

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1114 OF 2013
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 13317 OF 2012)

AVECO ELECTRONICS PVT. LTD.

PETITIONER(s)

VERSUS

NEC INDIA PRIVATE LTD.

RESPONDENT(s)

O R D E R

Leave granted.

2. The Designate Judge while dealing with the Petition under Section 11 of the Arbitration & Conciliation Act, 1996 (for short "the Act") observed that on the basis of the affidavits and the report of the C.F.S.L., it was difficult for the court to come to a definite conclusion that the agreement at Annexure P-1 produced by the petitioner therein (present respondent) is a fabricated document.

In paragraph 6 of the impugned order, it was further observed as follows:

"It does appear from the report of the CFSL that the relevant page of the agreement produced by respondent (Annexure R-1) which contains Clause 16 has undergone changes. The question remains whether these changes were brought about by consent between the parties or unilaterally carried out by the respondent. A comparison of the two clauses reveals that the real change is in relation to the wording of Clause 16.3. It is understandable that the respondent being a distributor of the petitioner operating in Hyderabad may have had reservations about pursuing litigation with the petitioner at a place outside Hyderabad. Even in terms of Clause 16.3 of the agreement produced by the petitioner at Annexure P-1 the parties were prepared to have the seal of arbitration anywhere in India and not in Delhi in particular."

3. The Designate Judge, despite having not been able to come to a definite conclusion about the conclusion as to whether their existed an agreement, appointed sole arbitrator to adjudicate the disputes between the parties including claims and counter-claims. A seven Judge Bench of this Court by a majority judgment in SBP & Co. vs. Patel Engineering Ltd and another¹, inter alia, held that the Chief Justice has to decide whether the applicant has satisfied the

(With prayer for interim relief and office report)

Date: 11/02/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s) Mr. K.K. Rai, Sr Adv.
 Mr. Awanish Kumar, Adv.
 Mr. S.K. Pandey, Adv
 Mr. Bankey Bihari, Adv.

For Respondent(s) Mr. Sumit Bansal, Adv. for
 Mr. Arun Kumar Beriwal, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
Appeal is disposed of in terms of signed order. No costs.

(Pardeep Kumar)		(Renu Diwan)	
Court Master		Court Master	

[SIGNED ORDER IS PLACED ON THE FILE]