

(2017) 05 CHH CK 0040
In the Chhattisgarh High Court
Case No : 312 of 2016

Zuberi Engineering Company

APPELLANT

Vs

M/s M P Tar Products

RESPONDENT

Date of Decision : 17-05-2017

Acts Referred:

Contract Act, 1872, Section 23, Section 28 -
Micro, Small and Medium Enterprise Development Act, 2006, Section 11, Section 11(12)(b), Section 2(e)

Citation : (2017) 05 CHH CK 0040

Hon'ble Judges : Prashant Kumar Mishra

Bench : Single Bench

Advocate : Raza Ali, Rajeev Shrivastava

Judgement

1. Petitioner is aggrieved by the order dated 28-4-2015 (Annexure - P/1) passed by the Micro Small and Medium Enterprises Facilitation Council (MSEFC), Chhattisgarh, Raipur, as also for restraining the respondent No.2 to entertain the arbitration application preferred by the respondent No.1 because the respondent No.2 has no jurisdiction to entertain such application.

2. The petitioner is a partnership firm having its registered office at Jaipur (Rajasthan). Petitioner was awarded the contract by KSK Water Infrastructure on Turnkey basis for laying of 65 km M.S. Pipe Line of diameter 1800 mm, 1300 mm & 1200 mm for power plant at village Nariyana, District Janjgir-Champa, for a total sum of Rs.439.53 crores. Outer surface of the pipelines were required to be wrapped with Coal Tar Tape to protect from direct contact with earth to make pipes corrosion free. For the said work, the petitioner issued two work orders to the respondent No.1 on 30-8-2010 and an agreement to this effect was executed between the parties containing the arbitration clause. Clauses 12 & 13 of the contract are reproduced hereunder : 12. In the event of any difference or dispute arising out of or in connection with this work, the same shall be first amicably settled by mutual dialogues or otherwise, the jurisdiction will be at Jaipur.

13. Disputes & Jurisdiction:- Any suit to enforce the right of either party shall be instituted and tried by the court of ordinary civil jurisdiction of Jaipur (Rajasthan).

3. According to the petitioner, the respondent No.1 failed to complete the work within time, however, it has raised a claim with the respondent No.2 for refund of the performance security without submitting the final bill with the petitioner. The respondent No.1's application before the respondent No.2 has been objected by the petitioner on the ground that jurisdiction for resolving any dispute is to be settled at Jaipur (Rajasthan) and not at any other place, however, the respondent No.2 has rejected the objection and has proceeded further to take steps to resolve the dispute under the provisions of the Micro, Small and Medium Enterprise Development Act, 2006 (for short "the Act, 2006").

4. The issue concerning interpretation of exclusive jurisdiction clause fallen for consideration before the Supreme Court in a catena of decisions. In *Swastik Gases Private Limited v. Indian Oil Corporation Limited*, (2013) 9 SCC 32 the Supreme Court had an occasion to consider similar exclusive jurisdiction clause. After referring to several of its earlier judgments, the Supreme Court held thus at paras 31 & 32 : 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. (Emphasis supplied)

5. Following *Swastik Gases Private Limited* (supra) the Supreme Court in *B.E. Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited*, (2015) 12 SCC 225 held thus at paras 11 & 12 : 11. In a very recent judgment delivered on 10-9-2014 in *State of W.B. v. Associated Contractors*, the three-Judge Bench (speaking through one of us, Rohinton Fali Nariman, J.), noticing the decisions of this Court in *FCI v. A.M. Ahmed & Co.* (SCC para 6); *Neycer India Ltd. v. GMB Ceramics Ltd.* (SCC para 3) with reference to Section 31(4) of the Arbitration Act, 1940 and the decisions of this Court in *Jatinder Nath v. Chopra Land Developers (P) Ltd.* (SCC para 9); *Rajasthan SEB v. Universal Petrol Chemicals Ltd.* (SCC paras 33 to 36) and *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.* (SCC para 32), held that where the agreement between the parties restricted jurisdiction to only one particular court, that court alone would have jurisdiction as neither Section 31(4) nor Section 42 (of the 1996 Act) contains a non obstante clause wiping out a contrary agreement between the parties. On the basis of the above decisions, it was further held that applications preferred to courts outside the exclusive court agreed to by parties would also be without jurisdiction.

12. In light of the legal position expounded in *Swastik Gases (P) Ltd.* and *Associated Contractors* and having regard to Clause 13 of the agreement, as noted above, the jurisdiction of the District Judge, Raipur is ousted and, therefore, he cannot be said to have any jurisdiction in dealing with the matter. The only competent court of jurisdiction is the court at Goa.

6. In an extremely recent decision rendered in *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited & Others*, Civil Appeal No.5370-5371 of 2017 (decided on 19-4-2017), the Supreme Court has again followed the decision rendered in *Swastik Gases Private Limited* (supra) and *B.E. Simoes Von Staraburg Niedenthal* (supra) to observe thus in para 21 : 21. It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases Private Limited v. Indian Oil Corporation Limited*, (2013) 9 SCC 32. This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited*, (2015) 12 SCC 225. 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 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.

7. The legal position is, thus, fairly well settled that when the exclusive jurisdiction clause is available in a contract/ agreement, the jurisdiction of Courts and Tribunals at other places have been excluded and the places mentioned in the agreement/contract will only have the jurisdiction over the matter.

8. In the present case, the parties have agreed to submit to the jurisdiction to settle the dispute at Jaipur (Rajasthan), therefore, the respondent No.2 at Raipur (Chhattisgarh) has no jurisdiction to entertain the application moved by the respondent No.1.

9. In the result, the writ petition is liable to be and is hereby allowed and the impugned order is quashed. Liberty is reserved in favour of the respondent No.1 to raise the dispute before the jurisdictional forum at Jaipur (Rajasthan). No order as to cost(s).