

# Calcutta High Court

HON'BLE JUDGE(S): RAVI KRISHAN KAPUR, J

TECHMA ENGINEERING ENTERPRISE PRIVATE LIMITED V. UNION OF INDIA

A.P- 334 of 2021, decided on 11/02/2022

**Arbitration and Conciliation Act (26 of 1996) , S.9- Interim measures - Jurisdiction of Court - Parties agreed to confer exclusive jurisdiction in case of any dispute in Court having jurisdiction where headquarters of Railway situated and where contract signed - Headquarters of Railways situated at Jaipur, letter of acceptance issued from Jaipur and purchase order issued at Jaipur - Court at Jaipur would have jurisdiction - Plea of bidder that in absence of words like 'alone', 'exclusively' and 'only' in forum selection clause, jurisdiction of Calcutta High Court not excluded, untenable - Calcutta High Court would have no jurisdiction to entertain application.**

(Para 9, 10, 13)

**Case Referred :**

**Chronological Paras**

AIR 2007 SC 1812 : 2007 AIR ~~sew~~ 3023

AIR 1989 SC 1239

AIROnline 2013SC 365

AIROnline 2003 CAL 1

AIROnline 2014 SC 307

**Name of Advocates**

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Sarvapriya Mukherjee,Rudrojit Sarkar,Asish Choudhury,Rabindra Kumar Mitra, Mrs. A. Basu for Petitioner; Sanajit Kumar Ghosh,D. Nag,Raja Ghosh for Respondent.

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**I.RAVI KRISHAN KAPUR, J. :-**This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 ('the Act').

2. The disputes by and between the parties arise out of a tender published by the respondent. Pursuant to the tender, the petitioner submitted its bid. Thereafter, the respondent issued a purchase order on the petitioner. On 4 August, 2021, the respondent issued a 2 termination notice and threatened the petitioner to recover the security deposit from the dues payable to the petitioner by the Railways or any other Zonal Railways. In this application, the petitioner assails the notice dated 4 August, 2021.

3. A preliminary point has been raised by the respondent that this Court has no jurisdiction to entertain this application.

4. It is submitted on behalf of the respondent that in terms of Clause 17 of

Section G of the tender document, and also the letter of acceptance dated 25 January 2021, there is an exclusive jurisdiction clause in the agreement. For the sake of convenience, Clause 17.1 provides as follows:-

17.1 Court Jurisdiction:

"For any disputes related to contract or inspection/action by RDSO in pursuance of "General Guidelines for Vendor Approval", the court jurisdiction would be the HQrs of the Zonal Railway, where the contract agreement has been signed."

5. It is submitted by the respondent that, since the respondent has its headquarters at Jaipur and the agreement was also signed at Jaipur, the appropriate Court at Jaipur has exclusive jurisdiction to entertain this application.

**6. On** behalf of the petitioner it is submitted that, the forum selection clause contained in the tender does not exclude the jurisdiction of this Court. The word 'alone', 'exclusively' and 'only' have not been used in Clause 17.1. In the absence of such words, this Court has jurisdiction to entertain this application. It is further submitted on behalf of the petitioner that an integral part of the cause of action has arisen within the jurisdiction of this Court. The petitioner has its registered office at Kolkata. The petitioner had submitted its bid at Kolkata. The petitioner had received the letter awarding the tender at Kolkata. All communications by and between the parties have also been issued or received by the petitioner from its office at Kolkata. Accordingly, a substantial part of the cause of action has arisen within the jurisdiction of this Court and this Court has jurisdiction to entertain this petition. In support of its contentions, the petitioner has inter-alia relied on the following judgments reported in (2007) 11 SCC 335 : **(AIR 2007 SC 1812)** [Alchemist Ltd. vs. State Bank of Sikkim], 2003 (2) CHN 502: (AIROnline 2003 CAL 1)[Sukanta Mitra vs. Union of India], (2019) SCC OnLine 860 [Apratim Mukherjee vs. State Bank of India@ Para 24-26] (Sic) and (1989) 2 sec 163 : **(AIR 1989 SC 1239)** [ABC Laminart Pvt. Ltd. vs. A.P. Agencies@ Para 3-5, 22].

7. Upon this application being moved, the petitioner had been granted an order of injunction dated 18th August, 2021.

8. The limited question which arises for adjudication is whether this Court has

jurisdiction to entertain this application or not. A Court exercising jurisdiction under Section 9 of the Act must ensure that it is the 'Court' defined under the Act. It is well settled that where there are two or more competent Courts which can entertain a proceeding, the parties to the proceeding may agree to vest exclusive jurisdiction in one such Court to try the disputes which might arise between 4 them. Such clauses are often referred to as "forum selection clauses" and are recognized in law, whereby parties agree to a choice of forum in one of the several Courts which has jurisdiction to entertain such disputes. Moreover, where an agreement contains a forum selection clause conferring jurisdiction on a particular Court to decide the matter, the effect of such a clause is to automatically oust the jurisdiction of any other Court which may have jurisdiction in respect of the subject matter of the arbitration proceedings.

9. **From** a reading of Clause 17 of the contract, it is evident that the disputes relating to this contract are only to be filed in the Court where the headquarters of the Zonal Railways is situated and where the agreement has been signed. The headquarters of the respondent is situated at Jaipur. The letter of acceptance was issued from Jaipur. The purchase order was also issued at Jaipur. Clause 2 of the tender provides that the use of a digital signature of the bidder on the tender document shall be held as a confirmation and acceptance of all the clauses mentioned in the E-tender document. There is nothing in the agreement which is violative of Section 28 of the Contract Act 1872. Accordingly, in view of the clear language contained in Clause 17 of the agreement, I am of the view that the parties had agreed to confer exclusive jurisdiction in case of any dispute in the Court having jurisdiction where the headquarters of the respondent Railway is situated and where the contract had been signed. In my view, this would only be the Court at Jaipur.

**10.1** find no merit in the contention of the petitioner that in the absence of words like 'alone', 'exclusively' and 'only' in the forum selection clause the jurisdiction of this High Court is not excluded. This submission is erroneous and misconceived. In *M/s. Swastik Gases Pvt. Ltd. vs. Indian Oil Corporation Ltd.* (2013) 9 SCC 32 : (AIROnline 2013SC 365) the Supreme Court has held that 'the absence of words like 'alone', 'only', or 'exclusive' is neither decisive nor does it make any material difference in deciding the jurisdiction of a Court. In fact, the very existence of a jurisdiction clause in an agreement makes the intention of the parties clear and it is not necessary to read such clauses like a statute. Accordingly, the

contention of the petitioner is rejected.

11. Significantly, the decision in Swastik Gases Pvt. Ltd. (Supra) has also been followed in various other judgments including B.E. Simoese Von Staraburgh Niedenthal and Anr. vs. Chhattisgarh Investment Ltd. (2015) 12 SCC 225: **(AIROnline 2014 SC 307)** where it has been held that if the agreement between two parties is clear and unambiguous enough to place jurisdiction in one court, then by doing so it deprives all other Courts of jurisdiction in that case. I have no dispute with the general propositions laid down in authorities relied on by the petitioner. However, all the decisions are distinguishable and inapposite to the facts of this case.

12. The alternative argument made on behalf of the petitioner that the arbitration clause is vague, ambiguous and unworkable is also self defeating. This contention if accepted goes to the root of maintainability of this application and is rejected.

13. Accordingly, I am of the view that this Court has no jurisdiction to entertain this application.

Since this application is dismissed on the ground of jurisdiction, there is no question of entering into the merits of the controversy between the parties.

14. In view of the aforesaid, AP 334 of 2021 stands dismissed. The interim order dated 18 August, 2021 stands vacated. However, there shall be no order as to costs.

**Petition Dismissed**