

OCD-13 & 14

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP/820/2023

STEEL AUTHORITY OF INDIA LIMITED
Versus
POSCO ENGINEERING AND CONSTRUCTION COMPANY LIMITED

WITH

AP/599/2023

STEEL AUTHORITY OF INDIA LIMITED
Versus
POSCO ENGINEERING AND CONSTRUCTION COMPANY LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 11th December, 2023.

Appearance:

Mr. Sarathi Dasgupta, Adv.

Mr. Arijit Basu, Adv.

...for the petitioner

Mr. Ratnanko Banerji, Sr. Adv.

Ms. Trisha Mukherjee, Adv.

Mr. Chetan Kumar Kabra, Adv.

Mr. Rachit Bansal, Adv.

..for the respondent

The Court: The Court accepts and agrees with the preliminary objection taken on behalf of the respondent/award-holder on the point of maintainability.

According to counsel appearing for the respondent/award-holder, the arbitration clause in the agreement executed between the parties denudes this Court of jurisdiction to entertain the matter. The matters at present are two applications for stay and for setting aside of an Award dated 25th March, 2023.

The reason for the Court's view is as follows.

The arbitration clause, which has been set out in the body of the application for stay of the Award, unequivocally designates the venue of the arbitral proceedings to be at New Delhi. Learned counsel appearing for the petitioner/award-debtor, however, relies on the exclusive jurisdiction clause conferring jurisdiction on the Courts of Asansol, West Bengal. Counsel submits that the Calcutta High Court would have jurisdiction to entertain the application since the dispute is an international commercial arbitration under Section 2(1)(e)(ii) of The Arbitration and Conciliation Act, 1996.

There are several decisions of the Supreme Court as well as this Court and Co-ordinate Benches on the point of conflict (or the absence thereof) between the expressions 'seat' and 'venue'. *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited*, (2017)7 SCC 678; *BGS SGS Soma JV v. NHPC Limited*, (2020)4 SCC 234 and more recently, *BBR (India) Private Limited v. S.P. Singla Constructions Private Limited*, (2023)1 SCC 693 have conclusively settled the issue as to the primacy of the arbitration clause over any general jurisdiction clause conferring exclusive jurisdiction on a Court.

The unanimous view of the Supreme Court as well as the High Courts is that the venue or the seat designated by the parties in the arbitration clause

would vest a Court with jurisdiction. The proceedings in relation to the arbitration agreement would hence have to be filed in that court alone. These decisions can also be referred to where either the seat or the venue has been designated. In those cases, seat and venue would have to be interchangeably used.

In the present case, New Delhi has been designated as the venue of the arbitral proceedings. In the absence of designation of a seat, New Delhi would have to be seen as the seat and the Delhi High Court would hence be the appropriate forum for entertaining any applications with regard to the arbitration agreement.

The petitioner's contention with regard to Calcutta High Court being the appropriate Court in terms of Clause 2(1)(e)(ii) of the Act is not tenable after the decisions stated above. There is no doubt that the exclusive jurisdiction clause must defer to the seat/venue designations in the arbitration agreement.

The Court is informed that the petitioner approached the Asansol Court for setting aside of the Award and was turned away for want of jurisdiction. The award-holder has filed execution proceedings before the Delhi High Court.

Since the court is of the view that the arbitration agreement precludes it from entertaining the present applications, AP/820/2023 and AP/599/2023 are both dismissed as not being maintainable.

(MOUSHUMI BHATTACHARYA, J.)