

Pit Stop Corporation vs Double Tick Media Pvt. Ltd on 16 February, 2021

Author: Talwant Singh

Bench: Talwant Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ARB.P. 611/2020

PIT STOP CORPORATION Petitioner
Through: Mr. Rahul Malhotra, Advocate

versus

DOUBLE TICK MEDIA PVT. LTD. Respondent
Through: Mr. Aman Nandrajog, Advocate

CORAM:
HON'BLE MR. JUSTICE TALWANT SINGH
ORDER

% 16.02.2021 The present matter has been taken up for hearing in physical Court.

1. The petitioner has filed this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator. It has been submitted on behalf of the petitioner that it is the owner of property No. H-16, Sector-63, Noida, Uttar Pradesh and the respondent approached the petitioner for taking a portion of the said property on rent. Accordingly, a lease deed dated 19th January, 2019 was signed for a period of nine years, w.e.f. 21st January, 2019. However, in the second week of June, 2020, the officials of the petitioner informed that the respondent had abandoned the demised property without any notice or cause. Hence, the petitioner took physical possession of the demised property w.e.f. 15th January, 2020. The respondent was called upon to pay the outstanding dues of more than Rs. 2 Crores vide legal notice dated 20th June, 2020 and the arbitration was also invoked through the said notice, to which no reply was received. Hence, the present petition was filed. The arbitration clause contained in the lease agreement is reproduced here under:

"Dispute if any will be settled firstly between the parties themselves amicably for the mutual benefit of both the parties in writing. If efforts to attain an amicable resolution fail, an arbitrator will be appointed with the mutual approval of both the parties.

All disputes and differences between the parties arising out of this Agreement or carrying out of thereof or interpretation or meaning of any of the terms thereof shall

be solely, exclusively and finally decided by reference to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or reenactment thereof. The arbitration proceedings shall be held in Delhi. The courts at Delhi shall have jurisdiction, in case of any unsettled dispute."

2. Notice was issued. Reply was filed by the respondent. The main objection of the respondent is with regard to the jurisdiction of the present Court, which is detailed in para 9 and 10 of the reply as under:

"9. The above clause only mentions that the Arbitration proceedings shall be held in Delhi. The reference to proceedings being held at Delhi is only a reference to the venue of arbitration, and not the seat of arbitration. However, the said Clause does not confer exclusive jurisdiction of this Hon'ble Court. The clause only mentions that the courts at Delhi shall have jurisdiction in case of any unsettled dispute. The clause has not been limited by use of words such as "exclusive jurisdiction" or "courts at Delhi only shall have jurisdiction".

The said part of the clause is severable and unenforceable since this Hon'ble Court would otherwise not have the jurisdiction to decide any dispute arising out of the said lease deed. It is submitted that no part of the cause of action has arisen in Delhi, nor can any part of the cause of action arise in Delhi. The demised premises is located in NOIDA and the agreement is also registered before the authorities in NOIDA.

10. The Respondent primarily relies on the following facts to substantiate the same:

a. Firstly, the Courts of Delhi have been conferred to having jurisdiction for any unsettled dispute by way of Clause 26 of the Lease Deed dated 19.01.2019. However, this Hon'ble Court is not a competent court within the meaning of section 2 (1) (e) of the Arbitration and Conciliation Act, 1996 as neither the subject matter (demised premises) of the present dispute nor the cause of action to file the present Petition, falls within the territorial jurisdiction of this Hon'ble Court.

b. Secondly, the demised premises is situated in NOIDA, Uttar Pradesh and the courts of Uttar Pradesh would have territorial jurisdiction to adjudicate matters pertaining to the same. The lease deed under which the present dispute has arisen was also registered at Noida, Uttar Pradesh and not within the territorial jurisdiction of this Hon'ble Court.

c. Thirdly, the cause of action to file the present Petition, as per the Petitioner itself, arose upon non-payment of rent by the Respondent for the demised premises at Noida, Uttar Pradesh, which clearly shows that no cause of action for the present dispute arose within the territorial jurisdiction of this Hon'ble Court.

d. Fourthly, the registered address of the Respondent Company, as mentioned in the Lease Deed dated 19.01.2019 as well as the Memo of Parties to the Petition under Reply is 'E- 3/10, Nupur Kunj,

Arera Colony, Bhopal, M.P. - 462016', which is also not within the territorial jurisdiction of this Hon'ble Court."

3. Arguments have been heard. Learned counsel for the petitioner has submitted that since the lease agreement itself provides that the arbitration proceedings shall be held in Delhi and the Courts at Delhi shall have the jurisdiction, hence, the present petition is maintainable before this Court for appointment of an Arbitrator. On the other hand, learned counsel for the respondent has argued that the arbitration clause only mentions that the arbitration proceedings shall be held in Delhi and it is a reference only to the venue of arbitration and not the seat of the arbitration. The said clause does not confer exclusive jurisdiction to this Court. It was also submitted that the property in question is situated in Noida, Uttar Pradesh; the lease deed was registered at Noida, Uttar Pradesh and the respondent has its registered office in Bhopal, Madhya Pradesh. Hence, this Court has no jurisdiction to entertain the present petition.

4. The dispute regarding the venue of arbitration and whether the Courts at the venue shall have the exclusive jurisdiction or not, is no longer res integra. The Hon'ble Supreme Court in the matter of 'Brahmani River Pellets Limited v. Kamachi Industries Limited' had observed as under:

"15. The inter-play between "Seat" and "place of arbitration" came up for consideration in the case of Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. and Ors. MANU/SC/0456/2017: (2017) 7 SCC 678. After referring to BALCO, Enercon (India) Limited and Ors. v. Enerson GMBH and Anr. MANU/SC/0102/2014: (2014) 5 SCC 1 and Reliance Industries Limited and Anr. v. Union of India MANU/SC/0518/2014: (2014) 7 SCC 603 and also amendment to the Act pursuant to the Law Commission Report, speaking for the bench Justice Nariman held as under:

18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO MANU/SC/0722/2012: (2012) 9 SCC 552 judgment in no uncertain terms has referred to "place" as "juridical seat" for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word "place" is used, refers to "juridical seat", whereas in Section 20(3), the word "place" is equivalent to "venue". This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

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 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 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. MANU/SC/0654/2013:

(2013) 9 SCC 32. This was followed in a recent judgment in B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. MANU/SC/0930/2014: (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.

16. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik, non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference.

17. When the parties have agreed to have the "venue" of arbitration at Bhubaneswar, the Madras High Court erred in assuming the jurisdiction Under Section 11(6) of the Act. Since only Orissa High Court⁶ will have the jurisdiction to entertain the petition filed Under Section 11(6) of the Act, the impugned order is liable to be set aside."

5. In view of the judgment of the Hon'ble Supreme Court in the matter of Brahmani River Pellets Limited v. Kamachi Industries Limited (Supra), it is clear that this Court has the exclusive jurisdiction to entertain the petition for appointment of the Arbitrator. Hence, while exercising this jurisdiction and in view of the fact that the respondent did not respond to the notice of the petitioner invoking the arbitration, I hereby appoint Mr. Justice Vinod Goel (Mob: 9910384637), retired Delhi High Court Judge, as a sole Arbitrator to decide the disputes between both the parties. The parties shall appear before the learned Arbitrator either physically or virtually, as may be convenient to the learned Arbitrator. The learned Arbitrator shall make declaration under Section 12 of the Act.

6. The proceedings shall take place under the aegis of Delhi International Arbitration Centre (DIAC).

7. The petition is disposed of in the above terms.

8. The copies of the order be sent to learned Sole Arbitrator and DIAC at the earliest.

TALWANT SINGH, J FEBRUARY 16, 2021/pa [Click here to check corrigendum](#), if any