



ARB-342-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

ARB-342-2024

Date of Decision: 19.12.2024

Sanjeev Sachdeva

...Applicant

Versus

Rajesh Puri and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Sukesh Kumar Jindal, Advocate for the applicant

Mr. Vivek Singla, Advocate for the respondents

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 parties entered into an agreement dated 21.12.2019 (Annexure P-1). A dispute erupted between the parties. There is an arbitration clause in the aforesaid agreement. The execution of agreement, arbitration clause therein and service of notice under Section 21 of 1996 Act is not disputed.

3. Learned counsel for the respondents submits that as per clause 11 of the agreement, the arbitration proceedings have to be held in New Delhi, thus, this Court has no territorial jurisdiction to entertain the instant application. In support of his arguments, he relies upon judgment of Supreme Court in ***BGS SGS Soma JV v. NHPC Limited, 2020 (4) SCC 234*** and ***Mankastu Impex Private Limited v. Airvisual Limited, 2020(5) SCC***



4. *Per contra*, learned counsel for the applicant submits that the property in dispute is located at Gurugram; the agreement was executed in Gurugram; the parties are located at Gurugram and as per Clause 12 of the agreement, the Courts at Gurugram have jurisdiction to try all suits or proceedings in connection with the Agreement.

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

6. For the ready reference, Clauses 11 and 12 of the agreement are reproduced as below: -

“11. All disputes, differences and/or claims arising out of these presents or as to the construction, meaning or effect hereof or as to the rights and liabilities of the parties hereunder shall be settled by Arbitration to be held in Delhi in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any statutory amendments thereof by a sole arbitrator who shall be nominated/appointed solely by the First Party and the other party shall at no point of time have any objection to the appointment of the sole arbitrator whose decision shall be final.

12. The Courts at Gurugram shall have jurisdiction to try all suits or proceedings, matters or things in connection with this Agreement.”

7. The issue of jurisdiction raised by the respondent has been adverted by this Court in ***M/s I Care Consultancy v. M/s Mahindra and Mahindra Financial Services Limited and others, ARB-49-2023; Naveen Garg v. Sanjay Aggarwal, ARB-118-2024*** and ***M/s I Care Consultancy v. L&T Finance Ltd. and others, ARB-57-2023***. It has been held that this



The relevant extracts of the judgment in ARB-49-2023 are reproduced as below: -

“8. From the agreement and arguments of both sides, it comes out that an agreement dated 04.01.2012 was executed between applicant and respondent. There is an arbitration clause in the agreement. As per said agreement, the venue of arbitration shall be Mumbai. The agreement was executed at Karnal (Haryana). The registered office of respondent is at Mumbai. Both parties are having their office at Karnal (Haryana). The work pursuant to agreement was to be executed within jurisdiction of this Court. The cause of action has arisen within jurisdiction of this Court.

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11. As per Section 2 (1) (e), ‘Court’ includes principal Civil Court of original jurisdiction and High Court which in exercise of its ordinary original civil jurisdiction, has jurisdiction to decide the question forming the subject matter of arbitration if the same had been the subject matter of a suit.

This Court, indubitably, has no ordinary original civil jurisdiction to decide the questions forming the subject matter of arbitration if the same had been the subject matter of a suit. All civil suits arising within territorial jurisdiction of this Court are filed before District Court. This Court cannot entertain civil suit on the original side. This Court has only appellate jurisdiction, thus, this Court does not fall within definition of Court as defined under Section 2 (1) (e) of 1996 Act. Undisputedly, the cause of action has arisen within territorial jurisdiction of this Court and as per Rules and Regulations governing the jurisdiction of this Court and District Courts functioning within its jurisdiction, the parties, in the absence of Arbitration clause, could file civil suit at Karnal (Haryana) which is place of agreement as well as cause of action. Thus, Civil Court at Karnal (Haryana) falls



within definition of 'Court' as defined under Section 2(1) (e) of 1996 Act.

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20. *Constitution Bench in BALCO (supra) had occasion to consider jurisdiction of Courts in India and applicability of provisions of Arbitration Act, 1996 where place/seat of arbitral Tribunal is outside the country. The court has held that where seat of arbitrator is outside the country, Part-I of the 1996 Act would not be applicable. Section 2(2) of the Act candidly provides that Part-I shall apply where the place of arbitration is in India meaning thereby if place of arbitration is outside the country, Part-I would not be applicable. In para 96, Supreme Court categorically held that Court within whose jurisdiction the subject matter of the suit is situated and the court within jurisdiction of which the dispute resolution i.e. arbitration is located would have jurisdiction. The Court clarified its opinion by way of an example. At the cost of repetition, the relevant part of para 96 of the judgment is reproduced as below:*

“For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal

sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the



jurisdiction of which the dispute resolution i.e. arbitration is located.”

[Emphasis Supplied]

21. Section 11(12) provided that in case of international commercial arbitration, the reference to the Supreme Court or High Court shall be construed as Supreme Court and in cases other than international commercial arbitration, the reference to Supreme Court or High Court shall be construed as High Court. It further provides that High Court means a High Court within whose local limits, the principal Civil Court is situated. Section 11 (12) at the cost of repetition is reproduced as below:

“(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the “Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “Supreme Court”; and (b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to “the Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “High Court” within whose local limits the principal Civil Court referred to in clause (e) of subsection (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.”

[Emphasis Supplied]

22. This Court as discussed hereinabove, does not fall within definition of Civil Court as defined under Section 2 (1) (e) of 1996 Act, thus, this Court gets jurisdiction under Section 11(6) where principal Civil Court of original jurisdiction has jurisdiction to decide the questions forming the subject matter of arbitration, had the same been the subject matter of suit. The cause of action has arisen within jurisdiction of principal Civil Court at Karnal (Haryana). The



said Court has jurisdiction to entertain civil suit arising out of aforesaid agreement. The contention of respondent is that as per arbitration agreement, Mumbai Court has exclusive jurisdiction whereas as per judgment of Supreme Court in *BALCO (supra)*, Court at Karnal (Haryana) as well as Mumbai has jurisdiction in term of Section 2(1)(e) read with Section 20 of 1996 Act. As Civil Court at Karnal (Haryana) has jurisdiction to entertain dispute in question, this Court has jurisdiction to entertain application under Section 11 (6) of 1996 Act.

23. A Coordinate Bench of this Court *M/s Green Global Energy Vs. G.R. Infra Projects Ltd*, Arbitration Case No.256 of 2019, vide order dated 10.05.2024 has held that this Court has jurisdiction to entertain an application under Section 11 (6) though in the agreement, it was provided that courts in Udaipur shall have exclusive jurisdiction. In the said case, agreement between the parties was executed at Gurugram and work order pertained to Uttar Pradesh. No cause of action arose at Udaipur, however, in the agreement, Udaipur was notified venue of the arbitration. This Court while passing said order noticed judgment of Supreme Court in *Indus Mobile Distribution (P) Ltd. (supra)* & *Ravi Ranjan Developers Pvt. Ltd. (supra)* and appointed a sole arbitrator.

The aforesaid order of this Court has been assailed before Supreme Court by way of petition for Special Leave to Appeal (C) No.13409 of 2024. Supreme Court has issued notice of motion which is confined to following contentions:

- (i) the respondent did not invoke arbitration clause before invoking Section 11 of Arbitration Act.
- (ii) Arbitration clause provides for appointment of arbitral Tribunal consisting of three arbitrators.

24. In the wake of above discussion and findings, it is hereby held that this Court has jurisdiction to entertain present application under Section 11 (6) of 1996 Act. The objection raised by respondent is rejected.”



8. In the case in hand, the agreement was executed within the jurisdiction of this Court. Both the parties are located in Gurugram i.e. within jurisdiction of this Court. Not even part of cause of action arose within jurisdiction of New Delhi whereas whole of cause of action arose within jurisdiction of this Court. Thus, present case is squarely covered by aforesaid judgments of this Court.

9. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a sole Arbitrator to adjudicate the dispute between the parties.

10. Mr. V.K. Maheshwari, Principal Judge (Retd.), Family Court, Delhi, residing at House No.85, Sector 30, Gurugram- 122001, Mobile No.9910384671 is hereby appointed as a Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned Arbitrator is requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

11. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at his convenience.

12. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.

13. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the 1996 Act.

14. Needless to mention, parties would be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

15. A request letter along with copy of this order be sent to

Mr. V.K. Maheshwari.

(JAGMOHAN BANSAL)
JUDGE

19.12.2024
Mohit Kumar

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