

Dipendra Kumar vs.the Strategic Outsourcing Services Pvt Ltd

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Court : Delhi

Decided On : Sep-08-2017

Appellant : Dipendra Kumar

Respondent : The Strategic Outsourcing Services Pvt Ltd

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI ARB.P. 312/2017 Date of decision:

08. 09.2017

... Petitioner

\$~OS-28 * % + DIPENDRA KUMAR Through Mr. Vikas Sharma, Adv. versus THE STRATEGIC OUTSOURCING SERVICES PVT LTD Respondent Through Mr. Pallav Mongia, Mr. Ashish Virmnai and Mr.Abhinav Goyal, Advs. CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

(ORAL) 1. This petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking appointment of an arbitrator.

2. It is the case of the petitioner that on 01.02.2016, a work order was issued by the respondent whereby the petitioner was engaged for providing man power services in the State of Chhattisgarh for implementation of LED Bulbs Distribution Project. Disputes having arisen between the parties, the petitioner invoked the

arbitration clause on 07.03.2017. As the parties have failed to agree on an arbitrator, the present petition has been filed.

3. In the work order dated 01.12.2016 there is an arbitration clause which reads as follows:-

"ARB.P.312/2017 Page 1 Arbitration: In the case of dispute arising upon or in relation to or in connection with the contract between SOS and Agency which has not been settled amicably any party can refer the dispute (Indian) Arbitration and Conciliation Act 1996. Arbitration proceedings shall be held in Bengaluru. India and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English. for Arbitration under 4. Learned counsel for the respondent has entered appearance. He has raised an objection about the territorial jurisdiction of this court. He submits that in terms of the above noted arbitration clause, the arbitrator proceedings are to be held in Bengaluru and hence, seat of arbitration is Bengaluru and the courts in Bengaluru would only have territorial jurisdiction to adjudicate the disputes between the parties. He also relies upon the judgment of the Supreme Court in the case of M/s. Swastik Gases P. Ltd. vs. Indian Oil Corp. Ltd., (2013) 7 S.C.R. 581 to contend that the aforementioned clause ousts the jurisdiction of other courts. He relies upon the judgment of the Supreme Court in the case of Indus Mobile Distribution Private Ltd. vs. Datawind Innovations Pvt. Ltd. & Ors., (2017) 7 SCC 678 to contend that seat of arbitration being Bengaluru, the court at Bengaluru would only have territorial jurisdiction to adjudicate the disputes between the parties. However, he submits that to cut short the technicalities, he has no objection in case this court were to appoint a retired Judge of a High Court based in Bengaluru who would carry out the arbitration proceedings in Bengaluru.

5. Learned counsel appearing for the petitioner however relies upon the arbitration clause to contend that there is no ouster clause. He further submits that the work order was received by the petitioner in Delhi and the ARB.P.312/2017 Page 2 contract was finalised in Delhi. He relies upon Section 2(1) (e) of Act which provides that in the case of a domestic arbitration, the principal civil court of original jurisdiction in a district including the High Court in exercise of its original

jurisdiction having jurisdiction to decide the question forming the subject matter of arbitration if the same had been the subject matter of a suit would have the territorial jurisdiction. Hence, he submits that thus it would have jurisdiction. He submits that the arbitration clause which was the subject matter in Indus Mobile Distribution Private Ltd. vs. Datawind Innovations Pv. Ltd. & Ors.(supra) was different and hence that judgment would not apply to this Court.

6. The above arbitration clause clearly provides that arbitration proceedings would be held in Bangaluru. The Supreme in the case of M/s. Swastik Gases P. Ltd. vs. Indian Oil Corp. Ltd.(supra) held as follows:-

"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. 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', ARB.P.312/2017 Page 3 '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. xxx 28. For the reasons mentioned above, I agree with my learned Brother that in the jurisdiction clause of an agreement, the absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute. In the present case, only the Courts in Kolkata had jurisdiction to entertain the disputes between the parties. 7. Hence, merely because the agreement does not use the phrase only or exclusive does not mean that the aforesaid clause would not amount to an ouster clause. The entire purpose of the clause would be defeated if it ARB.P.312/2017 Page 4 was to be interpreted to mean that the courts other than Bangaluru would also have jurisdiction to adjudicate the disputes in question.

8. Similarly, in Indus Mobile Distribution Private Ltd. vs. Datawind Innovations Pvt. Ltd. & Ors.(supra), the Supreme Court held as follows: 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 Section 16 to 21 of the Code of Civil Procedure 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 parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases Private Limited Limited MANU/SC/0654/20

(2013) 9 SCC32 This was followed in a recent judgment in B.E. Simoes Von Staraburg Niedenthal and Anr. v. Chhattisgarh Investment Limited MANU/SC/0930/20

(2015) 12 SCC225 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 Corporation Oil v. Indian ARB.P.312/2017 Page 5 take necessary steps Under Section 9 in the Mumbai Court. Appeals are disposed of accordingly. 9. It may be noted that in that case of Indus Mobile Distribution Private Ltd. (supra) the arbitration clause which was the subject matter of dispute reads as follows:-

"19. All disputes and differences of any kind whatever arising out of or in connection with this agreement shall be subject to the exclusive jurisdiction of courts of Mumbai only. 10. The only difference in the two clauses is, namely, the clause which was the subject of dispute in Indus Mobile Distribution Private Ltd. vs. Datawind Innovations Pv. Ltd. & Ors.(supra) and the clause in the present case is that in that case the word Mumbai only was written whereas in the present case the ouster clause uses the phrase held in Bangaluru. The absence of the word only in my opinion, in view of the judgment of the M/s. Swastik Gases P. Ltd. vs. Indian Oil Corp. Ltd.(supra) would not be relevant. The Agreement specifically stating that the arbitration proceedings will be held in Bengaluru, the seat of arbitration will be Bengaluru and the Courts in Bengaluru will have jurisdiction.

11. Keeping in view the above decisions of the Supreme Court, I hold that the seat of arbitration in terms of the agreement is Bangaluru. This court would not have territorial jurisdiction to adjudicate the matter.

12. The petition is dismissed with liberty to the petitioner to take steps before the appropriate court as per law. JAYANT NATH, J SEPTEMBER08 2017 rb
ARB.P.312/2017 Page 6

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