



\$~7

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ARB.P. 342/2023

VEDANTA LIMITED

..... Petitioner

Through: Mr. Krishendu Dutta, Sr. Adv. with
Mr. Anurag Tandon, Mr. Rajat Sinha, Mr. Shiva
Pande, Advs.

versus

SHREEJI SHIPPING

..... Respondent

Through: Mr. Navin Pahwa, Sr. Adv. with Ms.
Aastha Mehta, Mr. Yash Goyal, Ms. Perna
Mohapatra, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

08.02.2024

%

1. This is a petition seeking appointment of an Arbitral Tribunal to adjudicate the disputes between the parties.
2. As per Mr. Dutta, learned senior counsel for the petitioner, a Purchase Order dated 21.06.2021 bearing No. 4800019319 was executed between the parties for handling the transportation of coal from Kandla Port to Bhachau Plant and Bedi Port to Khambalia Plant ("Purchase Order"). The parties also executed the Standard Terms and Conditions for Transport Agreement to the Purchase Order ("Appendix"), (collectively referred to as "Contract").
3. Since there were shortfalls in the amount which was contracted to be transported and the amount actually transported and since there were



disputes, the petitioner invoked the Arbitration Clause.

4. The Arbitration Resolution clause is contained in Clause 10 of Annexure B of the Appendix, which reads as under:-

“10. ARBITRATION

10.1 Any dispute or difference whatsoever arising between the parties out of or relating to the interpretation, meaning, scope, operation or effect of this Agreement or the existence, validity, breach or anticipated breach thereof or determination and enforcement of respective rights, obligations and liabilities of the parties thereto shall be amicably settled by way of mediation. If the dispute is not conclusively settled within a period of twenty-one (21) days from the date of commencement of mediation or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under

the (Indian) Arbitration and Conciliation Act, 1996 (as amended from time to time), which are deemed to be incorporated by reference into this clause. The arbitration shall be conducted as follows:

(i) A sole arbitrator shall be appointed in case the value of claim under dispute is less than 5,000,000 (Rupees Five Million Only) / \$ 100,000 (Hundred Thousand United States Dollars) and in any other event by a forum of three arbitrators with one arbitrator nominated by each Party and the presiding arbitrator selected by the nominated arbitrators.

(ii) The language of the mediation and arbitration



proceedings shall be English. The seat of arbitration shall be [Local Jurisdiction in Goa / Local Jurisdiction Karnataka /Delhi], India.

(iii) The award made in pursuance thereof shall be final and binding on the parties.”

5. Mr. Pahwa, learned senior counsel for the respondent states that there is no arbitration agreement between the parties. He also states that the Purchase Order was never accepted by the respondent. Paragraph 7 of the reply affidavit in this regard is important and reads as under:-

“7. It is submitted that a Purchase Order dated 21.06.2021 was issued by the Petitioner and sent through post to the Respondent. The contract was to commence from 21.06.2021 and end at 31.10.2021. That before the terms of the Purchase order could even be read, the Respondent had started the unloading/ handling and delivery process of the coal since the first vessel had already arrived in the said time period carrying the Petitioner's coal. The Purchase order carries the same terms and conditions as LOI. However, an arbitration clause came to be included under the head "Annexure-B Standard terms and conditions for Transport Agreement" as Clause 10.1. It is submitted that the purchase order is not signed by the Respondent and the Respondent had never agreed to be bound by any arbitration process. It is submitted that in the name of general terms and conditions, the Respondent is saddled with the responsibility of undergoing arbitration. However, the purchase order was never negotiated nor was it signed by the



Respondent.”

6. He further states that the services were provided by the respondent pursuant to the Letter of Intent (LoI) dated 17.06.2021 and not pursuant to the Purchase Order. He draws my attention to the LoI and last line of the LoI reads as under:-

*“This LOI shall be converted into a formal PO shortly.
Please treat this LOI as our confirmation for the above
project.”*

7. He also draws my attention to Clause 14.10 of the Appendix to state that the Purchase Order itself contemplated that it shall be valid and binding only once it is duly signed by the parties. Admittedly, the same has never been signed. Clause 14.10 of the Appendix reads as under:-

“14.10 Validation: This Agreement shall come into effect when authorized representatives of both Company and Service Provider execute and affix their signature hereto in their due capacity, within 3 working days after confirmation of business by Company and constitutes the entire agreement between the Parties relating to its subject matter. Any alteration, amendment or addition to any of the terms of this Agreement shall become binding only when such alteration, amendment or addition is evidenced in writing and is executed by the authorized representatives of the both parties in their due capacity.”

8. Lastly, Mr. Pahwa, learned senior counsel states that a perusal of the arbitration agreement and more particularly Clause 10.1(ii) states that the seat of arbitration shall be “local jurisdiction in Goa, local



jurisdiction in Karnataka/ Delhi”. The applicable law and jurisdiction is contained in Clause 11.2. Clause 10.1(ii) and Clause 11.2 read as under:-

“ 10.1

(ii) The language of the mediation and arbitration proceedings shall be English. The seat of arbitration shall be [Local Jurisdiction in Goa / Local Jurisdiction Karnataka /Delhi], India.

.

11.2 The parties submit to the exclusive jurisdiction of the courts of [Local Jurisdiction in Goa / Local Jurisdiction Karnataka /Delhi], India and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Agreement.”

9. The learned counsel for the respondent contends that Clause 10.1(ii) is hit by Section 29 of the Indian Contract Act, 1872, and Section 20 of CPC should apply to determine jurisdiction. He states that no part of cause of action has arisen within the territorial jurisdiction of this Court and it shall only be the Courts at Gujarat, where cause of action has arisen, which will have jurisdiction to entertain the Section 11 application.
10. Mr. Dutta, learned senior counsel states that the petitioner vide email dated 22.06.2021 issued the Purchase Order in favour of the respondent. He further states that pursuant to the arbitration agreement, a mediation notice dated 18.08.2022 was sent by the petitioner to the respondent and mediation proceedings were also held between the



parties.

11. Lastly, he submits that the invoices raised by the respondent towards their services provided contain the mention of Purchase Order. Hence, he states that there is an arbitration agreement in writing between the parties as contemplated under Section 7(4)(b) of the Arbitration and Conciliation Act, 1996.
12. I have heard learned counsel for the parties.
13. Section 7 of the Arbitration and Conciliation Act, 1996 and more particularly Sections 7(4)(a) and 7(4)(b) read as under:-

“Section 7. Arbitration Agreement.

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one



party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

(emphasis supplied)

14. At the stage of Section 11 petition, this Court is only required to see the *prima facie* existence of an arbitration agreement and is not to adjudicate upon the merits of the case.
15. Admittedly, the Purchase Order has been sent vide email dated 22.06.2021 (denied by the respondent) by the petitioner to the respondent. The email address of the respondent is found on the letter dated 22.06.2021 and reads as Shreeji@shreejishipping.in. The same is also found on the invoices raised by the respondent, which also contain mention of the Purchase Order. Hence, I am of the opinion that there exists an arbitration agreement between the parties.
16. As far as Section 29 of the Indian Contract Act, 1872 is concerned, I am of the opinion that the same is not applicable to the arbitration clause in the present case. Section 29 reads as under:

“Agreements, the meaning of which is not certain, or capable of being made certain, are void.”

17. In the present case, the arbitration clause clearly states that the seat of arbitration is Goa, Karnataka or Delhi. It merely gives a choice to the parties to invoke the jurisdiction of either of these courts. There is no ambiguity in the clause, as it intended for the parties to choose either of these jurisdictions to govern the arbitration proceedings invoked by the



parties. The same is certain, or is capable of being made certain. Hence, I am of the view that arbitration clause is not hit by Section 29 of the ICA.

18. The fact that the seat of the arbitration has been contemplated as Delhi, Karnataka and Goa also vests jurisdiction with this Court to entertain and try the Section 11 petition in view of the judgment of the Hon'ble Supreme Court in ***Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.***, (2017) 7 SCC 678:

“19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.”

19. I am unable to agree with the contention of the learned senior counsel



for the respondent that where three other ports are stated to be having the seat of arbitration, in that scenario, the provisions of Section 16 to 20 of CPC should be applied for determining which of the Courts has jurisdiction, as the law in this case is already settled by the above paragraphs of the judgment of the Hon'ble Supreme Court. In case the seat of arbitration is at three places, the parties are at liberty to approach any one of the said three places.

20. For the said reasons, the petition is allowed and the following directions are issued:-

- i) Even though the arbitration clause mentions panels of three arbitrators, without prejudice to the rights of the respondent and without prejudice to its rights to challenge the present order, the respondent and the petitioner are agreeable to the appointment of a Sole Arbitrator. Accordingly, Mr. Abhijat (Adv.) (Mob. No. 9811800833) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the



parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

- v) The parties shall approach the learned Arbitrator within two weeks from today.
- 21. The issues raised by the respondent in the present petition remain open to be adjudicated by the Arbitrator.
- 22. Without prejudice to the rights of the respondent and without prejudice to the rights of the respondent to challenge the present order, the respondent is agreeable to appointment of an Arbitrator.
- 23. The petition is allowed and disposed of in the above terms.

JASMEET SINGH, J

FEBRUARY 8, 2024 / (MS)

Click here to check corrigendum, if any