

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

FAO No. 2791 of 2015 (O&M)
Date of decision: 11.7.2019

M/s Shivalik Fastners Private Limited and another

...Appellants

Versus

Union of India and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Anil Kumar Aggarwal, Advocate,
for the appellants.

Mr. Amit Kumar, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short '**the Act**') seeking to set aside the judgment dated 21.2.2015 passed by the Additional District Judge, Sahibzada Ajit Singh Nagar (Mohali), dismissing the objections filed under Section 34 of the Act for setting aside arbitral award dated 18.9.2012.

2. A few facts need to be noticed for adjudication of the instant case. The respondents herein floated a tender No. 02081119 for purchase of the item called "Transom Complete for Air Spring Suspension Bogie". In response to the tender, the appellants submitted their offer for supply of 1428 number of the said item at the basic price of ₹12,700/-, vide his offer dated 23.7.2008. The offer was accepted by the respondents and Purchase

Order was subsequently issued on 27.9.2008. Thereafter, a dispute arose between the parties regarding excise duty, sales tax etc. to be paid. The matter was referred to an Arbitrator for settlement, as per the terms of the reference, which are as under:-

“Whether the claim for refund by M/s Shivalik Fastners Pvt. Ltd. for an amount of Rs. 6,24,215/- which was deducted by the ICF Administration towards ED & ST, despite issuing a Modification No.1 dated 14.11.2008 against Purchase Order No. 02/08/1119/1650/S dated 27.09.2008 is correct. If so, what is the relief.”

3. The Arbitrator so appointed came to the conclusion that an amount of ₹6,24,215/-, had rightly been deducted towards excise duty, sale tax etc. and the plea for refund of the same was rejected. Aggrieved against the said award, objections under Section 34 of the Act came to be filed before the Additional District Judge, Mohali, who, on merit, came to the conclusion that there was no infirmity in the award so passed and dismissed the objections. Aggrieved against that judgment, the instant appeal has been filed.

4. Appearance has been caused on behalf of the respondents, who have taken preliminary objections regarding maintainability of the appeal as well as the objections filed before the Additional District Judge, Mohali. The ground of territorial jurisdiction has been raised by the learned counsel appearing on behalf of the respondents, who urges that, as per the terms of the agreement, the arbitration was held in Chennai as well as an award was passed in Chennai itself and if the appellants were aggrieved against the award, they ought to have filed objections in Chennai itself instead of

approaching the courts at Mohali. It is also argued that the Additional District Judge rightly came to the conclusion that there was no merit in the objections so filed, while stating that the question of territorial jurisdiction had not been gone into. In support of his contention, learned counsel for the respondents relies on the judgment rendered in **Indus Mobile Distribution Versus Datawind Innovatons Private Limited and others 2017 AIR (SC) 2105.**

5. Learned counsel appearing on behalf of the appellants would argue that the contract in fact had been accepted at Mohali and, therefore, the courts at Mohali would have the jurisdiction to entertain the objections filed. It is also argued that the respondents herein had not raised or argued the question regarding want of jurisdiction to entertain the objections filed under Section 34 of the Act before the Additional District Judge, Mohali, and there is deemed waiver of the objection. He places reliance upon Section 4 of the Arbitration and Conciliation Act, 1996 in support of his argument.

6. I have heard learned counsel for both the parties and with their assistance have also gone into the terms and conditions of the agreement entered between the parties and the judgment as relied upon by the learned counsel appearing on behalf of the respondents. The relevant clauses of the agreement are re-produced hereunder:-

“2702. Irrespective of the place of delivery, the place of performance or place of payment under the contract, the contract shall be deemed to have been made at the place from which the acceptance of tender has been issued.

2703. Jurisdiction of courts. This Courts of the place from where the acceptance of tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the contract.

xx xx xx

2900. Arbitration.

(a) to (f)

xx xx xx

(g) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine.”

7. It is not in dispute that in response to a tender that had been floated, an offer was made by the appellants herein, which was accepted and the tender was issued at Chennai. The argument raised by the learned counsel for the appellants that the courts at Mohali would have the jurisdiction to decide the objections under Section 34 of the Act, by relying upon the Contract Act, is not sustainable, as the terms of the agreement clearly specify that “the contract shall be deemed to have been made at the place from where the acceptance of tender has been issued”. In other words, a plain reading of the said clause would mean that the contract is made at the place where the tender is accepted. Furthermore, the jurisdiction of the courts have been specified in Clause 2703 which clearly reads that the courts where the acceptance of the tender has been issued would have the exclusive jurisdiction to decide any dispute arising out of or in respect of the contract. Even the venue of the arbitration has been fixed to be at the place from which the acceptance note is issued or such other place as the Arbitrator may determine. A conjoint reading of the terms of

the agreement leads one to an inescapable conclusion that it was the courts at Chennai which would have the exclusive jurisdiction to entertain the objections filed under Section 34 of the Act.

8. Another argument that has been put forth by the learned counsel for the appellants is that there is deemed waiver of objection regarding the territorial jurisdiction by relying upon Section 4 of the Act. Section 4 of the Arbitration and Conciliation Act, 1996 is re-produced as under:-

“4 Waiver of right to object. —*A party who knows that—*
(a) any provision of this Part from which the parties may derogate, or
(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.”

9. The argument as raised might have merit if the counsel for the appellants had been able to establish that the respondents herein had not raised any objection regarding territorial jurisdiction. A perusal of the impugned judgment would reflect that the respondents had taken a preliminary objection regarding maintainability of objections under Section 34 of the Act at the courts at Mohali. The relevant portion regarding objections taken, as reflected from the impugned judgment itself, is re-produced as under:-

“... this Court has no territorial jurisdiction to entertain and try the petition and this petition is barred by limitation prescribed

under Section 34 (3) of the Arbitration Act....”

10. The Additional District Judge in his wisdom proceeded to decide the objections on merit and upheld the award so passed, without dealing with the issue regarding territorial jurisdiction. In such eventuality, it cannot be said that the respondents herein had abandoned or waived their rights to argue on the question of territorial jurisdiction by the court at Mohali to entertain the objection under Section 34 of the Act. In the **Indus Mobile Distribution (supra)**, the Hon'ble Supreme Court, after consideration of several judgments, has held in no uncertain terms as under:-

“20. 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.

21. It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts.

*For an 19 Page 20 exhaustive analysis of the case law, see **Swastik Gases Private Limited v. Indian Oil Corporation Limited**, (2013) 9 SCC 32. This was followed in a recent judgment in **B.E. Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited**, (2015) 12 SCC 225. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly.*

11. In the case, referred to above, a question arose as to whether the courts at Mumbai alone would have the jurisdiction in respect of the dispute arising out of an agreement ousting the jurisdiction of other courts, where the seat of arbitration was fixed at Mumbai. The facts of **Indus Mobile Distribution (supra)**'s case would be applicable to the instant case where the seat of arbitration and the venue was fixed at Chennai itself and, therefore, proceedings under Section 34 of the Act ought to have been filed at Chennai.

12. Mr. Anil Kumar Aggarwal, learned counsel for the appellant also argued that the contract came to be concluded by acceptance at Mohali, by relying upon Section 4 of the Contract Act, 1872 and argues that if acceptance was made at Mohali, the courts therein would have the jurisdiction to entertain the objections filed under Section 34 of the Act.

However, this Court is of the opinion that this argument is not sustainable.

No doubt, the contract was concluded on its acceptance at Mohali, but the terms and conditions of the contract/agreement have to be read, which term specifically provides “*irrespective of the place of delivery, the place of performance or place of payment under the contract, the contract shall be deemed to have been made at the place from which the acceptance of tender has been issued*”. Thus, it is clear that since the acceptance of the tender was made in Chennai, therefore, only the courts at Chennai would have the jurisdiction to entertain the objections filed under Section 34 of the Act. Even otherwise, there is an exclusive jurisdiction clause of which the appellants herein are signatory and jurisdiction has been conferred upon the courts from where the acceptance of tender has been issued and therefore, once there is an exclusive clause conferring jurisdiction upon the court, which in the instant case would be Chennai, the objection ought to have been filed in Chennai itself.

13. Finding no merit in the contention that the Mohali courts had the jurisdiction to entertain the objections under Section 34 of the Act, this appeal is dismissed.

14. At this stage, learned counsel for the appellants seeks liberty to approach the courts at Chennai. The appellants are at liberty to file objections along with an application for condonation of delay, if any, which will be dealt with in accordance with law.

11.7.2019

prem

Whether speaking/reasoned

Whether reportable

(JAISHREE THAKUR)

JUDGE

Yes

Yes