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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 579/2018

SINHOTIA METALS & MINERALS PVT LTD.

..... Petitioner

Through: Mr.Sahil Chopra, Mr.Akhilesh Bansal
& Mr.Dhruv Bansal, Adv.

versus

JINDAL INDIA THERMAL POWER LTD. Respondent

Through: Ms.Suruchi Agarwal & Mr.Sushil
Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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18.09.2018

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of a Presiding Arbitrator for constitution of the Arbitral Tribunal for adjudicating the disputes that have arisen between the parties in relation to the following Work Orders:-

“WORK ORDERS FOR CONSTRUCTION OF RAW WATER RESERVOIR:

JITPL/2012-13/Odisha/386, Dated 22.01.2013

JITPL/2012-13/Odisha/386/Amd. 001, Dated 26.04.2013

JITPL/20 12-13/Odisha/386/Amd. 002, Dated 22.09.2014

WORK ORDERS FOR CONSTRUCTION OF ASH DYKE

JITPL/2012-13/Odisha/387, Dated 22.01.2013

JITPL/2012-13/Odisha/387/Amd. 001, Dated 08.08.2013

JITPL/2012-13/Odisha/387/Amd. 002, Dated 22.09.2014

WORK ORDER FOR CONSTRUCTION OF DRAINS

JITPL/2013-14/Odisha/518, Dated 14.02.2014”

The Work Orders contain a common Arbitration Agreement in form of Clause 14, which is reproduced hereinbelow:-

“Clause 14.0 ARBITRATION

To the best of their ability, the parties hereto shall endeavour to resolve amicably between themselves all disputes arising in connection with this work order. If the same remain unresolved within thirty (30) days of the matter being raised by either party, either party may refer the dispute for settlement by arbitration. The arbitration to be undertaken by two arbitrators, one each to be appointed by either party. The arbitrators appointed by both the parties shall mutually nominate a person to act as umpire before entering upon the reference in the event of a difference between the two arbitrators and the award of the said umpire in such a contingency shall be final and binding upon the parties. The arbitration proceeding shall be conducted in accordance with the provision of the Indian Arbitration & Conciliation Act, 1996 and the venue of such arbitration shall be city of New Delhi only.”

(emphasis supplied)

Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 20.02.2018 and nominated its Arbitrator. The respondent, vide its reply dated 28.03.2018, while disputing the claims of the petitioner, nominated its own Arbitrator. Thereafter, the two nominated Arbitrators were unable to reach at a consensus on the name of the Presiding Arbitrator, forcing the petitioner to file the present petition.

Learned counsel for the respondent submits that as the work in question was to be performed at District Angul, Odisha and even the bills were raised at Angul, this Court would lack territorial jurisdiction to

entertain the present petition. She further submits that Clause 14 of the Work Orders merely prescribes the “venue” of arbitration to be at New Delhi. This, however, does not mean that the “seat” of arbitration shall also be at New Delhi conferring the jurisdiction on this Court to entertain the present petition.

Counsel for the respondent relying upon the judgment of the Supreme Court in *Union of India Vs. Hardy Exploration and Production (India) Inc.*, MANU/SC/0488/2018 submits that the question regarding the “seat” and “venue” for holding arbitration proceedings by the Arbitrator has been referred by the Supreme Court to a larger bench. She further relied on the judgment of the Calcutta High Court in *Hirok Chowdhury and Ors. Vs. Khagendra Nath Mandal and Ors.*, MANU/WB/0812/2018 to contend that in the said case the High Court has held that it is the Courts under Section 2(1)(e) of the Act that will have jurisdiction to entertain the petition.

I am unable to agree with the submissions made by the counsel for the respondent. In the present case the Agreement records that the “venue” of arbitration is to be at New Delhi ‘only’. ‘Venue’ as used in the Arbitration Agreement would clearly be the ‘seat’ of arbitration as the ‘venue’ of arbitration cannot shift from New Delhi. The registered office of the respondent is also at New Delhi and the two Arbitrators that have been appointed by the parties are also from New Delhi. Clearly, therefore, this Court, in terms of the judgment of the Supreme Court in *Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited and Others*, (2017) 7 SCC 678 would have exclusive jurisdiction to entertain the present petition.

It is not the case of the respondent that the Arbitration Agreement

makes a distinction between the “seat” and “venue” of arbitration. In fact, as noted above, it prescribes the “venue” of arbitration to be New Delhi ‘only’, which in the present case clearly refers to the “seat” of arbitration.

In *Hardy Exploration, (Supra)* the Supreme Court was dealing with the question relating to the ‘International Commercial Arbitration’ in which case the “seat” and “venue” would have to be examined keeping in view the terms of the arbitration agreement itself. The present is a case of Domestic Arbitration and in any case, as noted above, there is no other indication of jurisdiction provided in the Work Order. Therefore, in terms of *Indus Mobile Distribution Private Limited, (Supra)* this Court would alone have jurisdiction to entertain the present petition.

In *Hirok Chowdhury and Ors., (Supra)* the Court was considering the following Clause:-

“12. Jurisdiction:

12.1 Only Courts having territorial jurisdiction over the Said Property shall be entitled to receive, try and entertain actions between the Parties arising out of the aforesaid arbitration proceedings.”

In view of the above Clause, the Calcutta High Court held that the Courts in terms of Section 2(1)(e) of the Act would be Courts of proper jurisdiction. Therefore, the said judgment would have no application to the facts of the present case.

In view of the above, I see no impediment in appointing a Presiding Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned work orders.

I appoint **Justice Pratibha Rani**, Retd. Judge of this Court (R/o 8-B,

Lodhi Estate, New Delhi-110003, Tel. No.: 21420268) as the Presiding Arbitrator. The Presiding Arbitrator shall give a disclosure under Section 12 of the Act before proceeding with the reference.

The petition is allowed in the above terms, with no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 18, 2018/rv