

(2016) 03 P&H CK 0260
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 6219 of 2014

M/s Mahashiv Promotoers Private Limited	APPELLANT
Vs	
Haryana State Roads and Bridges Development Corporation Limited and another	RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Citation : (2016) 4 Civil LJ 451 : (2016) 3 PLR 41

Hon'ble Judges : Rekha Mittal, J.

Bench : Single Bench

Advocate : Mr. Tribhuvan Dahiya, Advocate, for the Appellant; Ms. Monica Jalota, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Mittal, J.—The present petition lays challenge to order dated 28.8.2014 (Annexure P-8) passed by the District Judge, Panchkula, whereby application (Annexure P-6) filed by the petitioner to challenge territorial jurisdiction of the Court at Panchkula to entertain the objection petition, was dismissed.

2. The brief backdrop of the case is that the respondents issued a notice inviting bid for appointment as entrepreneur/agent for collection of toll at toll point No. 2 Gurgaon-Pataudi-Rewari Road KM 24 near Gurgaon. The petitioner submitted tender in pursuance of notice inviting bid. Bid of the petitioner was accepted and an agreement was executed between the parties. A dispute arose between the parties in regard to location of toll barrier which was referred to an Arbitrator in pursuance of an arbitration clause. The Arbitrator passed an award against which the petitioner filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (in short "the Act") by way of petition bearing No. 2/Arbi/16.4.2014 in the Court of District Judge, Gurgaon. Respondent No. 1 filed an objection petition ARB No. 13 dated 18.4.2014 in the Court of District Judge, Panchkula. On receipt

of notice of the objection petition preferred by the respondent, the petitioner filed an application dated 18.7.2014 (Annexure P-6) under Section 21 (1) of the Code of Civil Procedure (in short "CPC") for dismissal of the objection petition for want of jurisdiction. On receipt of reply from the respondent, the said application was dismissed by the District Judge, Panchkula vide impugned order dated 28.8.2014.

3. Counsel for the petitioner would contend that dispute between the parties pertains to collection of toll at toll point No. 2 Gurgaon-Pataudi Rewari Road, therefore, cause of action accrued within the territorial jurisdiction of Court at Gurgaon and thus an objection petition against the award would be competent in the Court of District Judge, Gurgaon. It is further submitted that the objection petition preferred by the petitioner was filed prior in time to the objection petition preferred by respondent No. 1 and once the court at Gurgaon is seized of the matter, the order passed by the District Judge, Panchkula cannot be allowed to sustain. It is further argued that the judgment relied upon by court below *M/s Swastik Gases P. Limited v. Indian Oil Corporation Limited*, 2013 (9) SCC 32 has got no bearing on the facts of the case in hand because in the said case, the agreement contains jurisdictional clause 18 to the effect that the agreement shall be subject to jurisdiction of the courts at Kolkata and in those circumstances, it was held that in view of intention of the parties explicitly contained in the agreement, territorial jurisdiction of the courts other than that of Kolkata is excluded. The last submission made by counsel is that in absence of any such clause in regard to jurisdiction of a particular court in the agreement between the parties to present lis, the respondents cannot derive any advantage to their contention from the ratio laid down in *Swastik Gases P. Limited's* case (*supra*). On the contrary, in support of his contentions, he has referred to judgment of the Apex Court *Dresser Rand S.A. v. Bindal Agro Chem Limited and another*, (2006) 1 Supreme Court Cases 751, wherein while dealing with clause 27.4.2 of the general condition of purchase, it was held that contention of the petitioner that there was an arbitration agreement between the parties is erroneous and baseless assumption as the tender document or the invitation to bid of BINDAL (containing the "instructions to bidders" and the "General Conditions of Purchase") by itself is neither an agreement nor a contract.

4. Counsel for respondent No. 1, on the contrary, has submitted that in the notice inviting bid and instructions to bidders, certain conditions have been incorporated and one of the conditions laid therein is to the effect that the jurisdiction of the Court will be at Panchkula. Similarly, in the condition of agreement in para 17, it has been mentioned that for any dispute, the jurisdiction of the court will be at Panchkula. No suit will be filed out side the jurisdiction of Court at Panchkula. It is further argued that in the agreement executed between the parties, it was specifically agreed that notice inviting bid and instructions to bidders shall be deemed to form and be construed as part of contract agreement, therefore, the court at Panchkula alone has the territorial jurisdiction to entertain and try the objections preferred by the respondent.

5. I have heard counsel for the parties and perused the records.

6. Counsel for the petitioner has not disputed that agreement (Annexure P-1) was executed between the parties after the bid/offer submitted by the petitioner in response to notice inviting tender was accepted by the respondent. The said agreement in para 39 contains an arbitration clause for appointment of Arbitrator for adjudication of a dispute in the event of an entrepreneur/agent disagreeing with decision of an authority as per clause 38 of the agreement. The agreement, in clause 2 provides for certain documents deemed to form and construed as part of the contract agreement. A relevant Extract from Clause 2 of the agreement, reads thus:-

"The following documents shall be deemed to form and be construed as part of this contract agreement in the following order of priority:-

(i) xxx xxx xxx

(ii) xxx xxx

(iii) xxx xxx xxx

(iv) xxx xxx xxx

(v) Notice inviting bid and instructions to Bidders."

7. Since the notice inviting bid and instructions to bidders have been made a part and parcel of the agreement executed between the parties containing an arbitration clause, the petitioner cannot escape what is prescribed in the notice inviting bid wherein it has been specifically mentioned that jurisdiction of the court will be at Panchkula.

8. In Dresser Rand S.A.'s case (supra), the tender document was the invitation to bid of R-1 BINDAL (containing "instructions to bidders" and "General Conditions of Purchase") was held to be neither an agreement nor a contract. It appears that in the said case, there was concluded contract between the parties, therefore, the question of "instructions to bidder" and "general conditions of purchase" forming part of an agreement/contract did not arise. Under these circumstances, Hon'ble the Supreme Court refused to accept contention of the petitioner that Clause 27.4.2 of the general conditions of purchase cannot form the basis to contend that there was an arbitration agreement between the parties. In this view of the matter, the petitioner cannot seek any aid to its contentions from what has been held in Dresser Rand S.A.'s case (supra).

9. In Swastik Gases P. Limited's case (supra), the agreement contained a specific clause in regard to jurisdiction of the court at Kolkata, therefore, it was held that jurisdiction of any other court or the courts in Rajasthan is excluded in view of clause 18 of the agreement. In the case at hand, the judgment in Swastik Gases P. Limited's case (supra) can be applied with equal force for the notice inviting bid and instructions to bidders contained a specific clause in regard to jurisdiction of the court at Panchkula that has been made an integral

part of the agreement between the parties. In this view of the matter, I find myself unable to accept the submissions made by counsel for the petitioner that either the court at Gurgaon has jurisdiction to decide the objections or the District Judge, Panchkula has committed any error much less illegality in dismissing the application raising objection in regard to territorial jurisdiction of the court at Panchkula.

10. For the foregoing reasons, the petition is dismissed leaving the parties to bear their own costs.