

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5337 OF 2019

M/s Macwber Beekay Pvt. Ltd. Noida (Uttar Pradesh) Thr. Executive Director Rakesh Kumar Singh

-VS-

M/s Sunil Hitech Engineers Ltd. Saki-Naka, Andheri (East) Bombay 400072

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Amit Khare, Advocate for petitioner.
Shri S. V. Bhutada, Advocate with Shri Y.
Maheshwari, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.
DATE : September 19, 2019

The petitioner is aggrieved by the order dated 18/07/2019 which has been passed while considering an application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, the said Act) in the light of Clause-36 of the General Conditions of Contract by which the disputes if any between the parties were to be resolved through arbitration.

The petitioner filed an application under Section 9 of the said Act on 08/03/2019 initially in the Court of the learned Principal District Judge. The said proceedings were thereafter transferred to the Court exercising jurisdiction under Commercial Courts Act, 2015. The respondent herein raised an objection to the jurisdiction of

the said Court to entertain that application on the ground that as per provisions of Clause-16.2 of the General Conditions of Contract, the Courts at Mumbai alone had exclusive jurisdiction in all matters arising out of the said contract. When the said proceedings were pending, on 25/06/2019 the Company in question went into liquidation by virtue of commencement of liquidation proceedings. On 18/07/2019 the learned District Judge-1 held that in terms of Clause-16.2, the Court at Nagpur had no jurisdiction to entertain the application under Section 9 of the said Act. Accordingly the application at Exhibit-15 moved by the respondent was allowed and the application under Section 9 of the said Act was returned to the petitioner for filing the same before the proper forum.

2. Shri Amit Khare, learned counsel for the petitioner submits that the aspect of jurisdiction was wrongly decided by the Commercial Court. He referred to the pre-bid agreement and urged that on the Letter of Intent being issued to the petitioner, the terms stated in the pre-bid agreement formed part of the agreement dated 09/11/2011. He then referred to the developments that had taken place from 25/06/2019 the challenge as raised

to the aspect of jurisdiction would have to be considered in the light of the provisions of the Insolvency and Bankruptcy Code, 2016. He has referred to the subsequent developments in the form of orders passed by the National Company Law Tribunal as well as initiation of liquidation proceedings by the liquidator. According to him by virtue of interim directions issued by the Commercial Court, invocation of Bank Guarantee was restrained during pendency of the proceedings which arrangement has been continued even thereafter. He submits that as of now the petitioner as a creditor has lodged his claim before the liquidator and therefore the liquidator needs to be directed to consider those claims raised by the petitioner in accordance with law.

3. Shri S. V. Bhutada, learned counsel for the respondent on the other hand supported the impugned order. According to him by virtue of provisions of Clause-16.2 of the General Conditions of Contract the exclusive jurisdiction vested with the Courts at Mumbai. The application filed under Section 9 of the said Act at Nagpur was itself misconceived. He further submitted that by not referring to Clause-16.2 in the application filed under

Section 9 of the said Act, the petitioner had suppressed material facts. It was only by filing a reply to the said application that this aspect was pointed out. Placing reliance on the decision in ***Agarwal Industries Ltd. vs. Golden Oil Industries (P) Ltd. 1999 (3) Mh.L.J. 684*** it was submitted that since relevant facts were not pleaded the petitioner was not entitled for any further indulgence and the writ petition deserves to be dismissed on that count. He however does not dispute the subsequent events that have occurred by virtue of commencement of the liquidation proceedings.

4. I have heard the learned counsel for the parties and I have perused the relevant documents. It is undisputed that by invoking Clause-36 of the General Conditions of Contract the petitioner has taken recourse to the provisions of the said Act. The petitioner accordingly filed an application under Section 9 of the said Act. During pendency of the said proceedings the process of liquidation commenced on 25/06/2019. Clause-16.2 of the General Conditions of Contract vested exclusive jurisdiction with regard to all matters arising out of the said contract in the Courts at Mumbai. Clause-9 of the

pre-bid Consortium Agreement makes that agreement void in case a party is declared insolvent or gets wound up.

In the application that was filed under Section 9 of the said Act the petitioner sought to rely upon the facts that the said agreement was signed at Nagpur and the fact that the respondent had its registered office at Nagpur. It is in the light of these pleadings that the jurisdiction at the Court at Nagpur was invoked. In the application filed at Exhibit-15 along with the reply at Exhibit-10, the respondent relied upon Clause-16.2 of the General Conditions of Contract to urge the exclusive jurisdiction vested with the Courts at Mumbai.

5. After considering the relevant clauses of the said contract I find that the learned Principal District Judge-1 was justified in observing in the light of provisions of Clause-16.2 that the Court at Nagpur had no jurisdiction and the aspect of jurisdiction would be governed by Clause-16.2. Clause-9 of the Pre-Bid Consortium Agreement cannot be read as conferring jurisdiction to the Courts at Nagpur.

6. As regards the contention raised on behalf of the respondent that the petitioner had deliberately not referred to Clause-16.2 in its application filed under Section 9 of the said Act is concerned, as stated above the petitioner has sought to rely upon its stand that the agreement was signed at Nagpur, the Bank Guarantee was sought to be invoked from Nagpur and that the registered office of the respondent was at Nagpur. Since the petitioner sought to justify its invocation of jurisdiction at Nagpur by relying upon aforesaid aspects which ultimately are found not acceptable, it cannot be said that a deliberate reference was not made to those facts. Since it is found that Clause-16.2 governs the aspect of jurisdiction, I do not find any reason to interfere with the impugned order.

7. As per the order passed on 18/07/2019 while returning the application to the petitioner herein for filing it before proper forum, the parties had been directed to maintain status quo till 05/08/2019. On 01/08/2019 this Court continued that interim arrangement and the same stands extended till 20/09/2019. Hence while maintaining the orders passed below Exhibit-1 and Exhibit-15 in

Miscellaneous Civil Application No.195 of 2019 the interim protection which has been granted by this Court shall continue to operate for a period of three weeks from today without prejudice to the rights of the parties. It is noted that the request for extending the continuation of interim relief is opposed by the learned counsel for the respondent.

The writ petition is disposed of accordingly. It is clarified that this Court has not gone into correctness of the respective contentions urged by the parties and only the provisions of Clause-16.2 of the General Conditions of the Contract have been taken into consideration. All points are kept open. No costs.

JUDGE