



2024 : DHC : 3278



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision:-25th April, 2024.

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ARB.P. 1076/2023

M/S R K BARARIA THROUGH SHRI R K BARARIA SOLE

PROPRIETOR

..... Petitioner

Through: Mr. Sanjay Bansal, Advocate
(9810959432).

versus

JBM GLOBAL SCHOOL

..... Respondent

Through: Mr. Manmeet Singh Arora, Mrs.
Jasbir Kaur, Mr. Jasman Singh
Sethi, Mr. Yash Batra, Advs.
(9464777772)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This is a petition under section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter, 1996 Act*), filed by the Petitioner- M/s. RK Bararia seeking appointment of an arbitrator in terms of clause 17 of the Agreement for Civil (Labor Rate) Contract (*hereinafter, 'the Agreement'*) dated 5th December, 2017.
3. The Petitioner and the Respondent - JBM Global School, in the present case, entered into an Agreement, for execution of work regarding Construction of Basement 1, Basement 2, Ground Floor, 1st, 2nd, 3rd, 4th and 5th Floors at '*Institutional Plot no. A-11, Sector-132, Expressway*



Noida'. The Petitioner's case is that the Respondent had not paid the complete dues in respect of the bills raised by him towards the completion of the work underlying the Agreement, as also against the extra items towards work done by the Petitioner. Vide notice dated 16th August, 2023 under Section 21 of the 1996 Act, the Petitioner invoked arbitral proceedings.

4. On 13th October, 2023, notice was issued in this petition. On 22nd February, 2024, the reply to the present petition was handed over in Court. Today, the pleadings have been completed, as noted vide order dated 16th April, 2024 passed by the Id. Joint Registrar.

5. There are two issues being raised by the Respondent in opposition to the petition. The first is that the copy of the Agreement filed by the Petitioner on record is not the correct Agreement and that the actual Agreement has a stamp paper of Uttar Pradesh. The Id. Counsel for the Respondent has produced the original Agreement and submits that it has been signed by Mr. Sumit Bararia on behalf of the contractor, i.e., the Petitioner. However, the Petitioner has also submitted another signed original Agreement, which has the signatures of Mr. Sumit Bararia on behalf of Mr. R.K. Bararia.

6. The Court has posed a specific question to both parties regarding whether there is any difference in the clauses of the two versions of the said Agreement, to which the clear answer is '*no*'. The terms of both the Agreements are identical. The explanation given by the Petitioner is that the copy filed by the Petitioner was provided by the Architect, who was appointed by the Respondent. However, this is refuted by the counsel for the Respondent, who submits that the actual Agreement is the one submitted by the Respondent.



7. The second issue raised is that this Court does not have the territorial jurisdiction to entertain the present petition, as the stamp paper on the Agreement is of Uttar Pradesh. The Court has considered both the Agreements. Clause 17 of the Agreement is identical in both the versions, which reads as under:-

“17. Any dispute or discussion shall be placed in front of arbitrator, jointly appointed by consent from both parties.”

8. As per the above Clause 17, no specific seat of arbitration has been prescribed in both the Agreements. The Petitioner is based out of Delhi. The Architect appointed by the Respondent is also based out of Delhi. The bills are stated to have been cleared in Delhi.

9. On the other hand, the Respondent submits that the school building constructed in terms of the Agreement, is located in NOIDA and the Agreement has been entered into at NOIDA.

10. In *Aarka Sports Management Pvt. Ltd. v. Kalsi Buildcon Pvt. Ltd. (2020:DHC:2223)*, the arbitration agreement did not stipulate any seat of arbitration as the parties had not agreed on the seat of arbitration under Section 20(1) of the 1996 Act. Hence, it was held that since the parties had not agreed on the seat of the arbitration, the Court within the meaning of Section 2(1)(e) of 1996 Act read with Sections 16 to 20 of CPC would be competent to entertain an application under Section 11 of the 1996 Act. The relevant portion of the said decision is set out below:

“Summary of Principles

23. Section 20 (1) of the Arbitration and Conciliation Act empowers the parties to determine the seat of



arbitration. The parties are at liberty to choose a neutral seat of arbitration where neither the cause of action arose nor the parties reside or work and Sections 16 to 20 of the Code of Civil Procedure would not be attracted.

24. Once the seat is determined, the Court of that place shall have exclusive jurisdiction to deal with all matters relating to arbitration agreement between the parties.

25. If the parties have not determined the seat of arbitration, the seat of arbitration shall be determined by the Arbitral Tribunal under Section 20(2) of the Arbitration and Conciliation Act.

26. 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.

Findings

27. The arbitration agreement dated 16th March, 2018 does not stipulate any seat of arbitration as the parties had not agreed on the seat of the arbitration under Section 20(1) of the Arbitration and Conciliation Act. In that view of the matter, the seat of the arbitration shall be determined by the Arbitral Tribunal under Section 20(2) of the Arbitration and Conciliation Act.

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

11. In ***Juki India Pvt. Ltd. v. M/s. Capital Apparels Technology Pvt. Ltd.*** (2022:DHC:1470), the distribution agreements entered into between the parties did not specify the place of signing, nor did they include any



provisions regarding the territorial jurisdiction of courts or specify a seat, venue, or jurisdiction for arbitration proceedings in the event of disputes. Following the principles laid down in *Aarka Sports (supra)*, it was held that this Court had territorial jurisdiction under Section 11 of the 1996 Act, because the cause of action arose in Delhi. The relevant portion of the said decision is as follows:

“8. Mr. Wahi submits that since in the present case the distribution agreements are completely silent as to the “seat” or “venue” of arbitration and as to the „territorial jurisdiction” of courts in relation to the arbitration agreement, the petitioner’s case would be covered by the principle summarised in para 27 as extracted above, namely, that the territorial jurisdiction would lie with a court as defined in section 2(1)(e) of the A&C Act, that is to say the “principal civil court of original jurisdiction” which would be competent to decide the questions forming subject matter of the arbitration if the same had been subject matter of a civil suit.

9. Furthermore, attention is drawn to the provisions of section 20 of the Code of Civil Procedure 1908 („CPC’), to say that in the present case, since the registered office of the defendant is situate within the territorial jurisdiction of this court in Delhi; and that at least some of the invoices which are claimed to be due and payable by the respondent were raised at New Delhi, this court would be competent to entertain and decide the present petition. On this point, Mr. Wahi draws attention to section 20(a) and (c) of the CPC which read as under:

...

10. On the other hand, Mr. Navodaya Singh Rajpurohit, learned counsel for the respondent, has argued that for one, the arbitration clauses contained



in the distribution agreements are completely silent as to „territorial jurisdiction“. Besides it is urged that since the disputes between the parties culminated in the signing of two MoUs, the distribution agreements are of no consequence now; and the petitioner's claims can at best be said to arise from the MoUs, which do not contain any arbitration clause. Accordingly, it is argued that there is no subsisting arbitration agreement between the parties and the present petition deserves to be dismissed.

11. Upon a conspectus of the averments contained in the petition and in the reply; the documents placed on record, in particular distribution agreements dated 01.07.2010 and 01.01.2021, upon which reliance is placed; keeping in view the existence of the arbitration agreements contained in clauses 10(e) and 13 respectively of the said distribution agreements; as also the decision of the Co-ordinate Bench of this court in Aarka Sports Management (supra) read with section 2(1)(i) of the A&C Act and section 20 of the CPC, this court is of the following opinion :

i. Since the respondent has its registered office in Delhi within the territorial jurisdiction of this court; and some of the amounts claimed by the petitioner are due against invoices that have prima-facie been raised in Delhi, this court has territorial jurisdiction to entertain and decide the present petition;

ii. Clause 10(e) of the parent distribution agreement dated 01.07.2010 and clause 13 of the latest distribution agreement dated 01.01.2021 clearly record that the parties have agreed to refer their inter-se disputes arising from the distribution agreements to arbitration by a sole arbitrator under the provisions of the A&C Act;

iii. A perusal of MoU dated 31.12.2020 also shows that certain monies were owed by the respondent to the petitioner against invoices raised, which monies are claimed to be due till date;



iv. Although it has been contended on behalf of the respondent that MoU dated 31.12.2020 does not contain an arbitration clause, and therefore, the disputes cannot be referred to arbitration, this court sees no merit in that contention, since MoU dated 31.12.2020 is itself founded upon the business transactions conducted by the parties inter-alia under distribution agreement dated 01.07.2010; and the subject matter of the MoU is therefore itself part of a “ ... dispute, difference, or question which may at any time arise between the parties hereto or touching or arising out of or in respect of this agreement (deed) or the subject matter thereof ...” as contemplated in the arbitration agreement contained in the distribution agreements;

v. This court is also satisfied that prima-facie none of the disputes that are sought to be raised appear to be non arbitrable.

12. In view thereof, this court is to persuade to allow the present petition.”

12. In the present case, it is clear that the arbitration agreement does not specify the seat of arbitration. Considering the fact that since a part of the cause of action has clearly arisen in Delhi due to the geographical proximity of the parties, it cannot be said that the jurisdiction of Courts in Delhi is excluded.

13. Under such circumstances, this Court is of the opinion that the remaining issues raised regarding the Agreements, including as to who is the proprietor of the Petitioner with whom correspondences have been entered, and any other disputes, ought to be adjudicated by the Arbitrator. The said Clause of the Agreement clearly states that the parties had to appoint an Arbitrator by mutual consent. Since there is no consent between the parties,



the Court appoints **Justice Ms. Sunita Gupta, (Retd.) (M:9910384628)** as the Id. Sole Arbitrator to adjudicate the disputes between the parties.

14. Accordingly, with the consent of the parties, it is directed that the arbitration shall take place under the aegis of the Delhi International Arbitration Centre (*hereinafter, 'DIAC'*). The fee of the Id. Sole Arbitrator shall be paid as per Fourth Schedule under the 1996 Act as amended by the DIAC Rules, 2023.

15. The petition is disposed of. All pending applications are disposed of.

16. List before the DIAC on 21st May, 2024.

17. All contentions of the parties are left open. The original documents submitted by both the parties are returned to the respective parties for production of the same before the Id. Sole Arbitrator. The coloured copy of the Agreements are however taken on record, and the same shall be tagged with the present file.

18. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.

PRATHIBA M. SINGH
JUDGE

APRIL 25, 2024

A/DN