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

+ **ARB.P. 293/2025 & I.A. 3664/2025**

VASCON ENGINEERS LIMITED

.....Petitioner

Through: Mr. Sandeep Bajaj, Mr. Anuj Jhaveri,
Ms. Parijat Singh, Mr. Mayank
Biyani, Mr. Mihir Modi, Advocates.

versus

AIRPORTS AUTHORITY OF INDIA

.....Respondent

Through: Ms. Neetika Sharma, Mr. Varnit
Vashistha and Mr. Kavav Singhal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

20.02.2025

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1. The Petitioner has approached this Court under Section 11(6) of the Arbitration & Conciliation Act for appointment of an Arbitrator in relation to disputes which have arisen between the parties under a contract entered into between the parties for extension of the existing Terminal Building of the Goa Airport Daboli, Goa.

2. It is stated that the parties entered into the Contract Agreement on 17.12.2019. Clause 4.1 of the said contract agreement reads as under:-

“4.1 SETTLEMENT OF DISPUTES

It is specifically agreed by and between the parties that all the difference or disputes arising out of the Agreement of touching the subject matter of the Agreement shall be decided by process of settlement and arbitration, as specified in Clause 25 of the General condition of Contract(GCC) at page 57-58 and the provision of the Arbitration & Conciliation



Act, 1996 (amended as per the Arbitration & Conciliation (Amendment) Act, 2015) shall apply and Delhi Court alone shall have exclusive jurisdiction over the same.”

3. A perusal of the said condition shows that the courts in Delhi will have the exclusive jurisdiction. However, the said contract clause also refers to Clause 25 of the General Conditions of the Contract.
4. Clause 25 of the General Conditions of the Contract specifies the mode of dispute resolution through Dispute Resolution Committee. It also states that in case the Dispute Resolution Committee is unable to resolve the disputes, then the matter shall be referred to arbitration. However, the schedule annexed with the General Conditions of Contract in this case states that the place of arbitration shall be in Goa.
5. Apart from the General Conditions of the Contract, there are also Special Conditions of Contract. Clause 1.3 of the Special Conditions of Contract states that the Special Conditions of Contract will override the General Conditions of the Contract. Clause 44 of the Special Conditions of Contract states that the courts at Delhi will alone have the jurisdiction to decide any dispute arising out of the contract.
6. Notice was issued in the matter on 12.02.2025. Ms. Neetika Sharma, learned Counsel, enters appearance on behalf of the Respondent.
7. Learned Counsel for the Petitioner has taken this Court through Clause 4 of the contract agreement, the provisions of the Special Conditions of Contract contends that since courts at Delhi alone will have jurisdiction, the seat of arbitration shall be Delhi.
8. *Per contra*, learned Counsel for the Respondent has taken this Court



to Clause 25 of the General Conditions along with Schedule F annexed thereto which stipulates that the place of arbitration shall be Goa.

9. Taking into account the totality of the facts and circumstances of the case, Clause 25 of the General Conditions of Contract only gives the modalities of the dispute resolution. The said Clause is reproduced as under:-

“Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instruction here-in before mentioned and as to the quality of workmanship materials used on the work or as to any other question, claim, right, matter or thing whatsoever, in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders these conditions or otherwise concerning the work or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

i. If the contractor considers any work demanded of him to be outside the requirement of the contract, or disputes any drawing, record or decision given in writing by the Engineer-in-Charge or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed such party shall promptly within 15 days of the arising of the disputes request the ~~Execution Director~~ (Engg.)/~~Regional~~ ~~Executive-Director/Member (Plg)~~/Chairman, AAI as the case may be, who shall refer the dispute to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any, in



respect of each such disputes. The Dispute Redressal Committee (DRC) shall give the opposing party two weeks for written response, and give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from the ~~Execution Director (Engg.)/Regional Executive Director/Member (Plg)/Chairman, AAI~~. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate / legal counsel etc.

If the Dispute Redressal Committee (DRC) fails to give its decision within aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DAC) or expiry of time limit given above, then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the ~~Execution Director (Engg.)/Regional Executive Director/Member (Plg)/Chairman, AAI~~ as the case may be for appointment of Arbitrator on prescribed performa as per Appendix-XVII under intimation to the other party.

It is also a term of contract and each party invoking Arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking Arbitration.

The ~~Execution Director (Engg.)/Regional Executive Director/Member (Plg)/Chairman, AAI~~ shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer in Charge to ~~Execution Director (Engg.)/Regional Executive Director/Member (Plg)/Chairman, AAI~~ for



appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator, who shall act as the presiding arbitrator. In the event of:

*a. A party fails to appoint the second arbitrator, or
b. The two appointed arbitrators fail to appoint the Presiding Arbitrator, then ~~Member (Plg)~~/Chairman, AAI shall appoint the second or Presiding Arbitrator as the case may be.*

ii. Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having Sole Arbitrator where tendered amount is Rs. 100.00 Cr or less. Where tendered value is more than Rs. 100.00 Cr., Tribunal shall consist of three arbitrators as above. The requirements of the arbitration and the conciliation act, 1996 (26 of 1996) and any further statutory modifications or reenactment thereof and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking Arbitration shall give a list of disputes with amounts, claimed, if any, in respect of each such disputes along with the notice for appointment of Arbitrator and giving reference to the decision of the DRC.

It is also term of this contract that any member of Arbitration Tribunal shall be a graduate engineer with experience in handling public works, engineering contracts at a level not lower than Chief Engineer. This shall be treated as mandatory qualification to be appointed as Arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track



arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the Appointing Authority, the Arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each disputes and claim referred to him and in all cases where the total amount of the claims by any party exceed Rs. 1,00,000/-, the Arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid as per the Act. It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims.

The place of the arbitration shall be mentioned in schedule 'F'. In case there is no mention of place of arbitration, the Arbitral Tribunal shall determine the place of arbitration. The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.”

In the Schedule F, the place of arbitration is mentioned as Goa.

10. A perusal of the said clause shows as to how the dispute has to be resolved. Schedule F states that the place of arbitration shall be Delhi whereas Clause 4 of the contract agreement after mentioning that the



settlement of disputes by arbitration as specified in Clause 25, mentions Courts at Delhi alone will have jurisdiction. Harmoniously construing both the clauses, it could be deduced that the seat of arbitration would only be Delhi. There is a direct conflict between the terms of the contract, Special Conditions of the Contract and the General Conditions of the Contract regarding the place where the seat of arbitration should be.

11. In view of the fact that the Contract Agreement which is supreme, which would override the Special Conditions of the Contract and the General Conditions of the Contract, stipulates that the courts at Delhi will alone have the jurisdiction, this Court is of the opinion that this Court will have the jurisdiction to appoint an Arbitrator and the seat of arbitration shall be at Delhi.

12. This Court is not going into the arguments as to whether the Special Conditions of the Contract will override the General Conditions of the Contract itself or not because an arbitration agreement would be separate from the contract agreement. However, since the contract refers to Clause 4 of the contract agreement and the Special Conditions of Contract which override General Conditions of Contract also mentions that Court at Delhi will have jurisdiction. The seat in this case would be Delhi and the courts at Delhi will have jurisdiction to entertain the petition under Section 11 of the Arbitration & Conciliation Act.

13. Accordingly, Justice L. Nageswara Rao, former Judge of the Supreme Court of India (Mob: 9810035984) is appointed as a Sole Arbitrator to adjudicate upon the disputes between the parties.

14. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and



regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

15. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act within a week of entering on reference.

16. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

17. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

18. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 20, 2025

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