

September 04, 2020
ARDR

(Via Video-conference)

FMAT 226 of 2020
+
CAN 1 of 2020
(Old No. CAN 2613 of 2020)
+
CAN 2 of 2020
(Old No. CAN 5169 of 2020)
+
CAN 3 of 2020
(Old No. CAN 5170 of 2020)

CART-Roadwings JV & ors.
Vs.
South Eastern Coal Fields Ltd. & Ors.

Mr. Debraj Sinha,
Mr. Kaushik Saha,
Mr. Saptarshi Kumar Mal
...for the Appellants/Applicants.
Ms. Soni Ojha,
...for the respondent/Axis Bank.

The appellants/applicants undertake to affirm and stamp the petition/applications as per the Rules within one month of resumption of normal functioning of the Court. The petition and the applications are taken up through videoconference on the basis of such undertaking.

This appeal is arising out of an order passed by the Commercial Court at Alipore in Money Suit No.40 of 2019 filed by the South Eastern Coal Fields Ltd. (hereinafter referred to as the "Applicant) for return of the plaint to be presented before the appropriate Court. The prayer is made based on the agreement,

which contains a jurisdiction clause. The applicant is having its registered office at Bilaspur.

On 4th May, 2016, a global tender was floated for hiring heavy earth moving machine for removal of over burden. The tender was floated for execution of a work at Sohagpur area or at other areas. The global competitive bid for the contract was in online e-tender mode wherein the prospective bidders had participated and quoted the rate after express acceptance of the terms and conditions of the Notice Inviting Tender. The bid of the appellant was accepted and it was declared a successful bidder. On the basis thereof, the Letter of Intent (hereinafter referred to as "LOI") dated 27th September, 2016 was issued.

Clause 26.1 of the Notice Inviting Tender mentions the following jurisdiction clause:

"The matter related to any disputes or differences arising out of this bid and subsequent contract awarded based on the bid shall be subject to the jurisdiction of Bilaspur Court only".

In terms of Clause 13 of the Work Order dated 6th March, 2017 it was decided that the matter related to any disputes or differences arising out of the work order and subsequent contract/agreement entered into by and between the parties based on the tender work order shall be subject to the jurisdiction of Court (Bilaspur, Chattrishgarh) only.

It is elementary that in case of a breach of contract the guiding factor for determining the

jurisdiction of the Courts would be either the place where the contract is concluded or performed or breach had occurred.

It is also elementary that by an agreement the parties conferred jurisdiction upon a court which he does not possess. Having regard to the documents and record and the averments in the plaint, it cannot be disputed that the contract was accepted at Bilaspur and execution of the contract was also in the State of Madhya Pradesh. If any of the elements conferred under jurisdiction of the Court is present, however, insignificant it may be, and the parties have with their eyes open had agreed to the jurisdiction on a particular Court irrespective of the word 'only' or exclusive the intention of the parties are clearly discernable to confer jurisdiction on that Court only in case the dispute arises between the parties.

Having regard to the widely worded jurisdiction clause in the Notice Inviting Tender as well as in the Work Order and having regard to the fact that those places were also inextricably connected with the contract, we are not inclined to interfere with the order passed by the learned Trial Judge of the Commercial Division.

Accordingly, the appeal stands dismissed. The periods spent before the learned Trial Judge as well as before us stand excluded for the purpose of limitation

and the plaintiff and the appellant would get the benefit of Section 14(2) of the Limitation Act in the event the plaint is presented before the appropriate Court having the jurisdiction in terms of the order of the trial court.

In the facts and circumstances, there shall be no order as to costs.

By consent of the parties, the appeal and the connected applications being CAN 1 of 2020 (Old No. CAN 2613 of 2020) + CAN 2 of 2020 (Old No. CAN 5169 of 2020) + CAN 3 of 2020 (Old No. CAN 5170 of 2020) are heard together and are disposed of by this order.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)