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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**ON THE 1<sup>st</sup> OF FEBRUARY, 2023**

**CIVIL REVISION No. 855 of 2019**

**BETWEEN:-**

M/S ATRIA CONVERGENCE TECHNOLOGIES P  
LTD. DULY CONSTITUTED UNDER THE  
PROVISIONS OF COMPANIES ACT, 1956 HAVING  
1. ITS REGISTERED OFFICE AT 2ND FLOOR NO.1,  
INDIAN EXPRESS BUILDING QUEEN ROAD  
BANGLORE (KARNATAKA)

S.R. CABLE TV PRIVATE LIMITED DULY  
CONSTITUTED UNDER THE PROVISION OF  
COMPANIES ACT ACT 1956 HAVING ITS  
2. REGISTERED OFFICE 304-305-306 CORPORATE  
HOUSE 3RD FLOOR 169 RNT MARG, INDORE  
(MADHYA PRADESH)

**.....PETITIONER**

***(SHRI ATUL KUMAR GUPTA-ADVOCATE)***

**AND**

MR. SANJAY MAHORE S/O B.S. MAHORE, R/O 11,  
1. TIRUPATHI NAGAR AERODROME ROAD  
INDORE (MADHYA PRADESH)

MR. VIJAY MAHORE S/O B.S. MAHORE, R/O 11  
2. TIRUPATHI NAGAR, AERODROME ROAD,  
INDORE (MADHYA PRADESH)

MR. ROHIT SETHI S/O LATE PRAKASH  
3. CHANDRA SETHI, R/O 62 SHIV VILLAS PALACE.  
RAJWADA. INDORE (MADHYA PRADESH)

**.....RESPONDENTS**

***(SHRI MANOJ MUNSHI, LEARNED COUNSEL FOR THE  
RESPONDENT [R-1] & [R-2].***

***MS. ARCHANA JADIA, LEARNED COUNSEL FOR THE RESPONDENT  
[R-1].***

***None for the respondent no.3 despite service.***

***This revision coming on for orders this day, the court passed the***

*following:*

**ORDER**

The petitioner has filed the present Civil Revision being aggrieved by the order dated 19.09.2019 passed by First Additional District Judge, Dewas in MJC AV Case No.600012/2016 whereby an application filed by the petitioners seeking dismissal of the respondent's petition filed under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as " Act, 1996" for convenience) has been dismissed.

The facts of the case in short are as under:-

1. The petitioners and the respondents entered into a Share Purchase Agreement on 04.06.2008 for the transfer of shares of the business of **SR Cable**. A dispute occurred between the parties and since there is an agreement clause in the aforesaid agreement same was referred to the sole arbitrator for adjudication. The learned Arbitrator conducted the proceedings at Bangalore as the parties did agree that the arbitration proceedings would be carried out at Bangalore. Clause 23 in the agreement says that any legal action or proceedings arising out of the agreement shall be irrevocably submitted to the exclusive jurisdiction of the competent courts at Bangalore. The appointment of the Arbitrator was made on a petition filed by the petitioners before the High Court of Karnataka.
2. That the petitioner approached the District Court Dewas by filing an application under Section 9 of Act, 1996 for interim relief, however, said application was dismissed. Thereafter an Arbitration Appeal No.37/2010 was filed before this Court that also came to be dismissed.

3. Meanwhile, the learned Arbitrator has passed an Award in favour of the petitioner on 09.12.2015.

4. Respondents No.1 and 2 filed a petition under Section 34 of Act, 1996 before District Judge Dewas challenging the validity of the award. After notice, the present petitioners appeared in the proceedings and filed an application under Section 42 of the Act, 1966 objecting to the territorial jurisdiction of the Court at Dewas for deciding an application filed under Section 34 of the Act, 1966, however, vide order dated 19.09.2020, the learned District Judge has dismissed the application relying on the judgment passed *State Of West Bengal & Ors vs Associated Contractors AIR 2015 SC 260*, hence, this Civil Revision before this Court.

5. Learned counsel for the petitioner submits that by way of clause 23 of the agreement, parties conferred exclusive jurisdiction of the competent Court at Bangalore. An Arbitrator was appointed by the High Court of Karnataka thereafter arbitration proceedings were conducted in Karnataka and the final award was passed. At no point of time, the respondent No.1 and 2 raised any objection about the territorial jurisdiction. It is further submitted that being aggrieved by the award dated 09.12.2015, respondent No.3- Rohit Sethi had filed an application under Section 34 of the Act, 1966 before the Civil Court at Bangalore and in which the petitioners and respondents No.1 and 2 both participated and vide order dated 25.11.2022 dismissed the case Com.As. No.49 of 2016. In support of his contention Shri Gupta, learned counsel for the petitioners has placed reliance on the judgment passed by Apex Court in the case *State of West Bengal and others Vs. Associated Contractors (2015) SCC 31, Indust Mobile*

*Distribution Private Limited Vs. Datawind Innovations Private Limited (2017) 7 SCC 678, Brahmani River Pellets Limited Vs. Kamachi Industries Limited 2019 SCC Online 929 and BGS SGS Soma JV Vs. NHPC Limited (2020) 4 SCC 234* and prays that the impugned order be set aside and proceedings of Arbitration Petition No.12/2016 be terminated.

6. Learned counsel for the respondent Nos. 1 and 2 contends that there is no dispute to the aforesaid proposition of law as held by the Supreme Court in catena of judgments. However, the facts of the present case are totally different and distinguishable. The present case is of waiver of the jurisdiction of the Courts mentioned in clause 23 of the Arbitration Agreement. It is submitted by Shri Munshi learned counsel that in none of the cases relied upon by the petitioners, there was the issue of waiver of exclusive jurisdiction of the Court mentioned in the agreement and this particular issue of waiver makes this case distinguishable from the judgments relied upon by the petitioners.

7. It is further submitted that much before the commencement of arbitration proceedings, the petitioner had applied under Section 9 of the Act as Arbitration case No.07/2010 on 04.10.2010 before the Additional District Judge, Dewas (which is the court of first instance as defined under Section 42 of the Arbitration and Conciliation Act) who vide order dated 12.11.2010 dismissed the said application against which the present petitioner filed an appeal under Section 37 of the Act before the Division bench of this Hon'ble Court as Arbitration Appeal No.37/2010 and this Hon'ble Court vide order dated 07.07.2011 confirmed the order of learned Additional District Judge, Dewas and dismissed the appeal hence the petitioners are estopped from raising the issue of territorial jurisdiction of the court

at Dewas . It is submitted that the said application was filed by the present petitioner and the appeal under Section 37 of the Act before this Hon'ble High Court was also filed by the present petitioner which amount to the waiver. Thus, the present petitioner despite the existence of clause No.23 in the agreement about the exclusive jurisdiction of Bangalore court submitted to the jurisdiction of Dewas Court (at first instance) much prior to the commencement of arbitration proceedings way back in the year 2010. Waiver of right as mentioned in section 4 of the Act is based upon " the Principle of Estoppel" according to which a person cannot deny the things which he asserted previously or agreed by law. The silence of the party even after knowing the fact of non-compliance is considered a waiver of his right to object and the same cannot be objected to at any other stage. In the present case, the petitioner himself had submitted to the jurisdiction of Dewas Court by applying Section 9 of the Act and by virtue of section 4(b) of the Act, clause No.23 which contains exclusive jurisdiction of Bangalore Court has been deemed to have been waived by the petitioner and since no objection was raised at that time by the respondent therein, the clause 23 has been waived of and has become non-est. It is further submitted by Shri Munshi learned counsel that the petitioner cannot blow hot and cold simultaneously nor the petitioner be allowed to do " FORUM SHOPEE" by choosing the jurisdiction as per petitioner's discretion and choice saying good by section 42.

8. So far as proceedings imitated under Section 34 of the Act, 1955 by respondent No.3 (Rohit Sethi) before the Civil court at Bangalore is concerned, Shri Munshi, learned counsel submits that respondents No.1 and 2 herein have filed an application under Section 34 of the Act (which is a subsequent application within meaning of

section 42 of the Act) before Dewas Court on 03.03.2016 for setting aside of the award passed by the Arbitral Tribunal on 09.012.2015 following the provision of Section 42 of the Act as the first application under Section 9 of the Act was filed on 04.10.2010 in Dewas Court whereas, respondent No.3 despite non-existence of clause No.23 due to waiver and submission to the jurisdiction of Dewas Court filed another independent application under Section 34 on 17.03.2016 for setting aside the said award dated 09.12.2015. Thus, the application filed in Bangalore Court on 17.03.2016 is subsequent to the application filed by respondents No.1 and 2 in Dewas Court on 03.03.2016. Therefore, the application filed by respondents No.1 and 2 in Dewas Court is prior in time to the application filed in Bangalore Court. The Bangalore Court in view of provisions of section 42 of the Act had no jurisdiction and thus the order passed by the Bangalore Court on 25.11.2022 Com.As. No.49 of 2016 is without jurisdiction and hence nullity. The petitioner is well aware of the said fact and did not raise any objection before Bangalore Court raising the plea of jurisdiction. Hence, any order passed by Bangalore Court having no jurisdiction is non-est, nullity and no binding upon the respondent herein. Therefore, in view of above, learned Court has rightly dismissed the application filed by the petitioner and Civil Revision is liable to be dismissed. However, Shri Munshi, learned counsel has conveniently avoided the answer whether respondents No.1 and 2 did appear before the Court at Bangalore in Com.As. No.49 of 201 and raised an objection about the territorial jurisdiction or disclosed that they have also filed a petition under Section 34 of the Act, before the Court at Dewas.

I have heard learned counsel for the parties.

9. There is no dispute execution of the share purchase agreement

and insertion of clauses 23 and 24 in respect of jurisdiction and arbitration. Both clauses are reproduced below:-

**"23. Governing law and jurisdiction**

23.1 This agreement shall be governed by and construed in accordance with Indian law.

23.2 Subject to clause 24, in relation to any legal action or proceedings arising out of the in connection with this agreement ( Proceedings) each party hereto irrevocably submits to the exclusive jurisdiction of the competent Courts of Bangalore, and welves any objection to proceedings in any such court on the grounds of venue or on the grounds that the proceedings have been brought in an inappropriate or inconvenient forum.

**24. Arbitration.**

24.1 If any dispute arises between the parties hereto during the subsistence of thereafter, in connection with the validity, interpretation, implementation or alleged breach of any provision of this agreement or regarding any question, including the question as to whether the termination of this agreement by one party hereto has been legitimate, the parties hereto shall endeavour to settle such dispute amicably. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the parties hereto, after reasonable attempts, which attempt shall continue for not less than 30 days. If parties can record such failure by giving 15 days notice thereof to the other party in writing.

**10.** It is also correct that petitioners had approached Dewas by way of an application under Section 9 of the Act, 1966 for the purpose of interim relief and thereafter approached the High Court at Karnataka for seeking the appointment of the arbitrator. Respondents No.1 and 2 participated in the arbitration proceedings conducted by Shri G. Raghavendra Rao, Retd District Judge and did not raise any issue of waiver and the learned arbitrator has passed the final award. The moment award is passed section 42 comes into operation which specifically says that any application under this part has been made in a Court that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court

and in no other Court. Section 42 starts the notwithstanding clause and in chapter 7 which is a resource to be taken against the arbitration award, therefore, the contention of Shri Munshi, learned counsel is liable to be rejected about the waiver of the right to object under Section 4 of the Act.

11. The Apex Court in the case of ***BGS SGS Soma JV(supra)*** held that the seat of arbitration alone and not the place of cause of action determined the jurisdiction of the Court over the arbitration however, the application under Section 9 may be preferred before the Court in which part of the cause of action arises in the case where parties have not agreed on the seat of the arbitration. Relevant paragraph No.98 is reproduced below:-

"However, the fact that in all the three appeals before us the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, would lead to the conclusion that both parties have chosen New Delhi as the "seat" of arbitration under [Section 20\(1\)](#) of the Arbitration Act, 1996. This being the case, both parties have, therefore, chosen that the Courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the "seat" has been chosen, which would then amount to an exclusive jurisdiction clause so far as Courts of the "seat" are concerned."

12. In the case of ***Indus Mobile Distribution Private Limited (supra) Apex Court*** has held that it is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. In the case of ***Brahmani River Pellets Limited (Supra)*** the Apex Court has held that 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 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.

**13.** Apart from that respondent No.3 had already approached the Court at Bangalore by way of an application under Section 34 of the Act and which came to be dismissed vide order dated 25.11.2022 therefore the issue raised by the respondent No.1 and 2 in an application under Section 34 of the Act, 1956 are liable to be considered by the Court at Bangalore which has already examined the validity of the award under challenge. This Court cannot declare that the order passed by the Bangalore court is nullity as prayed by the Shri Munshi, learned counsel for respondents No.1 and 2.

**14.** In view of the above, Civil Revision is allowed, the impugned order is set aside and the learned court is directed to return the application filed under Section 34 of the Act for presentation before the Competent Court.

**(VIVEK RUSIA)**

**JUDGE**

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