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Arb.OP.(comdiv) No.52 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.04.2025

Pronounced on: 25.04.2025

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.52 of 2025

M/s.SEPC Limited,
Chennai.

.. Petitioner

-VS-

M/s.Ace Technologies and Infrastructure Limited,
Mumbai.

.. Respondent

Petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed seeking to appoint an arbitrator to resolve the disputes between the petitioner and the respondent.

For Petitioner : Mr.V.Suresh

For Respondent : Mr.Vikram P.Jain



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ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) seeking for appointment of an Arbitrator by this Court.

2. There seems to be a dispute between the petitioner and the respondent arising out of the Memorandum of Understanding (MoU) dated 20.06.2016. There exists an arbitration clause in the said MoU dated 20.06.2016 and the same is extracted hereunder:-

“24. All dispute, differences and/or any claims those may arise between the parties against each other will be resolved by a Sole Arbitrator, to be appointed on mutual agreement, within 30 days, from the date on which a party communicates such dispute difference or claim to the other party and if no such agreement could be reached within such date, the sole arbitrator will be appointed following the provisions in Arbitration and Conciliation Act, 1996, as modified from time to time.

The provisions of Arbitration and Conciliation Act, 1996, as modified from time to



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time will be applicable to the said arbitration proceedings.”

3. The petitioner has invoked arbitration in accordance with Section 21 of the Act by issuing notice to the respondent on 29.11.2024. Admittedly, no reply was sent by the respondent to the arbitration invocation notice dated 29.11.2024 sent by the petitioner.

4. The respondent has raised the following objections:-

(a) The MoU dated 20.06.2016 was entered into only at Mumbai and therefore, no part of cause of action arose within the jurisdiction of this Court. Therefore, this Court does not have territorial jurisdiction to decide this petition.

(b) The respondent has already approached the National Company Law Tribunal (NCLT) and has filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016, against the petitioner and therefore, this petition is not maintainable.

5. With regard to the objections raised by the respondent for the maintainability of this petition before this Court, the learned counsel for



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the petitioner drew the attention of this Court to the MoU dated 20.06.2016, which is the subject matter of the dispute, and would submit that since the petitioner is having its office at Chennai and has signed the MoU dated 20.06.2016 also only at Chennai and part payments were also made by the petitioner to the respondent only from Chennai and the arbitration clause contained in the MoU dated 20.06.2016 has not stipulated the seat of the arbitration, a part of cause of action arose within the jurisdiction of this Court and therefore, this Court is having the territorial jurisdiction to entertain this petition.

6. The learned counsel for the petitioner drew the attention of this Court to a decision of the Hon'ble Supreme Court in the case of *Alchemist Ltd. and another Vs. State Bank of Sikkim and others [2007 (11) SCC 335]* and would submit that as held in the said decision, even if a small fraction of cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the petition. According to him, since the MoU dated 20.06.2016 was signed by the petitioner only at Chennai and the petitioner is having its office at Chennai and part payments were also made by the petitioner to the

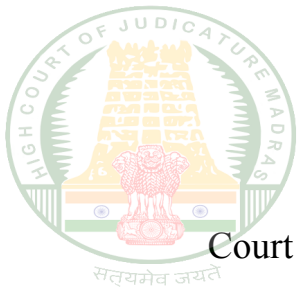


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respondent only at Chennai, this Court is having territorial jurisdiction to decide this petition.

7. On the other hand, the learned counsel for the respondent drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of ***Ravi Ranjan Developers Pvt Ltd Vs. Aditya Kumar Chatterjee [2022 SCC Online SC 568]*** and would submit that as per the said decision, Section 11(6) of the Act has to be harmoniously read with Section 2(1)(e) of the Act 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. Therefore, according to him, since the contract was entered into only at Mumbai, High Court of Bombay alone has got territorial jurisdiction to entertain this petition.

8. The learned counsel for the respondent also drew the attention of this Court to a judgment of the Delhi High Court in the case of ***Prashanth Kumar Parashar Vs. Sumit Singla and another [Arb.P.1182/2024, dated 20.03.2025]*** and would submit that as seen from the said decision, the suit on a contract can be filed only before the



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Court where the contract was entered into. According to him, since the MoU dated 20.06.2016, which is the subject matter of the dispute between the parties in this petition, was entered into only at Mumbai, High Court of Bombay alone has got jurisdiction to entertain this petition.

DISCUSSION:-

9. The following are the undisputed facts:-

(a) The arbitration clause contained in the MoU dated 20.06.2016, which is the subject matter of the dispute between the parties, has not stipulated the seat of the arbitration.

(b) The petitioner is having its office at Chennai.

(c) In the MoU dated 20.06.2016, it is noticed that the petitioner has signed the contract only at Chennai.

(d) Part payments were made by the petitioner to the respondent under the MoU dated 20.06.2016 and proof for the same, which has been filed as documents along with this petition, has not been disputed by the respondent. As seen from those documents, remittances were made by the petitioner to the respondent from their bank account maintained at Chennai.



WEB COPY 10. The facts of the judgment of the Hon'ble Supreme Court in ***Ravi Ranjan Developers Pvt Ltd (cited supra)*** relied upon by the learned counsel for the respondent are different from the facts of the instant case. In the said decision, admittedly, no part of the cause of action arose within the territorial jurisdiction of Calcutta High Court and in that case, the development agreement, which was the subject matter of the dispute, was admittedly executed and registered outside the jurisdiction of Calcutta High Court. The appellant therein, who had approached the Hon'ble Supreme Court, was also having its registered office only at Patna, outside the jurisdiction of Calcutta High Court. The appellant therein also did not carry on business within the jurisdiction of Calcutta High Court. Only under those circumstances, the Hon'ble Supreme Court held that no part of the cause of action arose within the jurisdiction of Calcutta High Court and on that ground, the petition filed under section 11 of the Act was rejected. But, in the case on hand, as stated above, the petitioner is having its office only at Chennai; part payments were also made by the petitioner to the respondent only from Chennai; and the petitioner had signed the contract only at Chennai.



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11. Whether the facts averred in the petition filed before this Court would constitute a part of cause of action or not, can be decided depending upon whether such facts constitute a material, essential or integral part of the cause of action. The Hon'ble Supreme Court in *Alchemist's case (cited supra)* has also made it clear that even if a small fraction of cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition.

12. In the case on hand, the petitioner is having its office only at Chennai and the MoU dated 20.06.2016, which is the subject matter of the dispute between the parties, also reveals that the petitioner has signed the contract only at Chennai. Though the contract was concluded at Mumbai by signing of the contract by the respondent at Mumbai, this Court is of the considered view that a part of cause of action has arisen only within the jurisdiction of this Court.

13. The decision of the Delhi High Court in *Prashanth Kumar Parashar (cited supra)* relied upon by the learned counsel for the respondent has no applicability for the facts of the instant case. In that



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case, no part of the cause of action arose within the jurisdiction of Delhi

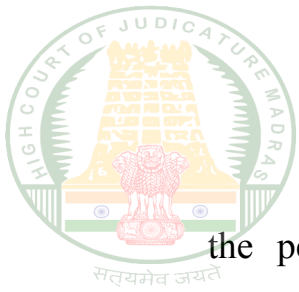
High Court and on that ground, Delhi High Court dismissed the petition filed under Section 11 of the Act. However, in the case on hand, as observed earlier, a part of cause of action has arisen on account of the fact that the petitioner is having its office only at Chennai and part payments were also made by the petitioner only from their bank account maintained at Chennai and the petitioner had signed the contract only at Chennai as seen from MoU dated 20.06.2016.

14. Section 20(c) of the Code of Civil Procedure, 1908 (CPC), allows a suit to be filed in a court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. In other words, a suit can be filed even if the defendant doesn't reside or carry on business in the court's jurisdiction, as long as the legal basis for the claim (the cause of action) arose within that court's jurisdiction. In the case on hand, admittedly, the arbitration clause, which has been invoked by the petitioner, does not disclose the seat of the arbitration. When the seat of the arbitration is not fixed in the arbitration clause, part of cause of action doctrine applies as per Section 20(c) CPC.



WEB COPY 15. The facts of the decisions relied upon by the learned counsel for the respondent, namely, ***Ravi Ranjan (cited supra) and Prashanth Kumar (cited supra)***, are totally different, and in those decisions, no part of cause of action arose within the jurisdiction of the Court where the petitioner had approached.

16. In case of an arbitration other than international commercial arbitration, 'Court' would mean the principal Civil Court of original jurisdiction in a district and would include the High Court in exercise of its ordinary original jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been the subject matter of the suit, but it does not include any Civil Court of a grade inferior to such principal Civil Court or any Court of small causes. In the case on hand, the arbitration clause contained in the MoU dated 20.06.2016 has not stipulated the seat of the arbitration. Part of cause of action has also arisen at Chennai, within the jurisdiction of this Court, since the petitioner is having its office at Chennai; part payments were also made by the petitioner to the respondent only at Chennai; and



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the petitioner had also signed the MoU dated 20.06.2016 only at Chennai.

17. It is well settled law that when two or more courts have jurisdiction to adjudicate disputes arising out of an arbitration agreement, the parties to such agreement may decide to refer all disputes to any one court to the exclusion of all other courts, which may otherwise have had jurisdiction to decide the disputes. The said proposition is supported by a decision of the Hon'ble Supreme Court in the case of ***Union of India Vs. HardyExploration and Production (India) Inc [13 SCC 472]***. However, the Hon'ble Supreme Court has also made it clear that by consent of the parties, they cannot confer jurisdiction on a court which inherently lacked jurisdiction. In the case on hand, as seen from the averments contained in the affidavit filed in support of this petition as well as from the documents filed in support of this petition, part of cause of action has arisen within the jurisdiction of this Court, on account of the fact that (a) the petitioner is having its office at Chennai; (b) part payments were also made by the petitioner from their bank account maintained at Chennai; and (c) the MoU dated 20.06.2016 was signed by the petitioner only at Chennai.



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18. Certainly, the aforesaid facts constitute a material and essential part of the cause of action. The Hon'ble Supreme Court in *Alchemist's case (cited supra)* relied upon by the learned counsel for the petitioner also makes it clear that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Though the High Court of Bombay may also have territorial jurisdiction to entertain a petition under Section 11 of the Act, it will not prevent the petitioner herein to approach this Court and seek appointment of an Arbitrator under Section 11 of the Act, since a part of cause of action has also arisen within the jurisdiction of this Court.

19. The second objection raised by the respondent that they have already approached the NCLT and have filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016, against the petitioner, and therefore, this petition is not maintainable is concerned, the said objection has to be rejected in view of the fact that as on date, NCLT has not admitted the application filed by the respondent against



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the petitioner under Section 9 of the Insolvency and Bankruptcy Code,

2016. Only when the NCLT admits the application filed by the respondent under Section 9 of the Insolvency and Bankruptcy Code, 2016, moratorium will come into play, which may curtail this Court to appoint an Arbitrator under Section 11 of the Act. Therefore, the second objection raised by the respondent for appointment of an Arbitrator by this Court under Section 11 of the Act is also rejected by this Court.

20. For the foregoing reasons, this petition has to be allowed as prayed for and accordingly, this petition is allowed as prayed for with the following directions:-

(a) This Court hereby appoints Hon'ble Mrs.Justice Banumathi, former Judge, Supreme Court of India, residing at A-417, 2nd floor, Arjun Marg, Defence Colony, New Delhi-110024 (Mobile No.7042955477) as the sole arbitrator to adjudicate the dispute between the petitioner and the respondent arising out the MoU dated 20.06.2016.

(b) The Sole Arbitrator appointed by this Court



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shall be paid remuneration/fees as per the schedule
agreed upon by the parties to the dispute.

(c) The Arbitrator shall adhere to the provisions
of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral
award within the stipulated period as prescribed under
the Arbitration and Conciliation Act, 1996.

25.04.2025

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Index:yes
Neutral citation: yes



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ABDUL QUDDHOSE, J.

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