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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 12.07.2023*

+ ARB.P. 306/2023 & I.A. 12258/2023 -Delay 44 days in filing

Reply by Res.

ESSENTIAL INTERIORS DESIGNS PVT LTD TROUGH ITS
DIRECTOR SHRI KARAN SETH PetitionerThrough: Mr. Rohit Priya Ranjan, Mr. Sanket
Mishra, Ms. Srishti Sonkar, Adv.

versus

GLOBE INTERNATIONAL INC TROUGH ITS PROP RAJAN
SHARMA RespondentThrough: Mr. Nishant Kumar Srivastava, Mr.
Rajnish Kumar Jha, Ms. Poonam Dolo, Adv.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "The Act") seeks appointment of an Arbitrator for adjudication of disputes between the parties, which have arisen out of the work order dated 12.10.2021 issued by the petitioner.

2. At the outset itself, it may be noted that while the respondent does not deny that the disputes between the parties were required to be adjudicated through arbitration, the petition is opposed only on the ground of territorial jurisdiction. It is the respondent's plea that the parties having agreed that the venue of arbitration would be at Gurugram, Haryana, this Court would not have the territorial jurisdiction to entertain the present petition under Section



11(6) of the Act.

3. By placing reliance on the decision of the Apex Court in ***Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462***, learned counsel for the respondent submits that the parties having agreed to confer exclusive jurisdiction on the Courts at Gurugram, the present petition would not be maintainable. He contends that in ***Brahmani River Pellets Limited Ltd. (supra)***, the Apex Court has dealt with a similar situation where the Madras High Court had erroneously exercised jurisdiction under Section 11(6) of the Act to appoint an arbitrator despite the parties having agreed that the venue of arbitration would be Bhubaneswar, Odisha. This decision of the Madras High Court was set aside by the Apex Court by holding that once the parties had agreed for the venue of the arbitration as Bhubaneswar, the intention of the parties was to exclude the jurisdiction of all other Courts. It was held that by agreeing that the venue of arbitration would be Bhubaneswar, the parties had implicitly agreed for the exclusive jurisdiction of the Courts at Bhubaneswar. He therefore contends that in the present case as well, the parties having agreed that all the sittings of the Arbitral Tribunal would be at Gurugram, Haryana, their intention was to exclude the jurisdiction of all other Courts. He therefore prays that the present petition be dismissed.

4. In response, learned counsel for the petitioner, seeks to place reliance on a subsequent decision of the Apex Court in ***Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee, 2022 SCC OnLine SC 568***, where even though the parties had agreed that the sittings of the Arbitral Tribunal would be at Kolkata, neither the cause of action had arisen in Kolkata nor were the parties residing/carrying out business in Kolkata. In the said case, not only



were the parties residing/carrying out business in Bihar but even the cause of action had arisen only in Bihar. However, by relying on the agreement between the parties designating Kolkata as the venue for arbitration, a petition under Section 11 was filed by one of the parties before the Calcutta High Court, which proceeded to appoint an arbitrator. This order of the Calcutta High Court was set aside by the Apex Court by holding that once the entire cause of action had arisen in Bihar, the mere factum of the parties agreeing that the venue of arbitration would be Kolkata, would not clothe the Calcutta High Court with the jurisdiction to entertain a petition under Section 11(6) of the Act. He, therefore, contends that in the present case as well, once it is an admitted position that not only are the registered offices of both the parties situated at Delhi but even the site where the work was carried out under the contract was in Delhi, it is only this Court which would have the requisite territorial jurisdiction to entertain the present petition. Furthermore, even the invoices issued by the respondent were addressed to the petitioner's Delhi office and therefore no cause of action whatsoever had arisen at Gurugram. He therefore prays that the present petition be allowed.

5. Having considered the submissions of the parties, I may begin by first noting the arbitration clause as contained in the work order dated 12.10.2021. The same reads as under:

“The venue of Arbitration shall be at Gurgaon in English language and the arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re enactment thereof. The arbitration award shall be binding of the parties to arbitration.”

6. As is evident from the submissions of the parties, they are ad idem



that the work under the contract was carried out at Delhi. They are also *ad idem* that both the parties are carrying out business at Delhi and also on the aspect of the invoices having been raised against the petitioner at its Delhi address. The respondent also does not deny that the parties are governed by an arbitration clause. The only plea of the respondent is that the parties having agreed that the venue of the arbitration would be at Gurugram, the Courts at Delhi would have no jurisdiction to deal with the matter. As noted hereinabove, while the respondent has relied on the decision of the Apex Court in ***Brahmani River Pellets Limited (supra)***, the petitioner has relied on a subsequent decision of the Apex Court in ***Ravi Ranjan Developers Pvt. Ltd. (supra)***. Both these decisions of the Apex Court have been authored by 2-Judge Benches.

7. In order to appreciate the rival submissions of the parties, I may first note the relevant extracts from the decision in ***Ravi Ranjan Developers Pvt. Ltd. (supra)***, relied upon by the petitioner. I find that in para 20 of its decision, the Apex Court framed a similar question as arises in the present petition. The same reads as under:

20. The question in this case is, whether the Calcutta High Court had territorial jurisdiction to pass the impugned orders. The answer to the question has to be in the negative for the reason that the Development Agreement was admittedly executed and registered outside the jurisdiction of the High Court of Calcutta, the agreement pertains to development of property located in Muzaffarpur outside jurisdiction of the Calcutta High Court. The Appellant has its registered office in Patna outside the jurisdiction of Calcutta High Court. The Appellant has no establishment and does not carry on any business within the jurisdiction of the Calcutta High Court. As admitted by the Respondent, no part of the cause of



action had arisen within the jurisdiction of Calcutta High Court.

8. By referring to the definition of ‘Court’ as provided in Section 2(1)(e) of the Act, the Apex Court in para nos. 21 and 25 to 28 of its decision observed that the provisions of Section 2(1)(e) had to be read harmoniously with the provisions of Section 11(6) of the Act. The Court therefore came to the conclusion that when neither any part of the cause of action had arisen at Kolkata nor were any of the parties residing/carrying out any business in Kolkata, a petition under Section 11(6) would not lie before the Calcutta High Court especially when the parties had not agreed on the seat of arbitration but had agreed only to the venue of arbitration being Kolkata. The relevant extracts of para nos. 21 and 25 to 28 read as under:

21. Mr. Sinha referred to the definition of Court in Section 2(1)(e) of the A&C Act, set out hereinbelow for convenience:

“2. Definitions.—(1) In this Part, unless the context otherwise requires, —

(a) to (d) ...

(e) “Court” means— (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes; (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the



subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

25. In the present case, no suit could have been filed in any Court over which the Calcutta High Court exercises jurisdiction, since as stated above, the suit admittedly pertains to immovable property situated at Muzaffarpur in Bihar, outside the territorial jurisdiction of the Calcutta High Court and admittedly, no part of the cause of action had arisen within the territorial jurisdiction of the Calcutta High Court. The Appellant who would be in the position of Defendant in a suit, neither resides nor carries on any business within the jurisdiction of the Calcutta High Court.

26. Of course, under Section 11(6), an application for appointment of an Arbitrator necessarily has to be moved in the High Court, irrespective of whether the High Court has the jurisdiction to decide a suit in respect of the subject matter of arbitration and irrespective of whether the High Court at all has original jurisdiction to entertain and decide suits. As such, the definition of Court in Section 2(1)(e) of the A&C Act would not be applicable in the case of a High Court exercising jurisdiction under Section 11(6) of the A&C Act to appoint an Arbitrator/Arbitral Tribunal.

27. At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial jurisdiction. Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act.

28. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of



whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent.

9. It would also be apposite to refer to para 48 of the aforesaid decision wherein the Apex Court categorically observed that by mentioning that the venue of arbitration would be Kolkata, the parties never intended to make Kolkata, the seat of arbitration. The same reads as under:

48. In this case, the parties, as observed above did not agree to refer their disputes to the jurisdiction of the Courts in Kolkata. It was not the intention of the parties that Kolkata should be the seat of arbitration. Kolkata was only intended to be the venue for arbitration sittings. Accordingly, the Respondent himself approached the District Court at Muzaffarpur, and not a Court in Kolkata for interim protection under Section 9 of the A&C Act. The Respondent having himself invoked the jurisdiction of the District Court at Muzaffarpur, is estopped from contending that the parties had agreed to confer exclusive jurisdiction to the Calcutta High Court to the exclusion of other Courts. Neither of the parties to the agreement construed the arbitration clause to designate Kolkata as the seat of arbitration. We are constrained to hold that Calcutta High Court inherently lacks jurisdiction to entertain the application of the Respondent under Section 11(6) of the Arbitration Act. The High Court should have decided the objection raised by the Appellant, to the jurisdiction of the Calcutta High Court, to entertain the application under Section 11(6) of A&C Act, before appointing an Arbitrator.”



10. From the aforesaid, what emerges is that while dealing with a clause similar to the clause in the present case, the Apex Court held that despite the parties having agreed that the venue of arbitration would be Kolkata, it could not be presumed that they had agreed to confer jurisdiction on the Courts at Kolkata. The Apex Court therefore held that since the cause of action had arisen in Bihar and the parties were also based in Bihar, the Calcutta High Court would not have the jurisdiction to entertain a petition under Section 11 of the Act merely because the parties had agreed that the venue of the arbitration would be at Kolkata. At the cost of repetition, it may be reiterated that even in the present case only the venue of arbitration was agreed to be Gurugram. Neither is any party carrying out business in Gurugram nor had any part of the cause of action arisen in Gurugram. On the other hand, not only are both the parties carrying out business in Delhi but even the entire cause of action had arisen at Delhi. It is also the admitted case of the parties that the seat of the arbitration had not been pre-determined. I am, therefore, of the view that the present petition is squarely covered by the decision in ***Ravi Ranjan Developers Pvt. Ltd. (supra)***.

11. I have also considered the decision in ***Brahmani River Pellets Limited (supra)***, relied upon by the respondent. In the said case, the Apex Court was dealing with a situation where not only had the parties agreed that the venue of arbitration would be at Bhubaneswar but also the subject matter of the dispute between the parties was situated in Odisha. It was in these circumstances that the Court opined that intention of the parties was to confer exclusive jurisdiction to the Courts at Bhubaneswar and therefore held that the Madras High Court was wrongly approached by one of the parties under Section 11 of the Act. In the present case, the situation is



absolutely contrary.

12. It is undisputed that in the present case, neither any part of cause of action had arisen in Gurugram nor is any of the parties residing/carrying out business in Gurugram. On the other hand, the offices of both the parties are in Delhi; the site where the work was carried out was in Delhi, the invoices were also issued at the petitioner's Delhi address. In these circumstances, I am unable to accept the respondent's plea that merely because the parties had agreed that the venue of arbitration would be at Gurugram, they had intended to confer exclusive jurisdiction on the Courts at Gurugram. In my considered opinion, once the parties are *ad-idem* that the entire cause of action has arisen in Delhi as also that the parties are carrying out business in Delhi and the seat of arbitration as against the venue of arbitration was never pre-determined, this Court would undoubtedly have the jurisdiction to entertain the present petition under Section 11(6) of the Act. I am therefore of the view that the decision in ***Brahmani River Pellets Limited (supra)***, is clearly distinguishable.

13. For the aforesaid reasons, the petition deserves to be allowed and is accordingly allowed by appointing Mr. Tejvir Singh Bhatia, Advocate [Mobile No.9899528289] as the sole Arbitrator for adjudication of disputes between the parties in relation to the work order dated 12.10.2021. The arbitration proceedings will be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and, therefore, the fees of the learned Arbitrator will be governed as per the Rules of the DIAC.

14. Before entering upon reference, the learned Arbitrator will make a disclosure under Section 12 of the Act. Needless to state, this Court has not expressed any opinion on the merits of the petitioner's claims and therefore,

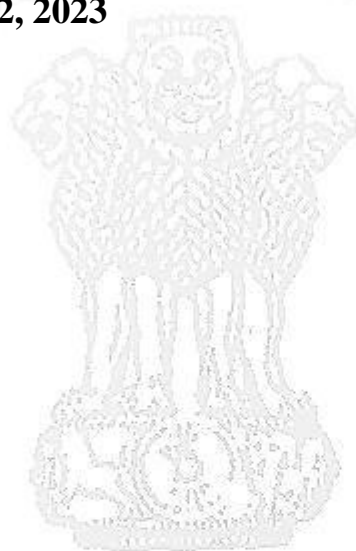


it will be open for the parties to file claims/counter claims and raise all pleas permissible in law before the learned Arbitrator, which will be decided by the learned Arbitrator in accordance with law.

(REKHA PALLI)
JUDGE

JULY 12, 2023

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