



2024:DHC:7401



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **O.M.P.(I) (COMM.) 362/2023****G D GOENKA PVT LTD**

.....Petitioner

Through: Mr. Rajat Aneja, Ms. Garima
Saxena, Advs.

versus

DINODIA EDUCATIONAL SOCIETY

.....Respondent

Through: Ms. Lisa Mishra, Mr. Suresh
Kumar Mitruka, Mr. Aayush Mitruka and
Ms. Charu Bansal, Advs.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**

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23.09.2024**O.M.P.(I) (COMM.) 362/2023 & I.A. 578/2024**

1. IA 578/2024 has been preferred by the respondent seeking dismissal of OMP (I) (Comm) 362/2023 on the ground that this Court does not have the territorial jurisdiction to entertain this petition.

2. On 10 January 2024, learned Counsel for the petitioner had waived his right to file a reply to this application and had agreed to argue this application on merits.

3. I have heard Mr. Rajat Aneja, learned Counsel for the petitioner and Ms. Lisa Mishra, learned Counsel for the respondent at length.

4. The present petition, preferred under Section 9 of the

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Arbitration and Conciliation Act, 1996¹, seeks pre-arbitral interim reliefs restraining the respondent and all others acting on its behalf from using the brand name “G.D. Goenka” and any other logos/signs/symbols etc. specified under the head “use of brand name” in the agreement dated 17 September 2008 executed between the petitioner and the respondent. Additionally, the petition seeks a direction to the respondent to furnish security of ₹ 2,65,91,975/-, pending arbitration and rendition of the award.

5. The respondent, *vide* IA 578/2024, contends that, prior to the filing of the present petition by the petitioner before this Court on 7 October 2023, the respondent had, on 20 January 2023, instituted an earlier Section 9 petition, also seeking pre-arbitral interim reliefs, before the Commercial Court at Siliguri. The contention of the respondent is that the Commercial Court at Siliguri also possessed jurisdiction to deal with the matters arising out of the Memorandum of Understanding/Agreement dated 17 September 2008. Where, thus, more than one court possesses jurisdiction to entertain matters arising out of the agreement and the provision for reference of disputes to arbitration contained therein, the contention of the respondent is that, if one of the jurisdictional courts is first approached, all subsequent proceedings relating to the arbitration have to be preferred before that Court. That, submits Ms. Lisa Mishra, learned Counsel for the respondent, is an unequivocal mandate of Section 42² of the 1996 Act.

¹ “the 1996 Act”, hereinafter

² **42. Jurisdiction.** – Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.



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6. The disputes arise out of two Memoranda of Understanding³/Agreement dated 5 July 2006 and 17 September 2008, executed between the parties, the operative MoU being the MoU dated 17 September 2008. By the said MoUs, the respondent was granted a franchise by the petitioner to run a school using the brand name “G D Goenka Public School” at Siliguri, Kolkata and Guwahati. However, it appears that the agreement was actually implemented only in respect of the right to use the aforesaid brand name in Siliguri, as no school bearing the brand name was set up by the respondent in Kolkata or Guwahati.

7. The MoU dated 17 September 2008 also notes that the respondent owned 7.32 acres of land situated at Dagapur, Siliguri and was intending to acquire land at Kolkata and Guwahati. There is no dispute that the respondent is situated at Siliguri and the petitioner is situated at New Delhi.

8. The MoU dated 17 September 2008 envisaged resolution of disputes by arbitration. The relevant clause reads thus:

“ARBITRATION AND JURISDICTION

That in case any dispute arises between FRANCHISOR and FRANCHISEE in respect of any conditions of this Memorandum of Understanding, the matter shall be resolved with the mutual consent of both the parties and/or shall be referred to the ARBITRATOR(s) so appointed with the mutual consent of both the parties. The decision of the said Arbitrator shall be binding upon both the parties.”

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9. Thus, the MoU did not designate either a venue or a seat of arbitration. Nor is there to be found, in either of the MoUs, any exclusive jurisdiction clause, vesting exclusive jurisdiction, in matters relating to the MoUs, with courts at any one geographical location.

10. In that view of the matter, the issue of territorial jurisdiction to deal with matters relating to the MoUs, including matters arising out of arbitration, would have to be assessed on the basis of Section 20⁴ of the CPC.

11. Viewed thus, courts within the jurisdiction of which the defendant in a suit is located, or where the whole or any part of the cause of action arises, would be possessed of jurisdiction to deal with the matter.⁵

12. “Cause of action” for the purposes of Section 20, is to be understood as comprising two elements; firstly, the breach of duty owing by one person to the other and, secondly, the damage resulting to the other from the breach, or the fact or combination of facts which

³ “MoUs” hereinafter

⁴ 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 work for gain, as aforesaid, acquiesce in such institution; or

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

Explanation. – A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

⁵ Refer **Laxman Prasad v Prodigy Electronic Ltd, (2008) 1 SCC 618**



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gives rise to a right to sue.⁶ Elsewhere, the expression “cause of action” is also defined, classically, as comprising the “bundle of facts which are relevant for determination of the *lis* between the parties”.⁷ In the context of trade mark infringement, “cause of action” has been held, in *Indian Performing Rights Society Ltd v Sanjay Dalia*⁸, to encompass “not only refers to the infringement but also the material facts on which the right (alleged to be infringed) is founded.”

13. Jurisdiction to deal with the matters under the MoUs, including the matters pertaining to the arbitration, would thus vest both with courts at Delhi as well as courts at Siliguri, as the cause of action arose in part at Delhi and in part at Siliguri.

14. As this application points out, prior to the filing of the present petition before this Court, the respondent had instituted Misc (Arb) No. 1/2023 (*Sanjay Bansal v G D Goenka (P) Ltd*) before the learned Commercial Court at Siliguri under Section 9 of the 1996 Act, arising out of the MoUs between the parties.

15. The said petition was listed before the learned Commercial Court on several dates of hearing and was finally dismissed on 19 December 2023 which was the eighth day of hearing. The operative portion of the said order may be reproduced as under:

“The claim of the petitioners over an amount with interests does not hold good within the preview of the provisions of S. 9 of the Arbitration and Conciliation Act. The ground of the inability or

⁶ Refer *SBI v Ranjan Chemicals*, (2007) 1 SCC 97

⁷ *AVM Sales Corporation v Anuradha Chemicals (P) Ltd*, (2012) 2 SCC 315

⁸ (2015) 10 SCC 161

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refusal to pay royalty to the o.p. on the plea that there is no question for payment of any royalty by the petitioner society to the o.p. company for the pandemic period of two years does not hold good or cannot be allowed to be restored to or cannot be relied on, unless otherwise, provided in any agreement in writing between the two or in any approval /acceptance in writing from the side of the o. p. and in the case in hand, no such affirmation of exemption of royalty is observed and accordingly the said plea of the petitioners fails. From what have been discussed above, it is clear that the petitioners have failed to show cause in their favor so as to have any relief u/s. 9 of the Arbitration and Conciliation Act, which is why the petitioner u/s. 9 being sans merit, is liable to be rejected and the Misc. (Arbitration) Case is liable to be dismissed.”

Thus, the Commercial Court at Siliguri entertained the respondent’s Section 9 petition on merits and dismissed it on the ground that no case for granting interim relief under Section 9 of the 1996 Act existed.

16. Section 42 of the 1996 Act operates inexorably in such circumstances. The provision clearly states that where, with respect to an arbitration agreement, any application under Part I of the 1996 Act has been *made* in a court, that Court alone would have jurisdiction over the arbitral proceedings and all subsequent applications arising out of agreement and the arbitral proceedings have to be made in that Court alone and in no other Court. This position also stands underscored by the following passages from the judgment of the Supreme Court in **BGS SGS Soma JV v NHPC Ltd** ⁹:

“59. Equally incorrect is the finding in **Antrix Corporation Ltd.**¹⁰ that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one

⁹ (2020) 4 SCC 234

¹⁰ **Antrix Corpn Ltd v Devas Multimedia (P) Ltd**, (2018) 4 Arb LR 66



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Court exclusively. This is why the section begins with a non-obstante clause, and then goes on to state “...where with respect to an arbitration agreement any application under this Part has been made in a Court...” *It is obvious that the application made under this part to a Court must be a Court which has jurisdiction to decide such application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the Courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no “seat” is designated by agreement, or the so-called “seat” is only a convenient “venue”, then there may be several Courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the “seat” of arbitration, and before such “seat” may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a Court in which a part of the cause of action arises would then be the exclusive Court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.”*

(Emphasis supplied)

17. Ms. Mishra has drawn my attention to the judgment of a Division Bench of this Court in ***Priya Hiranandani Vandervala v Niranjan Hiranandani***¹¹, which has interpreted the expression “has been made” as employed in Section 42 of the 1996 Act. Paras 23 and 24 of the report in that case, which more or less insulate the issue from further debate, read thus:

23. On the interpretation of the words ‘has been made’ which occur in Section 42 of the Act, sustenance can be sought from the judgment of the Supreme Court reported as ***Fiza Developers and***



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Inter-Trade Private Ltd. Vs. AMCI (India) Pvt. Ltd. & Anr¹²

Section 36 of the Act makes an award enforceable after the time for making an application to set aside the award under Section 34 of the Act has expired or where such application ‘having been made’ is refused. In para 20 of the decision the Supreme Court held that *the very filing and pendency of an application under Section 34, in effect, operates as a stay of the enforcement of the award.*

24. Every Court has a procedure for filing, scrutiny and listing of petition, applications and suits. *Merely because the Registry of a Court takes time, as per the rules, and this resulting in a hiatus between the physical act of filing of a petition by a party and the ministerial act of the Court officers placing it before a Judge, would not mean that a petition or an application has not been made as contemplated by the statute.* Thus, the first argument of Priya is rejected.”

(Emphasis supplied)

18. Thus, the very filing of the Section 9 application by the respondent before the Siliguri Court amounted to “making” of the application. Thus viewed, the Siliguri court was first approached by the respondent under Section 9, before the petitioner petitioned this Court under the same provision.

19. Inasmuch as the Siliguri Court and this Court concurrently possess jurisdiction to deal with matters arising out of the arbitration agreement between the parties, and the Siliguri court was approached in the first instance, applying **BGS SGS Soma**, all subsequent proceedings relating to the arbitration and arbitration agreement would necessarily have to be filed before the Siliguri court and not before any other court.

20. Viewed thus, the present petition must be held to be devoid of territorial jurisdiction.



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21. IA 578/2024 is accordingly allowed.

22. OMP (I) (Comm) 362/2023 is dismissed, reserving liberty with the petitioner to approach the appropriate forum in accordance with law.

C.HARI SHANKAR, J

SEPTEMBER 23, 2024

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Click here to check corrigendum, if any

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