



Arb.O.P.No.29 of 2022
and A.No.3765 of 2022

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N.SATHISH KUMAR, J.

This Original Petition has been filed under Section 34(2) of Arbitration and Conciliation Act, 1996 seeking to set aside the award dated 24.05.2022 passed by the learned Arbitrator.

2. Though the application has been made on the ground that no notice has been issued under Section 21 of the Arbitration and Conciliation Act, 1996, the fact remains that the seat of arbitration is at Mumbai. Even as per the agreement, the parties have agreed to have the seat of arbitration at Mumbai and arbitration has also commenced at Mumbai and award has been passed. Such being the matter, once, the seat is designated and parties have agreed to exclusive jurisdiction of Courts at Mumbai, any challenge made to arbitral award ought to have been made only in the Court at Mumbai which alone has jurisdiction.

3. Such view of the limited aspect, this Court is of the view once the seat has been mentioned as Mumbai, challenge has to be made only at



Mumbai and not before this Court.

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4. It is relevant to note that the Hon'ble Supreme Court in the case of Brahmani River Pellets Limited Vs. Kamachi Industries Limited, reported in CDJ 2019 SC 817, wherein, it was held as follows:

“14. In Swastik, the Supreme Court held that clause like (18) of the agreement will not be hit by Section 23 of the Contract Act and it is not forbidden by law nor it is against public policy. It was so held that as per Section 20 of the Act, parties are free to choose the place of arbitration. This “party autonomy” has to be construed in the context of choosing a court out of two or more courts having competent jurisdiction under Section 2(1) (e) of the Act.

15. The inter-play between “Seat” and “place of arbitration” came up for consideration in the case of Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. and others (2017) 7 SCC 678. After referring to BALCO, Enercon (India) Limited and others v. Enercon GMBH and another (2014) 5 SCC 1 and Reliance Industries Limited and another v. Union of India (2014) 7 SCC 603 and also amendment to the Act pursuant to the Law Commission Report, speaking for the Bench Justice Nariman held as under:-

“18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO (2012) 9 SCC 552 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 Sections 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



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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 Sections 16 to 21 of 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 the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. (2013) 9 SCC 32 This was followed in a recent judgment in B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. (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.” [underlining



added]

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16. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the “venue” of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik, non-use of words like “exclusive jurisdiction”, “only”, “exclusive”, “alone” is not decisive and does not make any material difference.

17. When the parties have agreed to have the “venue” of arbitration at Bhubaneswar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order is liable to be set aside.”

5. Accordingly, this Arbitration Original Petition is dismissed on the ground of jurisdiction and it is open to the petitioner to challenge the award in the manner known to law before the concerned Court which has the jurisdiction. Consequently, connected Application stands closed.

07.11.2023

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