

Order Below Exh.1 & 30
in
Civil Misc.Application No.31/2016

1. Feeling aggrieved and dissatisfied with the order passed in Arbitration petition No.21 of 2012 dated 23/4/2016 by Hon'ble Mr.Justice C.K.Buch Saheb, Sole Arbitrator, Ahmedabad. The applicant/original opponent has moved this application to set aside the arbitration award under Section 34 of the Arbitration and Conciliation Act.

2. The facts of the application are as follows.

2.1 The claimant raised the dispute and served a legal notice dated 17.10.2011 raising demand of Rs.51,42,020/- to the respondent and asked respondent that the respondent should appoint an Arbitrator from the Panel of two names suggested in the notice within 30 days of the notice. The respondent was also intimated that on failure to appoint Arbitrator, the claimant would proceed to appoint its Arbitrator leaving it to the respondent to appoint an Arbitrator of its choice and Arbitrators then would appoint third Arbitrator Umpire. The respondent was intimated that, failure in appointing Arbitrator from its side, the claimant would approach the High Court for appointment of an Arbitrator. As there was no response to this notice, the petitioner moved a petition under Section 11 of the Arbitration and Conciliation Act. The claimant filed petition under Arbitration Act being No.21 of 2012. The Learned Nominee Judge of Hon'ble High Court of Gujarat after hearing the parties appointed Hon'ble Mr.C.K.Buch, retired Judge of Hon'ble High Court of Gujarat, to act as Sole Arbitrator to resolve the disputes between the parties vide order dated 13.07.2012. Thus, the Tribunal has been constituted.

3. Present application under 7 Rule 10 of the Code of Civil Procedure, 1908 on behalf of respondent for the return of the Civil Misc.Application filed by the applicant vide **Exh.30**;

1. The applicant herein has filed the above captioned Civil Misc. Application U/s 34 of the Arbitration and Conciliation Act against the arbitral award passed by the Ld. Arbitrator having seat in Ahmedabad. It is submitted that the present application is not maintainable and deserves to be returned on the ground that this Hon'ble Court shall not have the territorial jurisdiction to entertain, adjudicate and decide the present application. It is submitted that the arbitral award against which the present application has been filed was passed by the Arbitrator having seat in Ahmedabad i.e. at Neetibaug opposite High Court of Gujarat. Hence, as per the settled principle of law, an application U/s 34 of Arbitration and Conciliation shall only be filed within the jurisdiction of Hon'ble Court where the seat of Arbitration was i.e. at Ahmedabad and not at any other court. Hence, the present Civil Misc. Application shall only be filed before the Hon'ble Court of Ahmedabad having jurisdiction to entertain adjudicate and decide the application. Therefore, on this ground this the caption Civil Misc. Application deserves to be returned to the applicant.

- It is therefore respectfully submitted that the present application preferred by the applicant lacks the territorial jurisdiction and hence the application deserves to be returned as per Order 7 Rule 10 of Civil Procedure Code. That, the Hon'ble Supreme Court time and again more

specifically in the case of **Sundaram Finance Limited Vs Abdul Samad & Anr. In Civil Appeal No. 1650 of 2018; Inox Renewable Ltd. Vs Jayesh Electricals Ltd. reported in 2021 SCC Online SC 448 and BGS SGC SOMA JV Vs NHPC Limited reported in (2020) 4 SCC 234**, have observed and stated that Application U/s 34 of Arbitration and Conciliation Act shall only be filed before the Courts where the seat of Arbitration is located. Hence, the question and legality regarding the territorial jurisdiction of the Hon'ble Court having jurisdiction to entertain and adjudicate an application U/s Section 34 of Arbitration and Conciliation Act is time and again settled by Hon'ble Supreme Court. Therefore, on this ground the present application filed by the deponent deserves to be allowed by this Hon'ble Court and the above captioned CMA deserves to be returned to the applicant.

- The respondent herein further submits that over and above, the applicant itself have filed an application before this hon'ble court in the above numbered matter wherein, the applicant has only mentioned that this hon'ble court has no jurisdiction to try, entertain and decide the application U/s.34 of The Arbitration and Conciliation Act and hence also this CMA deserves to be returned to the applicant.
- In view of the above, it is clear that the application U/s 34 preferred by applicant herein is barred by Law and hence this Civil Misc. Application is required to be returned under the provisions of Or. 7 R. 10 of the CPC.
- The respondent herein therefore prays as under:

(A) The Hon'ble Court may be pleased to pass an order for return of the Civil Misc. Application No. 31 of 2016 in view of the above facts and grounds under the provisions of Or. 7 R. 10 of CPC, 1908.

(B) Any other relief deemed fit to the circumstances be granted.

(C) Cost of this application be provided to the respondent.

4. Written reply on behalf of the applicant **Exh.32 & 38** regarding the application for return of the applicant's application as per CPC O-7, Rule-10 of the respondent, which are as under;

(1) The respondent's application is not valid and is not acceptable.

(2) The respondent has no right or authority to make this or that application.

(3) No reason has arisen for the respondent to make this or that application.

(4) The respondent has filed the present application after inexcusable delay. The applicant filed the present application on 14/07/2016 whereas the present application was filed by the respondent in August 2023 i.e. after 7 (seven) years. Therefore, the application is liable to be dismissed on the grounds of delay and laches.

(5) We hereby expressly deny all claims other than those admitted by the applicant in this reply.

(6) The submission made by the respondent in para-1 of the application is false and misleading.

- The fact that the arbitration was held in Ahmedabad is on

record. But the original jurisdiction of the arbitration was Patan district in accordance with Siddhpur, but since the arbitration was in Ahmedabad and both the parties kept in mind the cost of the arbitration, only the seat of the arbitration was kept in Ahmedabad, but no agreement was given that the jurisdiction of the court would remain in Ahmedabad for future legal proceedings.

4.1 It is not correct for the respondent to say that if the arbitration was held in Ahmedabad, then as per Section 34 of the Arbitration Act, the proceedings can be held only in Ahmedabad. All the submissions made by the respondent in para-2 of the application are not true and are not acceptable. The facts of the previous decisions of the Hon'ble Supreme Court referred to in this paragraph are different from the facts of the present case and therefore this previous decision is not applicable in the present case. The respondent has made a false representation in para-3 of the application. The applicant has not made any representation as alleged by the respondent. The submission made by the respondent in para-4 of the application is incorrect and not legally enforceable. The claim made by the respondent in para-5 of the application is false, improper, unreasonable and illegal and is not tenable. It is humble request to dismiss the application. After filing the present application, the respondent has not given notice to the arbitration and has filed a reply to the present application seeking to dismiss its application. In it, the defence as per this application has not been taken. Now, after 2016 and 2021, such an application has been filed after an inexcusable delay, based on the previous decisions. Which is not tenable and

will be dismissed with costs.

5. Written submissions on behalf of the respondent to the application under order 7 rule 10 of CPC vide **Exh.35**

1. The applicant has filed the above numbered matter u/s.34 of The Arbitration and Conciliation Act, 1996 against the arbitral award passed by the Ld. Arbitrator having seat in Ahmedabad. The said application is not maintainable and deserves to be returned on the ground that this arbitral award against which the present CMA No.31/2016 is filed was passed by the Arbitrator having seat in Ahmedabad i.e. at Neetibuag Opposite High Court of Gujarat. Hence, as per the settled principles of law, an application U/s.34 of The Arbitration and Conciliation Act shall only be filed within the jurisdiction of The Hon'ble court where the seat of the Arbitration was ie. at Ahmedabad and not at any other court. Hence, the present CMA shall only be filed before the Hon'ble Court of Ahmedabad having jurisdiction to entertain, adjudicate and decide the application.

2. The present CMA filed by the Applicant lacs the territorial jurisdiction and hence the application deserves to be returned as per Order 7 Rule 10 of Civil Procedure Code. The Hon'ble Supreme Court time and again more specifically in the case of Inox Renewable Ltd. Vs Jayesh Electricals Ltd. reported in 2021 SCC Online SC 445, BGS SGC SOMA JV VS NHPC Limited reported in (2020) 4 SCC 234, Hindustan Construction Company Limited Vs. NHPC Limited and Others 2020 SCC Online SC 305, have

observed and stated that application U/s.34 of Arbitration and Conciliation Act shall only be filed before the courts where the seat of Arbitration is located. The said judgments are produced herewith the separate list of documents with the marking on the relevant paragraphs for the reference of the Hon'ble court. Therefore, on this ground the present application filed by the deponent deserves to be allowed by this Hon'ble court and the above captioned CMA deserves to be returned to the applicant.

3. The respondent herein submits that over and above the same, the applicant herein has itself filed an application before this Hon'ble court wherein the applicant has only mentioned that this Hon'ble court has no jurisdiction to try, entertain and decide the present application and hence also the CMA deserves to be returned to the applicant.

4. In view of the above, it is clear that the application U/s.34 of The Arbitration and Conciliation Act preferred by the Applicant herein is barred by Law and hence this Civil Misc. Application deserves to be returned to the applicant Under Order 7 Rule 10 of CPC.

6. I have heard Id.Advocates and considering the written arguments of the parties and perused the record of the case. This application is filed by the respondent Under Order 7 Rule 10 of CPC and argued that this court has no jurisdiction to try, entertain and decide the present application. Hence this Civil Misc. Application deserves to be returned to applicant to present in the District Court, Ahmedabad. The applicant has filed an application

to challenge the award passed U/s 34 of the Arbitration and Conciliation Act. It is not disputed fact that the award was passed by the Hon'ble Mr.Justice C.K.Buch Saheb, Sole Arbitrator, Ahmedabad and proceeding of arbitration commenced at Ahmedabad and the award was also declared at Ahmedabad. If we consider the judgment produced by the respondent in support of his submission, **BGS SGS Soma JV Versus NHPS Limited in Civil Appeals No.9307 of 2019 with Nos.9308 of 2019 and 9309 of 2019 decided on December 10, 2019**, in which Hon'ble Supreme Court held that, whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as "arbitration proceedings" does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intend to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings.

7. Thus, considering the facts of the above judgment, the proceedings in this matter have been held at Ahmedabad seat after hearing both the parties and the award has also been declared from the Ahmedabad seat. Therefore, this court does not have the jurisdiction to entertain the application Under Order 7 Rule 10 of CPC and decide the present application. Considering

the principles of the above judgment. Accordingly, the application should be returned to the applicant in the court having appropriate jurisdiction at Ahmedabad, therefore, in the interest of justice, the following order is made.

-:: O R D E R ::-

1. The respondent's application vide Exh.30 is hereby allowed.
 2. It is ordered that the original application U/s 34 of the Arbitration and Conciliation Act be returned to the applicant for filing application in the court having jurisdiction at Ahmedabad.
- Pronounced & signed in open Court today.

Date : 07/03/2026
Place:Patan

(Mahammadirfan A. Shaikh)
4th Addl.District Judge, Patan
U.I.Code No.GJ00892

VSS