

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/425/2023

M/S. OSCORP INDUSTRIES PVT. LTD.
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 9th October, 2023.

Appearance:
Mr. Animesh Paul, Adv.
...for the petitioner

Mr. Rudraman Bhattacharya, Adv.
Mr. S.K. Tiwari, Adv.
...for the respondent

The Court:- The respondents' preliminary objection rests on the jurisdiction of this Court to entertain the present application filed under Section 11 of the 1996 Act. According to learned counsel appearing for the respondents, Clause 64(1)(iii)(d) of the General Conditions of Contract designates the place of arbitration to be within the geographical limit of the Division of the Railway where the cause of action arises or Headquarters of the concerned Railway or any other place with the written consent of both the parties; hence, the place would be Hajipur, Bihar and the correct High Court hence would be the Patna High Court.

It does not appear from any material disclosed by the parties that the parties consented in writing to designate the place of arbitration to be at any

other place but as signified in Clause 64(1)(iii)(d) of the General Conditions of Contract.

Although, learned counsel appearing for the petitioner seeks to rely on *Ravi Ranjan Developers Pvt. Ltd. vs. Aditya Kumar Chatterjee*, 2022 SCC OnLine SC 568, to urge that the “place” of arbitration is different from the “seat”. This contention is contrary to the line of decisions pronounced by the Supreme Court. The first of the decisions is *Bharat Aluminium Company vs. Kaiser Aluminium*, (2012) 9 SCC 552 followed by *Enercon (India) Limited & Ors. vs. Enercon GMBH & Anr.*, (2014) 5 SCC 1; *Brahmani River Pellets Limited vs. Kamachi Industries Limited*, (2020) 5 SCC 462; *Indus Mobile Distribution Private Limited vs. Datawind Innovations Pvt. Ltd.*, 2017 (7) SCC 678; *BGS SGS Soma JV vs. NHPC Limited*, (2020) 4 SCC 234; *Hindustan Construction Company Ltd. vs. NHPC Limited*, 2020 (4) SCC 310 and lastly *BBR (India) Pvt. Ltd. vs. S.P. Singhla Constructions Pvt. Ltd.*, 2023 (1) SCC 693 which is a recent judgment of the Supreme Court.

In all these decisions, the Supreme Court opined that the designated seat of the arbitration would determine the courts which would have jurisdiction in all matters for controlling or supervising the arbitration process. In *BGS SGS Soma JV*, the Supreme Court held that where the venue is designated but not the seat, the venue would be read and construed as the seat and the courts at the seat would be conferred with exclusive jurisdiction to hear all disputes in relation to the arbitration agreement. The Supreme Court also made a distinction between the Courts as designated in the arbitration clause and those designated under the governing clause of the agreement.

In *BGS SGS Soma JV*, the Supreme Court also referred to *Bharat Aluminium Company* to say that Section 20(1) and (2) of the 1996 Act would refer to the seat of arbitration while Section 20(3) would refer to the venue.

The consensus is that accrual of cause of action would have no relevance to the seat of the arbitration agreement which may be at a neutral place.

Ravi Ranjan Developers relied on the facts where the parties did not agree to Kolkata being the seat of arbitration. The Supreme Court specifically was of the view that parties intended Kolkata to be the venue of arbitration. In the present case the parties agreed that the “place” of arbitration would be in Hajipur, Bihar as per the arbitration clause.

In the present case, the arbitration clause mentions “place” of arbitration and clarifies it further by stating that the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway. Even if the cause of action is seen as irrelevant for fixing jurisdiction, the Headquarters of the concerned Railway is at Hajipur, Bihar. Therefore, the Courts at the place, which would be construed as the seat, would be conferred with exclusive jurisdiction to control and supervise the arbitration.

Section 11(6) of the 1996 Act confers the power to appoint arbitrator/s only on the Supreme Court or the High Court, as the case may be. Hence, the Patna High Court would be the appropriate High Court where the petitioner would have to go to with the prayer for appointment. .

The preliminary objection taken on behalf of the respondent is accepted for the above reasons.

AP/425/2023 is accordingly dismissed as not being maintainable.

(MOUSHUMI BHATTACHARYA, J.)

T.O.
A.R. (C.R.)