

Calcutta High Court

HON'BLE JUDGE(S): I. P. MUKERJI, ANIRUDDHA ROY, JJ

TECHMA ENGINEERING ENTERPRISE PRIVATE LIMITED V. UNION OF INDIA

APOT - 31 of 2022, decided on 18/02/2022

Arbitration and Conciliation Act (26 of 1996) , S.9- Jurisdiction of Court - Forum selection clause - Purchase contract - Express intention of parties to select Court at Jaipur as only Court having jurisdiction - Part of cause of action arising in Jaipur - Jurisdiction of all Courts except Jaipur excluded by term in Clause of agreement - Order holding that Calcutta High Court would have no jurisdiction to entertain application, proper.

The clause of agreement between parties stated that "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." It is express from the words of the said term of the contract that the Court in the "headquarters of the Zonal Railway is situated where the contract agreement has been signed" would be the Court having jurisdiction. By the use of these words, the parties have made a condition that only a particular Court would have jurisdiction and not others, otherwise providing details of the jurisdictional Court would be rendered meaningless. Either the desire of the parties should be manifest from the words of the contract or their intention seem apparent on a construction of those words. On a construction of the above words, we have no doubt that it was the express intention of the parties to select the Court at Jaipur as the only Court to have jurisdiction. Part of the cause of action has arisen in Jaipur. In these circumstances, even if assuming that a part of the cause of action has

arisen in Calcutta, the jurisdiction of all Courts except Jaipur have been excluded by the said term. Thus Order holding that Calcutta High Court would have no jurisdiction to entertain application would be proper. (Para 2,8,11)

Name of Advocates

Rudrajit Sarkar, Adv. Ashis Chwodhury, Adv. Ms. Aindrilla Basu, Adv. Tirthankar Das, for Petitioner; Sarajit Kr. Ghosh, Adv. Raja Ghosh, Adv. D. Nag, for Respondent.

I. ORDER :-We are concerned here with a forum selection clause in a purchase contract dated 25 January, 2021 between the parties, containing an arbitration clause.

2. Clause 17.1 of the agreement between the parties is material and is set out below :

"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."

3. In an application under Section 9 of the Arbitration and Conciliation Act, 1996, this Court had passed an interim order on 18 August, 2021 restraining the respondent from taking any "steps" against the appellant.

4. By the impugned judgement and order dated 11 February, 2022, the Section 9 application was dismissed and the said interim order vacated on the ground that this Court had no jurisdiction to entertain it.

5. The question before the Court was whether the above term of the agreement could be called a forum selection clause and if yes, whether by virtue of that clause the jurisdiction of any court was ousted?

6. The learned judge has come to a specific finding that the headquarters of the respondent is at Jaipur and that the letters of acceptance and the purchase order were also issued from that city. This finding of fact clearly indicates that a part of the cause of action had arisen at Jaipur. Therefore, a suit, if filed in Jaipur, would be competent.

7. However, it was argued by Mr. Sarkar, learned advocate appearing for the appellant that since the word "alone" had not been inserted in the said term of the contract, the jurisdiction of other Courts, otherwise having jurisdiction could not be said to have been excluded by that clause.

8. **We** are unable to accept the submission. It is express from the words of the said term of the contract that the Court in the "headquarters of the Zonal Railway is situated where the contract agreement has been signed" would be the Court having jurisdiction. By the use of these words, the parties have made a condition that only a particular Court would have jurisdiction and not others, otherwise providing details of the jurisdictional Court would be rendered meaningless.

9. Either the desire of the parties should be manifest from the words of the contract or their intention seem apparent on a construction of those words. On a construction of the above words, we have no doubt that it was the express intention of the parties to select the Court at Jaipur as the only Court to have jurisdiction.

10. Part of the cause of action has arisen in Jaipur.

11. In those circumstances, even if assuming that a part of the cause of action has arisen in Calcutta, the jurisdiction of all Courts except Jaipur have been excluded by the said term.

12. We affirm the judgement and order dated 11 February, 2020.
13. The appeal and the connected stay application are dismissed accordingly.
14. However, for the ends of justice, the status quo as of today with regard to recovery of penalty in terms of the impugned award will be maintained by the respondent for a period of three weeks from date to enable the appellant to approach the competent Court.

Appeal Dismissed