

ARB-517-2021 (O&M)

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

231 (2 Cases)

ARB-517-2021 (O&M)
Date of Decision: 05.12.2024

M/s Tanishq Contracts (India) Private Limited

...Applicant

Versus

M/s ABB India Limited

...Respondent

With

ARB-520-2021 (O&M)

M/s Intercon Buildtech Private Limited

...Applicant

Versus

M/s ABB India Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Shalender Mohan, Advocate for the applicant
Mr. Annand Chhibbar, Senior Advocate with
Mr. Vaibhav Sahni, Advocate and
Mr. Utkarsh Khatana, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in both the captioned applications, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *ARB-517-2021*.



2. Through instant application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act'), the applicant is seeking appointment of an Arbitrator.

3. The applicant entered into an agreement dated 25.08.2013 with the respondent. The said agreement comprises of arbitration clause which is reproduced as below: -

“All disputes and differences of any kind whatever arising out of on in connection with the Contractor or the carrying out of the works (Whether during the progress of the works or after their completion or whether before or after determination, abandonment or breach of the contract) shall be referred to and settle by Owner who shall state his decision in writing, such decision may be in the form of final certificate or otherwise. The decision of the Owner in respect of any of accepted matter shall be final and without appeals. But if either the Owner or Contractor be dissatisfied with the decision of the Owner on any manner, question or dispute of any kind (except any of the accepted matter) or as to the withholding by the Owner of any certificate to which the Contractor may claim to be entitled then and in any such case either party receiving notice of such decision give a written notice matters in dispute be Arbitration and final decision of a single Arbitrator being a fellow of the Indian Institute of Architects to be agreed upon and appointed by both the parties or in case of disagreement as to the appointment both being fellows of the Indian Institute of Architectures of two Arbitrators both being fellows of the Indian Institute of Architects one to be appointed of each party, which Arbitrators shall before taken upon themselves the burden of reference appoint any Umpire. The Arbitrator, the Arbitrators of the Umpire as the case may be shall have power to open up review and revise any certificate, opinion, decision, requisition or notice save in regard to the excepted matter and to determine all matters in dispute which shall be submitted to him or them and of which notice shall have been



given as aforesaid. Upon every or any such reference the cost of and incidental to the reference and Award respectively shall be in the direction of the Arbitrator or Arbitrators or the Umpire as the case may be whom may determine the amount thereof or direct the same to the taxed as between Attorneys and Client or as between party and party and shall direct by whom and to whom and in what manner the same shall be borne and paid.

This submission shall be deemed to be a submission to Arbitration within the meaning of the Indian Arbitration Act 1940 or any demodification thereof for the time being in force. The award of the Arbitrator or Arbitrators or the Umpire as the case may be shall be final and binding on the parties. Such reference except as to the withholding by the Owner of any Certificates under 4.31 to which the Contractor claims to be entitled shall not be opened or entered upon until after the completion or alleged completion of the works or until after the practical cessation of the work arising from any cause unless with the written consent of the Owner and the Contractor. Provided always that the Owner shall not withhold the payment of an Interim Certificate nor the Contractor except with the consent in writing of the Owner in any way delay the carrying out of the works by reason of any such matters, question or dispute being referred to Arbitration but shall proceed with the work with all due diligence and shell, until the decision of the Arbitrator or Arbitrators or the Umpire as the case may be given abide the decision of the Owner and no award of the Arbitrator or the Arbitrators or the Umpire as the case may be shall relieve the Contractor of his obligations to adhere strictly to the Owner's instructions with regard to the actual carrying out of the works. The Owner and the Contractor hereby also agree that Arbitration under this clause shall be a condition precedent to any right to action under the Contract.

In the event of any dispute or difference between the parties hereto, such dispute or difference shall be resolved amicably by mutual consultation or through the good offices of empowered agencies of the



Government. If such resolution is not possible, then, the unresolved dispute or difference shall be referred to arbitration of an arbitrator to be nominated by Secretary, Department of Legal Affairs ("Law Secretary") in terms of the Office Memorandum no.55/3/1/75- CF, dated the 19th December 1975 issued by the Cabinet Secretariat (Department of Cabinet Affairs), as modified from time to time. The Arbitration Act 1940 (10 of 1940) shall not be applicable to the arbitration under this clause. The award of the Arbitrator shall be binding upon parties to the dispute. Provided, however, any party aggrieved by such award may make a further reference of setting aside or revision of the award to Law Secretary whose decision shall bind the parties finally and conclusively."

A dispute erupted between the parties. The execution of agreement, arbitration clause in the agreement and service of notice under Section 21 of 1996 Act is not disputed.

4. Learned Senior counsel for the respondent submits that as per Clause 8.5 of the agreement, Courts situated at Vadodara for the purpose of disputes, action and proceedings arising out of the contract have jurisdiction, thus, this Court in terms of law laid down by Supreme Court lacks jurisdiction to appoint an Arbitrator under Section 11(6) of 1996 Act. He further submits that as per Appendix II of the contract, the Rules of Arbitration of Indian Chamber of Commerce (for short '**Rules**') are applicable, thus, provisions of 1996 Act cannot be invoked to make appointment of an Arbitrator. The applicant is required to approach authority constituted under the Rules.

5. I have heard the arguments of learned Senior counsel for both sides and perused the record with their able assistance.

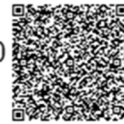


6. From the perusal of afore-quoted arbitration clause, it is evident that there is no provision for making appointment of Arbitrator under the Rules. A complete procedure in the aforesaid clause has been prescribed. The said clause is an independent arbitration agreement which provides complete procedure. It specifically provides that submission shall be deemed to be a submission to arbitration within the meaning of Arbitration Act, 1940. There is no question to direct the applicant to approach authority under the Rules. The respondent concededly has not agreed to make appointment as per arbitration agreement, thus, applicant has rightly approached this Court under Section 11(6) of 1996 Act.

7. The respondent has raised another objection with respect to jurisdiction. The respondent is relying upon Clause 8.5 which is reproduced as below:-

“The CONTRACT shall be governed by and construed according to the laws in force in INDIA. The CONTRACTOR hereby submits to the jurisdiction of the Courts situated at Vadodara for the purposes of disputes, actions and proceedings arising out the CONTRACT and the courts at Vadodara only will have the jurisdiction to hear and decide such disputes, actions and proceedings.”

8. The arbitration agreement is an independent agreement. Clause 8.5 deals with jurisdiction with respect to entire contract. There is nothing specific in the arbitration agreement with respect to venue/seat of the Arbitrator. Indubitably, the respondent is having its office within jurisdiction of this Court. The agreement was executed at Faridabad. The applications



were invited by the respondent at Faridabad. No part of cause of action has arisen within the jurisdiction of Vadodara.

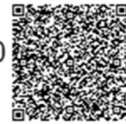
9. The issue of jurisdiction raised by the respondent has been adverted by this Court in *M/s I Care Consultancy v. M/s Mahindra and Mahindra Financial Services Limited and others, ARB-49-2023*; *Naveen Garg v. Sanjay Aggarwal, ARB-118-2024* and *M/s I Care Consultancy v. L&T Finance Ltd. and others, ARB-57-2023*. It has been held that this Court has jurisdiction to appoint an Arbitrator under Section 11 of 1996 Act. The relevant extracts of the judgment are reproduced as below: -

“8. From the agreement and arguments of both sides, it comes out that an agreement dated 04.01.2012 was executed between applicant and respondent. There is an arbitration clause in the agreement. As per said agreement, the venue of arbitration shall be Mumbai. The agreement was executed at Karnal (Haryana). The registered office of respondent is at Mumbai. Both parties are having their office at Karnal (Haryana). The work pursuant to agreement was to be executed within jurisdiction of this Court. The cause of action has arisen within jurisdiction of this Court.

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11. As per Section 2 (1) (e), ‘Court’ includes principal Civil Court of original jurisdiction and High Court which in exercise of its ordinary original civil jurisdiction, has jurisdiction to decide the question forming the subject matter of arbitration if the same had been the subject matter of a suit.

This Court, indubitably, has no ordinary original civil jurisdiction to decide the questions forming the subject matter of arbitration if the same had been the subject matter of a suit.



All civil suits arising within territorial jurisdiction of this Court are filed before District Court. This Court cannot entertain civil suit on the original side. This Court has only appellate jurisdiction, thus, this Court does not fall within definition of Court as defined under Section 2 (1) (e) of 1996 Act. Undisputedly, the cause of action has arisen within territorial jurisdiction of this Court and as per Rules and Regulations governing the jurisdiction of this Court and District Courts functioning within its jurisdiction, the parties, in the absence of Arbitration clause, could file civil suit at Karnal (Haryana) which is place of agreement as well as cause of action. Thus, Civil Court at Karnal (Haryana) falls within definition of 'Court' as defined under Section 2(1) (e) of 1996 Act.

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20. *Constitution Bench in BALCO (supra) had occasion to consider jurisdiction of Courts in India and applicability of provisions of Arbitration Act, 1996 where place/seat of arbitral Tribunal is outside the country. The court has held that where seat of arbitrator is outside the country, Part-I of the 1996 Act would not be applicable. Section 2(2) of the Act candidly provides that Part-I shall apply where the place of arbitration is in India meaning thereby if place of arbitration is outside the country, Part-I would not be applicable. In para 96, Supreme Court categorically held that Court within whose jurisdiction the subject matter of the suit is situated and the court within jurisdiction of which the dispute resolution i.e. arbitration is located would have jurisdiction. The Court clarified its opinion by way of an example. At the cost of repetition, the relevant part of para 96 of the judgment is reproduced as below:*

“For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal

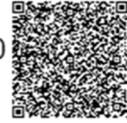


sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located.”

[Emphasis Supplied]

21. *Section 11(12) provided that in case of international commercial arbitration, the reference to the Supreme Court or High Court shall be construed as Supreme Court and in cases other than international commercial arbitration, the reference to Supreme Court or High Court shall be construed as High Court. It further provides that High Court means a High Court within whose local limits, the principal Civil Court is situated. Section 11 (12) at the cost of repetition is reproduced as below:*

“(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the “Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “Supreme Court”; and (b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to “the Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “High Court” within whose local

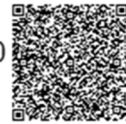


limits the principal Civil Court referred to in clause (e) of subsection (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.”

[Emphasis Supplied]

22. *This Court as discussed hereinabove, does not fall within definition of Civil Court as defined under Section 2 (1) (e) of 1996 Act, thus, this Court gets jurisdiction under Section 11(6) where principal Civil Court of original jurisdiction has jurisdiction to decide the questions forming the subject matter of arbitration, had the same been the subject matter of suit. The cause of action has arisen within jurisdiction of principal Civil Court at Karnal (Haryana). The said Court has jurisdiction to entertain civil suit arising out of aforesaid agreement. The contention of respondent is that as per arbitration agreement, Mumbai Court has exclusive jurisdiction whereas as per judgment of Supreme Court in BALCO (supra), Court at Karnal (Haryana) as well as Mumbai has jurisdiction in term of Section 2(1)(e) read with Section 20 of 1996 Act. As Civil Court at Karnal (Haryana) has jurisdiction to entertain dispute in question, this Court has jurisdiction to entertain application under Section 11 (6) of 1996 Act.*

23. *A Coordinate Bench of this Court M/s Green Global Energy Vs. G.R. Infra Projects Ltd, Arbitration Case No.256 of 2019, vide order dated 10.05.2024 has held that this Court has jurisdiction to entertain an application under Section 11 (6) though in the agreement, it was provided that courts in Udaipur shall have exclusive jurisdiction. In the said case, agreement between the parties was executed at Gurugram and work order pertained to Uttar Pradesh. No cause of action arose at Udaipur, however, in the agreement, Udaipur was notified venue of the arbitration. This Court while passing said order noticed judgment of Supreme Court in Indus Mobile*



Distribution (P) Ltd. (supra) & Ravi Ranjan Developers Pvt. Ltd. (supra) and appointed a sole arbitrator.

The aforesaid order of this Court has been assailed before Supreme Court by way of petition for Special Leave to Appeal (C) No.13409 of 2024. Supreme Court has issued notice of motion which is confined to following contentions:

- (i) the respondent did not invoke arbitration clause before invoking Section 11 of Arbitration Act.*
- (ii) (ii) Arbitration clause provides for appointment of arbitral Tribunal consisting of three arbitrators.*

24. In the wake of above discussion and findings, it is hereby held that this Court has jurisdiction to entertain present application under Section 11 (6) of 1996 Act. The objection raised by respondent is rejected.”

10. In the case in hand, the agreement was executed within the jurisdiction of this Court. The office of the applicant is in New Delhi and the respondent is having its regional office in Faridabad. No part of cause of action arose within jurisdiction of Vadodara Court whereas part of cause of action arose within jurisdiction of this Court. Thus, present case is squarely covered by aforesaid judgments of this Court.

11. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a sole Arbitrator to adjudicate the dispute between the parties.

12. Mr. Justice Rameshwar Singh Malik, Retired Judge of this Court, residing at B-13, Mayflair Gardens, Hauz Khas, August Kranti Marg, New Delhi, Mobile No.7837049206 is hereby appointed as a Sole Arbitrator to



ARB-517-2021 (O&M)

-11-

adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned Arbitrator is requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

13. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at his convenience.

14. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.

15. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the 1996 Act.

16. Needless to mention, parties would be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

17. Pending application(s), if any, shall stand disposed of.

18. A request letter along with copy of this order be sent to Mr. Justice Rameshwar Singh Malik.

(JAGMOHAN BANSAL)
JUDGE

05.12.2024

Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No