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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 316/2018

I.A HYDRO ENERGY PVT LTD

..... Petitioner

Through: Mr.Vikash Kumar and Mr.Aman
Modi, Advs.

versus

ASHWANI SAINI & COMPANY

..... Respondent

Through: Mr.Shivang Dubey, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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04.10.2018

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as the 'Act') has been filed by the petitioner seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Consultancy Agreement dated 20.10.2015 executed between the parties. The Consultancy Agreement contains an Arbitration Agreement in form of Clause 10 thereof which is reproduced hereinbelow:

"10. Dispute Resolution: In the event of any dispute arising between the parties in any matter arising from or in connection to this agreement and not being mutually resolved within 30 days, the dispute shall upon request of any party to this Agreement be referred to an arbitrator to be appointed by mutual consent. In the event of failure amongst the parties to reach a consensus on the choice of arbitrator, the parties shall agree to appoint an arbitrator by following the procedure prescribed by the Arbitration and Conciliation Act, 1996 and rules framed thereunder. The award of the arbitrator shall be

final, conclusive, and binding on the parties. The venue of arbitration shall be Raipur and language to be adopted for the purpose shall be English. (Emphasis supplied)

2. Clause 11 of the Consultancy Agreement provides for “Governing Law and Jurisdiction” and is reproduced hereinbelow:

“11. Governing Law & Jurisdiction: The terms of this Agreement shall be construed and interpreted in accordance with Indian Law. The Parties hereby agree that the courts of Delhi alone shall have jurisdiction to entertain any application or other proceedings in respect of anything arising under this Agreement and any award or awards made by an arbitrator appointed pursuant to Clause 10 above shall be filed in the concerned courts in Raipur only.” (Emphasis supplied)

3. A reading of the above Clauses will clearly show that the venue and seat of the arbitration has been agreed to be at Raipur and even Award passed in such arbitration proceedings is to be filed in the Court at Raipur “only”.

4. Though Clause 11 of the Consultancy Agreement also speaks about the Court of Delhi alone having jurisdiction, once there is a jurisdictional clause specifically in relation to the Arbitration Agreement between the parties, the same has to override the general jurisdictional clause.

5. In ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.***, (2017) 7 SCC 678, the Supreme Court has considered this issue and has held as under:

“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 Sections 16 to 21 of 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 the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.[Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., This was followed in a recent judgment in B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. 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. The appeals are disposed of accordingly.”

6. I may only note that in the present case, the petitioner had earlier filed an application under Section 11 of the Act before the High Court of Chhattisgarh at Bilaspur. By the order dated 23.02.2018 the said petition was allowed to be withdrawn with liberty to file the same before the jurisdictional High Court. It is not clear from the said order as to whether

the High Court of Chhattisgarh had refused to entertain the said petition. Be that as it may, once the exclusive jurisdiction in relation to the Arbitration Agreement is vested in the Court of Raipur, only the High Court having supervisory jurisdiction over the said Court will have the territorial jurisdiction to entertain this petition.

7. In view of the above, the petition is dismissed granting liberty to the petitioner to file the same before the Court of appropriate jurisdiction. There shall be no order as to cost.

NAVIN CHAWLA, J

OCTOBER 04, 2018/Arya