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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(MISC.)(COMM.) 73/2019**
GAMMON ENGINEERS AND CONTRACTORS PVT. LTD.

..... Petitioner

Through: Mr.Pawan Upadhyay, Mr.Rajesh
Chhetri & Mr.Ratik Sharma, Advs.

versus

NHPC LTD

..... Respondent

Through: Mr.Anil Nag & Mr.Arun Singh,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
25.03.2019

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1. This petition under Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking extension of time for the Arbitral Tribunal to pass the Award adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 14.11.2002 executed between the parties for the Civil & Hydro-Mechanical Works for Power House, Pressure Shaft, Surge Shaft & Part HRT (LOT-PB.3) for Parbati HE Project (Stage-II).
2. The counsel for the respondent has raised a preliminary objection on the territorial jurisdiction of this Court to entertain the present petition. Relying upon Clause 5.2 of the General Conditions of Contract (GCC) he submits that only Courts at Haryana would have exclusive jurisdiction to entertain the present petition. Clause 5.2 of the GCC is reproduced hereinbelow:-

“5.2 In respect of all matters or actions arising out of the Contract and which may arise at any time, the Courts in

Haryana shall have exclusive jurisdiction, subject to Clause 37 hereof (Settlement of Disputes). ”

3. On the other hand, the learned counsel for the petitioner submits that Clause 37.5 of the GCC states that the arbitration proceedings shall be held in New Delhi/Faridabad. In the present case, all arbitration proceedings have been conducted at Delhi and therefore, Delhi Courts alone shall have the exclusive jurisdiction to entertain the present petition. He places reliance on the Judgment dated 28.05.2015 passed in FAO(OS) 131/2015 titled ***NHPC Limited vs. Hindustan Construction Company Ltd.***, and on ***Olympic Oil Industries Ltd. vs. Practical Properties Pvt. Ltd.***, MANU/DE/1707/2018. Further, relying upon the Judgment of the Supreme Court in ***Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited***, (2017) 7 SCC 678, he submits that as the arbitration proceedings have been conducted at Delhi, Delhi is the seat of arbitration, vesting exclusive jurisdiction to this Court to entertain the present petition.

4. I have considered the submissions made by the learned counsels for the parties. Clause 37.5 of the GCC reads as under:-

“37.5 Arbitration proceedings shall be held at New Delhi/Faridabad, India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.”

5. A reading of the above Clause would clearly show that the arbitration proceedings could be held at New Delhi or Faridabad. The said Clause, therefore, refers only to the ‘venue’ of arbitration. As held by the Supreme Court in ***Union of India vs. Hardy Exploration and Production (India) Inc.***, 2008 (11) SCALE 733, under Section 20(1) & (2) of the Act, the determination of the ‘seat’ of arbitration is to be made either by the parties

or by the Arbitral Tribunal having regard to the circumstances of the case, including the convenience of the parties. Merely because the arbitration proceedings are held at Delhi, would not make Delhi the ‘seat’ of arbitration. In the present case the Clause 5.2 of the Agreement, infact indicates a contrary intention of the parties as it vests exclusive jurisdiction in the Courts at Haryana.

6. I may also note that the respondent has also filed a Writ Petition, being Civil Writ Petition No. 22680/2018, challenging the order of the Arbitral Tribunal fixing the fee structure of the members of the Arbitral Tribunal before the Punjab and Haryana High Court and the said petition is stated to be pending adjudication. Though the respondent is not right in its submission that the filing and pendency of the said petition would itself attract Section 42 of the Act, in my opinion, the petitioner having not challenged the jurisdiction of the Punjab and Haryana High Court in those proceedings, cannot contend that merely because the arbitration proceedings are being held at Delhi, it would make Delhi the ‘seat’ of arbitration, vesting exclusive jurisdiction in this Court in relation to the arbitration proceedings.

7. In *Hindustan Construction Company Ltd.* (Supra), there was no dispute between the parties that Delhi was the seat of arbitration. The only issue raised was that as the Contract was signed at Faridabad and the Registered Office of one of the parties was at Faridabad and no part of cause of action had arisen at Delhi, this Court would not have the jurisdiction. It was further contended that NHPC Ltd., the appellant therein, had earlier filed an application under Section 14(2) of the Act in the Courts at Faridabad and therefore, under Section 42 of the Act, only that Court would have jurisdiction. Clause similar to Clause 5.2 in the present case was not under

consideration before the Court in the said case.

8. In *Olympic Oil Industries Ltd.* (Supra), Clause 17 of the Agreement clearly provided that seat of arbitration shall be at Delhi. Further Clause 18 vested exclusive jurisdiction to Courts at New Delhi. Applying the judgment of the Supreme Court in *Indus Mobile Distribution Private Limited*, (Supra) this Court held that this Court would have exclusive jurisdiction.

9. As noted hereinabove, Clause 37.5 of the GCC merely provides for venue of arbitration to be at Delhi or Faridabad. Infact, even exclusivity of venue at Delhi is not provided in the said Agreement. Admittedly in the entire arbitration proceedings, though the same have been held in Delhi, there has been no determination on the seat of arbitration to be at Delhi, either by the parties or by the Arbitral Tribunal.

10. In view of Clause 5.2 of the GCC, therefore, in my opinion this Court would lack territorial jurisdiction to entertain the present petition.

11. Even otherwise, the Agreement was executed at Faridabad, Haryana and the registered office of the respondent is also at Faridabad, Haryana. No cause of action has arisen within the territorial jurisdiction of this Court. Therefore, even in terms of Section 2(1)(e) of the Act, only Courts at Faridabad would have the territorial jurisdiction to entertain the present petition.

12. The petition is dismissed granting liberty to the petitioner to file the same before the competent Court of jurisdiction.

NAVIN CHAWLA, J

MARCH 25, 2019/rv