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IN THE HIGH COURT OF JUDICATURE FOR ORISSA
AT CUTTACK

ARBP No.56 of 2018

(An application under Section 11(6) of the Arbitration & Conciliation Act, 1996).

M/s. SJ Biz Solution Pvt. Ltd. ... Petitioner

-Versus-

M/s. Sany Heavy Industry India Pvt. Ltd. ... Opp. Party

Advocate(s) who appeared in this case by Video Conferencing mode:-

For Petitioner	:	Mr. Avijit Pal
For Opp.Party	:	Mr. A. Bhattacharya M/s. Baibaswata Panigrahi

HONOURABLE THE CHIEF JUSTICE MR. MOHAMMAD RAFIQ

J U D G M E N T

01.10.2020

Petitioner-M/s. SJ Biz Solutions Pvt. Ltd. has filed this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, "Act, 1996") seeking appointment of an independent arbitrator to *arbitrate* the disputes between the petitioner and the opposite party.

The case of the petitioner as set up in the present application is that the opposite party-M/s. Sany Heavy Industry India Pvt. Ltd. is the manufacturer of heavy construction equipments. The petitioner approached the opposite party for dealership in the State of

Odisha. Accordingly, a dealership agreement was entered into between the parties in January, 2014, initially for a period of one year and it was further renewed in the year 2014, 2015 and 2016, each time for a period of one year. Lastly, the contract was extended on 01.01.2017 for a period of one year till 31.12.2017. Pursuant to the agreement, the petitioner submitted Bank Guarantee for a sum of Rs.25,00,000/- (Rupees Twenty-five Lakh) drawn in the Bank of Baroda in favour of the opposite party. Even as the dealership agreement was subsisting, the opposite party without any rhyme or reason, and without any notice to that effect, illegally terminated the agreement on 04.09.2017, much prior to expiry of the period. The opposite party did not even pay the legitimate dues of the petitioner. The representatives of the petitioner met the opposite party to discuss the pending issues. The minutes of meeting held on 28.12.2017 were drawn up for full and final settlement of dues for resolution of all the issues. The minutes were signed by the representatives of both the parties. The issues in respect of the spare parts, FOC (Free of Cost Accessories), claims regarding reimbursement, machine delivery on account of M/s. Ganesh Paltasingh and release of SY 2010 and SY 220 were discussed and finalized. The opposite party agreed to pay an amount of Rs.33,49,926/- to the petitioner in respect of the claims of FOC. The balance claim of Rs.4,44,879/- was subject to further reconciliation. The opposite party however did not make any payment till March, 2018 in terms of the above said settlement. The petitioner on 24.03.2018 requested the opposite party for release of the said amount as he had

to settle the statutory dues of the Government prior to 31.03.2018. The opposite party vide its e-mail dated 30.03.2018 informed the petitioner about the amount receivable from him and requested the petitioner to get NOC from all customers in respect of FOC amount.

As the matter stood thus, the petitioner received a letter dated 05.04.2018 from Bank of Baroda, Barbil Branch, wherein it was intimated to the petitioner that they have received a notice dated 29.03.2018 from the opposite party invoking Bank guarantee in order to make payment of Rs.25,00,000/-. In these circumstances, the petitioner filed an application under Section 9 of the Act, 1996 before the learned District Judge, Khurda at Bhubaneswar vide ARBP No.25 of 2018. The learned District Judge by his order dated 09.04.2018 issued a notice to the opposite party, directing it to maintain status quo as on the date in respect of encashment of the bank guarantee. However, despite such direction of the learned District Judge, the Bank guarantee was encashed and the money remitted to the opposite party. The petitioner therefore by letter dated 16.04.2018 submitted its claim to the opposite party, who by its e-mail dated 04.05.2018, acknowledged the receipt of the claim of the petitioner dated 16.04.2018 on 03.05.2018, but refuted all the claims of the petitioner. Disputes having thus arisen between the parties, the petitioner by its letter dated 23.07.2018 invoked the arbitration Clause 15.3 of the Dealership Agreement dated 17.01.2017 and requested the opposite party to appoint a sole Arbitrator. The said letter was received by the

opposite party on 01.08.2018. Since the opposite party failed to appoint the arbitrator within a period of 30 days, the petitioner was constrained to file this petition under Section 11(6) of the Act, 1996.

Mr. Avijit Pal, learned counsel for the petitioner submitted that even if the parties in clause 15 of the Dealership Agreement (Annexure-1) agreed that the place of arbitration shall be at 'Pune', the jurisdiction of this Court to entertain the present application filed under Section 11(6) of the Act, 1996 is not excluded as cause of action, wholly, or at least in part, has arisen in the territory of the State of Orissa. It is contended that in view of Section 20(1) of the Act, 1996 the parties are free to chose the place of arbitration. The word 'place' in Section 20 has been used in the sense of the word 'Venue'. Even if the parties in the present case in clause 15.3 of the Dealership Agreement, agreed upon the place of arbitration at 'Pune', the word 'place' used therein only denotes the venue of arbitration proceedings, which can take place anywhere. This becomes further clear from clause 16 (13.4) of the agreement which provides that "all disputes arising out of or in any way connected with these presents shall be subject to the jurisdiction of the Courts, having territorial jurisdiction." Clause 17 of the agreement also clarifies this position by indicating the geographical areas of territory, would be the entire districts of Odisha. It is submitted that in view of the definition of the Court given in Section 2(1)(e) of the Act, 1996, the Courts at Bhubaneswar would have the jurisdiction to entertain the petition under Section 9 of the

Act, 1996 and for the same reason, this Court would also have the territorial jurisdiction, especially in view of Section 11(11) of the Act, 1996 which provides that where the request has been made to more than one High Court, the High Court where request has been made first in point of time, which in this case is Orissa High Court, would be competent to decide the application. Learned counsel for the petitioner in support of his arguments relied upon the decision of the Supreme Court in the case of ***Mayavati Trading Private Limited vs. Pradyuat Deb Burman, (2019) 8 SCC 714***.

Mr. A. Bhattacharya, learned counsel for the opposite party has argued that Section 20 of the Act, 1996 has given freedom to the parties to decide the place of arbitration. If the parties in the agreement have chosen a particular place as the place of arbitration, only the High Court having territorial jurisdiction over that place would be competent to entertain and decide the application under section 11 for appointment of arbitrator. It is denied that the opposite party has illegally invoked the Bank guarantee and that the opposite party has forfeited the right to appoint the Arbitrator. In fact, the opposite party has already appointed Hon'ble Justice (Retd.) Mr. S.R. Sathe, Bombay High Court, residing at Pune, as the sole arbitrator. The present application ought to be therefore dismissed as infructuous. As regards the Bank Guarantee, it is submitted that notice on the petition filed by the petitioner under Section 9 of the Act, 1996 was issued by the learned District Judge, Khurda on 09.04.2018 to the opposite party.

But in the meantime, the opposite party had already invoked the bank guarantee on 29.03.2018 by encashing the amount even before receiving such notice. Therefore, the petition under Section 9 was also rendered infructuous.

Learned counsel submitted that this controversy has been set at rest by a catena of decisions of the Supreme Court. Learned counsel has in support of his argument relied on judgment of the Supreme Court in ***Indus Mobile Distribution Pvt. Ltd. vs. Datawind Innovations Private Ltd. & Ors.***, ***(2017) 7 SCC 678*** and ***BGS SGS Soma JV vs. NHPC Limited, (2020)4 SCC 234***. It is argued that the Supreme Court in ***Indus Mobile Distribution Pvt. Ltd., supra*** has reiterated the same law, as in ***Bharat Aluminium Company (BALCO) vs. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552***, as to the autonomy given to the parties to choose the place of arbitration under Section 20 of the Act 1996. These and other cited and relevant judgments shall be discussed at the appropriate place hereinafter.

I have given my thoughtful consideration to rival submissions and perused the material on record.

In order to appreciate the rival submissions, it is deemed appropriate to reproduce clause 15.3 of the dealership agreement, which reads as follows:

> *"All disputes arising out of the execution or in relation to this Agreement shall be settled amicably through friendly negotiation between the parties. If a settlement cannot be reached, any dispute, controversy or claim arising out of or in relation to this Agreement, including the validity, invalidity, breach or termination thereof, shall be referred for arbitration, to sole arbitrator appointed by the Managing Director/CEO of Sany Heavy Industry India Pvt. Ltd. Place of arbitration shall be at Pune & language of arbitrator proceeding shall be English."*

The Parliament has in its legislative wisdom given the freedom to the parties to choose the place of arbitration, which is evident from Section 20 of the Act, 1996. The Constitution Bench of the Supreme Court in ***Bharat Aluminium Company (BALCO), supra***, examined the matter with regard to "subject matter of arbitration" vis-a-vis "subject matter of suit" in the context of the definition of the Court as given under Section 2(1)(e) of the Act, 1996. The Constitution Bench in that judgment while dealing with the concept of 'autonomy' given to the parties as to selection of the place of arbitration, also extensively examined Section 20 of the Act, 1996. Relevant discussion in para 96 to 98 of the report is reproduced hereunder:

> *"96. Section 2(1) (e) of Arbitration Act, 1996 read as under:*
>
> *"2. **Definitions** (1) In this Part, unless the context otherwise requires –*
>
> *(a) – (d) xxx xxx*
>
> *(e) "Court" in case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include*

any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes."

We are of the opinion, the term "subject-matter of the arbitration" cannot be confused with "subject-matter of the suit". The term "subject-matter" in Section 2((1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts, i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. 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.

97. The definition of Section 2(1)(e) includes "subject-matter of the arbitration" to give jurisdiction to the courts where the arbitration takes place, which otherwise would not exist. On the other hand, Section 47 which is in Part II of the Arbitration Act, 1996 dealing with enforcement of certain foreign awards has defined the term "court" as a court having jurisdiction over the subject-matter of the award. This has a clear reference to a court within whose jurisdiction the asset/person is located, against which/whom the enforcement of the international arbitral award is sought. The provisions

> *contained in Section 2(1)(e) being purely jurisdictional in nature can have no relevance to the question whether Part I applies to arbitrations which take place outside India.*
>
> *"98. We now come to Section 20, which is as under:-*
>
> *"20. Place of arbitration- (1) The parties are free to agree on the place of arbitration.*
> *(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the Arbitral Tribunal having regard to the circumstances of the case, including the convenience of the parties.*
> *(3) Notwithstanding sub-section (1) or sub-section (2), the Arbitral Tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property."*
>
> *A plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any "place" or "seat" within India, be it Delhi, Mumbai etc. In the absence of the parties' agreement thereto, Section 20(2) authorizes the tribunal to determine the place/seat of such arbitration. Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.*

An identical issue came up before the Supreme Court in the case of ***Swastik Gases Private Limited vs. Indian Oil Corporation Limited, (2013) 9 SCC 32.*** In that case, the respondent-Indian Oil Corporation Limited appointed M/s. Swastik Gases (P) Ltd. as their consignment agent at Jaipur, Rajasthan. The relevant clause in the agreement between the parties provided that the agreement shall be subject to the jurisdiction of the Courts at Kolkata. Swastik Gases (P) Ltd. invoked clause 18 of the arbitration clause and filed application under Section 11(6) of the Act, 1996 before the Rajasthan High Court for appointment of arbitrator. The respondent-Indian Oil

Corporation raised the plea of lack of territorial jurisdiction of Rajasthan High Court contending that the agreement has been made subject to jurisdiction of the Courts at Kolkata. The designated judge held that the Rajasthan High Court did not have territorial jurisdiction to entertain the application under Section 11(6) of the Act, 1996. The order of the High Court was challenged before the Supreme Court on the ground that the words like "alone", "only", "exclusive" or "exclusive jurisdiction", have not been used in the agreement. Therefore, even the Rajasthan High Court would have territorial jurisdiction. Repelling the argument, the Supreme Court held that use of such words inasmuch as non-use of such words does not make any material difference as to the intention of the parties in having in clause 18 of the agreement that the courts at Kolkata shall have the jurisdiction. Relevant discussion in paras-31 and 32 of the report is worth quoting:-

> *"31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11 (12) (b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of clause 18 of the agreement, the jurisdiction of Chief Justice of the Rajasthan High Court has been excluded ?*
>
> *32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst*

> *providing for jurisdiction clause in the agreement the words like 'alone', 'only', 'exclusive' or 'exclusive jurisdiction' have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties - by having clause 18 in the agreement – is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner."*

The Supreme Court in ***Indus Mobile Distribution Private Limited, supra*** while revisiting the Constitution Bench decision rendered in ***Bharat Aluminium Company,*** supra, considered the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) w.e.f. 23.10.2015. The Supreme Court while analyzing the definition of the 'Court' under Section 2(1)(e) and Section 20 of the Act,1996 categorically held that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. In that case, the seat of arbitration was Mumbai. The relevant clause of the agreement made it clear that the jurisdiction exclusively vests in the Mumbai courts. The Supreme Court held that 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 observations of the Supreme Court in para-19 of the judgment in the case of ***Indus Mobile Distribution Private Limited***, supra are quoted hereunder:-

> *"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 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 CPC 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."*

The Supreme Court in ***M/s. EMKAY Global Financial Services Ltd. vs. Girdhar Sondhi, (2018) 9 SCC 49,*** examined the correctness of the judgment of Delhi High Court challenged before it. The case was that an award was rendered between the parties in an arbitration proceeding which was held at Delhi, whereas the parties had agreed in the agreement that the exclusive jurisdiction of the Courts would be on the Courts at Mumbai. The respondent filed a petition under Section 34 of the Act, 1996 before the Additional District Judge, who referring to the exclusive jurisdiction clause contained in the agreement, held that the Court at Delhi would have no jurisdiction to proceed further in the matter and, therefore, rejected the Section 34 application. The Delhi High Court reversed the order of the learned

Additional District Judge. Challenge was made to the judgment of the Delhi High Court before the Supreme Court. The Supreme Court set aside the judgment of the Delhi High Court and restored the order of the Additional District Judge. Examining the effect of an exclusive jurisdiction clause and also considering the law laid down in ***Indus Mobile Distribution Pvt. Ltd. (supra),*** the Supreme Court in ***M/s. EMKAY Global Financial Services Ltd. Supra,*** in paras-8 and 9 of the report held as under:-

> *"8. The effect of an exclusive jurisdiction clause was dealt with by this Court in several judgments, the most recent of which is the judgment contained in Indus Mobile Distribution Pvt. Ltd. (supra). In this case, the arbitration was to be conducted at Mumbai and was subject to the exclusive jurisdiction of courts of Mumbai only. After referring to the definition of "Court" contained in Section 2(1)(e) of the Act, and Section 20 and 31(4) of the Act, this Court referred to the judgment of five learned Judges in BALCO vs. Kaiser Aluminum Technical Services Inc. in which, the concept of juridical seat which has been evolved by the courts in England, has now taken root in our jurisdiction.*
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> *xx xx xx*
> *xx xx xx*
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> *9. Following this judgment, it is clear that once courts in Mumbai have exclusive jurisdiction thanks to the agreement dated 03 July 2008, read with the National Stock Exchange bye-laws, it is clear that it is the Mumbai courts and the Mumbai courts alone, before which Section 34 application can be filed. The arbitration that was conducted at Delhi was only at a convenient venue earmarked by the National Stock Exchange, which is evident on a ready of Bye-law 4(a)(iv) read with sub-clause (xiv) contained in Chapter XI."*

The Supreme Court in a recently delivered decision in ***Brahmani River Pellets Limited vs. Kamachi Industries Ltd.***, (2020)5 SCC 462 considered whether the Madras High Court could

exercise jurisdiction under Section 11(6) of the Act, 1996 to appoint the sole arbitrator at the instance of the respondent, despite the fact that the agreement contains the clause that venue of arbitration shall be Bhubaneswar. The appellant challenged the said order by questioning the jurisdiction of the Madras High Court on the ground that since the parties had agreed that the seat of arbitration shall be at Bhubaneswar, only the Orissa High Court has exclusive jurisdiction to appoint the arbitrator. The respondent argued before the Supreme Court that since the cause of action arose at both the places, i.e., Bhubaneswar and Chennai, both Madras High Court as well as Orissa High Court will have supervisory jurisdiction. It was argued that in domestic arbitration, unless the parties tie themselves to an exclusive jurisdiction of the court in the agreement, mere mention of venue as a place of arbitration will not confer exclusive jurisdiction upon that court. It was also submitted that mere expression "venue of arbitration shall be Bhubaneswar" will not confer exclusive jurisdiction upon the Orissa High Court, particularly in view of the definition of the 'Court' as stipulated in Section 2(1)(e) of the Act, 1996, which confers power on the Principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been the subject matter of a suit. The Supreme Court relying the Constitution Bench decision of ***Bharat Aluminium Company i.e. Balco, supra*** repelled the argument in

paras-16 and 17 of the report in ***Brahmani River Pellets Limited, supra*** *while observing thus***:-**

> *"16. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik, non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference.*
>
> *17. When the parties have agreed to have the "venue" of arbitration at Bhubaneswar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order is liable to be set aside."*

The Supreme Court in ***BGS SGS SOMA JV*** supra, relied upon by learned counsel for the opposite party, was examining Sections 20 and 2(1)(e) of the Act, 1996, in the context of clause 67.3(vii) of the agreement executed between the parties in that case which provided that "Arbitration proceedings shall be held at New Delhi/Faridabad, India". Following ratio of the Constitution Bench decision in ***BALCO*** supra, it was held that test for determination of juridical seat, wherever there is an express designation of a "venue", and no designation of any alternative place as the "seat", the seat of arbitration, where alternative venues for conduct of proceedings are mentioned in arbitration agreement, shall be determined on the basis of venue chosen for conducting arbitration proceedings, to the exclusion of all other courts, even the courts where part of the cause

of action may have arisen. The issue involved in that case was thus slightly different than the one which is being examined in the present matter. Nonetheless, the law regarding the legislative recognition given to party autonomy as to the choice of the seat of arbitration has been reiterated.

Prior to Section 11(6A), the Supreme Court in several judgments, leading one being ***SBP & Co. vs. Patel Engineering Ltd. & another***, reported in (2005)8 SCC 618, had enunciated the law that at the stage of consideration of Section 11(6) application, the Chief Justice or his designate need not merely confine the examination of the existence of an arbitration clause but could also go into certain preliminary questions such as stale claim, accord, and satisfaction having been reached etc. But this position underwent a significant change after insertion of Sub-Section (6A) in Section 11 by Amending Act of 2015 w.e.f. 23.10.2015. It was this provision which the Supreme Court interpreted in ***Duro Felguera, S.A. vs. Gangavaram Port Limited, (2017) 9 SCC 729*** and held that all that the Court at the stage of Section 11 need to see is whether an arbitration agreement exists, nothing more, nothing less. It was held that legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator. The Supreme Court in ***Mayavati Trading Private Limited, supra*** relied by learned counsel for the petitioner also similarly held that after insertion of Sub-Section (6A) in Section 11 of the Act, 1996, by Amendment Act, 2015 w.e.f.

23.10.2015, the Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement. Therefore, the argument of the learned counsel for the petitioner that while considering the petition u/s 11(6) of the Act, this Court ought to only examine the existence of the arbitration agreement and should leave all other questions, including the question of territorial jurisdiction, open for consideration by the arbitrator in the scope of section 16 of the Act, 1996, cannot be countenanced. The Supreme Court in ***Mayavati Trading Private Limited, supra*** merely held that "existence" of "arbitration" agreement as referred to in sub-section (6A) of Section 11 inserted by 2015 amendment w.e.f. 23.10.2015 has correctly been interpreted in earlier judgment in ***Duro Felguera, S.A. supra.*** The subsequent judgment in ***United India Insurance Co. Ltd. Vs. Antique Art Exports (P) Ltd., (2019) 5 SCC 362*** was held to have not laid down the correct law and was therefore, overruled. The decision in the case of ***Mayavati Trading Private Limited, supra*** therefore does not in any manner help the petitioner as it does not deal with the question of territorial jurisdiction of the High Court.

In view of the above discussion, it must be held that this Court does not have the territorial jurisdiction to entertain the present

petition filed under Section 11(6) of the Act, 1996, which is accordingly dismissed as not maintainable.

With the above observations, the ARBP stands dismissed.

As Lock-down period is continuing for COVID-19, learned counsel for the petitioner may utilize the soft copy of this judgment available in the High Court's official website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587 dated 25.03.2020.

(Mohammad Rafiq)
Chief Justice

//S.K. Jena//P.A.