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

+ ARB.P. 800/2017 & I.A. No.14814/2017

TIRUPATI STRUCTURALS LTD Petitioner
Through Mr.Sanjay Sharma, Adv.

versus

SPML INFRA LIMITED Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **13.12.2017**

This petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of Arbitrator invoking the Arbitration Agreement, Clause 13 of the Purchase Order dated 10.06.2013 and the amended Purchase Order dated 25.10.2013.

Clause 13 of the Purchase Order dated 10.06.2013 provides that the venue of the Arbitration shall be Jaipur only and order shall be subject to the jurisdiction of the courts of Jaipur. The said Clause is reproduced herein below:

"13.DISPUTE RESOLUTION

All dispute / disputes arising out of or in connection with the Purchase Order shall be settled amicably through mutual discussions between the authorized representatives of both the parties, falling which such dispute / disputes shall be referred to an Arbitration of three Arbitrators, one to be appointed by each party. Both the Arbitrators shall appoint a third Arbitrator who shall act as the presiding arbitrator. The

award of the Tribunal of Arbitration shall be final and binding upon both the parties. The Arbitration shall be governed by the Arbitration & Conciliation Act, 1996 and/or any statutory modifications thereof. The venue of Arbitration shall be Jaipur only and order shall be subject to jurisdiction of courts of Jaipur.”

As the venue of the Arbitration has been provided at Jaipur only and even the courts of Jaipur have been given jurisdiction under the Contract between the parties. I am of the opinion that this Court would lack territorial jurisdiction to entertain the present petition. In this regard, I place reliance of judgement of Supreme Court in ***Indus Mobile Distribution Pvt Ltd. V. Datawind Innovations Pvt. Ltd and Ors.***, (2017) 7 SCC 678. Relevant paragraphs of the judgement are quoted below:

“19. 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.

20. 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. This was followed in a recent judgment in B.E. Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited. 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.”

(emphasis supplied)

Learned counsel for the petitioner submits that though venue of the Arbitration has been provided at Jaipur, this Court can exercise jurisdiction under Section 11 of the Act inasmuch as the courts at Jaipur have been given only qua proceedings under Section 34 of the Act and executability of the Award and not at the stage of Section 11 of the Act.

I fail to understand this argument and find absolutely no merit in the same.

In view of the above, the present petition is dismissed with no order as to cost.

Dasti.

NAVIN CHAWLA, J

DECEMBER 13, 2017/vp