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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision: 11.11.2024

M/s Tractel Tirfor India Private Limited

...Applicant

Versus

M/s Tata Projects Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Manmohan Saroop, Advocate,
Mr. Kalyan Dutt, Advocate and
Ms. Meena Kapoor, Advocate for the applicant
Mr. Amandeep Singh Talwar, Advocate for the respondent

JAGMOHAN BANSAL, J. (Oral)

1. Through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '**1996 Act**'), the applicant is seeking appointment of an Arbitrator.

2. The applicant is engaged in the business of manufacturing and supply of industrial lifting and handling systems. It received purchase orders dated 15.07.2015, 24.07.2015 and 03.02.2016 from the respondent. As per said purchase orders, the applicant was supposed to supply goods in the State of Chhattisgarh as well as Orissa. The applicant manufactured goods and transported to the agreed places. The applicant is claiming that respondent has not made payment with respect to goods supplied in the State of Chhattisgarh and Orissa.



3. Learned counsel for the respondent submits that as per purchase orders, the venue of the Arbitral Tribunal is Hyderabad or any other place as may be determined by respondent. The goods were manufactured at Faridabad, however, supply was made beyond the jurisdiction of this Court. In the application, there is no averment disclosing that cause of action arose within jurisdiction of this Court. There was specific clause in the agreement with respect to venue, thus, this Court has no jurisdiction to make appointment of Arbitral Tribunal.

4. Learned counsel for the applicant submits that the applicant in the application has specifically pointed out that goods were manufactured in the State of Haryana. The goods moved from Haryana to Chhattisgarh and Orissa. The respondent has discretion to fix venue of arbitration other than Hyderabad. This unilateral power is bad in the eye of law. The cause of action had arisen within jurisdiction of this Court, thus, application under Section 11(6) of 1996 Act is maintainable before this Court. The applicant filed civil suit before District Court, Faridabad, thus, this Court can entertain application under Section 11(6) of 1996 Act.

5. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

6. From the perusal of record, it is evident that the applicant filed civil suit at Faridabad which was dismissed as withdrawn. The respondent raised objection before the Civil Court with respect to territorial jurisdiction as well as maintainability in view of arbitration clause. On being pointed out by respondent, the applicant withdrew its suit with liberty to avail remedy of arbitration. The suit was dismissed with liberty sought.



7. The parties have indubitably entered into arbitration agreement. In the said agreement, venue of arbitration has been notified. Clause 32.3 of the purchase order is reproduced as below:-

“32.3 The venue of Arbitration shall be Hyderabad, India or any other place that TPL at its sole discretion may determine and the language of the arbitration shall be in English.”

8. Besides the aforesaid clause, in Clause 39 it has been provided that in the event of any litigation, the jurisdiction shall be that of the Courts at Hyderabad. Clause 39.1 of the purchase order is reproduced as under:-

“39. GOVERNING LAW, CONTRACT LANGUAGE, EFFECT AND JURISDICTION OF ORDER

39.1 The PO issued by TPL to the Supplier shall be construed in accordance with and governed by the laws of India and in the event of any litigation the jurisdiction of this Purchase Order shall be that of the courts at Hyderabad, India.”

9. The purchase order was issued from Hyderabad. The goods were manufactured at Faridabad, however, delivered out of jurisdiction of this Court. The applicant filed civil suit at Faridabad and the respondent raised objection of territorial jurisdiction and maintainability in view of arbitration clause. The suit was withdrawn with liberty to avail remedy of arbitration. The applicant is claiming that a part of cause of action has arisen within jurisdiction of this Court, thus, Civil Court set up within jurisdiction of this Court has jurisdiction to entertain dispute between the parties. The respondent is located at Hyderabad and its registered office is at Secunderabad. The goods no doubt were manufactured at Faridabad, however, supply was made beyond the jurisdiction of this Court. Even if arguments of applicant are



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accepted, at the most, a small part of cause of action has arisen within the jurisdiction of this Court. It is not the case of the applicant that substantial cause of action had arisen within the jurisdiction of this Court. In such circumstances, arbitration agreement which specifically provides venue of the arbitration cannot be ignored. In the agreement, the jurisdiction of Civil Court has also been notified. The Civil Court at Hyderabad is notified for the suit and venue of arbitration is also at Hyderabad.

10. In view of arbitration clause, absence of substantial cause of action having been arisen within the territorial jurisdiction of this Court as well as absence of averment in the application disclosing that cause of action has arisen within the jurisdiction of this Court except the averment that suit was filed at Faridabad, this Court does not find it appropriate to invoke its jurisdiction under Section 11(6) of 1996 Act.

11. In the wake of above discussion and findings, this Court is of the considered opinion that present application *sans* merit, thus, deserves to be dismissed and accordingly dismissed.

12. The applicant is at liberty to approach the appropriate Court.

(JAGMOHAN BANSAL)
JUDGE

11.11.2024

Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No