996 in case this Court upholds the view taken by the learned Single Judge in the impugned order dated 02.11.2016 that this Court does not have territorial jurisdiction to entertain the said petition.

Consequently, we allow this application for early hearing. The appeal shall be taken up for hearing today itself.

The application stands disposed of.

CM 47464/2016

Allowed subject to all just exceptions.

FAO(OS) 375/2016 & CM 47465/2016(condonation of delay)

The learned Single Judge, by virtue of the impugned order dated 02.11.2016, concluded that this Court did not have territorial jurisdiction to entertain the petition under Section 34 (OMP 471/2015). This is so because the entire cause of action occurred in Maharashtra. The Award was made in Pune, Maharashtra. The arbitral proceedings between the parties also took place in Pune, Maharashtra. The learned Single Judge, therefore, in these circumstances, held that the question of entertaining the said petition by this Court did not arise. He further noted that the works were executed in Maharashtra and the contract also provided for an exclusive jurisdiction of the Courts of the State of Maharashtra.

The learned counsel for the appellant, however, drew our attention to two orders dated 21.11.2011 and 14.02.2012 which were passed by the learned Single Judges of this Court in CS(OS) 2495/2011. That was a suit filed by the present appellant against Mecon Limited and the respondent herein. That suit was withdrawn by the present appellant, who was the plaintiff therein, after an agreement had been arrived at between the parties. There was some agreement with regard to arbitration proceedings which was recorded in the order dated 14.02.2012 by which the suit was dismissed as withdrawn.

The learned counsel for the appellant seeks to take advantage of Section 42 of the Arbitration and Conciliation Act, 1996 by submitting that the orders passed in the suit would have the same effect as an order passed in an application in Part-I of the said Act. We cannot agree with this submission made on the part of the appellant inasmuch as Section 42 can be attracted only when any application in respect to an arbitration agreement under Part-I of the said Act has been made in a Court. Even if we grant the appellant the indulgence by agreeing that an application need not be written but can also be oral, such an application, in any event, has to be in respect of arbitration agreement and has to be in terms of Part-I of the said Act. No such application, oral or written, is discernible from the orders passed in the said suit. Therefore, the benefit of Section 42 of the said Act cannot be taken. We may also note that the parties in the suit and parties to the arbitration are not identical.

For these reasons as also for the reasons given by the learned Single Judge, we are of the view that this Court does not have territorial jurisdiction for entertaining the petition under Section 34 of the said Act. The decision of the learned Single Judge is correct and the same is confirmed. The appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

FEBRUARY 22, 2017/SR