



2024:CGHC:47476-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Arbitration Appeal No.30 of 2024

{Arising out of order dated 6-8-2024 passed in Arb. M.J.C.No.34/2024 by the Judge, Commercial Court (District Judge Level), Nava Raipur, Atal Nagar, Distt. Raipur, Chhattisgarh}

M/s. Radhakishan Ventures Private Limited, C-245, Shailendra Nagar, Near Navkar Hospital, Raipur, Chhattisgarh, through its Partner Prachi Bhatia, W/o Shri Chandraprakash Bhatia, Aged about 47 years, R/o C-245, Shailendra Nagar, Raipur (C.G.)

... Appellant

versus

1. M/s Caratlane Trading Private Limited, Through its General Manager, 2nd, 3rd and 4th Floor, #32 Rutland Gate, 2nd Street, Khader Nawaz Khan Road, Nungambakkam, Chennai (T.N.) 600006
2. Prashant Choudhary, Sr Manager, M/s Caratlane Trading Private Limited, Unit No.902, 9th Floor, Eros Corporate Tower, Nehru Place, New Delhi, 110019
3. ICICI Bank, Through Branch Manager, Civil Lines, Raipur, Chhattisgarh 492001
4. HDFC Bank, Through Branch Manager, Ground & Second Floor, C 56, Sector 1, Devendra Nagar, Raipur (C.G.) 492001

... Respondents

For Appellant : Mr. Utsav Mahiswar, Advocate.

For Respondent No.1 : Mr. Ashish Tiwari, Advocate, on caveat.

Division Bench: -

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Radhakishan Agrawal, JJ.

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Judgment on Board
(03/12/2024)

Sanjay K. Agrawal, J.

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the A&C Act') is directed against the impugned order dated 6-8-2024 passed by the Judge, Commercial Court (District Judge Level), Nava Raipur, Atal Nagar, Distt. Raipur, Chhattisgarh, in Arb. M.J.C. No.34/2024, by which the appellant's application under Section 9 of the A&C Act has been dismissed by the Commercial Court finding no merit holding that clause 54 of the L6 Partner Agreement provides that the seat of arbitration shall be at Chennai, which is the exclusive jurisdiction clause, and in view of the decision of the Supreme Court in the matter of **BGS SGS Soma JV v. NHPC Limited**¹, the application under Section 9 of the A&C Act is not maintainable which is sought to be challenged in this appeal.
2. Mr. Utsav Mahiswar, learned counsel appearing for the appellant, submits that the learned Commercial Court is absolutely unjustified in rejecting the application as not maintainable, it ought to have entertained the application on merits and should have decided the same on merits.

1 (2020) 4 SCC 234

3. Mr. Ashish Tiwari, learned counsel appearing for respondent No.1, on caveat, submits that the appellant's application under Section 9 of the A&C Act was rejected by the Commercial Court on 6-8-2024 and thereafter, on the application filed by respondent No.1 herein, the High Court of Judicature at Madras, by order dated 28-8-2024 has appointed one Mr. K. Harishankar, Advocate, having office at No.554/555, 9th Floor, 'Capitale', Anna Salai, Teynampet, Chennai – 600 018, with the consent of parties and respondent No.1 had also filed application for interim relief which has been considered and order has been kept reserved, and in the said proceeding, the appellant herein is also appearing. In that view of the matter and in view of the exclusive jurisdiction clause holding that the seat of arbitration will be at Chennai, the Commercial Court is absolutely justified in holding that the application under Section 9 of the A&C Act was not maintainable and the instant appeal deserves to be dismissed.
4. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
5. Clause 54 of the contract in question i.e. L6 Partner Agreement, which has been filed as Annexure A-4 of the appeal memo (page 68) and which has also been noticed by the Commercial Court at paragraph 13 of the impugned order, states as under: -

“DISPUTE RESOLUTION AND JURISDICTION:

54. All disputes or difference which may arise between the parties or their representatives with regard to the construction, meaning and effect of this agreement or rights and liabilities of the parties under this agreement or any other matter relating to the subject matter of this agreement within 30 days of notice to each defaulting Party. This Agreement shall be governed in accordance with laws of India as administered by the courts in Chennai only, without giving effect to the principles of conflict of laws. The parties shall be bound to refer the disputes arising out of or in relation to this Agreement to a binding arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 by mutual appointed sole arbitrator. The said arbitration proceedings shall be conducted in English language and the seat of arbitration shall be at Chennai. It is hereby clarified that the parties shall have the discretion to seek equitable relief, interim relief or interim measures or enforce any arbitral award in any court of competent jurisdiction (a) before commencement of arbitral proceedings as per the provisions in this Agreement, or (b) during arbitral proceedings, or (c) at any time after the making of the arbitral award by the arbitral tribunal but before it is enforced.

In the event of there being any proceedings before the Court, jurisdiction shall be vested with the Courts of Chennai- only.”

6. The learned Commercial Court after noticing that the seat of arbitration proceeding will be at Chennai and that is the exclusive jurisdiction clause, considered the decision of the Supreme Court in **BGS SGS Soma JV** (supra) in which it has been held at paragraph 38 as under:-

“38. A reading of paras 75, 76, 96, 110, 116, 123 and 194 of *BALCO*² would show that where parties have selected the

2 *BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810

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seat of arbitration in their agreement, such selection would then amount to an exclusive jurisdiction clause, as the parties have now indicated that the courts at the “seat” would alone have jurisdiction to entertain challenges against the arbitral award which have been made at the seat. The example given in para 96 buttresses this proposition, and is supported by the previous and subsequent paragraphs pointed out hereinabove. The *BALCO*² judgment, when read as a whole, applies the concept of “seat” as laid down by the English judgments (and which is in Section 20 of the Arbitration Act, 1996), by harmoniously construing Section 20 with Section 2(1)(e), so as to broaden the definition of “court”, and bring within its ken courts of the “seat” of the arbitration³.”

7. The learned Commercial Court also considered the decision of the Supreme Court in the matter of **Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.**⁴ which was referred to in **BGS SGS Soma JV** (supra) and in which it has been held in paragraphs 19 and 20 as under:-

“19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and

3 Section 3 of the English Arbitration Act, 1996 defines “seat” as follows:

“3. *The seat of the arbitration.*— In this Part “**the seat of the arbitration**” means the juridical seat of the arbitration designated—

(a) by the parties to the arbitration agreement, or

(b) by any arbitral or other institution or person vested by the parties with powers in that regard, or

(c) by the Arbitral Tribunal if so authorised by the parties,

or determined, in the absence of any such designation, having regard to the parties' agreement and all the relevant circumstances.”

It will be noticed that this section closely approximates with Section 20 of the Indian Arbitration Act, 1996. The meaning of “Court” is laid down in Section 105 of the English Arbitration Act, 1996 whereby the Lord Chancellor may, by order, make provision allocating and specifying proceedings under the Act which may go to the High Court or to county courts.

4 (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760

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Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the law of arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of the Code of Civil Procedure be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*⁵ This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.*⁶ Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment⁷ is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly.”

8. After considering the judgments rendered by their Lordships of the Supreme Court in **BGS SGS Soma JV** (supra) and **Indus Mobile Distribution (P) Ltd.** (supra), the learned Commercial Court observed in paragraphs 19 & 29 of the impugned order as under: -

5 (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157

6 (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427

7 *Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744 : (2016) 158 DRJ 391

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“19. In this view of settled legal position, there can be no doubt that in case at hand once the parties have chosen the seat of arbitration at Chennai then any matter pertaining to the prospective arbitration shall have to be dealt with by the Courts at Chennai. The arbitration clause is by and large very categorical in this regard as it has been mentioned twice therein that the agreement shall be governed in accordance with laws of India as administered by the Courts at Chennai only as also in the event of there being any proceedings before the Court, jurisdiction shall be vested with the Courts of Chennai-only. However, slight room for a possible alternative interpretation also appears to have been afforded with the use of portion “it is hereby clarified before it is enforced”.

29. Hence, effectually the exclusivity of jurisdiction of courts at Chennai to adjudicate any dispute between the parties pertaining to terms of the agreement would remain unaffected by the generalized nature of clarificatory portion and same would not in any manner dilute such exclusivity. Thus, it can easily be gathered that the arbitration clause does in fact envisage the exclusivity of jurisdiction of courts at Chennai only and cannot be deemed to be akin to affording non-exclusive jurisdiction.”

9. A careful perusal of the finding recorded by the Commercial Court would show that in view of clause 54 of the L6 Partner Agreement, the arbitration proceedings between the parties shall be conducted in English language and the seat of arbitration shall be at Chennai and that is the exclusive jurisdiction clause. Even it has also been held by the learned Commercial Court that the arbitration clause does in fact envisage the exclusivity of jurisdiction of courts at Chennai only and thereafter, at the instance of respondent No.1 herein in subject dispute, the High Court of Judicature at Madras has appointed Mr. K. Harishankar, Advocate, as arbitrator with the

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consent of the appellant herein and the Sole Arbitrator has started the proceeding and Minutes of Proceedings had also been drawn and respondent No.1 herein has filed an application for interim relief which is being considered. In that view of the matter, we are of the considered opinion that the Commercial Court is justified in holding that it has no jurisdiction to adjudicate the application under Section 9 of the A&C Act in view of the exclusive jurisdiction clause in the contract agreement i.e. L6 Partner Agreement and further justified in rejecting the application as not maintainable, which is absolutely in accordance with law. The arbitration appeal, therefore, deserves to be and is accordingly dismissed. However, this will not bar the appellant herein to file application for interim relief, if any, before the arbitration tribunal. There will be no order as to costs.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Radhakishan Agrawal)
JUDGE