

ORDER SHEET

AP-COM/481/2024

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

H R CONSTRUCTION PRIVATE LIMITED
VS
STEEL AUTHORITY OF INDIA

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 2nd July, 2024.

Appearance:

Mr. Sabyasachi Chowdhury, Adv.

Mr. Debraj Sahu, Adv.

Ms. Sweta Mukherjee, Adv.

..for the petitioner

Mr. Rudraman Bhattacharya, Adv.

Ms. Supriya Dubey, Adv.

Mr. Akash Munshi, Adv.

...for the respondent

The Court: The present application under Section 29-A of the Arbitration and Conciliation Act, 1996 has been preferred for extension of the mandate of the learned Arbitrator. It is submitted by learned counsel for the petitioner that the hearing before the Arbitrator has been concluded and only the award remains to be passed.

Learned counsel for the respondent submits that, in principle, he does not have any objection to the mandate of the learned Arbitrator being extended. However, the respondent apprehends that by operation of Section 42 of the 1996 Act, in the event the present application is entertained and decided by this Court, the parties would be restricted to this Court in all

future court applications arising in connection with or out of the said arbitral proceedings/award.

Learned counsel for the respondent places reliance on Clause 16 of the agreement in question which, according to him, fixes the forum as the District Court located in the district of the Works/Plants/Unit/Office of the company which shall have exclusive jurisdiction upon any matter arising out of the contract.

It is argued that since the plant of the Steel Authority of India is situated in Keonjhar, the District Court having territorial jurisdiction over the said area should be the appropriate Court which should entertain the present application under Section 29-A.

In order to substantiate his contention, learned counsel cites *Chief Engineer (NH) PWD (Roads) vs. M/s. BSC & C and C JV* for the proposition that the principal court having original jurisdiction is the appropriate court to take up applications under Section 29-A.

Learned counsel next cites the judgment of a co-ordinate Bench of this Court in the matter of *Commercial Division Bowlopedia Restaurants India Limited vs. Devyani International Limited* reported at 2021 SCC OnLine Cal 103 for the proposition that when there is a forum selection clause conferring exclusive jurisdiction to a court which is different to the court having jurisdiction over the seat of arbitration, in a domestic arbitration, the court which has jurisdiction as per the forum selection clause overrides the other.

Learned counsel accordingly submits that the matter may be either relegated to the appropriate District Court having territorial jurisdiction in

Keonjhar or a rider may be added by this Court that the order passed by this Court shall not be construed to be passed in the first application contemplated in Section 42 of the 1996 Act.

Learned counsel appearing for the petitioner places reliance on the agreement in question itself and argues that both the agreement and the letter of acceptance dated May 6, 2013 between the parties stipulate that the agreement was entered into within the respondent's then office at 10, Camac Street, Kolkata-700017 although the same has subsequently shifted.

Thus, it is argued that it is this Court which is the principal civil court of original jurisdiction having power to adjudicate applications arising under the 1996 Act in respect of the present cause of action.

Learned counsel places particular reliance on the latter part of the expression "Works/Plant/Unit/Office" used in Clause 16 and argues that both the unit and the office of the respondent are situated within the territorial jurisdiction of this Court.

Learned counsel for the petitioner further cites *BBR (India) Private Limited vs. S.P. Singla Constructions Private Limited* reported at (2023) 1 SCC 693 where it was held that the legislature has given jurisdiction to two courts: the court which should have jurisdiction where the cause of action is located and the court where the arbitration takes place. This is necessary as on some occasions the agreement may provide the "seat of arbitration" that would be neutral to both the parties. The courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. The "seat of arbitration" need not be the place where any cause of action has arisen, in the sense that the "seat of arbitration" may be different

from the place where obligations are/had to be performed under the contract.

As such, it is argued that it is this Court which has jurisdiction to take up the matter. Learned counsel also relies on the pleadings in paragraph 22 of the present application to substantiate his argument.

It transpires from the materials annexed to the application and the pleadings thereof that at least a part of the cause of action for the present *lis* arose at 10, Camac Street, Kolkata-700017, which is within the territorial jurisdiction of this Court, from where the letter of acceptance was issued. That apart, it transpires *ex facie* from the agreement in question that the unit concerned is also located within the territorial jurisdiction of this Court.

A careful scrutiny of Clause 16 also indicates that the court referred to is the “District Court” located in the district, *inter alia*, where the unit or office of the company is situated and is not confined to where the works or plant finds place.

Hence, it is undoubtedly this Court which is the principal civil court having original jurisdiction which has the territorial authority to take up the present application. That apart, all the sittings of the arbitral tribunal, except for two, have been held in Kolkata and the parties have been consistently appearing in the proceeding in Kolkata. Thus, I do not find any particular reason as to why there should be a deviation from such stand of the parties at this juncture.

In any event, as rightly argued by the petitioner, the co-ordinate Bench decision in *Devyani International Limited (Supra)* does not apply to the present case insofar as there is no clear-cut distinction between the court

having jurisdiction over the seat of arbitration and over the cause of action, since at least a part of the cause of action arose, even on the face of the pleadings, within the territorial jurisdiction of this Court whereas Clause 16 of the agreement specifies the location of the unit or office also to be the seat of arbitration.

In such view of the matter, even going by the ratio laid down by the Supreme Court in *Chief Engineer (NH) PWD (Roads) (Supra)*, it is this Court which has jurisdiction to take up the matter.

There being otherwise no dispute to the prayer for extension of mandate, AP-COM/481/2024 is allowed, thereby extending the mandate of the learned Arbitrator to adjudicate the dispute between the parties till September 30, 2024.

(SABYASACHI BHATTACHARYYA, J.)