

HIGH COURT OF CHHATTISGARH AT BILASPUR**ARBITRATION REQUEST NO. 7 OF 2019**

- Prasad Engineering No.9, Opp. to Sampda Campus, Rajeev Vihar, R.K. Nagar, Bilaspur, through Signatory Virendra Prasad.

... Applicant**Versus**

1. B.G.R. Energy Systems Ltd., 443 Anna Salai Teynampet, Chennai 600018 Tamil Nadu, India.
2. Marwa Thermal Power Project, 2x5000 Mw, A/c BGR Energy Systems Ltd., Janjgir Champa (CG)

... Non-applicants

For Applicant	:	Mr. Sushobhit Singh, Advocate
For Non-applicants	:	Mr. Pawan Kesharwani, Adv., & Mr. Chandresh Shrivastava, Adv.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/08/2021**

1. Present is an Application filed by Applicant under Section 11(6) of the Arbitration and Conciliation Act, 1996. The request by Applicant is for appointment of an Arbitrator for resolving the dispute that has arisen between Applicant and Non-applicants.
2. Upon notice being sent by this Court, the Non-applicants entered their appearance and have questioned the jurisdiction of this Court in entertaining the present Application in terms of the specific Agreement that has been entered into between the parties for resolving the dispute if any between the parties.
3. It would be relevant at this juncture to refer to the clauses dealing with the resolution of disputes and also governing laws and jurisdiction, as per the terms and conditions of the Annexure to the Service Order (Annexure A-1):-

“g. **Resolution of Disputes:-** M/s. Prasad Engineering Works & M/s. BGR shall make every effort to resolve amicably by direct informal negotiations, any agreement or dispute arising between them or in connection with the contract.

h. If at any time there should be any question, dispute or difference between the parties in respect of any matter arising out of or in relation to this, the same shall be settled. If the parties fail to settle any of the question, dispute or difference through negotiations, the same shall be referred to arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 and the rules made there under and any statutory modifications or re-enactments thereof that may be made from time to time and actually in force at the time of reference.

i. The cost of arbitration shall be borne by the parties in the ratio to be agreed upon by the parties. The venue of arbitration shall be Chennai.

j. **Governing Law and Jurisdiction:-** M/s. Prasad Engineering and M/s. BGR Energy have to agree that this contract shall be governed by and be constructed and interpreted in accordance with the laws in force in India. Courts at Chennai will have exclusive Jurisdiction in all matters arising under this contract.”

4. From the afore given facts and specific Agreement entered into between the parties, it is clearly reflected that the parties have agreed to have exclusive jurisdiction clause for the purpose of resolving the disputes and approaching the Courts if need so arises. In terms of the exclusive jurisdiction clause, the parties have agreed upon the Courts at Chennai to be the Courts for redressal of their grievances.

5. At the time of entering into the Contract between the parties, either side has with eyes wide open and with full consciousness accepted the condition of jurisdiction to a particular Court in the event of either party requiring intervention of the Court of law for settlement of the disputes. The parties in the instant case had agreed upon the jurisdiction to the Courts at Chennai. Having accepted the said condition which also finds place in the Contract itself accepted by both the parties, under the

exclusive jurisdiction clause it would be the Courts at the agreed place alone which would have the jurisdiction even for raising the demand of settlement of disputes by way of Arbitration.

6. The Hon'ble Supreme Court recently in the case of **BGS SGS Soma JV v. NHPC Limited [2020 (4) SCC 234]**, dealing with the issue of agreed jurisdiction upon a Court in the Contract, has extensively referring to all the recent past judgments on the issue of jurisdiction of a Court *qua* the agreement between the parties choosing the jurisdiction, in para-61 emphatically held that wherever there is an express designation of a venue and no designation of any alternative place, the inexorable conclusion is that, the stated venue would be actually the juridical seat of the arbitral proceeding also. The Hon'ble Supreme Court has clearly discussed on the exclusive jurisdiction clause entered into between the parties in the Contract.

7. The Hon'ble Supreme Court further in the said judgment has also said that if the parties would not have entered into an agreement deciding the jurisdiction of a Court, then under the normal circumstances the proceeding could had been initiated at more than one place which includes any place where even part cause of action has arisen. Whereas, if the parties have agreed upon conferring the jurisdiction at a particular place, under no circumstances can any other Court has the jurisdiction to entertain the litigation between the parties arising out of the Contract where there is a specific Agreement deciding the jurisdiction of a Court.

8. The Hon'ble Supreme Court further in the said judgment in para- 81 & 82 has held as under:

“81. Most recently, in *Brahmani River Pellets* (supra), this Court in a domestic arbitration considered Clause 18 – which was the arbitration agreement between the parties – and which stated that arbitration shall be under Indian Arbitration and Conciliation Act, 1996, and the venue of arbitration shall be Bhubaneswar. After citing several judgments of this Court and then referring to *Indus Mobile Distribution* (supra), the Court held:

“18. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the “venue” of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in *Swastik*, non-use of words like “exclusive jurisdiction”, “only”, “exclusive”, “alone” is not decisive and does not make any material difference.

19. When the parties have agreed to the have the “venue” of arbitration at Bhubaneshwar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order is liable to be set aside.”

82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral

proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an International context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”

9. In view of the aforesaid legal position as it stands and the Agreement entered into between the parties, the present Application as moved by the Applicant before this Court would therefore not be tenable and the jurisdiction as such would be in the Courts where the parties have agreed to have an exclusive jurisdiction for resolving their disputes and for appointment of an Arbitrator.

10. Learned Counsel for Applicant at this juncture prays that liberty be reserved for Applicant to approach the Court where the parties by way of Agreement had conferred jurisdiction.

11. The prayer made by Applicant is not opposed by learned Counsel for Non-applicants.

12. Accordingly, with aforesaid liberty, the present Application under Section 11(6) of the Arbitration and Conciliation Act is dismissed for want of jurisdiction in terms of the above-stated legal position.

Sd/-
(P. Sam Koshy)
Judge

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