



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

ARBITRATION APPEAL NO. 35 OF 2024

IND INFOTECH SERVICES,
having its registered office at Plot
No.4, Ayodhya Nagar, Nagpur -440024,
through its Proprietor, Rajesh Ushekwar,
Aged 56 years, Occupation – Business,
Resident of Flat No. 202, Plot No., 4,
Shivdatta Apartment, Opposite Petrol
Pump, Ring Road, Trimurty Nagar,
Parsodi, Nagpur – 440022 (M.S.).

.... **APPELLANT**

VERSUS

(1) Union of India,
through Ministry of Railways,
Rail Bhavan 1, Raisina Road,
New Delhi, Delhi, India.

(2) The Deputy Chief Engineer
(Construction) I, Western Railway
(Survey & Construction), Kothi
Compound, Rajkot, Gujarat – 360001.

.... **RESPONDENTS**

Mr. U.A. Gosavi, Counsel for the appellant,
Mrs. Suhasini N. Deshpande, Counsel for the respondents.

CORAM : NIVEDITA P. MEHTA, J.

DATE OF RESERVING THE JUDGMENT : **19-12-2025**
DATE OF PRONOUNCING THE JUDGMENT : **06-01-2026.**

JUDGMENT :

Heard.

2. The appellant has taken exception to the order dated 20-04-2024, passed on an application under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim measures, whereby the prayer for interim reliefs was rejected and the application came to be dismissed by the learned District Judge-8, Nagpur.

3. It is the case of the appellant that it is a proprietary concern experienced in the field of survey, large-volume data conversion and digitisation in CAD/GIS, data attachment, programming, image processing and feature extraction from satellite imagery, land-use and land-cover mapping, contour and resource mapping, photogrammetry, AIM/FM applications, etc. It is further the case of the appellant that it undertakes almost all kinds of mapping activities using Differential Global Positioning System (DGPS) and web-based Geographic Information Systems, including software development.

4. Respondent No. 2, on 24-11-2022, published a tender on its website bearing Tender No. DYCERCRJT-SUNR-RJT-49-RI, calling upon bidders to submit online bids for updating and reconciling land plans, certification by Revenue Authorities, and computerisation/digitisation of land plans under Rajkot and Morbi Districts in connection with the Surendranagar-Rajkot Doubling Project, having a value of Rs. 80,27,545.20/-.

5. The appellant emerged as the successful bidder and was called for negotiations, pursuant to which a work order was issued. A revised acceptance was issued on 20-03-2023 in favour of the appellant and was received by the appellant at Nagpur by email on the same date. The appellant acknowledged the Letter of Acceptance and submitted its work methodology.

6. The tender contract is governed by the Indian Railways General Conditions of Contract (IRGCC) dated 24-11-2022. As per Clause 16(4) of the IRGCC, the successful bidder is required to submit a Performance Guarantee within 21 days from the date of issuance of the Letter of Acceptance. Extension may be granted beyond 21 days and up to 60 days from the issuance of the Letter of Acceptance by the competent authority signing the contract. It is further provided that if the successful bidder fails to submit the Performance Guarantee within a period of 60 days, the contract can be terminated by Respondent No. 2.

7. On 06-04-2023, the appellant sought oral permission for extension of time to submit the Performance Guarantee, which was extended by the competent authority. The appellant issued the Performance Guarantee on 17-05-2023, issued by Canara Bank, valid for the period from 17-05-2023 to 16-05-2024. The appellant states

that the Performance Guarantee was sent through WhatsApp on 17-05-2023, and thereafter, a physical copy of the same was also dispatched. It is claimed that the said Performance Guarantee was accepted by the respondents.

8. The appellant further states that it commenced the work from 20-03-2023 and was required to complete the same within a period of six months from the date of the Letter of Acceptance, i.e., on or before 20-09-2023. On 17-07-2023, by written communication, the appellant informed that 70% to 80% of the work had been completed and expressed its intention to raise the first running bill.

9. After receipt of the said letter, it is contended that Respondent No. 2, by letter dated 27-07-2023, terminated the work awarded to the appellant on the ground that the appellant failed to submit the Performance Guarantee within a period of 60 days from the date of the Letter of Acceptance, thereby breaching the contractual conditions. The appellant claims to have suffered huge losses due to the alleged illegal termination of the contract.

10. It is further stated that the bid was submitted from Nagpur, all communications including the Letter of Acceptance were received at

Nagpur, and the termination of contract was also received by the appellant at Nagpur. On 08-08-2023, the appellant issued a notice invoking the arbitration clause, as disputes had arisen. Simultaneously, after the respondents failed to appoint an arbitrator, the appellant filed an application under Section 11 of the Act and also preferred an application under Section 9 of the Act, praying for restraint against the respondents from awarding the balance work to any other contractor or agency and for securing the amount allegedly due.

11. Initially, at the stage of issuance of notice, the learned Court below, by order dated 27-09-2023, restrained the respondents by way of ad-interim injunction from finalising the tender process for a limited period. Upon appearance of the respondents and filing of reply, the application was taken up for final hearing and, by the impugned order, the application came to be dismissed.

12. Upon issuance of notice, the respondents entered appearance and filed their reply. The primary objection raised by the respondents is that, in view of Clause 13 of the tender document, the jurisdiction of Courts at Nagpur is expressly excluded, and therefore the appellant has no locus to invoke the jurisdiction of any Court in the State of Maharashtra. The respondents heavily relied upon Clause 13 of the

tender document, which confers jurisdiction upon specified courts in the State of Gujarat. It is contended that, having signed the tender document and agreed to the jurisdiction clause, the appellant cannot invoke the jurisdiction of courts in Maharashtra.

13. On merits, the respondents vehemently contended that the Performance Guarantee was not submitted within the stipulated period. It is the case of the respondents that the Performance Guarantee was received by Respondent No.2 on 23-05-2023 through Nandan Courier. As per the tender conditions, the original Performance Guarantee was required to be received in the office of the tender-accepting authority within a period of 60 days from the issuance of the Letter of Acceptance. Therefore, it is submitted that Respondent No. 2 rightly terminated the contract in accordance with Clause 16(4).

14. I have heard the learned Counsel for the parties. The learned Counsel for the appellant submitted that the Performance Guarantee was submitted pursuant to oral permission granted for extension by Respondent No. 2. It is contended that the Performance Guarantee was first sent through WhatsApp and was duly acknowledged, and thereafter sent by courier. It is argued that the learned Court below failed to consider that the acceptance of the tender was communicated

at Nagpur and that the termination order was also communicated to the appellant at Nagpur by EMS Speed Post, thereby conferring jurisdiction on Courts at Nagpur.

15. It is further contended that the learned Court below committed a serious error in holding that the Performance Guarantee was not accepted by Respondent No. 2 and that the termination was proper. The appellant asserts that had the Performance Guarantee not been accepted, the respondents would not have verified its authenticity from Canara Bank. It is argued that the findings on merits recorded by the learned Court below are contrary to the scope of Section 9 of the Act, particularly when the work had already commenced.

16. Reliance is placed by the appellant on a judgment of the Hon'ble Supreme Court reported in *Aglowmed Ltd. v. Shell Life Sciences Pvt. Ltd., 2013 (3) MHLJ 648*, to contend that apart from the cause of action arose at Nagpur, the Courts at Nagpur shall have jurisdiction.

17. Per contra, the learned Counsel for the respondents submitted that Clause 13 of the tender document clearly stipulates that the tender process shall be governed by the laws of India and that Courts in Gujarat, namely Vadodara, Ahmedabad, Rajkot and Bhavnagar

Divisions, shall have exclusive jurisdiction in respect of disputes arising out of the tender process. It is submitted that since the tender pertains to Gujarat, only Courts in Gujarat have jurisdiction.

18. On merits, it is submitted that the Performance Guarantee was required to be received by the tender-accepting authority within 60 days from the date of issuance of the Letter of Acceptance dated 20-03- 2023, and even assuming extension, the outer limit expired on 18-05-2023. The respondents deny receipt of any valid Performance Guarantee through WhatsApp and contend that WhatsApp correspondence is not legally authenticated.

19. Reliance is placed by the respondents on several judgments, including *SmithKline Beecham Consumer Healthcare GMBHY & Ors. v. Hindustan Lever Ltd. & Anr.*, 2002 (1) Mh.L.J. 453; *Nagubai Ammal & Ors. V. B. Shama Rao & Ors.*, AIR 1956 SC 593; and *R.N. Gosain v. Yashpal Dhir*, (1992) 4 SCC 683, and other authorities, to contend that once a party has agreed to an exclusive jurisdiction clause, it is estopped from resiling therefrom and further to contend principles of estoppel and approbate and reprobate. The learned Counsel further placed reliance to contend that that the principle of approbate and reprobate comes into force as the appellant itself has elected

jurisdiction to a particular court in a particular place, and therefore the appellant is stopped from agitating the issue of jurisdiction again and again.

20. Heavy reliance is placed on the judgment of the Hon'ble Supreme Court in *M/s. Activitas Management Advisor Pvt. Ltd. V. Mind Plus Healthcare Pvt. Ltd.*, [SLP (C) NO. 27714 Of 2024] decided on 05-08-2025, to contend that where exclusive jurisdiction is conferred, proceedings must be initiated only before the courts so designated.

21. I have perused Clause 13 of the tender document. The said clause unequivocally provides that Courts in Gujarat, particularly Rajkot Division, shall have exclusive jurisdiction over all disputes arising under or in connection with the tender process. The subject tender pertains to the Surendranagar–Rajkot Doubling Project. A bare perusal of Clause 13 leaves no manner of doubt that Courts outside Gujarat are expressly excluded.

22. It is well settled that when parties have consciously agreed to an exclusive jurisdiction clause, only the Courts so designated can exercise jurisdiction. The judgment of the Hon'ble Supreme Court in *M/s. Activitas Management Advisor Pvt. Ltd.* (*supra*) reiterates this position.

23. The contention of the appellant that a bundle of facts arose at Nagpur cannot override the express exclusive jurisdiction clause. Mere occurrence of certain events at Nagpur does not confer jurisdiction where the parties have contractually excluded such jurisdiction.

24. I, therefore, find substance in the submissions of the learned Counsel for the respondents. However, it must be observed that once the Court finds that it lacks jurisdiction, it ought not to have recorded findings on merits. Enquiry into factual disputes, such as submission of the Performance Guarantee within time, was unwarranted once jurisdiction was found lacking.

25. In view of the above, I am of the considered opinion that Courts at Nagpur do not have jurisdiction to entertain disputes arising out of or in connection with the subject tender. It is clarified that the observations on merits shall not prejudice the appellant in any proceedings initiated before a Court of competent jurisdiction, and such proceedings shall be decided independently on their own merits. Hence, I proceed to pass following order:

ORDER

The appeal preferred by the appellant against the judgment and order dated 20-04-2024 passed in Arbitration Case No. 149 of 2023 by

the learned District Judge-8, Nagpur, stands dismissed. No order as to costs.

(NIVEDITA P. MEHTA, J.)

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