

(2012) 09 CAL CK 0127

In the Calcutta High Court

Case No : A.P.O. No. 373 of 2011, A.P. No. 130 of 2004 and A.P.O. No. 377 of 2011, A.P. No. 129 of 2004

Steel Authority of India Ltd.

APPELLANT

Vs

The Indian Cements Ltd.

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)(e), 2(e), 34, 34(3), 42
Civil Procedure Code, 1908 (CPC) — Section 141, 20, 20(a), 86
Limitation Act, 1963 — Section 14, 21

Citation : (2013) 1 CHN 194

Hon'ble Judges : Shukla Kabir Sinha, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Pradip Ghosh, Mr. Dhruba Ghosh Advocate and Mr. C.L. Singh, for the Appellant; Tilak Bose and Mr. Rishad Madora Advocate, for the Respondent

Judgement

Ashim Kumar Banerjee. J.

1. On June 3, 1995 Steel Authority of India Limited (hereinafter referred to as SAIL) entered into a Charter Party agreement with Indian Cements Limited (hereinafter referred to as ICL) for importing coal from Australia. The vessel was to discharge cargo at four places in India including Paradip and Haldia. The dispute arose when the vessel arrived at Paradip Port on July 28, 1995 and completed discharge of unloading coal to the extent of 24,088 MT and leaving a balance quantity of 23,501 MT to be discharged at Haldia Port being the next port of discharge. At the time of unloading at Paradip Port, one of the cranes out of four cranes of the vessel had been found out of order for which SAIL calculated the lay time on pro-rata basis which ICL did not agree, that gave rise to dispute to be resolved through arbitration in terms of the arbitration clause stipulated in the Charter Party Agreement. Accordingly, the parties nominated their respective nominees in the Arbitral Tribunal. The Arbitral Tribunal held sittings at Delhi. The Arbitral Tribunal ultimately, published its award on September 6, 1999. SAIL was not happy with the award. SAIL challenged the

award u/s 34 of the Arbitration and Conciliation Act, 1996 before the Delhi High Court on December 16, 1999. The Delhi High Court finally heard the application and declined to entertain the same vide judgment and order dated March 15, 2004. The Court found that it had no territorial jurisdiction to entertain the same. The Court directed the application to be returned to SAIL for filing it in the proper Court. SAIL applied for Certified Copy of the order however, did not wait as by that time the petition was ready to be returned. The Court returned it on April 13, 2004. April 14 being holiday at Calcutta SAIL filed it in this Court on April 15, 2004. From the records, we find that the original application filed before the Delhi High Court being O.M.P. 30 of 2000 was re-numbered as A.P. No. 129 of 2004 by this Court. Similarly, in the other appeal this Court re-numbered it as A.P. No. 130 of 2004. Both these appeals would relate to two Chartered Parties, however, involving identical facts. Learned Single Judge heard both the applications A.P. No. 129 and 130 of 2004. ICL raised preliminary issue to the effect that applications were barred by laws of limitation and this Court also lacked territorial jurisdiction to entertain the applications. The Learned Judge decided the first issue as against SAIL whereas the other issue raised by ICL was rejected. His Lordships dismissed the applications being found barred by laws of limitation hence, these appeals.

CONTENTIONS RAISED BY SAIL:

2. Mr. Dhruba Ghosh, learned counsel argued on behalf of the SAIL. According to him, the Tribunal published the award on September 6, 1999. However, SAIL received the same on September 22, 1999 hence, the limitation period would start from the said date and not from the date of the award. SAIL filed the application on December 17, 1999 that would involve eighty four days required for the said purpose. The time stopped running as soon as SAIL filed the application for setting aside that was to be brought within ninety days hence, the application before the Delhi High Court was within time.

3. Delhi High Court by its judgment and order dated March 15, 2004 directed return of the petition to SAIL for being filed in the proper Court. The SAIL received the petition from the Court's department on April 13, 2004. April 14 being a holiday, the petition was filed on April 15, 2004. Hence, there would not be any delay in filing the same. Even if April 14 would be excluded out of the purview of limitation, there could be at best one or two days delay in filing the same that would also keep the application within the prescribed period of limitation. Mr. Ghosh further contended that the period taken by the Delhi High Court to decide the issue was covered by Section 14 of the Limitation Act that the learned Judge failed to appreciate. He however, contended, learned Judge rightly held that this Court had territorial jurisdiction to entertain the application as per Section 2(e) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act of 1996) that would provide for a principal Civil Court to decide an application u/s 34. He contended that the dispute would arise on the Charter Party wherein ICL could have initiated proceedings for recovery of their

dues against SAIL in a Court where SAIL was carrying on business. SAIL was having its office at 18, Strand Road, Calcutta dealing with the subject consignment hence, this Court was competent to entertain a civil action and thus, would come within the definition of Section 2(e) to maintain an application u/s 34. He relied on the following decisions in this regard:-

i) Nawab Usmanali Khan -Vs- Sagar Mal reported in All India Reporter 1965 Supreme Court page 1798.

ii) M/s. Dynasty Developers Private Limited -Vs- Jumbo World Holdings Limited and Others reported in All India Reporter 2008 Madras page 119.

iii) Kellie -Vs- Fraser reported in Indian Law Reporter Volume II page 447.

4. On the issue of limitation Mr. Ghosh relied on the following decisions :

i) Ram Ujarey -Vs- Union of India reported in 1999 Volume I Supreme Court Cases page-685.

ii) Union of India and Anr. -Vs- Bhavna Engineering Co. reported in 2006 (Suppl.) Arbitration Law Reporter page-47 (Supreme Court).

iii) State of Goa -Vs- Western Builders reported in 2006 Volume VI Supreme Court Cases page-239.

iv) Consolidated Engineering Enterprises -Vs- Principal Secretary, Irrigation Department and Others reported in 2008 Volume VII Supreme Court Cases page-169.

v) State of Maharashtra and Others -Vs- ARK Builders Private Limited reported in 2011 Volume I Arbitration Law Reporter page-512 (Supreme Court).

vi) Coal India Limited and Another -Vs- Ujjal Transport Agency and Others reported in 2011 Volume I Supreme Court Cases page-117.

CONTENTIONS RAISED BY ICL:

5. Mr. Bose in his usual fairness admitted, rather conceded, His Lordship's view on Section 14 of the Limitation Act was not the correct proposition of law. He however, attacked the judgment on the issue of territorial jurisdiction. He referred to his cross objections filed in these two appeals on the issue. According to Mr. Bose, the cause of action would arise on a breach of the contract. It would depend upon three eventualities:- execution, performance and breach of any obligation. According to him, the subject matter of the dispute would relate to berthing problem at Paradip that would cause delayed delivery of consignment at Haldia. Hence, ICL would have to file a civil action either before a Paradip Court or Haldia had there been no arbitration clause. He contended that it was a claim for demurrage that could arise only for delayed delivery or non-delivery. None of the eventualities occurred within the territorial jurisdiction of this Court. He contended, Delhi High Court held, it did not have territorial jurisdiction. SAIL approached Delhi High Court on a wrong premise. SAIL could also approach the

Madras High Court where ICL was carrying on business. In no stretch of imagination the Calcutta High Court did have the territorial jurisdiction to entertain the application u/s 34. He referred to the Clauses of the Charter Party in this regard. He also placed the statement of claim, counter statement and rejoinder to show that the notice of readiness was also issued outside the territorial jurisdiction of this Court. He also criticized the way, Delhi High Court petition was filed in this Court. According to him, to maintain this petition before this Court, SAIL would have to satisfy the Court as to how the jurisdiction of this Court was attracted. No such attempt was made. He referred to decision in the case of A.B.C. Laminart Private Limited and another -Vs- A.P. Agencies, Salem reported in All India Reporter 1989 Supreme Court page 1239. In this decision the Apex Court observed, in case of a breach of a contract, the proceeding could be filed at a place where it was made. The place of performance was also relevant for the purpose.

6. Resuming his argument on the next day, Mr. Tilak Bose contended, it was the subject matter of arbitration that would determine the cause of action and not each piece of facts that might occur eventually leading to the controversy. He referred to Section 2(e) and tried to distinguish the provisions of Section 20 of the Code of Civil Procedure. He would say, Section 20 of the CPC would empower one or more courts to entertain a civil action where any part of the cause of action would arise. However, u/s 2(e) of the said Act of 1996, the Court would have jurisdiction to deal with any proceeding initiated under the said Act of 1996 where the said court would have the jurisdiction to decide the question forming the subject matter of arbitration had any civil suit been filed for the same. In short, a court was empowered to determine any dispute that would arise within the limits of its territorial jurisdiction forming the subject matter of the controversy. According to Mr. Bose, as we understand, Section 20 would relate to power of a civil court to decide an action in which part of the controversy arose within the jurisdiction whereas Section 2(e) would empower only the civil courts where it would have otherwise the jurisdiction to entertain any civil dispute where subject matter forming the controversy had arisen. Sections 20(a) and (b) would also empower the court where the defendant would reside or carrying on business or working for gain. According to Mr. Bose, the clause (a) and (b) were conspicuously absent in Section 2(e). He also contended that in view of Section 141 of the Code of Civil Procedure, Section 20 would have wide application and would also govern the field of arbitration subject to the provisions of Section 2(e). However, in High Court Section 20 would not have any role to play in view of clause 12 of the Letters Patent. He contended, the breach occurred at Paradip and Haldia, even taking recourse to Section 20 Chennai could also be the appropriate Court as ICL and SAIL entered into the chartered party agreement at Chennai. According to him, mere exchange of correspondence from Strand Road Office would not confer jurisdiction on this Court. He relied on the following decisions on the issue:

1. M/s. Indian Drugs & Pharmaceuticals Ltd. Vs. M/s. Indo Swiss Synthetics Gem

Manufacturing Co. Ltd. reported in All India Reporter 1996 Supreme Court page-543

2. Oil and Natural Gas Commission Vs. Utpal Kumar Basu & Ors. reported in 1994 Volume-IV Supreme Court Cases 711.

3. Inder Chand Jain Vs. Pooran Chand Bansi Dhar reported in All India Reporter 1959 Punjab page-614

4. M/s. V.K. Engg. Constructions Vs. The Managing Director, IRCON International Ltd., Delhi & Ors. reported in All India Reporter 2008 NOC page-1445.

7. He next contended, no part of the cause of action ever arose within the jurisdiction of this Court and no pleading to the said effect was averred on behalf of SAIL. He contended, originally Delhi High Court petition was filed on April 15, 2004. How this High Court would have territorial jurisdiction, was not pleaded until April 29, 2004 when the Court directed them to file supplementary affidavit. Such supplementary affidavit ultimately filed on June 28, 2004, that too, did not disclose any cause of action within the jurisdiction of this Court. He referred to the pleadings of the supplementary affidavit wherein we would find SAIL invoking jurisdiction on the plea, parties negotiated for a chartered party at Calcutta and some of the correspondences were exchanged therefrom. Relying on the said averment Mr. Bose contended, that would not confer jurisdiction on this Court as it was not the subject matter forming the controversy. He reiterated, chartered party was executed at Chennai and not at Calcutta as erroneously held by His Lordship. Exchange of correspondence was not the relevant piece of fact that could give rise to the cause of action. He also contended, even if twin plea of exchange of correspondence and negotiation of chartered party both at Calcutta were accepted on its face value that would have no consequence to confer jurisdiction on this court to term it as "principal civil court" within the meaning of Section 2(e).

WHAT IS CAUSE OF ACTION:

8. Resuming his argument of the next day, Mr. Bose contended, SAIL invoked jurisdiction of this Court on three counts :

i) SAIL was carrying on business within jurisdiction.

ii) Negotiation for Charter Party was held at Calcutta.

iii) Correspondence was exchanged from Strand Road Office.

9. He however, contended that the last one did not have any place in the pleadings. It was merely a plea from the bar. He however, took us to the annexures to the pleadings wherefrom we found that at page 58 of the paper book the debit note was sent by ICL to SAIL at their Calcutta office giving details of the lay time charges. Page 71 was the reaction of SAIL sending statements giving detail calculation contending that the dues could be at best rupees ninety thousand approximately. Page 81 was a FAX addressed by ICL to SAIL raising the

dispute. Referring to those three documents Mr. Bose contended that the pleadings did not have any other document that could be said to be correspondence. These three documents, even taken on their face value, would only suggest that a demand was raised by ICL that was confronted by SAIL from Calcutta. According to Mr. Bose, the Cause of Action would depend upon execution of the contract, its performance and breach, if any. Neither of these three events occurred at Calcutta. The Charter Party was executed at Chennai as would appear from page 29. The performance was to be done at four places being the port of discharge mentioned in page 40 being Madras, Vizag, Paradip and Haldia. The breach committed when one of the cranes got out of order at Paradip resulting in delay in unloading at Haldia. Hence, none of the eventualities occurred at Calcutta that could extend the territorial jurisdiction of this Court.

10. He relied on the following decisions on the issue of Cause of Action:

i) M/s. Indian Drugs & Pharmaceuticals Ltd. -Vs- M/s. Indo Swiss Synthetics Gem manufacturing Co. Ltd. & Ors. reported in All India Reporter 1996 Supreme Court page-543.

ii) Pratap Electrical & Co. Vs. Asea Brawn Boveri Ltd. reported in Arbitration Law Reporter 2006 Volume-IV page-426

iii) Rattan Singh Associates (P) Ltd. Vs. Gill Power Generation Company Pvt. Ltd. reported in Arbitration Law Reporter 2007 Volume-I page-206

iv) Fire Engineers Vs. State Bank of Patiala reported in 2005 (Supplementary) Arbitration Law Reporter (Delhi) page-287

v) Engineering Projects (India) Ltd. Vs. Greater Noida Industrial Development & Anr. reported in Arbitration Law Reporter 2004 Volume-II page-607

vi) A.B.C. Laminart Pvt. Ltd. Vs. A.P. Agencies, Salem reported in All India Reporter 1989 Supreme Court page-1239.

11. He relied on the A.B.C. Laminarts (supra) and as well as the Delhi High Court judgment in the case of Engineering Projects (Supra) to support his contention that the Court having substantial part of the cause of action having arisen within, should be the competent Court within the meaning of Section 2(e). Merely because one of the parties was carrying on business would not confer jurisdiction as held by the Jharkhand High Court in the case of Pratap Electrical (Supra).

12. He referred to the judgment and order impugned particularly page 210 and 211 to say, learned Judge misread the pleadings. His Lordship's view that carrying on business by SAIL would attract territorial jurisdiction, was erroneous.

LEAVE UNDER CLAUSE 12 OF THE LETTERS PATENT - IS IT NECESSARY? :-

13. Mr. Bose relied on two decisions of this Court in the case of Magma Fincorp Ltd. -Vs- AHK Earth Movers & Financial Services & Ors. reported in All India Reporter 2011 01 Calcutta page 152 and in the case of Tobu Enterprises Pvt. Ltd.

Vs. Camco Industries Ltd. reported in All India Reporter 1984 Calcutta page-24. Citing two Calcutta decisions Mr. Bose contended that leave under Clause 12 of the Letters Patent was necessary to invoke jurisdiction of this Court if a part of the cause of action was within and the rest outside. Mr. Bose contended, if the application u/s 34 should be treated as a suit it would have all trappings of suit including necessity of obtaining leave under Clause 12 as and when necessary. In this regard, he also referred to another Calcutta High Court decision in the case of Bepin Behary Law Vs. Mohit Kumar Pal & Ors. reported in All India Reporter 1942 page-496. He lastly contended, two Division Bench decisions of this Court held, leave under Clause 12 of the Letters Patent was necessary. This Court being a Court of coordinate jurisdiction should normally follow the same having a binding effect. In this regard he referred to the Apex Court decision in the case of Ram Jivan -Vs- Smt. Phoola (dead) by L. Rs. And others reported in All India Reporter 1976 Supreme Court page 844.

DIFFERENCE BETWEEN THE OLD LAW AND NEW LAW:

14. Mr. Bose contended that the decision of the Bombay High Court in the case of Dynasty Developers (Supra) could easily be distinguished as the Madras High Court failed to appreciate that the Calcutta decision referred to by His Lordship was under the old law being the Act of 1940 that would possibly not be applicable in a case where an application u/s 34 was initiated under the new law being the said Act of 1996. In this regard, he referred to Section 31 of the said Act of 1940, particularly Sub-Section (1), (2), and (3) that would obligate each one to approach the Court to file any application under the said Act where an award was filed or was likely to be filed. Under the said Act, award could be filed by the Arbitrator or by any of the parties at the instance of the Arbitrator. These three provisions being Sub-Section (1), (2) and (3) were conspicuously absent in the new law being the 1996 Act. Section 42 of the 96 Act is *pari materia* with Section 31(4) that would obligate a party to approach the same Court where already a proceeding was initiated being the subject matter of the identical controversy covered by the same agreement. Moreover, the said decision considered the Madras High Court Rules which would differ from our Rules. In short, Mr. Bose contended, under the old law once the award was filed in a Court an application for setting aside could only be filed in the same Court irrespective of the question whether the said Court was the "Court" within the meaning of Section 2(c) of the said Act 1940 *pari materia* with Section 2(e) of the said Act of 1996. Hence, an application for setting aside of the award under old law could only be filed before the Court where award was filed whereas the said application under the new law would have to be filed before the Court within the meaning of Section 2(e) being a Court which would otherwise determine questions forming the subject matter of controversy in case any civil action was brought for the said purpose.

15. Hence according to Mr. Bose, the decision in case of Dynasty Developers (Supra) would be of no assistance to SAIL.

SECTION 14 OF THE LIMITATION ACT:

16. Mr. Bose contended that on a plain reading of the said provision it would clearly appear that the provision would apply only to suit and no other proceeding. If SAIL would take benefit of this provision then they would have to accept proceeding u/s 34 as a suit.

17. Moment they would do so they would be obliged to take leave under Clause 12 of the Letters Patent.

DELAY:

18. Mr. Bose referred to Section 34(3) to contend that the application must be filed within 90 days and the Court had power to condone the delay up to a period of 30 days and not thereafter. According to him, no application was made for condonation of delay despite the fact that there had been delay in approaching this Court beyond 90 days. He referred to the decision in the case of Union of India Vs. Popular Construction Co. reported in 2001 Volume-VIII Supreme Court page-470 and in the case of D.M. Jawhar Merican Vs. Engineers India Ltd. reported in All India Reporter 2009 page-104.

SUMMING UP:

19. He lastly contended, the learned Judge rightly held that this Court had no jurisdiction. Hence, the appeal should be dismissed and his cross objection should be allowed holding that it was necessary for SAIL to obtain leave under Clause 12 of the Letters Patent once they would contend, a part of the cause of action would arise outside the purview of this Court.

MR. GHOSH IN REPLY:

20. Mr. Dhruva Ghosh, learned counsel appearing for SAIL dealt with the argument that was advanced on behalf of ICL by contending, the parties had claims and cross claims. Hence, the analogy "debtor seeks creditors" would equally be applicable in case of SAIL. SAIL negotiated the Chartered Party at Calcutta. They raised their cross claims by calculating the lay time charges and demanded the said sum from Calcutta. That would be payable at Calcutta. The arbitrator accepted a part of such claim as would appear from the award. Hence the Calcutta High Court did have the territorial jurisdiction to entertain the arbitration. Commenting on the interpretation that was advanced by Mr. Bose on Section 2(1)(e), Mr. Ghosh contended the subject matter of controversy and the question arising therefrom would also include dispute as to implementation of the contract. The contract would include payment of lay time charges in view of the delay. The arbitrator accepted such contention to certain extent and allowed the claim of SAIL in part that would definitely extend support to the case being filed at Calcutta by SAIL.

21. He distinguished four decisions cited by Mr. Bose in the case of Indian Drugs and Pharmaceuticals Limited (Supra), Oil and Natural Gas Commission (Supra),

Inder Chand Jain (Supra) and M/s. V.K. Engineering (Supra) and contended that all the said four decisions would relate to jurisdiction being attracted considering the situs of the party. Such question would not apply in the instant case that would be clear meaning of Section 2(1)(e). He contended, Section 2(1)(e) would include High Court. Hence the legal right of SAIL that arose at Calcutta to receive lay time charges since been denied, would definitely attract the jurisdiction of this Court. He distinguished the decision in the case of A.B.C. Laminart (Supra) and Southeast Asia Shipping Company Limited (Supra) would relate to cause of action being attracted on account of breach. He contended, the present case would stand on a different matrix. There was delay in unloading, which would automatically attract lay time charges. The dispute would relate to calculation of lay time charges that was done at Calcutta by SAIL. Such claim of SAIL was payable at Calcutta. Hence these two decisions would be of no assistance to us.

22. He distinguished three decisions in the case of Rattan Singh (Supra), Capital Fire Engineers (Supra) and Engineering Projects India Limited (Supra) by contending that the combined reading of the said three decisions would relate to the proposition of law that substantial part of cause of action arising within the jurisdiction of the Court that was attracted, must be pleaded. He referred to his supplementary affidavit to contend that such pleading had, in fact, been made by SAIL.

23. He distinguished Calcutta decisions in the case of Magma Fincorp Limited (Supra) and Tobu Enterprises Private Limited (Supra) to contend that facts would differ in the said two decisions. Application made u/s 9 was the subject matter whereas the present case would relate to setting aside of an award.

24. With the consent of Mr. Bose, Mr. Ghosh cited two new decisions while in reply being the case of Ambica Quarry Works -VS- State of Gujarat reported in All India Reporter 1987 Supreme Court page-1073 and age old decision in the case of Quinn -VS- Leathen reported in 1901 Appeal Cases page- 495. Citing the said two decisions, Mr. Ghosh contended, the precedent would definitely be applicable to support a proposition of law that would be fitting in an identical controversy. Any difference in the factual matrix would make the proposition of law outside the purview.

OUR VIEW ON THE CASES CITED:

Suit - meaning of

25. In the Case of Bhagawat Singh -Vs- State of Rajasthan reported in All India Reporter 1964 Supreme Court page 444 the Apex Court observed, a proceeding which does not commence with a plaint or petition in the nature of plaint, or where the claim is not in respect of dispute ordinarily triable in a Civil Court would, prima facie, not be regarded as suit within the meaning of Section 86 of the Code of Civil Procedure.

LIMITATION:

26. On the issue of calculation of the period to come within the scope of Section 37, Mr. Ghosh cited the decision in the case of Ram Ujarey - Vs- Union of India (Supra). The Apex Court in paragraph 21 considered Section 21 of the Limitation Act in a situation of the like nature. A Civil Suit was filed in a Court having no jurisdiction. The

27. Court directed return of the plaint to be filed before a Tribunal competent to decide the subject issue. There had been some delay in filing of the plaint before the Tribunal. The Apex Court held, "the limitation would not run from the date of the order, but would run from the date on which the plaint was returned and made available to the applicant, if the applicant was not at fault." In the instant case, we examined the original petition and found a noting of the Delhi High Court that it was delivered on April 13, 2004 in terms of an order passed on March 15, 2004. In view of the said noting, we are of the view, Mr. Ghosh was correct to say that there was no delay in filing the petition to this Court.

28. In the case of State of Maharashtra and Ors. -Vs- ARK Builders Private Limited (Supra) the Apex Court held, the date of the receipt of the award was the start date for the purpose of computation of limitation u/s 34.

29. On Section 14 of the Limitation Act, Mr. Ghosh cited four decisions. In the case of Union of India and Anr. Vs Bhavna Engineering Company (Supra), the Apex Court condoned the delay when an application u/s 34 was mistakenly filed before the Madhya Pradesh High Court instead of Bombay High Court. The Apex Court relied on Section 14 and made it applicable in the said case. The Apex Court overruled the decision of the High Court that Section 14 of the Limitation Act would not apply in case of the arbitration proceeding.

30. In the case of State of Goa Vs Western Builders (Supra), Section 14 was once again made applicable. In a case of the like nature the Apex Court in paragraph 26 held, Section 14 of the Limitation Act would be applicable in the Arbitration and Conciliation Act, 1996. The Apex Court took similar view in other two cases namely, Consolidated Engineering Enterprise (Supra) and Coal India Limited (Supra).

Jurisdiction

31. Mr. Ghosh cited the decision in the case of Kellie Vs Fraser (Supra) on the issue of jurisdiction. The tea estate of Darjeeling was under a partnership executed at Calcutta. The parties resided outside jurisdiction. The Deed contained an arbitration clause. The arbitrator entered upon reference and published his award at Calcutta dealing with the defendant's share in partnership. Plea was taken that Calcutta High Court did not have jurisdiction as the property was situated at Darjeeling. It was also contended that telegram was sent from Darjeeling to the arbitrator. The Court held that sending of telegram would not amount to revocation of the authority of the arbitrator to determine the question of territorial jurisdiction. Mr. Ghosh cited the decision in the case of Nawab Usmanali Khan (Supra). He also cited the decision in the case of Dynasty

Developers (Supra) on Clause 12 of the letters patent. According to him, leave under Clause 12 of the letters patent was not required to be taken to maintain an application u/s 34. To support his contention, he relied on the above decision that dealt with Section 2(e) of the said Act of 1996. The Division Bench held that an application under the said Act could not be said to be a "suit" within the meaning of Clause 12 of the Letters Patent and as such leave was not necessary.

PER CONTRA:

Jurisdiction

32. Mr. Bose cited A.B.C. Laminart (Supra) to contend that place of suing would relate to the place where the breach took place. He also relied upon Indian Drugs and Pharmaceuticals Limited (Supra), Oil and Natural Gas Commission (Supra), Inder Chand Jain (Supra) and M/s. V.K. Engineering (Supra) to support his contention that mere exchange of correspondence from Strand Road Office would not attract jurisdiction. If we look back to these cases we would find that the decisions would relate to the situs that was the centre of controversy.

Cause of action:

33. He again relied upon Indian Drugs (Supra) and A.B.C. Laminart (Supra) in addition to Pratap Electrical (Supra), Rattan Singh (Supra), Capital Fire Engineers (Supra) and Engineering Projects (Supra) to give a clear meaning "what would constitute Cause of Action".

34. If we give a combined reading we would find that Cause of Action would be the cause that would make the parties joining issue with each other on a dispute inter se. Each and every piece of fact that might have some connection with the dispute, would not be relevant to determine the genesis of Cause of Action helping to attract jurisdiction of a particular Court.

Clause 12:

35. Mr. Bose relied upon Magma Fincorp (Supra) and Tobu Enterprises (Supra) both of our Court, to contend that an application for u/s 34 would have all trappings of suit. He also relied upon Bepin Behary Law (Supra).

36. The ratio decided therein would relate to well-settled proposition of law. Clause 12 of the Letters Patent would vest original jurisdiction to this Court to try and determine a suit that might include similar proceedings. It is a special power granted to the Chartered High Court by the said Charter that would empower this Court to entertain any suit that would arise within the jurisdiction of this Court wholly or in part. However, Section 20 of the Court of Civil Procedure would automatically empower a Court having part of the Cause of Action arising therein to entertain a suit. The High Court is given free hand either to receive or to decline even if a part is within having the other part outside.

OLD LAW & THE NEW LAW:

37. Section 31(4) of the old Arbitration Law was identical to Section 42 of the new law that would give power to a Court to receive all subsequent proceedings once any proceeding under Act on the self same controversy was entertained. Section 31(1), (2) and (3) of the old law, read together, would however empower a Court to receive any proceeding including proceeding initiated for setting aside the award once the award was filed in the said Court. Under the new law, the award need not be filed. It could be enforced as a decree automatically after three months of its pronouncement or from the date of receipt in case it is not set aside by a competent Court and no proceeding for the said purpose is pending.

DELAY:

38. Lot was said on account of delay. Mr. Bose also relied upon two Apex Court decisions in the case of Popular Construction (Supra) and D.M. Jawhar Merican (Supra). We do not wish to deal with the same as factually we find that the application was well within the time. Our reasons would follow soon after.

OUR VIEW ON THE CONTROVERSY:

DELAY:

39. On examination of the original record, we find that both these cases were filed before the Delhi High Court on December 17, 1999. It is true that there was another stamped noting that it was filed on January 31, 2000. In our view, in absence of a challenge to both the notings, we would accept the first one as correct. In our view, once it reached Court and acknowledged through such noting we would consider the same as the relevant date. The subsequent date might be an internal noting. We would also find that the case was numbered as of 2000 that might be possible because of administrative problem. Delay might have caused in registering the case for which SAIL could not be blamed. The Court fee paid on the petition was cancelled on December 17, 1999 as we find from the noting. It would clearly mean that the petition was presented on the said day before the Delhi High Court. Hence the calculation given by SAIL through Mr. Ghosh was correct. The application was filed within ninety days before the Delhi High Court.

40. The order of return of the petition was made on March 15, 2004. However, the same was actually returned on April 14, 2004. It was physically impossible for SAIL to file the petition on March 15, 2004 soon after passing of the Order. It is not the case of either side that Court was ready to return the petition on the same day. It was physically not possible as passing of the order would have various consequences that would consume some time including signing of the Order, having the same recorded in the department's file, providing certified copy to the parties, making the petition ready for return by keeping loco copy thereof. Such time taken by the department of the Delhi High Court for administrative reason must be excluded while computing the period. The petition was ready for delivery on April 13, 2004 that was not in dispute. April 14 was

holiday in Calcutta. On April 15, it was filed in this Court. Hence the petition was well within the period of limitation. Question of applying for condonation of delay would not arise at all. We thus hold this issue in favour of SAIL and reject the contention raised by Mr. Bose on behalf of ICL.

JURISDICTION:

41. The plea of jurisdiction is a mixed question of fact and law. The Section 2(e) as we find on a plain reading, would relate to question arising out of the dispute forming Cause of Action, attracting jurisdiction of a Court that would be a "Principal Civil Court" deciding identical controversy in a civil action. Mr. Bose was correct to say, in a contractual dispute the Cause of Action would arise from a breach. In the present case, one of the cranes went out of order that would cause delay in delivery at Paradip and Haldia. The parties also agreed that it would attract payment of lay time charges. The controversy arose as calculation of the lay time charges fixing the responsibility on SAIL and ICL to discharge their corresponding obligation by payment that would give rise to claims and cross claims. Hence on the factual matrix, Mr. Ghosh's argument would rather impress us and we find it more logical. The lay time calculation was made by SAIL at Calcutta, which was sent by SAIL from their Calcutta office. ICL also denied such calculation from their office at Chennai. If we rely on this singular fact we would have no hesitation but to hold Calcutta and Chennai both had jurisdiction to entertain the application u/s 34. If we try to trace the reason for lay time charges being levied on the parties we would find that the genesis would lie on the time of delivery and reason for late delivery. What was the cause for delay? The answer would be, the crane went out of Order. Where? At Paradip. Where the delay occurred? Paradip and Haldia. The evidence pertaining to such difficulty in the crane would lie at Paradip whereas evidence as to the quantum of delay would lie at Paradip and Haldia. Hence for an effective adjudication, a civil proceeding should have been filed either at Paradip or at Haldia that would help both the parties to adduce evidence to support their rival contentions.

42. The matter may be viewed from a different corner. Why and how a territorial jurisdiction of a Court is determined? In our considered view, one or a few Courts set up at different places of the country might entertain disputes for adjudication. For adjudication they would need documentary and oral evidence that would depend upon the convenience and inconvenience of the parties. Hence an area based Court would be the right choice for effecting speedy Justice. Justice at the doorstep is the ultimate aim of any civilized country. Hence the Courts must try to come within the close proximity of the litigants to ameliorate their difficulties in pursuing their grievance before the Court. If a litigant has to travel miles after miles to reach the door of Justice he would be reluctant to approach. It would be difficult for him to approach Court of law that would give rise to inordinate discontent amongst the citizens who, despite grievance being had, would not be in a position to approach the door of Justice for redressal. Hence the Court in the near proximity of both the litigants having appropriate

pecuniary and territorial power and having appropriate competence would be appropriate for redressal of grievance.

43. Problem would arise, where all the parties would not be of the same locality, one might be at a distance. In such case the Court which would be less inconvenient to the party against whom the complaint would be made, would be the right choice.

44. Coming back to the factual matrix, if we apply our thought as above, we would find that a civil action either by SAIL or by ICL on the identical controversy, should be filed at Paradip or Haldia, that would help both the parties to adduce appropriate evidence, documentary and/or oral, as it would be the local Court where the incident occurred, the incident that gave rise to the dispute, meaning thereby, the cause of delay and factual delay. It is true that lay time charges calculation was in dispute. It is not a case simpliciter that the parties were not in dispute as to fixing of responsibility. The claims and cross claims were involved in the matter hence, the extent of liability was also the centre of controversy. It is not a mere calculation that would become the subject matter of Arbitration or a civil action in case, brought for the purpose. SAIL would obviously contend that the entire responsibility would lie upon ICL and ICL was to be blamed for delay in delivery and would obviously be responsible for taking the burden of lay time charges. ICL would naturally deny their responsibility. It was for the arbitrator to decide who was liable and to what extent, that would depend upon the nature of evidence. Evidence would obviously be available at Paradip and Haldia. Hence these two Courts would have been the right choice. We are told, the Arbitration was held at Delhi. SAIL therefore, approached the Delhi High Court. Delhi High Court found that they did not have jurisdiction. We are not competent to comment. We are of the view, even if the calculation of lay time charges, raising of demand and denial occurred at Calcutta considering of balance of convenience and inconvenience, the civil action would only lie either at Haldia or at Paradip. Those two places, in our view, would be the appropriate place and the principal Civil Court having jurisdiction over the said area would be the appropriate Court.

45. Mr. Bose strenuously contended that we must follow our own Division Bench decision in the case of Magma Fincorp (Supra). A decision of a coordinate bench is binding upon us. We could not avoid the same. If we disagree, we would have to refer to a larger Bench. That situation would not arise when the facts would differ. In the instant case, on facts, we would find the Courts at Haldia and Paradip would be appropriate to decide an identical controversy in a civil action. Hence the principal Civil Court having jurisdiction on either of those two places would be the right choice. Hence the decision of the Division Bench in the case of Magma Fincorp (Supra) would be of no assistance to us. The said decision dealt with an issue as to whether leave under Clause 12 was necessary to invoke the jurisdiction of this Court in an application u/s 34. In the instant case that question would not arise at all. Hence we leave it open to be decided in an

appropriate controversy, if occasions so arises in future.

46. The jurisdiction of the Calcutta High Court could be attracted in the present case on the strength of the raising of demand on lay time calculation. Even if we accept, this Court had jurisdiction on the strength of raising of demand and corresponding denial having arisen at Calcutta, we would find significant part having arisen admittedly outside jurisdiction of this Court. We cannot brush aside the argument of Mr. Ghosh that calculation of lay time charges and submission of the same from Calcutta coupled with a denial received at Calcutta would raise the subject matter of controversy. However, that issue would become insignificant as we would have to find out the genesis of controversy that would lie at Paradip and Haldia as elaborately discussed herein before. Hence even if we hold that the Calcutta High Court had jurisdiction we should not entertain the application u/s 34, whether or not leave under Clause 12 was required to be obtained. Considering balance of convenience and inconvenience and the real issue involved in the litigation giving rise to the subject matter of controversy, we hold, this Court should not have entertained the application. The learned Judge rightly declined to accept the same, however on a different reason.

47. Since we have already held that the application was made within time question of delay having occurred would not arise. The period taken by the Delhi High Court would certainly stand excluded u/s 14 of the Limitation Act. Here we respectively differ with His Lordship. Mr. Bose fairly conceded as he does always, on the issue. Section 14 of the Limitation Act would exclude the period when a litigant would approach a different Court other than the appropriate Court. The Arbitration was held at Delhi. SAIL thought, it would be the appropriate Court. On such bonafide belief, they approached the Delhi High Court who later on held that it did not have territorial jurisdiction to entertain the same. Delhi High Court did not dismiss the petition. It directed return of the petition with a liberty to file it in the proper Court. Hence the time taken by Delhi High Court would certainly stand excluded. Once the Court found that it had no territorial jurisdiction to entertain a lis it must return the same to the litigant at the earliest so that the delay in the process must not prejudice his right to approach a Court of law. That was the basic concept behind Section 14. In the decision in the case of Union of India Vs Bhabna Engineering (Supra), the Madhya Pradesh High Court held that Section 14 of the Limitation Act would not apply in case of an application u/s 34 as it would only apply in case of suit. The Bombay High Court did not notice the earlier Apex Court decision in the case of State of Goa Vs Western Builder (Supra). The Apex Court reversed the decisions of the High Courts in both cases. From the Apex Court decisions it is clear that enunciated in Section 14 would also apply in case of Section 34 application. In the case of Consolidated Engineering (Supra) the Apex Court once again considered the issue that there was no good reason while provisions of Section 14 would not apply in case of an application u/s 34. The Apex Court held, Section 14 would not relate to extension of the period of limitation but would provide for exclusion of a period when a litigant approached a wrong Court on a bonafide mistake. Hence we hold that the period

taken by the Delhi High Court in deciding the issue would stand excluded from being counted in the instant case. If we exclude the said period we would find the petition well within the prescribed period of limitation. Hence the learned Judge was perhaps not correct on the issue.

48. On that score we join issue with His Lordship. We thus hold, it is a fit and proper case, SAIL should approach "Principal Civil Court" having territorial jurisdiction over Paradip Port or Haldia Port. We thus direct return of the petition to SAIL for being filed at the appropriate Court as referred to above. We direct the Registrar Original Side to cause return of the petition to SAIL keeping a loco copy thereof.

49. We abundantly make it clear that the period taken by us in deciding the issue both by the learned Single Judge as well as by us and the period the Registrar might take in actual return, would stand excluded u/s 14 of the Limitation Act.

50. The appeals succeed in part and are allowed to the extent as above. The judgment and the order of the learned Single Judge impugned, would stand modified accordingly.

51. There would be no order as to costs. Urgent certified copy of this judgment, if applied for, be given to the parties on their usual undertaking.