

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 17th October, 2022*

Decided on: 13th January, 2023

+ **CS(OS) 1504/2008 & I.A. 155/2009, I.A. 7249/2009**

M/S ENGINEERING SYNDICATE

Having its office at

B-1/379, Janakpuri, New Delhi.

..... Petitioner

Through: Ms. Kanchan Semwal, Mr. Kunal
Arora, Advocates.

versus

1. DELHI DEVELOPMENT AUTHORITY

through its Vice Chairman,
INA Market, Vikas Sadan,
New Delhi.

2. EXECUTIVE ENGINEER

Northern Division-II,
DDA, DDA Office Complex,
Near Railway Crossing, Ashok Vihar,
Phase-I, Delhi.

3. SH. S.S. JAIN, SOLE ARBITRATOR,

DDA, 7th Floor, Vikas Minar, I.P. Estate,
New Delhi-02

..... Respondents

Through: Mr. Vaibhav Agnihotri, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

NEENA BANSAL KRISHNA, J.

1. An application was filed before Delhi High Court under Section 14 of the Arbitration Act, 1940 (old) (*hereinafter referred to as "Act, 1940"*) for directions to the Learned Arbitrator/respondent No.3 to file the original Arbitration Award dated 26th June, 2008 in the Court. The application was numbered as Suit in accordance with the Delhi High Court Rules. While the application was pending, the petitioner filed Objections vide I.A. 115/2009 under Section 15, 16, 30 & 33 of Arbitration Act, 1940 and I.A. 7249/2009 under Section 30 & 33 of the Arbitration Act.

2. The claim of the plaintiff before the learned Arbitrator was in the sum of Rs.58,44,073/- and the claim amount in the counter-claim of the defendants was Rs.92,60,131/-.

3. Section 12 of the Commercial Courts Act, 2015 provides for determination of Specified Value. Clause 1(e) states that where a counter-claim is raised in any suit, appeal or application, the value of the subject matter of the commercial dispute in such counter-claim shall be taken into account along with the Claim amount. Section 12(2) further provides that the aggregate value of the claim and the counter-claim in an arbitration of a commercial dispute shall be the basis for determination of whether the arbitration is subject to the jurisdiction of the Commercial Appellate Division or Commercial Court, as the case may be.

4. In the present case the suit has been initiated on the application under Section 14 of the old Act, 1940 on 05th August, 2008. The question is whether this case is liable to be transferred to the District Courts in terms of the Notification No.106/DHC/ORGL/2019 dated 30.01.2019 since the

specified value of the claim and counter-claim taken together is Rs. 151,04,204/-.

5. Section 4 of the Delhi High Court (Amendment) Act, 2015 provided as under:

4. The Chief Justice of the High Court of Delhi may transfer any suit or other proceedings which is or are pending in the High Court immediately before the commencement of this Act to such subordinate court in the National Capital Territory of Delhi as would have jurisdiction to entertain such suit or proceedings had such suit or proceedings been instituted or filed for the first time after such commencement.

6. Delhi High Court vide its Notification No.27187/DHC/Orgl. Dated 24.11.2015 in exercise of its powers conferred under Section 4 of Delhi High Court (Amendment) Act, 2015 issued the following directions :

“(i) All suits or other proceedings pending in the Delhi High Court on the Original Side up to the value of rupees one crore, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.

(ii) All suits or other proceedings the value of which exceeds rupees one crore but does not exceed rupees two crores, other than those relating to commercial disputes the specified value of which is not less than rupees one crore (as defined in The Commercial Courts, Commercial Division and Commercial Appellate

Division of High Courts Ordinance, 2015), pending in the Delhi High Court on the Original Side, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.”

7. A reference be made to Satyanarain Khandelwal vs. Prem Arora TR.P.(C.) 47/202 decided on 18th July, 2022, wherein the Division Bench of this Court had observed that Section 19 of the Amendment Act, 2015 categorically states that the Amendment Act, 2015 shall apply to cases relating to commercial suits filed on or after commencement of the Act i.e. 03.05.2018. The term “*save as otherwise provided*” that has been prefixed to Section 19 of the Amendment Act, 2015 is meant to be in the form of an exception. The purpose of the Saving Clause is to preserve from destruction certain rights, remedies and privileges already existing. This Clause saves all the rights that were previously there; it does not create any new rights. It was concluded that the Amendment Act, 2015 does not apply retrospectively to Section 15 of the Commercial Courts Act, 2015.

8. In New India Assurance Co. Ltd. vs. Smt. Shanti Misra (1975) 2 SCC 840, it was explained that where by way of amendment there is only a change of Forum i.e. a change of adjectival or procedural law, it may operate retrospectively and a person can be directed to go to the new forum even if the cause of action or right of action accrued prior to the change of forum. A party has a vested right of action, but not of forum. If by way of express words a new forum is made available, then the same shall be available to all the pending cause of action which may have arisen before the creation of the forum. The change of forum is meant to be operative retrospectively irrespective of the fact when the cause of action accrued.

9. This is a civil suit under the Arbitration Act, 1940 in 2008 instituted prior to 03.05.2018. Considering that the total value of the suit and the counter-claim is less than Rs. 2 crores, it is hereby directed that in terms of Delhi High Court Notification No.27187/DHC/Orgl. Dated 24.11.2015, this suit is transferred to the District Courts to be tried in accordance with law.
10. Parties are directed to appear before the learned Principal District & Sessions Judge, South District, Saket Courts, New Delhi, on 31st January, 2023 for further directions.
11. The petition is disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 13, 2023
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