

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.92 OF 2015

ORDER

M/s.Space Konstryst Private Limited, Hyderabad, the applicant company, seeks appointment of a sole Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), to resolve its claim for a sum of Rs.35,23,418/- raised against M/s.CPI Gera Realty India Private Limited, Pune, the respondent company.

Notice having been ordered upon this application on 07.08.2015, duly keeping open the issue of jurisdiction, Sri D.Srinivas Prasad, learned counsel, entered appearance for the respondent company and filed a counter.

The case of the applicant company is that it specialised in providing engineering, infrastructure and realty services to projects in the construction and real estate fields. The applicant company claims that it entered into an agreement on 29.08.2012 with the respondent company under which it was assigned the task of providing project management services in the respondent company's Greenfield Group Housing Project at Pune. It further claims that after receiving a sum of Rs.15,00,000/- at the time of signing the agreement, it commenced the project management consulting services on 01.09.2012 by deploying the entire project management consulting team on the site at Pune on 01.10.2012.

Disputes having arisen between the parties in relation to payments and delays, the applicant company addressed legal notice dated 18.12.2014 invoking the arbitration agreement in Article 24.2 of the agreement. The respondent company replied on 17.01.2015 denying its liability and calling the applicant company to visit Pune. The applicant company answered, *vide* letter dated 22.01.2015, expressing its inability

to incur additional expenditure by visiting Pune and requested the respondent company to come for a meeting at Hyderabad. As no meeting materialised, the applicant company is before this Court.

In its counter, the respondent company stated as under: The applicant company projected itself as a company with good credentials and experience in the area of providing management consulting services in residential projects but it did not even know the name of the project it was working on, viz., Gera's Greensville Trinity Towers, and not Greenfield Group Housing Project. According to the respondent company, this showed the casual approach of the applicant company. It however admitted execution of the agreement under which the applicant company was assigned with the task of providing project management services at Pune. Various rebuttals on the merits of the matter were set out by the respondent company. It asserted that the services of the applicant company were unsatisfactory. According to it, the delay was purely on the part of the applicant company and not on its part. The respondent company claimed that it sought a meeting with the applicant company to resolve the issues amicably at Pune, since the works were carried out there and the various defects and deficiencies could be seen and the issues could be easily sorted out there. The respondent company concluded the counter by stating that this Court had no jurisdiction to entertain the matter and that the application itself was premature.

Article 24 of the agreement dated 29.08.2012 relates to settlement of disputes. Article 24.2 states that if the parties do not succeed in negotiating resolution of a dispute, such dispute would be immediately submitted to non-binding arbitration under the Act of 1996 by an arbitrator appointed in accordance with the Rules. The Article

contemplates that the arbitration should be conducted in English and at a mutually agreeable venue in India.

Significantly, the agreement does not indicate as to where it was executed. There is no mention of the place of its execution in the first page and even the last page, where the parties affixed their signatures.

It is an admitted fact that the work to be executed under this agreement was at Pune. It is the specific contention of Sri D.Srinivas Prasad, learned counsel, that the agreement itself was executed at Pune. He would point out that the witness in whose presence both parties affixed their signatures to the agreement was one Anup Dighe, clearly a Maharashtrian. Though this Court cannot go by this singular fact alone, it is basically clear that the applicant company was awarded work as a project manager by the respondent company, which was styled as the 'client' in the agreement. The usual commercial practice when a work is being awarded by a Pune company to be executed at Pune, the agreement would ordinarily be executed at Pune itself. This assumption is further strengthened by the fact that the Pune company affixed its stamp on each page of the agreement, and its signatory affixed his signature adjacent thereto, but the applicant company did not affix its stamp thereon and its COO & Joint Managing Director merely signed on its behalf. It is not believable that, if the agreement had been executed at Hyderabad and the Pune company affixed its stamp thereon, the Hyderabad company would have failed to affix its own stamp, which would have been readily available. The contention of Sri D.Srinivas Prasad, learned counsel, that the subject agreement was executed at Pune therefore gains strength.

Section 11(12)(b) of the Act of 1996 makes it clear that the words 'High Court' shall be construed as a reference to the High Court within

whose limits the principal civil Court referred to in clause (e) of sub-section (1) of Section 2 is situated, and where the High Court itself is the Court referred to in that clause, to that High Court. Section 2(1)(e) of the Act of 1996 defines 'Court' as under:

'(e) "Court" means—

- (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
- (ii) in the case of international commercial arbitration, the high Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;'

As this Court does not exercise ordinary original civil jurisdiction, it is clear that unless the Court, as defined in Section 2(1)(e) of the Act of 1996, falls within the jurisdiction of this Court, an application under Section 11(6) would not lie to this Court. However, as already stated *supra*, neither is the respondent company situated within the jurisdiction of this Court, as its registered office is at Pune, nor was the agreement between the parties executed within the jurisdiction of this Court. Significantly, the work to be executed under the agreement, being part of the cause of action, also does not fall within the jurisdiction of this Court as it was to be carried out entirely at Pune. This Court therefore lacks the territorial jurisdiction to entertain this application.

The Arbitration Application therefore fails on this short ground and is accordingly dismissed. No order as to costs.

SANJAY KUMAR, J

10th APRIL, 2019

PGS

