

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.7749 of 2016 (O&M)

DECIDED ON: 9th February, 2023

Dakshin Haryana Bijli Vitran Nigam Ltd.

.....APPELLANT

VERSUS

M/s Arun Enterprises and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Vishal Garg, Advocate for petitioner.

Mr. Karanjeet Singh, Advocate for respondent.

AVNEESH JHINGAN, J (ORAL)

1. This appeal is filed against the order dated 11.8.2016 whereby Additional District Judge-I, Panchkula, returned the objection filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act').

2. The facts necessary for adjudication of present appeal are that on 28.11.2008 Uttar Haryana Bijli Virtan Nigam Limited (hereinafter referred to as 'the Nigam') fixed the annual rate contract for supply of Meter Cup Boards (MCBs). The rate contract was finalised between the Nigam and the respondent and on 25.2.2009 purchase order for supply was placed. There was dispute between the parties and Arbitrator was appointed. The proceedings culminated into award dated 6.12.2015, partially accepting the claim of the respondent. Aggrieved of the award, objections under Section 34 of the Act were filed at Panchkula. Considering that the proceedings of arbitration and passing of award was at Delhi and objections application of respondent under Section 34 of the Act are pending at Delhi, relying upon Section 42 of the Act the objections under Section 34 of the Act were returned holding that Panchkula Court had no

jurisdiction.

3. Learned counsel for the appellant submits that Panchkula Court erred in returning the application. Submission is that the clauses of the contract provide that the Courts at place of acceptance of tender shall have the exclusive jurisdiction for dispute arising out of contract. He further submits that the tender was accepted at Panchkula. Reliance is placed on the decisions of the Supreme Court in **Indus Mobile Distribution Private Ltd. v. Datawind Innovations Private Ltd. And others**, (2017) 7 SCC 678 and **BGS SGS Soma JV v. NHPC Ltd.** (2020)4 SCC 234.

4. Learned counsel for respondent submits that the proceedings were conducted at Delhi, award passed there and only Court at Delhi has the jurisdiction.

5. Before proceeding further it would be relevant to reproduce clause No.24(i) to (iii) of the contract:

" (i) This contract shall be governed by the Laws of India for the time being in force.

(ii) Irrespective of the place of delivery place of performance or place of payment under the contract, the contract shall be deemed to have been made at the place from where which the acceptance of tender has been issued.

(iii) Jurisdiction of Courts: The Courts of the place from where the acceptance of tender has been issued shall alone have exclusive jurisdiction to decide any dispute arising out of or in respect of the contract."

6. The clause is unambiguous that the parties agreed to submit to exclusive jurisdiction of the Court at the place where the tender was accepted. There is no dispute on the fact that the acceptance of tender was at Panchkula.

7. The Supreme Court in **Indus Mobile's case (supra)** held as under:

“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.”

8. The Supreme Court in **BGS SGC Soma's case (supra)** held as under:

"55. In Indus Mobile Distribution Private Limited and Ors. (supra), after clearing the air on the meaning of Section of the Arbitration Act, 1996, the Court in paragraph 19 (which has already been set out hereinabove) made it clear that the moment a seat is designated by agreement between the parties, it is akin to an exclusive jurisdiction clause, which would then vest the Courts at the “seat” with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties. "

"100. However, the fact that in all the three appeals before us the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, would lead to the conclusion that both parties have chosen New Delhi as the “seat” of arbitration under Section 20(1) of the Arbitration Act, 1996. This being the case, both parties have, therefore, chosen that the Courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the “seat” has been chosen, which would then amount to an exclusive jurisdiction clause so far as

Courts of the “seat” are concerned.”

9. From the judgments cited above, the legal position emerges that where the seat of arbitration is decided between the parties, the Court at that place will have exclusive jurisdiction.
10. In view of above, the impugned order is set aside and the matter is remanded back to Panchkula Court to decide it on merits.
11. Disposed of.
12. Since the main case has been decided, pending application, if any is rendered infructuous.

9th February, 2023
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *Yes*