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

+ O.M.P.(MISC.)(COMM.) 57/2018

MORA TOLLWAYS LIMITED

..... Petitioner

Through

Mr.Amit Sibal, Sr. Adv.with
Mr.Chirag M.Shroff, Ms.Neha
Sangwan and Ms.Sanjana Nangia,
Advs.

versus

BIHAR STATE ROAD DEVELOPMENT

..... Respondent

Through

Mr.Ranjit Prakash, Mr.Anshuman
Pande and Ms.Mahima Sareen, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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18.04.2018

IA Nos.5205-06/2018 (Exemption)

Allowed, subject to all just exceptions.

O.M.P.(MISC.)(COMM.) 57/2018

1. This petition under Section 29A(4) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking extension of time for making of the Arbitral Award by the Arbitral Tribunal.

2. The disputes between the parties arose out of the Concession Agreement dated 10.09.2011 by which the respondent had awarded the work

of construction, operation and maintenance of National Highway No.30 in the State of Bihar, including the section from km 0.000 to km 116.760 on Mohania-Ara section of National Highway No.30, by Four Laning on Design, Build, Finance, Operate and Transfer ("DBFOT") basis to the petitioner.

3. It is not denied that this Agreement was executed at Patna, Bihar. As noted above, the work was also to be executed at Bihar.

4. Disputes having arisen between the parties, the petitioner filed a petition under Section 11 of the Act seeking appointment of an Arbitral Tribunal before the High Court of Judicature at Patna being Request Case No.5/2016. During the pendency of the said petition, the parties agreed to the appointment of the present Arbitral Tribunal instead of and in place of referring the disputes to the Bihar Public Works Contracts Disputes Arbitration Tribunal as stipulated in Clause 44.3 of the Concession Agreement. In view of this agreement, the Patna High Court, vide its order dated 16.08.2016 confirmed the appointment of the Arbitrators on behalf of the petitioner and the respondent respectively.

5. Certain part of the dispute was also pending adjudication before the Supreme Court in form of Special Leave Petition (C) CC No.1489/2017 and Special Leave Petition (C) CC No.1517-19/2017. The Supreme Court vide its order dated 27.01.2017 disposed of the Special Leave Petition(s) with a clarification that the Arbitral Tribunal constituted by the Patna High Court shall independently adjudicate the validity of the termination of the contract by the respondent and the consequences thereof.

6. I have given the above sequence of events only to highlight that no part of the cause of action has arisen within the jurisdiction of this Court.

As noted above, the agreement was executed at Patna; the work was to be executed at Bihar and the Arbitral Tribunal was constituted at Patna.

7. Even otherwise, Clause 47.1 of the Concession Agreement provides that the Courts at Patna shall have the exclusive jurisdiction over the matters or disputes arising out of the said Agreement.

8. Learned senior counsel for the petitioner submits that this Court would have the jurisdiction to entertain the present petition as the Arbitral Tribunal has been holding its proceedings at Delhi. I am afraid that this itself cannot vest this Court with the jurisdiction to entertain the present petition, especially in the light of the facts that have been noted herein above. It may be as a matter of convenience that the Arbitral Tribunal is conducting its proceedings at Delhi, however, from this it cannot be inferred that the parties had agreed that the seat of the Arbitration would be at Delhi. Section 20(3) of the Act provides that the Arbitral Tribunal may meet at any place it considers appropriate for the conduct of the arbitration proceedings, however, the same would not transform such place as a seat of the Arbitration.

9. Learned senior counsel for the petitioner has placed reliance on the judgment of the Supreme Court in ***Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.*** (2012) 9 SCC 552 to contend that the Court where arbitration takes place would also have the jurisdiction in terms of Section 2(1)(e) of the Act. Though, the said proposition of law cannot be disputed, however, in the facts of the present case, in my view, the conduct of the arbitration proceedings in Delhi is only as a matter of convenience in the venue and cannot be considered as an agreement between the parties to shift the seat or the exclusive jurisdiction vested by them from the Courts of

Patna to Delhi.

10. In view of the above, I hold that this petition is not maintainable for lack of jurisdiction of this Court and the same is accordingly dismissed, with no order as to cost.

11. Dismissal of this petition would not preclude the petitioner from filing an application for similar prayer before the Court of competent jurisdiction.

NAVIN CHAWLA, J

APRIL 18, 2018/Arya