

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 24/08/2021

Order Passed on : 17/11/2021

W.P.(227) No.393 of 2021

1. South Eastern Coalfields Limited Seepat Road, Bilaspur (Chhattisgarh)
Through The Chairman Cum Managing Director, SECL, Seepat Road,
Bilaspur Chhattisgarh
2. The General Manager, Kusmunda Area, PO Kusmunda, District Korba,
Chhattisgarh
3. The Staff Officer (Mining) SECL, Kusmunda Area, PO Kusmunda,
District, Korba (Chhattisgarh)

---- Petitioners

Versus

- M/s Sri Balaji Metals & Minerals Pvt. Ltd., through: Raghav Lakhotia,
Director 23-A, Netaji Subhas Road, 3rd Floor, Kolkata (WB)

---- Respondent

With

W.P.(227) No. 415 of 2021

- M/s Sri Balaji Metals & Minerals Private Limited Through: Raghav
Lakhotia Director, 23-A, Netaji Subhas Road, 3rd Floor, Kolkata (W.B.)

---- Petitioner

Versus

South Eastern Coalfields Limited, Seepat Road, Bilaspur, (C.G.) Through:

1. The Chairman Cum Managing Director, SECL Seepat Road, Bilaspur
Chhattisgarh
2. The General Manager, Kusmunda Area, P. O. Kusmunda District: Korba,
Chhattisgarh
3. The Staff Officer (Mining) SECL Kusmunda Area, P. O. Kusmunda
District: Korba, Chhattisgarh

---- Respondents

(In W.P.(227) No.393/2021):-

For Petitioners :Mr. Kishore Bhaduri, Sr. Advocate with Mr. Sunny Agrawal and Mr. Vivek Chopda, Advocates.

For Respondent :Mr. S.B. Upadhyay, Sr. Advocate with Mr. Ankit Pandey, Advocate.

(In W.P.(227) No.415/2021)

For Petitioner :Mr. S.B. Upadhyay, Sr. Advocate with Mr. Ankit Pandey, Advocate.

For Respondents :Mr. Kishore Bhaduri, Sr. Advocate with Mr. Sunny Agrawal and Mr. Vivek Chopda, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

17/11/2021

1. Both the petitions under Article 227 of Constitution of India have been brought challenging the order dated 07.07.2021 passed by the learned Commercial Court (District level), Atal Nagar, Naya Raipur, C.G., by which the learned Commercial Court has held that Commercial Court in Naya Raipur does not have the territorial jurisdiction to decide the reference.
2. The petitioners in W.P.(227) No.393/2021 shall be referred to as 'petitioners' and the respondent in this petition, who is also petitioner in W.P.(227) No.415/2021 shall be referred to as 'respondent' in this order.

3. The brief facts of the case are these that after the completion of tender process of the work order was issued to the respondent M/s Shri Balaji Metals & Minerals Pvt. Ltd. As on 16.07.2007, the cost of the work was Rs.50,17,19,700/-. The time fixed for completion of work was 3 years, but the contract could not be completed and the contract was terminated by the petitioner vide order dated 31.08.2009. The left over work was completed by a third party according to the terms of contract.
4. The notice of recovery was issued against the respondent. Respondent raised objection and brought for consideration of the Committee as per the clause 12 of the contract. The petitioner constituted such Committee which was to submit a report with respect to the dispute present between the parties. The respondents then preferred a Writ Petition before the High Court which was disposed off by the High Court on 05.07.2012 by issuing some directions. As per the direction issued, the Committee which was constituted, heard both the parties and passed award on 31.12.2012 holding the decision of the petitioner regarding termination of contract and regarding issuance of notice for recovery of amount as legal and correct.
5. The respondent then again moved an application before the High Court of Chhattisgarh seeking modification of order dated 05.07.2012 in the Writ Petition which was disposed off vide order dated 07.01.2013, holding that the respondent shall have the liberty to raise objection before the appropriate forum under the Arbitration and conciliation Act, 1996 i.e. before the Commercial Court at Naya Raipur, C.G. against the award of the Committee

dated 31.12.2012. The Commercial Court, Raipur in the initial round allowed the application and the award of the Committee dated 31.12.2012 was set aside vide order dated 24.01.2017 holding that the Committee constituted was not in accordance with the law. The petitioner then preferred appeal before the High Court under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996') which was dismissed and the order passed by the Commercial Court was affirmed.

6. The petitioner then filed a Special Leave Petition (C.) No.16988 of 2018 before the Hon'ble Supreme Court. This S.L.P. was decided by the Supreme Court vide order dated 20.07.2018 by which all the earlier orders passed were set aside, a sole Arbitrator was appointed for arbitrating on the dispute present between the parties, in which the venue of the arbitration was fixed at New Delhi. The sole Arbitrator Hon'ble Mr. Justice Ashok Kumar Mathur, former Judge of Hon'ble Supreme Court, proceeded with the arbitration and passed the award dated 28.01.2020. This award was challenged before the Commercial Court, District level, Nava Raipur, C.G. It is in that proceeding, the learned Commercial Court has held that the Court is not vested with territorial jurisdiction to decide the issue present between the parties.
7. It is submitted by the learned Senior counsel for the petitioner that the learned Commercial Court has erroneously relied upon the judgment of Supreme Court in the case of **B.G.S. S.G.S. Soma J.V. Vs. N.H.P.C. Limited** reported in (2020) 4 Supreme Court

Cases 234. The place of sitting of the sole Arbitrator was decided by the Supreme Court only for the convenience of the learned Arbitrator. Whereas, the dispute between the parties has arisen in Chhattisgarh. It is submitted that it was only the venue of Arbitration for which the parties had agreed that it should be in Delhi for the convenience of the Hon'ble Arbitrator.

8. Initially the arbitration award was passed by the Committee constituted by the petitioner in Chhattisgarh State and the same was challenged before the learned Commercial Court of Chhattisgarh State, which was decided by the Commercial Court itself. Therefore, the Commercial Court, Raipur is the only Court which has jurisdiction to entertain the application under Section 34 of the Act, 1996 (hereinafter referred to as 'the Act, 1996'). Hence, this petition is fit to be entertained, therefore, relief is prayed for.
9. Learned Senior Counsel for the respondent submits in reply to opposes the submissions made by the learned counsel for the petitioner and submits that the arbitration in the present case was held in Delhi. Respondent has already filed an application under Section 34 of the Act, 1996 in the Court at Delhi. According to the judgment in B.G.S. S.G.S. Soma J.V. Vs. N.H.P.C. Limited (Supra), both the Courts in Raipur as well as in Delhi have jurisdiction to entertain the application under Section 34 of the Act, 1996. The learned Commercial Court has held that both the parties have chosen Delhi as Seat of Arbitration as provided under Section 20(1) of the Act, 1996. It is submitted that according to the contract between the parties, both the parties have agreed for the Seat of Arbitration to be within the jurisdiction of

Commercial Court at Raipur. The learned Commercial Court has misconstrued the venue of arbitration to be Seat of Arbitration.

10. Reliance has been placed on the judgment of Supreme Court in the case of **Swastik Gases Private Limited Vs. Indian Oil Corporation Limited** reported in (2013) 9 Supreme Court Cases 32, in which it is very clearly held, that when the parties have agreed to the contract specifying the jurisdiction of the Court of a particular place, that is a clause in the agreement in exclusion of all the other Courts.

11. Reliance has also been placed on the judgment of supreme Court in the case of **Hindustan Construction Company Limited Vs. N.H.P.C. Limited & Anr.** reported in (2020) 4 Supreme Court Cases 310, **Brahmani River Pellets Limited Vs. Kamachi Industries Limited** reported in (2020) 5 SCC 462, **Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd. & Ors.** reported in (2017) 7 Supreme Court Cases 678, **Emkay Global Financial Services Ltd. Vs. Girdhar Sondhi** reported in (2018) 9 Supreme Court Cases 49.

12. It is further submitted by the learned Senior Counsel for the respondent that the order of the Supreme Court directing the place for arbitration for the convenience of the learned Arbitrator is meant only to describe the venue of the arbitration and that should not be considered as Seat of Arbitration. Hence, clearly the **B.G.S. S.G.S. Soma J.V. Vs. N.H.P.C. Limited** (Supra) Case shall not be applicable. It is only the Seat at Bilaspur as agreed by the parties, where the jurisdiction vests with the Commercial Court at Raipur, because there is no such Court present, and functioning

in Bilaspur. Hence, the impugned order is not sustainable.

13.In reply, learned Senior Counsel for the petitioner submits that the order of the Supreme Court and the S.L.P. cannot be regarded as having effect to oust the clause 32 of agreement between the parties. Hence, the impugned order is not sustainable.

14.Heard learned counsel for the parties and perused the documents present on record.

15.The prayer in both the petitions is for quashing the impugned order. The order that was passed by the Hon'ble Supreme Court in Civil Appeal No.6852 of 2018 passed on 20.07.2018 regarding appointment of the sole arbitrator.

16.The petitioner and the respondent both being aggrieved by the arbitration award dated 28.01.2020 passed by the learned Arbitrator filed separate applications under Section 34 of Act, 1996. The application of the petitioner was registered as Arbitration M.J.C. No.14/2020 and the application of the respondent was registered as Arbitration M.J.C. No.06/2020. The learned Commercial Court by its own notion framed a legal question, whether the Commercial Court at Raipur has the territorial jurisdiction to consider and decide the applications filed by both the parties. In the impugned order, the learned Commercial Court made observation to this fact that both the parties had agreed that the seat for arbitration under Section 20 (1) of the Act, 1996 shall be at Delhi and on that basis, the impugned order was passed.

17.As per the submissions made by the learned counsel for both the

parties, the seat for arbitration and venue for arbitration both have different meaning. The Supreme Court has in the case of B.G.S. S.G.S. Soma J.V. Vs. N.H.P.C. Limited (Supra) case held in paragraph 82 :-

“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.”

18. Similarly, in the case of Swastik Gases Private Limited Vs. Indian Oil Corporation Limited (Supra), it was held in paragraph 32 by the Supreme Court which is as follows:-

“**32.** For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like ‘alone’, ‘only’, ‘exclusive’ or ‘exclusive jurisdiction’ have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties - by having clause 18 in the agreement – is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like clause 18 in the agreement, the maxim expression *unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by [Section 23](#) of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend [Section 28](#) of the Contract Act in any manner.”

19. In the case of Hindustan Construction Company Limited Vs. N.H.P.C. Limited (Supra) referring to the judgment in B.G.S. S.G.S. Soma J.V. Vs. N.H.P.C. Limited (Supra), it was held that

where a seat is designated in an agreement, the Courts of that place alone have jurisdiction.

20. Later on in the case of Brahmani River Pellets Limited Vs. Kamachi Industries Limited (Supra), the Supreme Court has held in paragraph 15.4 as under:-

“15. XXX

15.1. XXX

15.2. XXX

15.3. XXX

15.4 Pointing out that the words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have not been used in the agreement and use of such words is not decisive and non-use of such words does not make any material difference as to the intention of the parties by having clause 18 of the agreement that the courts at Kolkata shall have the jurisdiction, the Supreme Court held as under:-

“31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, the Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. *The question is, whether parties by virtue of Clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of Clause 18 of the agreement, the jurisdiction of the Chief Justice of the*

Rajasthan High Court has been excluded?

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. *It is a fact that whilst providing for jurisdiction clause in the agreement the words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement— is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts.* Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by [Section 23](#) of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend [Section 28](#) of the Contract Act in any manner.

33. The above view finds support from the decisions of this Court in [Hakam Singh v. Gammon India Limited](#) (1971) 1 SCC 286, [A.B.C. Laminart Private Limited v. A.B.C. Agencies](#) (1989) 2 SCC 163, [R.S.D.V. Finance Corporation Private Limited v. Shree Vallabh Glass Works Limited](#) (1993) 2 SCC 130, [Angile Insulations v. Davy Ashmore India Limited](#) (1995) 4 SCC 153,

Shriram City Union Finance Corporation Limited v. Rama Mishra (2002) 9 SCC 613, Hanil Era Textiles Limited v. Puromatic Filters Private Limited (2004) 4 SCC 671 and Balaji Coke Industry Private Limited v. Maa Bhagwati Coke Gujarat Private Limited (2009) 9 SCC 403.”

21.In the case of Swastik Gases Private Limited Vs. Indian Oil Corporation Limited (Supra), it has been held by the Court in paragraph 16 as follows:-

“**16.**The question under consideration in Angile Insulations[6] was whether the court of subordinate judge, Dhanbad possessed the jurisdiction to entertain and hear the suit filed by the appellant for recovery of certain amounts due from the first respondent. Clause 21 of the agreement therein read, “This work order is issued subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka.....”. This Court relied upon A.B.C. Laminart¹ and held that having regard to clause 21 of the work order which was legal and valid, the parties had agreed to vest the jurisdiction of the court situated within the territorial limit of High Court of Karnataka and, therefore, the court of subordinate judge, Dhanbad in Bihar did not have jurisdiction to entertain the suit filed by the appellant therein.”

22.In the case of Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd. (Supra), the Supreme Court made a clear distinction between the seat of arbitration and venue of arbitration in the paragraph 17, 18, 19 and 20 as follows:-

“**17.**In amendments to be made to the Act, the Law Commission recommended the following:

“Amendment of [Section 20](#)

12.In [section 20](#), delete the word “Place” and add the words “Seat and Venue” before the words “of

arbitration”.

(i) In sub-section (1), after the words “agree on the” delete the word “place” and add words “seat and venue”

(ii) In sub-section (3), after the words “meet at any” delete the word “place” and add word “venue”.

[NOTE: The departure from the existing phrase “place” of arbitration is proposed to make the wording of the Act consistent with the international usage of the concept of a “seat” of arbitration, to denote the legal home of the arbitration. The amendment further legislatively distinguishes between the “[legal] seat” from a “[mere] venue” of arbitration.] Amendment of [Section 31](#)

17. In [section 31](#)

(i) In sub-section (4), after the words “its date and the” delete the word “place” and add the word “seat”.

18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO judgment in no uncertain terms has referred to “place” as “juridical seat” for the purpose of [Section 2\(2\)](#) of the Act. It further made it clear that [Section 20\(1\)](#) and [20 \(2\)](#) where the word “place” is used, refers to “juridical seat”, whereas in [Section 20 \(3\)](#), the word “place” is equivalent to “venue”. This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

19. 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.

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

23. It is in another dispute, that in the contract, both the parties had agreed for the Seat of Arbitration to be at Bilaspur only, under the contract clause 32. The dispute raised by the respondent was earlier decided by the Committee arbitrating the case leading to continuation of litigation which reached finality before the Hon’ble Supreme Court. The Supreme Court then with a purpose to make settlement between parties by the order dated 20.07.2018 in Civil

Appeal No.6852 of 2018 set aside by the earlier orders and directed the fresh arbitration on the case by appointment of Hon'ble Shri Justice Ashok Kumar Mathur, the former Judge of Supreme Court and it was for his convenience that the Seat of Arbitration was directed to be held in Delhi. This order of Supreme Court cannot be regarded as having an effect to nullify the agreement Clause 32 present between the parties. The place of sitting of arbitrator in this case particularly, can be regarded as venue of arbitration only. The seat of arbitration as agreed between the parties is certainly at Bilaspur.

24.A clear distinction has been made by the Hon'ble Supreme Court regarding the terms of venue of arbitration and Seat of Arbitration in the case of Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd. (Supra). The view in the case of Swastik Gases Private Limited Vs. Indian Oil Corporation Limited (Supra) has been affirmed in the case of Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd. (Supra) judgment. Further, the Supreme Court has in the case of B.G.S. S.G.S. Soma J.V. Vs. N.H.P.C. Limited (Supra) judgment, has relied upon the judgment in the case of Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd. (Supra) and no distinction was made.

25.Hence, I am of this view that the learned Commercial Court has committed an error in holding, that it is not vested with jurisdiction to consider on the applications filed by the parties. The venue of jurisdiction has been misconstrued as the seat of jurisdiction whereas the seat of jurisdiction, between the parties is clearly

Bilaspur according to the Clause present in the contract agreement. Therefore, the commercial Court at Nava Raipur, C.G. clearly has jurisdiction to entertain for hearing the application filed under Section 34 of the Act, 1996, as there is no such Court in Bilaspur.

26.Hence, on the basis of the observations made here-in-above and the conclusion drawn, both the petitions filed are allowed and disposed off at the motion stage. The impugned orders in both the cases are set aside. The learned Commercial Court Naya Raipur, C.G. is directed to provide opportunity of hearing on the applications filed by both the parties under Section 34 of the Act, 1996 in accordance with law and dispose off the case at the earliest.

27.Accordingly, both the petitions are disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge