



2024:DHC:4751



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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of decision: 31<sup>st</sup> May, 2024*

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**ARB.P. 831/2024**

**M/S GUPTA ENTERPRISES**

252-G, First Floor,  
Sant Nagar, East of Kailash,  
New Delhi-110065

Email:- geconinfra@gmail.com, sksingla123@gmail.com

M.No.:- +91-9899312301, 9958541655 ..... Petitioner

Through: Mr. Kunwar Chandresh, Mr. Munis  
Nasir, Ms. Poonam Prasad and Ms.  
Anushka Nigam, Advocates.

versus

**UNION OF INDIA**

Through Executive Engineer,  
Central Public Works Department (CPWD),  
Jabalpur, MP-482002

M.NO- 0761- 2642247/2642248

Email Id:- uiodhc@gmail.com

..... Respondent

Through: Mr. Kameshwar Nath Mishra, Sr.  
Panel Counsel with Mr. Amit  
Acharya, Govt. Pleader and Mr.  
Sunny and Ms. Vidya Mishra,  
Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**



2024:DHC:4751

**I.A. 31343/2024 (Exemption)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

**ARB.P. 831/2024**

3. The Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with Section 151 CPC, has been filed on behalf of the petitioner seeking appointment of Sole Arbitrator.
4. The petitioner is in the business of construction and is a Builder and Government Contractor with its registered office at 252-G, Sant Nagar, East of Kailash, New Delhi- 110065. The respondent is Union of India represented to be having its business at Jabalpur Central Division, C.P.W.D., Survey of India Colony, Type-IV, Qtr. No.3 & 4, Near Kachnar City, Vijay Nagar, Jabalpur (M.P.), PIN: 482002.
5. It is asserted that a Tender for the construction of Building for 125 mm PSAPDS, CCC Manufacturing Plant and Process cum Storage Building along with AC Plants and Change Rooms at Ordinary Factory, Khamaria, Jabalpur (M.P. was accepted and a Letter dated 19.05.2017 for Acceptance of Tender was issued to the petitioner.
6. Disputes arose between the parties and the petitioner invoked the Settlement of Dispute Resolution clause provided under Clause 25 of the General Condition of Clause (GCC) via letter dated 21.12.2022. On receiving no response from the respondent, the petitioner wrote letter dated 17.01.2023 to the concerned Superintending Engineer, as per Clause 25 of GCC. However, the respondent in its Reply dated 02.02.2023, denied the Claims of the petitioner.



2024:DRC:4751



7. After further correspondence, a Dispute Resolution Committee (DRC) was constituted for adjudication of the petitioner's claims. The parties filed their respective Claims and Reply before the DRC, which concluded its hearing and issued the final decision vide letter dated 30.10.2023.

8. Being dissatisfied with the decision of DRC, the Petitioner *vide* its letter dated 30.11.2023 proposed the list of Ld. Arbitrators from the list of empanelled arbitrators by CPWD for consideration of the Respondent to select the sole arbitrator. It is asserted that at first, the respondent asked the petitioner to send the application for appointment in compliance with the format prescribed under the GCC; however, after the petitioner had sent a revised letter in the format, the respondent ignored the list of arbitrators sent by the petitioner and instead proposed its own list of arbitrators.

9. The parties failed to agree upon an arbitrator however, *vide* its letter dated 07.02.2024, the respondent declared that Sh. Arun Kumar Trivedi has been appointed as the Sole Arbitrator unilaterally.

10. The petitioner has asserted that it had never consented to such unilateral appointment and has not participated in any proceedings/hearing scheduled by the learned Arbitrator. Thus, the appointment of a Sole Arbitrator is sought by the present petition.

11. **Learned counsel for the respondent**, who has appeared on advance notice, submits that this Court has no territorial jurisdiction to entertain the present Suit. Clause 25 of GCC which provides for Arbitration, does not define any seat or venue of Arbitration. No part of cause of action has arisen in Delhi and therefore, this Court has no jurisdiction.

12. **Submissions heard.**

13. For appreciation of the contentions of the parties, it would be



2024:DHC:4751



appropriate to refer to the relevant part of Clause 25 (ii) of GCC, which provides for Arbitration, which reads as under:-

*"..The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.*

*It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award..."*

14. While the petitioner has stated in the Petition that the jurisdiction is in Delhi in accordance with the Dispute Resolution Clause of the Contract Agreement, it is evident from this Clause itself that it did not specify any seat or venue for the place of conducting the Arbitration.

15. The Apex Court in the Case of M/s Ravi Ranjan Developers Pvt. Ltd. vs. Aditya Kumar Chatterjee, 2022 SCC OnLine SC 568, it was observed that though in *stricto sensu* this definition of Court in Section 2(1)(e) of the Act, 1996 may not be applicable while exercising jurisdiction under Section 11(6) of the Act, 1996 to appoint the Arbitrator/Arbitral Tribunal, but at the same time, Application under Section 11(6) of the Act, 1996 cannot be filed in any High Court of India, irrespective of the territorial jurisdiction. Section 11(6) of the Act, 1996 has to be harmoniously read with Section 2(1)(e) of the Act, 1996 and construed to mean a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the Act, 1996. It was noted that the territorial



2024:DHC:4751



jurisdiction of entertaining the Civil Suits has been provided in Sections 16 to 20 of the Act, 1996. The Court within the legal limits of whose jurisdiction the defendant actually or voluntarily resides or carries on business, or where any part of cause of action has arisen, would essentially have the territorial jurisdiction to entertain the Suit. Where the Petition under Section 11 of the Act, 1996 is concerned, while it would be governed by the Arbitration Agreement and the jurisdiction of the Court to which the parties may agree, but if there is no such Agreement of seat of jurisdiction, then the Application under Section 11(6) of the Act, 1996 would be filed only in the jurisdiction of the High Court which is to be determined in accordance with Section 16 to 20 C.P.C.

16. A reference was made to Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited and Ors., (2017) 7 SCC 678 Hindustan Construction Company Limited vs. NHPC Limited and Anr. (2020) 4 SCC 310 and BGS SGS Soma JV vs. NHPC Limited, (2020) 4 SCC 234, wherein the parties had designated a seat of arbitration which thus, was held to become the exclusive jurisdiction clause because of which only the Courts within whose territorial limits the seat is located, would have jurisdiction to the exclusion of all other Courts.

17. In Union of India vs. Hardy Exploration and Production (India) Inc., (2019) 13 SCC 472, a 3-Judge Bench of the Apex Court held that the “sittings” at various places are relatable to “venue”. It cannot be equated with the “seat of arbitration” or “place of arbitration”, which has a different connotation.

18. Similarly, in the case of Mankastu Impex Private Limited vs. Airvisual Limited, (2020) 5 SCC 399, a 3-Judge Bench of the Apex Court observed



2024:DHC:4751



that the “seat of arbitration” is the vital aspect in any arbitration proceedings. It determines the applicable law and also the arbitration procedure. The *situs* is not just about where an Institution is based or where the hearings will be held, but it is all about which court would have the supervisory power over the arbitration proceedings.

19. Similar observations were made in Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. vs. Enercon GmbH], (2014) 5 SCC 1, wherein also it was held by the Supreme Court that the “*location of the seat*” shall determine the exclusive jurisdiction of the Court to oversee the arbitration proceedings.

20. After referring to all the aforesaid judgments in the case of M/s Ravi Ranjan Developers Pvt. Ltd., (supra), it was held that the parties cannot by consent, confer jurisdiction on a Court which inherently lacks jurisdiction. When neither the seat nor the place of arbitration is designated in the particular Arbitration Clause/Agreement and no part of cause of action has arisen within the jurisdiction of the High Court, the Application under Section 11(6) of the Act, 1996 would not be maintainable in said High Court.

21. There is thus, no confusion and law is explicit that for the purpose of Arbitration, even if no part of cause of action has arisen in a place, then too, the parties can agree on a seat of jurisdiction, which would then become the place for all litigation under the Arbitration Act. However, if the parties do not specify any seat/place of Arbitration, then the jurisdiction of the Court shall be determined in accordance with Section 16 to Section 20 of C.P.C.

22. In the present case, there is neither any place nor any venue determined by the parties, in the Arbitration Clause. Therefore, the territorial



2024:DHC:4751



jurisdiction has to be determined in accordance with Section 16 to Section 20, CPC.

23. The petitioner in its Petition has asserted that this Court has the jurisdiction to decide the matter as the petitioner and respondent both have Head Office in Delhi. However, a perusal of the Letter of Acceptance of Tender dated 19.05.2017 shows that the letter has been sent from the Office of the Executive Engineer, Government of India at Jabalpur, MP. Thus, the office of the respondent was at Jabalpur, M.P. Further, the Contract was to be executed at Ordinance Factory, Khamarin, Jabalpur (M.P.).

24. Moreover, Learned counsel for the petitioner upon being specifically asked, has stated that the address of the petitioner is of Delhi and the Headquarter of the respondent is in Delhi, though it is agreed that no other part of cause of action has arisen in Delhi.

25. In the light of aforesaid discussion, it is held that this Court has no territorial jurisdiction to entertain the present Petition, which is hereby dismissed.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**MAY 31, 2024/rs**