



ARB-425-2023

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

279

ARB-425-2023

Date of Decision: 06.08.2024

Aerial Telecom Solutions Private Limited**...Applicant**

Versus

Ericsson India Private Limited**...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: - Mr. Ajay Pal Saini, Advocate for the applicant

Mr. Sahil Khunger, 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 parties entered into agreement dated 16.07.2018 (Annexure P-1). There is an arbitration clause in the aforesaid agreement. The parties are neither disputing existence of agreement nor arbitration clause.

3. The applicant, in terms of Section 21 of 1996 Act, served notice dated 05.07.2023 (Annexure P-2) upon the respondent. The respondent vide its reply dated 03.08.2023 (Annexure P-3) advised the applicant to accept arbitration through sole arbitrator instead of three arbitrators as envisaged in the agreement.



4. As per arbitration agreement, there would be three arbitrators, however, during the course of hearing, both the parties agreed for the appointment of a sole arbitrator.

5. Mr. Sahil Khunger, Advocate submitted that this Court, in exercise of power conferred by Section 11 (6) of 1996 Act, has no power to appoint an arbitrator because as per agreement venue of arbitrator is 'Delhi'. The parties were free to select venue of arbitrator and they had consciously selected 'Delhi'. It is a settled proposition of law that parties are free to select any place of arbitration including neutral place. The venue of arbitrator cannot be controlled or governed by provisions of Civil Procedure Code.

6. The issue of jurisdiction raised by 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 Court has jurisdiction to appoint an Arbitrator under Section 11 of 1996 Act. The relevant extracts of the judgment are reproduced as below:-

“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.”*



7. In the case in hand, the agreement was executed on 16.07.2018 within the jurisdiction of this Court. The registered office of the respondent is in New Delhi and of the applicant in Mohali. The respondent is having its regional office in Gurugram. The work pursuant to the agreement was to be executed within jurisdiction of this Court. The cause of action arose between the parties within jurisdiction of this Court. Thus, present case is squarely covered by aforesaid judgments of this Court.

8. 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.

9. Mr. S.C. Goyal, District & Sessions Judge (Retd.), residing at Flat No.204, Tower 2, Malibu Town, Sector 47, Sohna Road, Gurugram Mobile No.9813204570 is appointed as an 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.

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

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

12. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.
13. Needless to mention, parties will 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.
14. A request letter along with copy of this order be sent to Mr. S.C. Goyal, District & Sessions Judge (Retd.).

(JAGMOHAN BANSAL)

JUDGE

06.08.2024

Mohit Kumar

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