

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Application No. 41 of 2014**

Ejaz Czar, Proprietor American Desii, S/o Hamid H Czar, aged about 39 years, R/o, 8, Prem Kunj, Civil Lines, Raipur (C.G.)

----Petitioner.

Versus

M/s Gupta Infrastructure (India) Pvt. Ltd., through it's Director, Shri Padmesh Gupta, 4th & 5th Floor, Temple Road, Civil Lines, Nagpur -440 001 (Maharashtra)

Raipur City Office

Chhattisgarh City Centre Mall, Pandri, Raipur -490004 (C.G.)

---- Respondents.

For Petitioner	: Shri Amrito Das & Shri Abhyuday Singh, Advocate.
For Respondent	: Shri Ashish Surana, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

29/06/2018

(1) This is an application under Section 11(6) of the Arbitration & Conciliation Act, 1996 (henceforth "AC Act, 1996") for appointment of arbitrator arising out of the dispute pursuant to the leave and licence agreement dated 9th May, 2012.

(2) Reply has been filed by the respondent herein stating that the leave and licence agreement dated 9th May, 2012 contains exclusive jurisdiction clause in shape of 13(K) of the said agreement and according to which Court / Tribunal at Nagpur have the exclusive jurisdiction to try any dispute or suits arising out of the Leave and Licence Agreement.

(3) Learned counsel for the petitioner would submit that as per agreement the seat of arbitration is to be held either at Raipur or at Nagpur, therefore, this Court has jurisdiction to entertain this application for appointment of Arbitrator.

(4) Learned counsel for the respondent would submit that in view of the exclusive jurisdiction clause in shape of clause 13(k) of the agreement, this Court has no jurisdiction to entertain this application.

(5) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove with utmost circumspection.

(6) It would be appropriate to notice Clause 13(K) of the leave and licence agreement dated 9th May, 2012, which states as under :-

“K. **JURISDICTION:** The Courts/Tribunals in **Nagpur** shall have exclusive jurisdiction to try any disputes or suit arising out of this Agreement.”

(7) From a perusal of Clause 13(k) of the leave and licence agreement , it appears that the said Agreement has an exclusive jurisdiction clause opting for Nagpur Court for all disputes.

(8) In the matter of **Swastik Gasas Private Limited Vs. Indian Oil Corporation Limited**¹, the Supreme Court has held as under :-

“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, 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 along shall have jurisdiction which means that the Courts at Kolkata along shall have jurisdiction which means

1 (2013) 9 SCC 32

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.”

(9) The same view has been followed and reiterated by the Supreme Court in the matter of **B.E. Simoes Von Staraburg Niedenthal and another Vs. Chhattisgarh Investment Limited**².

(10) Now, reverting to the facts of the present case, the leave and license agreement dated 9th May, 2012 executed between the parties clearly provides exclusive jurisdiction clause opting for Nagpur Court. Thus, this Court will have no jurisdiction to entertain this arbitration application.

(11) Accordingly, the arbitration application is liable to be and is hereby dismissed. However, the applicant is at liberty to file application for appointment of Arbitrator before the jurisdictional Court. No cost (s).

Sd/-
(Sanjay K. Agrawal)
Judge

2 (2015) 12 SCC 225

