

Mr. Anand Bhandari, i/by. Vivekanand V. Krishnan for the petitioner.

Mr. Omkar Kulkarni for respondent No.1.

Mr. Chirag Bhavsar a/w. Ms. Simran S., i/by. Vis Legis Law Practice for respondent Nos.2 and 3.

CORAM : MANISH PITALE, J
DATE : 20th OCTOBER, 2022

P.C. :

The area of dispute in the present petition concerns the insistence of the petitioner that the effect of application filed under Section 9 of the Arbitration and Conciliation Act, 1996 before the Court at Nashik would mean that for all purposes, as per Section 42 of the said Act, the place of arbitration has to be deemed to be Nashik, even though eventually, the arbitration proceeding may take place at a venue other than Nashik. The respondents seriously disputed the said position by highlighting the fact that even in the application filed under Section 9 pending before the Court at Nashik, a preliminary objection is raised on behalf of respondent as to the jurisdiction of the said Court to entertain the aforesaid application.

2. In other words, there is a serious dispute between the parties as to whether even a part of cause of action has arisen at Nashik and therefore, the preliminary objection regarding jurisdiction, raised on behalf of respondents in the proceeding pending before the Court at Nashik assumes

importance.

3. Judgment dated 10th December, 2019 of the Hon'ble Supreme Court in the case of **BGS SGS Soma JV v/s. NHPC Limited**, 2020 (4) SCC 234 and judgment dated 18th May, 2022 in the case of **BBR India Private Limited v/s. S. P. Singla Constructions Private Limited** (Civil Appeals No.4130 and 4131 of 2022) are relied upon and interpreted by learned counsel for the rival parties in support of their respective stands. Considering the question that has arisen in the present petition filed under Section 11 of the said Act for appointment of arbitrator, this Court would necessarily have to comment upon the effect of filing of application under Section 9 of the said Act in the Court at Nashik in the backdrop of Section 42 of the said Act and the position of law laid down by the Hon'ble Supreme Court in the aforesaid judgment, which would necessarily concern the preliminary objection as regards jurisdiction raised on behalf of the respondents before the Court at Nashik in application filed under Section 9 of the said Act. Any view taken by this Court on the question as to whether the Court at Nashik at all has jurisdiction, considering the question as to whether any part of the cause of action arising at Nashik would impinge upon the question of jurisdiction already raised and pending before the Court at Nashik.

4. In view of the above, it would be appropriate that the application filed under Section 9 of the aforesaid Act is decided at the earliest by the Court at Nashik, including the question of jurisdiction, so that any challenge that may be raised on the said issue could be considered in appropriate proceedings along with the present application filed under Section 11 of the said Act.

5. In view of the above, the Commercial Court at Nashik is directed to take up Commercial Arbitration Application No.3 of 2022 for consideration and final orders at the earliest. The said Court is expected to take up the application under Section 9 of the said Act for consideration and to decide the same on merits, including the question of jurisdiction raised by the respondents. The said application be disposed of by the Commercial Court at Nashik as expeditiously as possible and in any case, within six weeks from today.

6. Liberty is granted to the parties to mention the present application upon decision of the said application by the Commercial Court at Nashik.

(MANISH PITALE, J)

Priya Kambli