

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
(Original Side)

A.P. No. 436 of 2022

Reserved on: 19.01.2023

Pronounced on: 09.02.2023

Gainwell Commosales Private Limited (Tractors India Private Limited)
...Petitioner

-Vs-

Ardern Maschinfabrik Private Limited (Linhoff India Private Limited)
...Respondent

Present:-

Mr. Soumabha Ghose,
Mr. Soumalya Ganguli,
Ms. Tiana Bhattacharya, Advocates
... for the applicant

Mr. Balarko Sen,
Mr. Abirlal Ghosh, Advocates
... for the respondent

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

Prakash Shrivastava, CJ:

1. This application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of sole arbitrator to decide the dispute between the parties.

2. The plea of the applicant is that the respondent had placed the work order dated 3rd of July, 2017 for 5 ton wheel loader CAT 950H on hire. In terms of the work order, hire charges for machinery was to be paid on monthly basis within 30 days of receipt of invoice. According to the applicant, the invoice was raised but the respondent had failed and neglected to make payment in respect of the purchase order amounting to Rs. 1,89,651/-. The notice dated 09.03.2022 in

terms of Section 21 of the Act was sent nominating Mr. Anuj Singh, Advocate as sole arbitrator. The said notice was served upon the respondent but no reply was received, hence the present application was filed.

3. Learned Counsel for the respondent has raised an objection that the work order contains the arbitration clause with the place of arbitration as Mumbai and, therefore, this Court has no territorial jurisdiction. Whereas submission of learned Counsel for the applicant is that the tax invoices issued by the applicant makes the dispute subject to Kolkata jurisdiction, therefore, this Court has territorial jurisdiction.

4. I have heard learned Counsel for the parties and perused the record.

5. It is not in dispute that the work order dated 03.07.2017 contains the following arbitration clause:

“ARBITRATION

All disputes/ differences whatsoever, which shall arise between the parties hereto during the continuance of this agreement or afterwards, touching the agreement or the construction or application thereof or any clauses contained on the rights, duties, liabilities or either party in connection there with, shall be referred to a Sole Arbitrator to be appointed with the consent of both the parties.

The place of Arbitration shall be at Mumbai and the arbitrator appointed shall have held the office of judge of any Indian High Court or Supreme Court of India.

In the event of the parties not being able to agree to a sole Arbitrator within period of 15 days from being called upon to agree such appointment then in that event event Linnhoff India Pvt Ltd shall have the right to nominate such Sole

Arbitrator with similar qualification and his decision will be binding on the parties.

Such Arbitration proceedings will be held in consonance with the provisions of The Arbitration and Conciliation Act 1966 or any statutory modification or re-enactment thereof for the time being in force.”

6. The parties had acted upon the work order. Applicant had issued the said tax invoice and at the bottom of the tax invoice following was added as clause 7:

“7. All disputes are subject to Kolkata jurisdiction and are to be referred to Arbitration.”

7. The arbitration clause contains in the work order makes it clear that the parties had agreed for the place of arbitration to be Mumbai. It is also not in dispute that cause of action had also arisen at Mumbai. There is no material on record indicating that there was any deliberation between the parties to modify or substitute the arbitration clause contained in the work order. Hence, mere unilateral stipulation by the applicant making the dispute subject to Kolkata jurisdiction in tax invoice, will not alter the main arbitration clause contained in the work order.

8. Learned Counsel for the applicant has placed reliance upon the judgment of the Hon’ble Supreme Court in the matter of **BBR (India) Private Limited vs S.P. Singla Constructions Private Limited** reported in **AIR 2022 SC 2673** and in the matter of **Quippo Construction Equipment Limited vs. Janardan Nirman Private Limited** reported in **(2020) 18 SCC 277**, but both these judgments stand on different footing. In the present case, in the work order, the place of arbitration has already been fixed at Mumbai which in terms

of Section 20 of the Act is the jurisdictional seat and which can only be altered after deliberation and with mutual agreement between the parties. Hence, the objection of the respondent about territorial jurisdiction of this Court is sustained and A.P. is dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

Kolkata
09.02.2023

PA(SS)

(A.F.R./N.A.F.R.)