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RAJASTHAN HIGH COURT'S JURISDICTION FOR APPOINTING ARBITRATOR

A. Introduction

The Rajasthan High Court (“**HC**”), in *Aseem Watts* case¹ (“**Judgement**”), has held that the court, within whose jurisdiction the seat of arbitration falls under, shall have exclusive jurisdiction to entertain applications for appointment of arbitrator² under the Arbitration and Conciliation Act, 1996 (“**ACA**”).

B. Brief Facts

1. The Union of India through the Border Roads Organisation (“**UOI**”) invited tenders for Resurfacing of Road etc. at a certain military station (“**Tender**”).
2. Aseem Watts, a firm (“**AW**”), submitted its bid which was accepted by UOI.
3. A dispute arose between AW and UOI *inter alia* regarding default in performance.
4. AW sought appointment of arbitrator for settling the dispute. UOI appointed the arbitrator referring to clause 24³ in the agreement.
5. AW objected to the appointment and contended that the dispute fell within the purview of clause 35.2⁴ in the agreement.
6. Various Arbitration Applications were filed by AW under Section 11 of the ACA seeking *inter alia* appointment of an arbitrator and also under Sections 14⁵ & 15⁶ seeking appointment / substitution of arbitrator to adjudicate the dispute (“**Applications**”).

C. AW's Contentions

1. Key contentions raised and precedents⁷ relied on:
 - a. The exclusive jurisdiction of all disputes under the agreement is vested with the courts at Bikaner and the HC has supervisory jurisdiction over such courts.

¹ *Aseem Watts v. Union of India*, 2023 SCC OnLine Raj 1462.

² Sec.11 of the ACA

³ “Appointment of Arbitrator (applicable only for contract agreement to be executed between Border Road Organisation and a public enterprises” (sic).

⁴ “All disputes or difference arising as aforementioned, other than those for which the decision of the Accepting Officer or any other person is by the contract expressed to be final and binding shall be referred to sole arbitrator....”

⁵ Section 14 specifies the instances when an arbitrator’s mandate terminates.

⁶ Section 15 provides for additional instances when an arbitrator’s mandate terminates and also provides for substitution of arbitrator.

⁷ *BGS SGS SOMA JV v. NHPC Ltd.*, (2020) 4 SCC 234) and other judgments.

- b. The venue for arbitration would be New Delhi but the seat would be at Bikaner.
- c. That the arbitrator failed to take action against the UOI for failure to file document(s) before despite requests and hence, the mandate of the arbitrator stood terminated under Section 14(1)(a)⁸ of the ACA.

D. UOI's Contentions

1. Key contentions raised and precedents⁹ relied on:
 - a. All disputes to be referred to sole arbitrator to be appointed by the UOI.
 - b. Once venue of arbitration was fixed at New Delhi, the High Court of Delhi will have the exclusive jurisdiction.
 - c. AW failed to clarify on the required document(s) and to consent to enhancement of the period of arbitral proceedings.

E. HC's Judgement and Reasoning

1. The HC allowed AW's Applications observing that "[t]he *“contrary indicia”* is clearly reflected in the present case, because the seat was mentioned as Bikaner and venue was mentioned as New Delhi (HQ of BRO). This Court further observes that once the seat was fixed then this Court had exclusive jurisdiction to entertain the applications under Section 11..."
2. Relying on *Perkins Eastman Architects DPC* case,¹⁰ the HC allowed the substitution of the arbitrator.

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⁸ "...(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and.."

⁹ *Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.*, (2020) 5 SCC 462 and other judgments.

¹⁰ *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760, where the Supreme Court *inter alia* held that a person who is ineligible to act as an arbitrator cannot also appoint an arbitrator.