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

+ **ARB.P. 1126/2022**

**ANISH INFRACON INDIA PRIVATE LIMITED THROUGH ITS
AUTHORISED REPRESENTATIVE Petitioner**

Through: Ms. Bina Gupta, Ms Sheena Taqui,
Ms Akansha Saini and Mr Shiv
Vinayak Gupta, Advs.

versus

**IRCON INTERNATIONAL LIMITED THROUGH ITS CHAIR
MAN Respondent**

Through: Mr. Chandan Kumar and Ms Kirti
Atri, Advs.

**CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER
19.03.2024**

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1. This is a petition seeking appointment of an arbitrator arising out of the contract agreement dated 06.11.2017.
2. The settlement disputes is contained in clause 73 of the agreement and the same reads as under:

“ 73. SETTLEMENT OF DISPUTES:

...

73.1 Mutual Settlement

***All such disputes or differences shall in the first place be referred
by Contractor to the Employer in writing for resolving the same***



through mutual discussions, negotiations, deliberation, etc. associating representatives from both the sides and concerted efforts shall be made for reaching amicable settlement of disputes or differences.

73.2 Conciliation/Arbitration

73.2.1 It is a term of this contract that Conciliation/Arbitration of disputes shall not be commenced unless an attempt has first been made by the parties to settle such disputes, within 120 days of submission of monthly statement of such claim, through mutual settlement.

73.2.2 In the event of failure to resolve any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Employer of any certificate to which the contractor may claim to be entitled to, through mutual settlement, the Contractor may refer such matters to the Managing Director in writing within 60 days settlement through Conciliation. If the efforts to resolve all or any of the disputes through Conciliation fail, the contractor may refer to the Chairman and Managing Director of the Employer for settlement of such disputes or differences through Arbitration. No disputes or differences shall be referred to Arbitration after expiry of 60 days from the date of notification of the failure of Conciliation.

73.2.3 The demand for Conciliation or Arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item wise. Only such dispute(s) or difference(s) in respect which the demand has been made, together with counter claims or set off, given by the Employer, shall be referred to Conciliation or Arbitration and other matters shall not be included in the reference.

....

73.4 (a)(ii) Arbitration Tribunal: In cases where the total value of all claims/counter-claims exceeds Rs 2.00 Crore, Arbitral Tribunal



shall consist of a panel of three Officers not below GM level. For this purpose, the Employer will send a panel of more than 3 names to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the Employer. Contractor will be asked to suggest to the Chairman and Managing Director at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by the Employer. The Chairman and Managing Director shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the presiding arbitrator from amongst the 3 arbitrators so appointed. The Chairman and Managing Director shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrator sit will be necessary to ensure that one of them is from the Accounts Department. An officer of AGM rank of the Accounts Department shall be considered of equal status to the GM of the other departments of IRCON for the purpose of appointment of arbitrator."

3. It is stated by Mr. Kumar, learned counsel for the respondent that in the present case, there is no cause of action which has arisen within the territorial jurisdiction of this Court.

4. He states that in the present case, the facts are as under:

SI No.	Date	Particulars
i).	August 2017	<i>Ircon International Ltd. through its project office at Project office 5th Floor, Mehta Mahal, 15th Mathew Road, Opera House, Charni Road Mumbai --400004 Tel:' +91 22 2262 0659 Emal:ircon.30 18@ircon.org invited bid for Construction of civil works up to formation including Earthwork, blanketing, minor bridges, retaining walls, drains, ground improvement works, relocation of existing roads etc. From Chainage 37+532 (IR 196/15-17) to Chainage</i>



		<i>57+800 (IR; 216/23-25) in connection with construction of Western dedicated freight Corridor phase- II Vaitarna-Sachin Section. Infra Package SS4-A</i>
<i>ii).</i>		<i>Section 2 of the NIT set out "Form of Bid" and it was instructed that bid was to submitted to : IRCON INTERNATIONAL LIMITED, Acting Through General Manager IRCON INTERNATIONAL LIMITED, 5th Floor; Mehta Mahal, 15, Mathew Road, Opera House, Mumbai-400004</i>
<i>iii).</i>	<i>25.9.2017/ at page 5</i>	<i>Letter of Acceptance (LoA) was issued by General Manager IRCON INTERNATIONAL LIMITED, 5th Floor; Mehta Mahal, 15, Mathew Road, Opera House, Murnbai-400004.] to the Petitioner at its address at Gujarat.</i>
<i>iv).</i>	<i>6.11.2017</i>	<i>Formal agreement was signed by" ... acting through General Manager, IRCON INTERNATIONAL LIMIT~D,S 5th floor, Mehta Niall al, 15th Mathew Road Opera House Chami Road, Mmnbai (hereinafter called "the Employer;/Engineer") with the Petitioner having address at Gujarat.</i>
<i>v).</i>		<i>Work was executed between Vaitanra - Sachin Section. Vaitarana is in <u>Palghar Mumbai, Maharashtra</u>. Sachin falls in Surat Metropolitan Area, Gujarat.</i>
<i>vi).</i>	<i>23.11.2021/ at page 7</i>	<i>Petitioner raised disputes before the local Gujarat office of the Respondent.</i>
<i>vii).</i>	<i>6.1.2022/at page 14</i>	<i>Local Gujarat office of Respondent replied to the said letter.</i>
<i>viii).</i>	<i>19.2.2022/at page 29</i>	<i>Petitioner addressed letter to the CMD, IRCON seeking conciliation in terms of clause 73.2.2 of the GCC.</i>
<i>ix).</i>	<i>3.3.2022/ at page 31</i>	<i>Local office of Ircon in Gujarat replied and fixed meeting.</i>
<i>x).</i>	<i>26.5.2022/at page 34</i>	<i>Conciliation having failed Petitioner invoked arbitration under clause 73.4 (a) (ii) of the GCC by writing to the CMD (as was</i>



		<i>required in the clause)</i>
xi).	<i>Jurisdiction/ GCC</i>	<i>Clause 73.13 of the GCC provided for jurisdiction as under: “Jurisdiction of courts for dispute resolution shall be New Delhi.”</i>

5. Hence, he states that this Court does not have any jurisdiction to entertain the present petition.

6. Mr. Kumar, learned counsel for the respondent relies upon “**A.B.C. Laminart (P) Ltd. vs. A.P. Agencies**” [(1989) 2 SCC 163] to state as under:

“13. Under Section 20(c) of the Code of Civil Procedure subject to the limitation stated theretofore, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. It may be remembered that earlier Section 7 of Act 7 of 1888 added Explanation III as under:

“Explanation III.—In suits arising out of contract the cause of action arises within the meaning of this section at any of the following places, namely:

(1) the place where the contract was made;

(2) the place where the contract was to be performed or performance thereof completed;

(3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.”

14. The above Explanation III has now been omitted but nevertheless it may serve as a guide. There must be a connecting factor.”

7. He further relies on “**Patel Roadways Ltd. vs. Prasad Trading Co.**” [(1991) 4 SCC 270] which reads as under:

“12....The Explanation is really an Explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated



(whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive “or” will not be there. Instead, the second part of the Explanation would have read “and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place”.

8. Reliance is also placed on “***State of Rajasthan vs. Swaika Properties***” [(1985) 3 SCC 217] which reads as under:

“8....The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench.”

9. Lastly, Mr. Kumar, learned counsel for the respondent states that after invocation of the conciliation notice, two conciliation hearings were held in Gujarat.
10. I have heard learned counsel for the parties.
11. Admittedly, the arbitration clause as quoted above does not provide a



seat of arbitration at Delhi.

12. The seat of arbitration has been left open. However, in order to determine the jurisdiction where there is no seat of arbitration mentioned in the contract, reliance will have to be placed on Section 16 to 20 of CPC. In **“Aarka Sports Management (P) Ltd. v. Kalsi Buildcon (P) Ltd.”** [2020 SCC OnLine Del 2077], this Court opined that:-

27. If the parties have not agreed on the seat of the arbitration, the Court competent to entertain an application under Section 11 of the Arbitration and Conciliation Act would be the “Court” as defined in Section 2(1) (e) of the Act read with Sections 16 to 20 of the Code of Civil Procedure.

33....*The petitioner has relied upon cases in which the agreements provided the seat of arbitration, which eventually determined the jurisdiction of the Court whereas the agreement dated 16th March, 2018, in the present case, does not determine the seat. In that view of the matter, the jurisdiction, in the present case, has to be determined according to Section 2(1)(e) of the Arbitration and Conciliation Act read with Sections 16 to 20 of the Code of Civil Procedure.”*

13. Section 20 CPC reads as under:

“20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) *the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or*

(b) *any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who*



do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

14. Hence, the issue that needs to be determined is whether any cause of action for filing the petition has arisen within the Courts of jurisdiction at Delhi.

15. As per clause 73.2.2 of the agreement, in order to trigger the arbitration clause, the petitioner will have to refer the matters to the Chairman and Managing Director of the respondent. Admittedly, the Chairman and Managing Director of the respondent sits at New Delhi. According to me, the invocation forms an integral part of the cause of action.

16. The notice dated 26.05.2022 in terms of Clause 73.2.2 is addressed to the Chairman *cum* Managing Director at New Delhi.

17. For the said reasons, I am of the view that the judgements relied upon by the respondent are misconceived as a part of cause of action has arisen at Delhi and this Court will have jurisdiction to entertain the petition. It is not a case where there is no part of cause of action in Delhi and the parties have conferred jurisdiction on a Court which had none. Hence, the petition is allowed.

18. The respondent shall appoint its nominee arbitrator within a period of two weeks from today.

19. Both the parties state that the presiding arbitrator may be appointed by the Court. Hence, the following directions are passed:

i) Mr. Justice Rajiv Sahai Endlaw (Retd.) (Mob. No. 9717495002)



is appointed as a presiding 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 Arbitrators shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrators are 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 claim/ counter claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrators.
- v) The parties shall approach the learned Arbitrators within two weeks from today.

JASMEET SINGH, J

MARCH 19, 2024/DM/sr

Click here to check corrigendum, if any