
(2022) 04 DEL CK 0228

In the Delhi High Court

Case No : Original Miscellaneous Petition (I) (COMM.) No. 391 Of 2021, I.A. No. 15657 Of 2021, 2209, 5499 Of 2022

Sikka Motors Pvt Ltd

APPELLANT

Vs

Hyundai Motor India Ltd (HMIL)

RESPONDENT

Date of Decision : 27-04-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 2(1)(e), 9, 17, 20, 37
Code Of Civil Procedure, 1908 — Section 16, 17, 18, 19, 20, 21

Citation : (2022) 04 DEL CK 0228

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : M.A. Niyazi, Anamika Ghai Niyazi, Kirti Jaswal, Nehmat Setthi, Sandeep Sethi, Piyush Sharma, Adity Prasad

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

1. By this petition, under section 9 of the Arbitration and Conciliation Act 1996 (hereby referred to as the 'Arbitration Act'), petitioner inter alia seeks a restraint on the respondent from taking any illegal or coercive actions against the petitioner in terms of termination notice dated 25.11.2021 and further seeks a restraint on the respondent from initiating any process of termination till the Arbitrator decides the disputes arisen between the parties.

2. Subject petition was filed contending that parties had entered into a Non-exclusive dealership agreement dated 24.10.2016.

3. It is contended by the petitioner that the dealership agreement though initially for a period of three years, has been renewed on the same terms and conditions from time to time and has been last renewed on 05.08.2020. It is contended by learned counsel for the petitioner that petitioner is a dealer of the respondent since 2004.

4. Order dated 03.12.2021 in these proceedings records that after some arguments, statement of counsel for the petitioner was recorded that the matter was likely to be settled between the parties if the disputes were referred to mediation. Counsel appearing for the respondent had objected to the maintainability of the petition and contended that the mediation should be conducted at Chennai as there was an exclusive jurisdiction of the courts at Chennai.

5. Without going into the question of jurisdiction, this Court had referred the parties to mediation and directed that till further orders no coercive action shall be taken pursuant to the notice dated 25.11.2021. Thereafter, the matter was adjourned from time to time.

6. Mediation was not successful and respondent filed an application seeking vacation of the interim protection as also for the dismissal of the petition.

7. Learned Senior Counsel appearing for the respondent submits that the courts at Delhi do not have jurisdiction to entertain any proceedings under the Arbitration Act as the parties have conferred exclusive jurisdiction on the courts at Chennai.

8. On merits, learned Senior Counsel for the petitioner submits that the agreement between the parties itself stipulates that the same can be terminated by a notice of 60 days on either side. He submits that since the agreement itself is terminated, there is no question of any injunction being granted or any restraint being imposed on the termination even pending arbitration. He submits that in case petitioner has a grievance, on termination, petitioner can raise a claim before the Arbitral Tribunal in accordance with law.

9. Reference may be had to some of the Clauses in the dealership agreement. The arbitration Clause 11 reads as under:-

"All questions, differences, controversies or disputes whatsoever between the PARTIES or their representatives touching upon responsibilities and obligations of the PARTIES or any matter connected with the terms of this Agreement, whether as to construction or otherwise, shall be referred to arbitration of a Sole Arbitrator to be appointed by HMI. The provisions of the Indian Arbitration & Conciliation Act, 1995 or any other re-enactments or statutory modifications thereof for the time being in force shall be applicable for settlement of the dispute, controversies or differences. The decision of the Sale Arbitrator shall be final and binding on the Parties. The venue of the arbitration shall be Chennai and the language of arbitration shall be English. The arbitration proceedings will be on a fast track basis."

(underlining supplied)

10. Clause 12 of the agreement refers to jurisdiction and governing law. Clause 12 reads as under:-

"JURISDICTION & GOVERNING LAW

This Dealership Agreement shall be governed by & construed in accordance with the laws of India. Subject to the above Clause on Arbitration, and without affecting the validity of the arbitration clause, the Parties hereto unconditionally and irrevocably agree to submit to the exclusive jurisdiction of the competent courts in Chennai."

(underlining supplied)

11. The standard provisions accompanying the dealership agreement particularly Clause 14 reads as under:-

"TERMINATION OF AGREEMENT

14.1 Both HMI and DEALER are entitled to terminate this Agreement by giving 60 days notice. No reasons whatsoever need be stated by the party giving notice of termination and it is sufficient if the notice conveys the intention of the party to terminate this Agreement."

12. Perusal of the arbitration Clause 11 shows that the parties have agreed that the venue of arbitration shall be Chennai and Clause 12 dealing with jurisdiction and governing law stipulates that the said Clause is subject to the Clause of the arbitration and parties have unconditionally and irrevocably agreed to submit to the exclusive jurisdiction of the competent courts in Chennai.

13. Perusal of Clauses 11 and 12, clearly show that parties had agreed that the venue of arbitration shall be Chennai and the courts at Chennai shall have exclusive jurisdiction over the subject disputes emanating out of the said agreement.

14. References may be held to the Judgement of the Supreme Court in Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited (2017) 7 SCC 678, wherein the Supreme Court was considering a case involving a similar Clause that had stipulated "such arbitration shall be conducted at Mumbai in English language..... all disputes and references of any kind whatsoever, arising out of or in connection with this agreement shall be subject to exclusive jurisdiction of Courts at Mumbai."

15. The Supreme Court in Indus Mobile (supra) was considering the question as to whether, when the seat of arbitration is Mumbai, an exclusive jurisdiction clause stating that the courts at Mumbai alone would have jurisdiction in respect of disputes arising under the agreement would oust all other courts including the High Court of Delhi, whose judgement is appealed against.

16. The Supreme Court negated the contention of the counsel for the respondent therein that if no part of cause of action arose in Mumbai, even if the seat were at Mumbai, it would make no difference as the test prescribed by the CPC to give a court jurisdiction at least be fulfilled and since none of the test were fulfilled the courts at Mumbai would have no jurisdiction.

17. The Supreme Court referring to the decision of the Constitution Bench in *Balco Vs. Kaiser Aluminium Technical Services Incorporated* (2012) 9 SCC 552, held as under:-

"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."

(underlining supplied)

18. The Supreme Court in *Indus Mobile* (supra) further reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory jurisdiction over the arbitration. The Supreme Court finally concluded 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 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.

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 Corporation Ltd.* [Swastik Gases (P) Ltd. v. Indian Oil Corporation Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.* [B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] 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 judgment [Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC Online Del 3744] 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. The appeals are disposed of accordingly.

(underlining supplied)

19. The law laid down by the Supreme Court in *Indus Mobile* (supra) squarely applies to the facts and circumstance of the present case. In the present case also parties have agreed to the venue of arbitration as Chennai and also that the competent courts in Chennai would have exclusive jurisdiction.

20. Even if assuming that no part of cause of action has arisen in Chennai, applying the ratio of the judgment in *Indus Mobile* (supra), it can safely be concluded that the courts at Chennai would have exclusive jurisdiction to entertain any proceedings arising under the Arbitration Act.

21. The judgement referred to by the learned counsel for the petitioner in *M/s. Ravi Ranjan Developers Private Limited Vs. Aditya Kumar Chatterjee* dated 24.03.2022 in SLP 17397 and 17398 of 2021 is not applicable to the facts and circumstances of the present case for the reason that the Clause that was subject matter in *Ravi Ranjan Developers* (supra) stipulated that “the sitting of the said Arbitral Tribunal shall be at Kolkata.”

22. Clearly in *Ravi Ranjan Developers* (supra), parties had not agreed to confer any exclusive jurisdiction to the courts at Kolkata. Further, the dispute in the said case pertaining to a property that was situated in Muzaffarpur at Bihar.

23. The Supreme Court in Ravi Ranjan Developers (supra) held that suit for recovery of immovable property or determination of any other rights or an interest in any immovable property or for compensation for wrong immovable property is to be instituted in the court within the local limits of whose jurisdiction the property is situated.

24. The Supreme Court further, notice that the suit pertained to an immovable property situated to Muzaffarpur in Bihar outside the territorial jurisdiction of the Kolkata High Court and further, no part of cause of action had arisen within the territorial jurisdiction of the said court.

25. In Ravi Ranjan Developers (supra), Supreme Court has further, held that "a judgment is a precedent for the issue of law that is raised and decided. The judgment has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Words, phrases and sentences in a judgment, cannot be read out of context. Nor is a judgment to be read and interpreted in the manner of a statute. It is only the law as interpreted by in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say".

26. In the light of the above observation, the Supreme Court in Ravi Ranjan (Supra) perused the development agreement which was the subject matter of the dispute and held that the contention of the respondent that the parties to arbitration had agreed to subject to jurisdiction of Kolkata High Court was not correct.

27. The Supreme Court noticing that parties to the arbitration agreement only agreed that the sitting of the Arbitral Tribunal would be in Kolkata, held that Kolkata was the venue for holding the sitting of the Arbitral Tribunal and that the parties never agreed to submit to the jurisdiction of the Kolkata High Court in respect of disputes.

28. In contrast, in the present case, as noticed hereinabove, Clause 12 of the agreement specifically agrees to the exclusive jurisdiction of the competent courts in Chennai.

29. In view of the above, it is held that the courts at Delhi would not have the jurisdiction to entertain any proceedings arising out of the subject dealership agreement and the competent courts at Chennai alone would have exclusive jurisdiction.

30. Consequently, it is held that the petition is not maintainable in this court and is accordingly dismissed.

31. At this stage, learned counsel for the petitioner prays that the interim protection granted by this court by order dated 03.12.2021 be continued to enable the petitioner to approach a competent court. He further, submits that the Clause 14 pertaining to termination of the agreement stipulates that the parties are entitled to terminate the agreement by giving the 60 day notice and as the

termination notice was given on 25.11.2021 and this court by order dated 03.12.2021 had directed that no coercive action be taken, the 60 day period not having been completed, interim protection be continued for the balance period out of the period of 60 days.

32. I am unable to accept the contentions of learned counsel for the petitioner for the reason that it has been held that the courts at Delhi do not have jurisdiction. Since this court does not have jurisdiction to entertain the petition, this court would also not have jurisdiction to grant any interim protection or continue the same.

33. Further, it may be noticed that the agreement itself stipulates that the agreement is terminable and respondents have already exercised the rights of termination and as such taking a prima facie view, there is no ground to continue the interim protection that was granted by order dated 03.12.2021. Said prayer is also rejected.

34. Order Dasti under signatures of the Court Master.