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

+ **ARB.P. 698/2017**

ZAGSON ENGINEERING LTD. Petitioner
Through: Counsel (appearance not given).

versus

SOKEO POWER PROJECTS PVT LTD Respondent
Through: Mr Sourav Roy, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **22.02.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the work order dated 21.12.2015 ('the Agreement'). The "special conditions" (which are a part of the agreement) contain an arbitration clause, which is set out below:-

"15. ARBITRATION

The parties hereto shall endeavor to settle all disputes and differences relating to and or arising out of the contract amicably. In the event of the parties fail to resolve any disputes amicably, the same shall be referred to arbitration in accordance with the arbitration and conciliation Act, 1996 as is prevalent in India. Each party shall be entitled to nominate an arbitrator and the two arbitrators so nominated shall nominate a third arbitrator. The arbitrator shall give a reasoned award. The place of Arbitration will be at Hyderabad, Telangana and the language of the arbitration shall be English.

The parties hereto agree that the contractor shall be obliged to carry out its obligations under the contract even in the event a

dispute is referred to arbitration. It is further clarified that the M/s Sokeo shall be entitled to retain 5% of contract prize which has become due and payable for any unfinished works or any matter under arbitration.”

2. It is clear from the above that the parties had agreed that the arbitration would be held in Hyderabad, Telangana. It is trite law that an arbitration agreement is an independent agreement and the parties are free to determine the place of arbitration. This Court in ***Bygging India Ltd. v. Lanco Infratech Ltd.: Arb.P. 479/2016, decided on 07.10.2016*** had held that in such cases, the Court having jurisdiction over the place of arbitration would have the jurisdiction under part-I of the Act. Paragraph 14 of the said decision is set out below:-

“14. It is also well settled that an arbitration agreement is an independent agreement and in terms of Section 20(1) of the Act, the parties are free to agree on the place of arbitration. In one sense, the place of arbitration is where the arbitration agreement is to be performed. Thus, clearly the Court having jurisdiction over the place of arbitration would indisputably have jurisdiction under Part-I of the Act.”

3. The controversy as to which Court would have the jurisdiction where the parties have decided that the arbitration be conducted at a specified place has been authoritatively put to rest by the Supreme Court in its decision in ***Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and Ors.: (2017) 7 SCC 678***. In that case, the parties had agreed that the arbitration shall be conducted at Mumbai. After considering the rival contentions, the Supreme Court observed 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 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.”

4. In view of the above, it is clear that this Court would not have the jurisdiction to entertain the present petition. Accordingly, the petition is disposed of with liberty to the petitioner to move to the appropriate Court.

VIBHU BAKHRU, J

FEBRUARY 22, 2018
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