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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION APPLICATION NO. 155 OF 2019**

Tata Consultancy Services Ltd	...Applicant
<i>Versus</i>	
UP Legislative Assembly Secretariat	...Respondent

Mr Rohan Kelkar, *with Shadad Khan & Amnita Kingaonkar, i/b IndiaLaw LLP, for the Applicant.*
Mr Aarohi Bhalla, *with Vinod Kothari & Ausman Gangoly, i/b Apex Law Partners, for Respondent No. 1.*

CORAM: G.S. PATEL, J.
DATED: 18th November 2019

PC:-

1. The application is under Section 11 of the Arbitration and Conciliation Act 1996. The applicant, Tata Consultancy Services Ltd., entered into an agreement with the UP Government. In this agreement, a copy of which is at Exhibit 'A', and the effective date of which is said to be 5th December 2015, the signatory on behalf of the UP Government was one Pradipkumar Dube, the Principal Secretary of the UP Legislative Assembly Secretariat, Vidhan Sabha Marg, Hazratganj, Lucknow 226 001.

2. Clause 10.2 has a dispute resolution and governing law provision which reads thus:

“10.2 Governing Law and Dispute Resolution. This Agreement shall be governed by and interpreted in accordance with the laws of India. All disputes or differences whatsoever arising between the Parties, out of or in relation to the construction, meaning and operation or effect of this Agreement or breach thereof, shall be settled amicably. If, however, the Parties are not able to resolve such dispute or difference amicably, the same shall be referred for Arbitration to a sole Arbitrator to be mutually agreed upon, and failing such agreement to an Arbitration tribunal consisting of three arbitrators. Each party will nominate an arbitration and thee two arbitrators by mutual agreement will appoint the third arbitrator to constitute the Arbitration tribunal. The Arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act 1996. The Arbitration proceedings will be carried out at Mumbai and the award made in pursuance thereof shall be binding on the Parties.”

3. Admittedly the agreement does not have a separate jurisdiction clause.

4. The present petition is brought against the UP Legislative Assembly Secretariat itself. To a question from the Court as to whether, notwithstanding the signature on the document, such a petition would lie, my attention was invited to Article 187 of the Constitution of India. However, this only says that each House of the Legislature must have a separate secretariat. In any case, the question may not arise since on behalf of the petitioner a draft

amendment is tendered proposing to name the Government of Uttar Pradesh through the UP Legislative Assembly Secretariat as the respondent. I will accept this amendment. The draft amendment is taken on record and marked 'X1' for identification with today's date. The amendment is allowed. Amendment is to be carried out within one week from today without need of reverification. The respondent waives service of the amended petition. A copy of the amendment has been given to the learned Advocate for the respondent in Court.

5. On behalf of the respondent, there is a jurisdictional objection based on territoriality. Citing *Swastik Gases Pvt Ltd v Indian Oil Corporation*,¹ it is submitted that Mumbai would have no jurisdiction. Not only are exclusionary words missing from the contract but there is no jurisdiction or forum selection clause at all.

6. This may not be an accurate submission. *Swastik Gases* was considered by the Supreme Court itself in *Indus Mobile Distribution (P) Ltd v Datawind Innovations Pvt Ltd*.² A clear distinction was drawn in that judgment between a jurisdictional or forum selection clause under Section 20 of the Code of Civil Procedure 1908 and the choice of a seat in an arbitration agreement. An attempt was made to argue that the emphasis in *Indus Mobile* was to a choice of a 'neutral' venue and that Mumbai cannot be said to be 'neutral'. I am unable to appreciate the submission and I see no reason why Mumbai should not be considered neutral. That description only means that it is a venue that favours neither one side nor the other.

1 (2013) 9 SCC 32.

2 (2017) 7 SCC 678.

To insist that, in a matter such as this, where one party is from Uttar Pradesh and the other party is from Mumbai, that the only forum is one which neither of these two jurisdictions is clearly incorrect. The later decision of the Supreme Court in *Brahmani River Pellets Ltd v Kamachi Industries Ltd*³ considers the question of seat and venue and a conjoint reading of both *Indus Mobile* and *Brahmani River Pellets Ltd* leaves no manner of doubt that it is a contractual choice that will be given recognition notwithstanding the provisions of Section 20 of the Code of Civil Procedure 1908.⁴

7. In this view of the matter, the venue and seat of the arbitration will have to be in Mumbai. That is the express provision of Clause 10.2.

8. The parties agree on the name of Smt Justice RP Sondur Baldota, former Judge of this Court as a learned sole arbitrator. All the disputes and differences arising from the agreement dated 5th December 2015.

(a) Appointment of Arbitrator: By consent, Smt RP Sondur Baldota, former Judge of this Court, is hereby nominated to act as a Sole Arbitrator.

(b) Communication to Arbitrator of this order:

(i) A copy of this order will be communicated to him by the Advocates for the Applicant

3 2019 SCC OnLine SC 929.

4 See also: *Union of India v Hardy Exploration and Production (India) Inc*, 2018 SCC Online SC 1640.

within one week from today of the order being uploaded.

- (ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s **Smt RP SondurBaldota,
Former Judge of this Court.**

Address C/o. Suman Jain, 11/13 Botawala Building, 2nd floor, Office No. 4A, Opp. Asiatic Central Library, Horniman Circle, Fort, Mumbai 400 001

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward her statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently in advance of her entering upon the reference to his arbitration. That statement will be retained on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as she nominates to obtain appropriate

directions in regard to fixing a schedule for completing pleadings, etc.

- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email id.
- (f) **Interim Application/s:** Liberty to the parties to make an interim application or interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.

(j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

9. The arbitration application is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)