

Visa Engineers And Promoters Pvt Ltd vs Hapur Pilkhuwa Development Authority on 27 March, 2024

Author: Jasmeet Singh

Bench: Jasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
ARB.P. 949/2023

VISA ENGINEERS AND PROMOTERS PVT LTD....

Through: Mr. Rishi Sehga
and Mr. Midhun

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HAPUR PILKHUWA DEVELOPMENT AUTHORITY

Through: Mr. Harsh Mund
Singh, Ms. T
Chanika Sing

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH
ORDER

% 27.03.2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties arising out of Contract No. 732/adhi.abhi./abhi./hpda/16 dated 30.05.2016.

2. The Arbitration Clause is Clause 32, which reads as under:-

"Clause 32 Protest

(a) If the Contractor considers any work demanded of him to be outside the requirement of contract or considers any record or ruling of the Engineer-in-Charge or of his subordinates be unfair, he shall immediately upon such work being demanded or such record or ruling being made ask in writing for written instructions or decisions, whereupon he shall proceed without delay to perform the work or conform to the procedure or ruling and within twenty days after date of receipt of the written instructions or decision he shall file a written protest with the This is a digitally signed order.

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Engineer-in- Charge stating clearly in detail the basis of his objections. Except 20 for such protests or objections as are made on record in the manner herein specified, and within the time limit. limit stated the recorded rulings instructions or decisions of the Engineer-in- Charge shall be final and conclusive. Instructions and/or decisions of the Engineer-in-Charge contained in letters transmitting drawings to the Contractor shall be considered as written instructions or decisions subject to protest or objection as wherein provided.

(b) If the Contractor is dissatisfied with the final decision of the Engineer-in-Charge in pursuance of Clause 32(a), the Contractor may within twenty eight days after receiving notice of such decision give notice in writing requiring that the matter be submitted to arbitration and furnishing detailed particulars of the dispute or difference specifying clearly the point at the issue. If the Contractor fails to give such notice within the period of twenty eight days as stipulated above, the decision of the Engineer-in- Charge shall be conclusive and binding on the Contractor.

(c) Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and to the quality of workmanship or materials used in the work or as to any other question, claim, right or rates for extra items sanctioned and decided or not by the competent authority under the conditions of this contract matter or thing whatsoever in any was arising out of or relating to the contract designs, drawings, 21 specifications, estimates, instructions or order on these conditions or otherwise concerning the work or the execution of failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof, shall be referred to the sole arbitration of the person or persons appointed by the VC, HPDA. It will be no This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/04/2024 at 00:01:31 objection to any such appointment that the arbitrator so appointed is a Government servant that he had to deal with the matter to which contract relates and that in the course of his duties as Government servant, he had expressed views on all or any of the matters in dispute or differences. The arbitrator to whom the matter is originally or subsequently referred being incapacitated to act: the VC shall appoint another person to act as arbitrator in accordance with the term of contract. It is also a term of the contract that no person other than a person appointed by the VC as aforesaid/ shall act as arbitrator and if for any reason that is not possible, the matter is not to be referred to the arbitration at all. The arbitrator(s) may from time to time with consent of the parties enlarge the time for making and publishing the award.

Subject as aforesaid the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or reenactment thereof and the rules made there under and for time being in force shall to the arbitration proceeding under this clause. 22 The sole arbitrators shall be appointed by the VC, HPDA. All dispute between the parties to the contract arising out of relating to the contract shall after written notice by either party to the contract to the other party be referred to arbitration as above Unless the parties otherwise agree such reference shall not take place until after the completion, alleged completion or abandonment of the work of the determination of the contract.

The value of the arbitrator shall be such a place or places as may be fixed by an arbitrator in his/theirs sole discretion. Any suit or application for enforcement of this Arbitration Clause shall be filed in the competent court at Hapur, no other court or any other district or Pradesh or outside Uttar Pradesh shall have any jurisdiction in the matter. The award of the arbitrator shall be final, conclusive and binding on the parties to the contract."

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3. Mr. Sehgal, learned counsel for the petitioner states that in the present case Delhi will have jurisdiction as the petitioners' registered office is situated in Delhi, the Contract dated 30.05.2016 was signed at Delhi, work were executed through petitioners' registered office and payment of the work done was to be received by the petitioner in his Bank account situated at New Delhi.

4. The same is disputed by the learned counsel for the respondent.

5. In the present case, the stamp paper shows that it was purchased from Uttar Pradesh. The respondent's office is at Hapur, Uttar Pradesh. The work which was the subject matter of the contract was to be performed at Hapur, UP. Most importantly, the above-reproduced clause 32 gives exclusive jurisdiction to the Courts of Hapur, UP and states that the enforcement of the arbitration clause shall also be filed in competent Court at Hapur, Uttar Pradesh and no other Court.

6. In view of the aforesaid stated facts, I am of the view that no cause of action as well as the seat of arbitration is within the territorial jurisdiction of this Court.

7. The judgment of Hon'ble Supreme Court in "Emkay Global Financial Services Limited vs. Girdhar Sondhi" 2018 9 SCC 49 in this regard reads as under:-

8. The effect of an exclusive jurisdiction clause was dealt with by this Court in several judgments, the most recent of which is the judgment contained in Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678: (2017) 3 SCC (Civ) 760] In this case, the arbitration was to be conducted at Mumbai and was subject to the exclusive jurisdiction of courts of Mumbai only. After referring to This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/04/2024 at 00:01:32 the definition of "Court" contained in Section 2(1)(e) of the Act, and Sections 20 and 31(4) of the Act, this Court referred to the judgment of five learned Judges in BALCO v. Kaiser Aluminium Technical Services Inc., in which, the concept of juridical seat which has been evolved by the courts in England, has now taken root in our jurisdiction. After referring to several judgments and a Law Commission Report, this Court held: (Indus Mobile Distribution case) "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 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 Corpn. Ltd.* This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.* Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, This is a digitally signed order.

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9. Following this judgment, it is clear that once courts in Mumbai have exclusive jurisdiction thanks to the agreement dated 3-7-2008, read with the National Stock Exchange Bye-laws, it is clear that it is the Mumbai courts and the Mumbai courts alone, before which a Section 34 application can be filed. The arbitration that was conducted at Delhi was only at a convenient venue earmarked by the National Stock Exchange, which is evident on a reading of Bye- law 4(a) (iv) read with sub-clause (xiv) contained in Chapter XI.

8. Relying on the aforementioned judgment, it is clear that this court has no jurisdiction to entertain this petition. Therefore, the petition is dismissed with liberty to the petitioner to file the same in appropriate court of jurisdiction.

JASMEET SINGH, J MARCH 27, 2024/NG Click here to check corrigendum, if any This is a digitally signed order.

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