



2024:DHC:5639



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

+ **ARB.P. 1125/2023**

SIMPLEX INFRASTRUCTURES LIMITED.Petitioner

Through: Mr. Aman Jha, Ms. Babita
Yadav, Mr. Rishi Tutu and Ms. Shubha
Yadav, Advs.

versus

**JAMMU AND KASHMIR ECONOMIC
RECONSTRUCTION AGENCY**

.....Respondent

Through: Mr. Parth Awasthi, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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30.07.2024

ARB.P. 1125/2023

1. This petition, instituted under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, seeks appointment of an arbitrator to arbitrate on the disputes between the parties.

2. The dispute arises in the context of an agreement between the petitioner and the respondent, governed by General Conditions of Contract². Clause 20.6 of the GCC which envisages resolution of disputes by arbitration and reads, to the relevant extent, thus:

“20.6 Arbitration

¹ “the 1996 Act” hereinafter

² GCC



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Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

(b) if the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The place of arbitration shall be *the neutral location specified in the Contract Data* and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].”

3. The respondent has taken a preliminary objection to the territorial jurisdiction of this Court to entertain the present petition. He submits that the petitioner is situated in Kolkata, the respondent is situated in Srinagar, the contract was executed in Srinagar, for construction of flyovers/expressway in Srinagar.

4. These facts are not disputed by the petitioner.

5. According to the respondent, therefore, no part of cause of action has arisen within the territorial jurisdiction of this Court. As the contract between the parties does not expressly or by necessary implication confer jurisdiction on this Court to entertain the present petition, the petition cannot be entertained here. In fact, according to the respondent, the petition would appropriately lie before the Court at Srinagar.

6. Mr. Aman Jha, learned Counsel for the petitioner relies on the



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stipulation just below Clause 20.6(b) of the GCC to the effect that the place of arbitration would be “the neutral location specified in the contract data”. He acknowledges that, in the contract data which has also been placed on record, there is *no* location specified for the arbitral proceedings. Nonetheless, he submits that the intent of the parties is clearly that the arbitral proceedings would take place at a location other than Srinagar or Kolkata, as neither of these two can be treated as a neutral location.

7. Inasmuch as Clause 20.6 of the GCC envisages the place of arbitration being a neutral location, and neither Srinagar nor Kolkata can be treated as a neutral location, Mr. Jha submits that, as the *dominus litis*, he is entitled to invoke the jurisdiction of this Court.

8. Mr. Jha places reliance on the judgment of the Supreme Court in *Bangalore Electricity Supply Company Ltd v. E.S. Solar Power Private Ltd*³ and of a learned Single Judge of this Court in *Cinepolis India Pvt Ltd v. Celebration City Projects Pvt Ltd*⁴.

9. As against this, Mr. Parth Awasthi, learned Counsel for the respondent places reliance on the judgment of another learned Single Judge of this Court in *Aarka Sports Management Pvt Ltd v. Kalsi Buildcon Pvt Ltd*⁵.

10. The issue, in my view, is elementary. The submission of Mr.

³ (2021) 6 SCC 718

⁴ (2020) 2 Arb LR 355

⁵ (2020) 271 DLT 194



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Jha is predicated on a truncated reading of the relevant part of Clause 20.6 of the GCC. Clause 20.6, no doubt, designates a place of arbitration but requires that place of arbitration to be a “neutral location *specified in the Contract Data*”. Mr. Jha’s reading of this clause ends with the words “neutral location” and overlooks the words “specified in the Contract Data”, which follow. In effect, such an interpretation would render the words “specified in the Contract Data” redundant. Clause 20.6 of the GCC provides that, in the event of their existing of a neutral location *specified in the Contract Data*, that location would be the place of arbitration. Ergo, *if there is no neutral location specified in the Contract Data, Clause 20.6 has no application*. The Court cannot read the Clause 20.6 in a truncated fashion, as if the words “specified in the Contract Data” were not there.

11. Inasmuch as there is, admittedly, *no neutral location specified in the contract data*, this covenant in Clause 20.6 of the GCC has no application.

12. The result would be that the arbitration clause in the agreement between the parties does not provide for any place of arbitration.

13. The sequitur is that the jurisdiction of the Court to entertain the Section 11(6) petition would have to be decided on the basis of Section 20⁶ of the CPC. Viewed in that background, no part of the

⁶ **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



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cause of action has arisen within the territorial jurisdiction of this Court. The petitioner is located in Kolkata, the respondent is located in Srinagar and the contract has been executed in Srinagar. The work forming subject matter of dispute has also been undertaken at Srinagar.

14. The petitioner cannot, therefore, approach this Court under Section 11(6) of the 1996 Act. This Court is, quite clearly, *coram non judice*.

15. As such, for want of territorial jurisdiction and reserving liberty with the petitioner to seek appropriate remedies before the appropriate forum, this petition is dismissed.

C.HARI SHANKAR, J

JULY 30, 2024

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

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 work for gain, as aforesaid, acquiesce in such institution; or

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