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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ARB.P. 859/2023 & I.A. 490/2024
M/S SAMAL INFRA PROJECTS PVT. LTD. Petitioner
Through: Mr. Amit Singh, Adv.
versus
M/S ISGEC HEAVY ENGINEERING LTD. Respondent
Through: Mr. Arun Kumar Verma, Sr. Adv, Mr.
Shambhu Sharan, Mr. Ankit Jain, Ms. Sabah Iqbal
Siddiqui, Advocates

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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28.02.2024

1. This is a petition seeking appointment of an Arbitrator in accordance with the Arbitration Agreement contained in Clause 7 of the General Terms and Conditions of the Purchase Order dated 16.02.2021, which reads as under:-

“7) *ARBITRATION*

In the event of any dispute, arising during the tenure of the contract between contractor and the engineer-in-charge regarding interpretation of the work order or payment etc, it will be referred to the sole arbitrator to be appointed by the Managing Director of ISGEC HEAVEY ENGINEERING LTD. and decision of arbitrator will be final and binding on both the parties.”

2. Mr. Singh, learned counsel for the petitioner relies upon Clause 15 of the Purchase Order which reads as under:-



“15) JURISDICTION:

This contract is subject to Delhi jurisdiction.”

3. He also relies upon Clause 6 of the General Terms and Conditions of the Purchase Order which reads as under:-

“6) JURISDICTION

The civil Courts in Delhi/New Delhi shall have the exclusive jurisdiction of any matter, claim or disputes arising out of or relating to this work order.”

4. Mr. Singh states that once the agreement provides exclusive jurisdiction to the Courts at Delhi, the petition seeking appointment of the Arbitrator will lie in this Court.
5. Admittedly, it is the case of the petitioner that the Purchase Order was placed upon the respondent at Noida. The petitioner-company is situated in Noida, and the respondent is also a company at Noida. The registered office of the respondent is at Yamuna Nagar, Haryana. The contract of work which was to be executed was at Bulandshahr, Uttar Pradesh.
6. For the said reasons, it is stated by the learned senior counsel for the respondent that no part of cause of action has arisen within the jurisdiction of this Court and thus this Court will not have jurisdiction.
7. Mr. Singh, learned counsel relies upon the judgment of ***B.E. Simoesse Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.***, (2015) 12 SCC 225, and more particularly paragraph 10 which reads as under:-

“10. In Swastik Gases (P) Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , in the lead judgment, one of us (R.M. Lodha,



J., as he then was) referred to the earlier decisions of this Court in Hakam Singh v. Gammon (India) Ltd. [Hakam Singh v. Gammon (India) Ltd., (1971) 1 SCC 286] ; Globe Transport Corpn. v. Triveni Engg. Works [Globe Transport Corpn. v. Triveni Engg. Works, (1983) 4 SCC 707] ; Angile Insulations v. Davy Ashmore India Ltd. [Angile Insulations v. Davy Ashmore India Ltd., (1995) 4 SCC 153] ; New Moga Transport Co. v. United India Insurance Co. Ltd. [New Moga Transport Co. v. United India Insurance Co. Ltd., (2004) 4 SCC 677] ; Shree Subhlaxmi Fabrics (P) Ltd. v. Chand Mal Baradia [Shree Subhlaxmi Fabrics (P) Ltd. v. Chand Mal Baradia, (2005) 10 SCC 704] ; Rajasthan SEB v. Universal Petrol Chemicals Ltd. [Rajasthan SEB v. Universal Petrol Chemicals Ltd., (2009) 3 SCC 107 : (2009) 1 SCC (Civ) 770] ; Balaji Coke Industry (P) Ltd. v. Maa Bhagwati Coke Gujarat (P) Ltd. [Balaji Coke Industry (P) Ltd. v. Maa Bhagwati Coke Gujarat (P) Ltd., (2009) 9 SCC 403 : (2009) 3 SCC (Civ) 770] ; A.V.M. Sales Corpn. v. Anuradha Chemicals (P) Ltd. [A.V.M. Sales Corpn. v. Anuradha Chemicals (P) Ltd., (2012) 2 SCC 315 : (2012) 1 SCC (Civ) 809] and culled out the legal position in para 32 of the Report as under: [Swastik Gases (P) Ltd. case [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , SCC pp. 47-48]

“32. ... It is a fact that whilst providing for jurisdiction clause in the agreement the words like ‘alone’, ‘only’,



‘exclusive’ or ‘exclusive jurisdiction’ have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement—is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor is it against the public policy. It does not offend Section 28 of the Contract Act in any manner.”

Madan B. Lokur, J., while writing a separate judgment, concurred with the above legal position.”



8. He states that once the Courts in Delhi exclusively has jurisdiction to entertain the disputes between the parties, this Court will have the jurisdiction.
9. I am unable to agree.
10. It is a settled proposition of law that where two or more Courts have jurisdiction, the parties by agreement/ contract can restrict jurisdiction to one Court exclusively. However, where the Courts do not have jurisdiction at all, the parties by agreement cannot confer jurisdiction upon that Court.
11. This view is also stated in ***Aarka Sports Management (P) Ltd. v. Kalsi Buildcon (P) Ltd.***, 2020 SCC OnLine Del 2077 and more particularly in paragraphs 31 and 32 which read as under:-

“31. The petitioner could have succeeded if the agreement had provided the seat of arbitration to be Delhi. In that case, this Court would have exclusive jurisdiction to entertain this application.

32. Clause 15.1 which provides for exclusive jurisdiction of Delhi Courts, is not valid as the parties cannot confer jurisdiction on a Court which otherwise has no jurisdiction.

That apart, clause 15.1 is subject to clauses 15.2 and 15.3.”

12. The judgments of ***B.E. Simoes Von Staraburg Niedenthal*** (supra) and ***Swastik Gases Private Limited vs. Indian Oil Corporation Limited***, (2013) 9 SCC 32 are distinguishable as the arbitration agreements in those cases had merely vested exclusive jurisdiction in a Court which anyway had jurisdiction, ousting the other Courts. They did not grant jurisdiction to a Court which was wholly unrelated to the dispute.



13. For the said reasons, this Court does not have jurisdiction to entertain the present petition. Hence, the same is dismissed granting liberty to the petitioner to approach the competent Court of jurisdiction.

JASMEET SINGH, J

FEBRUARY 28, 2024 / (MS)

[Click here to check corrigendum, if any](#)