IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : ARBITRATION MATTER

ARBITRATION APPLICATION NO.242/2006

Reserved on 30th October, 2006

Date of decision: 4th January, 2007

M/S RATTAN SINGH ASSOCIATES
(P) LTD .....Petitioner

Through: Mr. S.V. Kulkarni
Advocate

VERSUS

M/S GILL POWER GENERATION
COMPANY PVT. LIMITED ... Respondents

Through: Mr. Raman Gandhi,
Advocate

GITA MITTAL, J.

1. This petition has been filed on behalf of the petitioner under Section 11(6) of the Arbitration & Conciliation Act, 1996 seeking appointment of an arbitrator. The petitioner places reliance on an agreement dated 9th April, 2003 whereby it was awarded the civil construction work of Babhalli Hydro Electric Project, Punjab vide contract no.GPGC-2003/Civil Works/001 which was to the tune of Rs.6,09,82,995/-. According to the petitioner, the project for the hydro electric power production was funded by the World Bank. Pursuant to the terms of agreement, the petitioner had furnished a performance guarantee in the prescribed form for an amount of Rs.30,50,000/-.

2. This petition has been necessitated as, according to the petitioner, its running bills for the work done from time to time for the purposes of verification and payment, have been disregarded by the respondent. According to the petitioner, it received ad hoc payments on account basis which was much less than the value of the bills raised from time to time, thereby, causing huge arrears to get accumulated to be paid by the respondent. As an instance, the petitioner has alleged that bills upto 30th May, 2004 valued at Rs.19,17,691/- for payment were paid only to the extent of Rs.9,10,962/-. The petitioner has contended that it has completed work to the tune of Rs.35,00,000/- in the month of June/July, 2004 and has requested for the release of the payment immediately. Vide letter dated 25th August, 2004, it claims to have submitted the fourth and fifth running bills of the work done upto 30th June, 2004 and 31st July, 2004 respectively. By a letter dated 1st September, 2004, it has been claimed that the petitioner called for the payment on

outstanding bills to the tune of Rs.58,73,662/-. It has been asserted that this was followed by a legal notice dated 9th March, 2005 calling for the outstanding amount and invoking the provisions of arbitration notifying the respondent that in case of failure to comply with the notice demand, measures would be taken up in the court of law. A second legal notice was sent on 19th May, 2005.

3. The petitioner has alleged that this resulted in the respondent agreeing to a meeting with the petitioner which was held on 20th May, 2005 and certain issues of dispute were agreed to be looked into positively. The memorandum of understanding in this behalf has been placed before this court.

4. The petitioner has submitted that on the request of the respondent, the petitioner had agreed to enhance the amount of the bank guarantee and had also extended the existing guarantee upto 3rd December, 2005. Thereafter, though the bank guarantee expired, yet the same was extended by three months upto June, 2006. According to the petitioner, the respondent has refused to settle out the differences even in terms of the memorandum of understanding dated 20th May, 2005 which relates to non-payment of running bills, payment of extra work done, amount towards escalation on account of increase in the prices of raw material etc.

On these facts, by way of the present petition, the petitioner has prayed for appointment of an arbitrator under Section 11(6) of the Arbitration & Conciliation Act, 1996.

5. This petition has been opposed on behalf of the respondent on three major grounds. Mr. Raman Gandhi, learned counsel appearing for the respondent, has urged that the agreement between the parties provided the mechanism whereby disputes redressal was required to be undertaken. It is pointed out that the agreement dated 19th April, 2003 between the parties stipulated that certain conditions of contract would form part of this agreement. Clause 24 of this agreement provided for an adjudicator to adjudicate upon the disputes. It has been pointed out that the adjudicator namely Col. G.L. Bajpai had been named by the parties in the agreement. In case of retirement or death of an adjudicator, Clause 26 of the Special Conditions provided the manner in which certain vacancies would be supplied. Clause 25 was to govern the manner in which the parties would conduct themselves in case of the dispute subsisting with the decision of the adjudicator. According to learned counsel, the present petition, without complying with the agreed procedure, is not maintainable and has to be rejected outright.

6. The other ground of opposition to the petition is a challenge to the asserted invocation of the arbitration clause. According to the respondent, no notice has been received from the respondent invoking the arbitration in terms of Clauses 24& 25 of the Special Conditions. It has been submitted that upon compliance with the stipulated conditions in the agreement between the parties, the petitioner was required to file such notice along with the present petition. Apart from disputing receipt of all communications which have been relied upon by the petitioner, it has been urged that none of the communications allegedly issued by or on behalf of the petitioner, met the requirement of Clauses 5, 24 or 25 of the Special Conditions.

7. It has further been urged that the petitioner has failed to comply with the mandate of Section 2(h) of the scheme of the Arbitration Act, 1996. In this behalf, reliance has been placed on the judgment of this court in 2005 (Supp.) Arb.L.R. 285 Maxon Printech Limited Vs. Governemnt of

Nagaland & Anr. & AIR 1999 Kerala 440 Nirman Sindia Vs. M/s Indal Electromelts Ltd., Coimbatore & Ors.

8. Lastly, an objection has been taken to the effect that the tender was invited by the respondent at Punjab and its acceptance issued from Punjab. The letter of acceptance was sent by the petitioner to the respondent addressed at Punjab. The entire contract was to be executed in Punjab and the respondent resides and works for gain in Punjab. Placing reliance in the judgment reported at 2006 (IV) AD (Delhi) 485 GE Countrywide Consumer Financial Services Limited Vs. Mr. Surjit Singh, it has been urged that situs of the arbitration would not govern the court which would have territorial jurisdiction over the matter.

9. Having heard learned counsel for the parties and carefully considered the matter, in my view it becomes necessary to first decide the jurisdictional objection raised by the respondent. The respondent has contended that it is located at Punjab outside the territorial jurisdiction of this court. It is further submitted that no part of the cause of action has arisen at Delhi.

10. My attention is drawn to the documents placed by the respondent on record which evidence the fact that the tender was invited by it at Punjab. A copy of the letter enclosing the petitioner's bid addressed to the respondent at Batala, District Gurdaspur, Punjab has also been placed before this court. The same bears the rubber stamp of the respondent with the signatures in acknowledgment of the receipt thereof at Batala. The respondent conveyed its acceptance of the bid of the petitioner by the letter dated 1st April, 2003 from its office at Batala, District Gurdaspur, Punjab. The contract agreement dated 19th April, 2003 between the parties reflects the address of the respondent as at Punjab.

11. The petitioner has urged that this agreement was signed at Delhi. However, the stamp paper dated 9th April, 2003 on which this agreement has been typed, has been purchased at Punjab.

12. I find that all communications which have been claimed by the petitioner to have been sent to the respondent, are addressed to its managing directors or have been sent to its address at G.T. Road, Batala, in the State of Punjab. The legal notices relied upon by the petitioner were also sent to the same address in Punjab. The communication dated 24th September, 2005 which has been sent by the petitioner to the respondent notifying it about the extension of bank guarantee and seeking issuance of a cheque, has been sent to the same address at Punjab. The meeting dated 20th May, 2005 wherein the memorandum of understanding was recorded, which is relied upon by the petitioner, was held not at Delhi but at Chandigarh. It is so mentioned thereon. There is no dispute that the contracted work was to be executed at Punjab. The petitioner has not disputed these factual assertions.

13. The learned counsel for the petitioner has placed reliance on a certificate of tax deposit at source (`TDS' for brevity) purportedly issued by the respondent. According to the petitioner, this TDS certificate is for the period from 1st April, 2003 to 31st March, 2004 and reflects deposit of the tax at Delhi. The respondent has explained that for one year, the tax was deposited at Delhi but the same would not impact the jurisdiction of this court.

14. So far as the territorial jurisdiction to entertain and adjudicate upon a petition under Section 11 of the Arbitration & Conciliation Act, 1996 is concerned, it is well settled that the same requires

that either the respondent is located at Delhi or that some part of the cause of action is within the territorial jurisdiction of the court before whom the petition is brought. Every fact pleaded does not form part of cause of action.

15. The principles which would apply to consideration of an objection to the maintainability of a petition on grounds of territorial jurisdiction are similar to those which apply to civil proceedings before a court of law.

16. In civil proceedings, 'cause of action' is understood to mean every fact, which, if traversed, would be necessary for the plaintiff to prove in order to support his right to the judgment of the court. It is that bundle of fact which, taken together with the applicable law, entitles the plaintiff to relief against the defendants.

17. In a judgment reported at AIR 1985 SC 1289 = (1985) 3 SCC 217 State of Rajasthan vs Swaika Properties, certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and the notice under Section 52 of the Rajasthan Urban Improvement were served upon the company at Calcutta. Basing its right to maintain the writ petition at Calcutta High Court, it had been contended that service of the notice within the territorial jurisdiction of the Calcutta High Court empowered that court to exercise jurisdiction in the matter. The Apex Court held that the entire cause of action for challenging the acquisition of the land under Section 152 of the Rajasthan Urban Improvement Act had arisen within the territorial jurisdiction of the Rajasthan High Court. The factum of service of the notice at Calcutta was held unnecessary for grant of an appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government. It was thus held that the High Court at Calcutta had no jurisdiction to entertain the writ petition.

18. The law on this aspect has been authoritatively laid down by the Apex Court when it had occasion to examine this question further in its judgment reported at AIR 2002 SC 126 entitled Union of India vs Adani Export Ltd. & Ors. wherein it was held thus :-
"17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts gives rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in Paragraph 16 of the petition, in our opinion, fall into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmadabad."

19. Placing reliance on the pronouncement of the Apex Court in the State of Rajasthan (supra) and the Adani Export matter in its judgment reported at (2004) 9 SCC 786 entitled National Textile

Corporation Ltd. & Ors. Vs Haribox Swalram & Ors., the Apex Court elucidated the applicable principles thus:-

"12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed."

In this case as the parties had litigated upto the Apex Court. In order to put an end to the litigation, the Supreme Court however examined the matter on merits as well.

20. In a recent judgment reported at (2004) 6 SCC 254 entitled Kusum Ingots & Alloys Ltd. vs Union of India & Anr. the Apex Court has considered this issue further and held thus :-

"26. The view taken by this Court in U.P. Rashtriya Chini Mill Adhikari Parishad that the situs of issue of an order or notification by the Government would come within the meaning of the expression "cases arising" in clause 14 of the (Amalgamation) Order is not a correct view of law for the reason hereafter stated and to that extent the said decision is overruled. In fact, a legislation, it is trite, is not confined to a statute enacted by Parliament or the legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instructions issued in this behalf shall also come within the purview thereof. Situs of office of Parliament, legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof."

21. It is noteworthy that the doctrine of forum conveniens is also guiding the courts in adjudicating upon and deciding issues, objections relating to territorial jurisdiction. This doctrine find its basis in convenience to parties and applies the principle that the court having the closest connection to the lis would guide the court in gdeciding as to the objections relating to territorial jurisdiction of the courts. In this behalf in Kusum Ingots & Alloys Ltd. vs Union of India (Supra), the court held thus :

"10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

30. We must however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney, Madanlal Jalan v. Madanlal, Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd., S.S. Jain & Co. v. Union of India and New Horizons Ltd. v. Union of India.]"

22. This principle finds application in the rationale and reasoning of the Apex Court in the Adani Export matter. There may be some facts which may constitute a cause of action whereby the High Court would be enabled and empowered to decide the disputes. Yet, each and every such fact pleaded by a party does not by itself lead to the conclusion that the court would have the territorial jurisdiction to entertain the lis. It is only such facts which have a nexus or relevance with the issues raised in the litigation which vest the court with territorial jurisdiction. Thus, though an agreement may have been executed within the territorial jurisdiction of the court, however in order to decide the issue of territorial jurisdiction in cases where the extraordinary jurisdiction of the High Court has been invoked in exercise of ordinary civil jurisdiction or its extraordinary writ jurisdiction under Article 226 of the Constitution of India or under special enactments as the Arbitration & Conciliation Act, 1996, it has to be seen whether the execution of the agreement is such an integral part of the facts relating to the litigation and dispute that consideration of such fact is absolutely imperative and essential for deciding the disputes involved in the case.

23. This question has arisen before a division Bench of this court in its judgment reported at (2003) 69 DRJ 98 entitled A.K. Surekha & Ors. Vs The Pradeshiya Investment Corporation of U.P. Ltd & Anr. In this case, the court was concerned with a challenge to the issuance of an recovery certificate against the petitioner at Delhi. The recovery certificate was issued pursuant to exercise of power under the statute on account of default of payments under an agreement between the parties at Lucknow. The agreement was entered at Lucknow and all disbursements were made from U.P. The agreement also contained a clause restricting territorial jurisdiction to the courts at Lucknow alone. In these facts, the court held as under :-

"28. We have examined the relevant clauses of the agreement and decided cases of various courts on question of territorial jurisdiction. If the principles which have been crystallized by the various courts are made applicable to the facts of this case, the conclusion would be irresistible that the court has no territorial jurisdiction to entertain this petition because in the instant case the respondent had entered into an agreement with the company of the petitioner at Lucknow and in the loan agreement, it was clearly stated that for the purposes of litigation relating to this agreement the territorial jurisdiction shall be of Lucknow courts alone. The petitioner on behalf of the company was signatory to the agreement. Thereafter a separate bond of guarantee was executed. In the bond of guarantee it was clearly agreed that the guarantors herein waive all rights which the Guarantors may become entitled to as surety/sureties to compete with the Corporation in obtaining payment of the moneys due or to become due to the Corporation in respect of the said loan in favour of the Corporation, as against the said Company. In clause 9, the petitioner has agreed that in order to give effect to the guarantee herein contained the corporation shall be entitled to act as if the Guarantors were the principal debtors to the Corporation for all payments and Covenants guaranteed by them as aforesaid, to the Corporation.

29. In this view of the matter, there was no justification or propriety on behalf of the petitioner to have filed a petition in this court for the relief of staying the recovery certificate. It is indeed unfortunate that most of the companies despite all kinds of clear and unequivocal agreements with the public sector undertakings and banks adopt delaying tactics whenever a case of re-payment of loans or dues arises. Unless the Courts adopt strict view of the matter it would be difficult to effectively curb this tendency."

24. A similar question had fallen for consideration before this court in a judgment reported at (2004) 73 DRJ 104 entitled Callipers Naigai Ltd. & Ors. vs Government of NCT of Delhi & Ors. and it was held as under :-

"8. In this particular case, we have to examine, therefore, what is the actual grievance of the petitioner. The petitioners, in view of Section 3 (3) of the said Act, cannot have any grievance with regard to the issuance of notices dated 02.07.1998 because these have been issued merely in compliance of the recovery certificate received by the respondent no. 2 from the Haryana Financial Corporation at Chandigarh. The respondent no. 2 had no option in the matter. He was not in any manner enjoined with any duty to examine the correctness or otherwise of the recovery certificate issued under Section 3 (2) of the said Act. The issuance of the recovery certificate is conclusive proof of the matters stated therein. In fact, the actual cause of action is in respect of the recovery certificate which is the causa causea and it is well-known that causa causea est causa causati (the cause of a cause is the cause of the thing cause) and the cause of the cause is to be considered as the cause of the effect also (see: Black's Law Dictionary 6th Edition, p.220). Thus, the recovery notices are nothing but the effect and the cause, in point of fact, is the issuance of the recovery certificate. In other words, the recovery certificate is the causa sine qua non (a necessary or inevitable cause); a cause without which the effect in question could not have happened (see: Black's Law Dictionary 6th Ediction, p.221. Sans the recovery certificate, the recovery notices could not have been issued. Thus, it is clear that the recovery notices dated 02.07.1998 cannot be set aside without the recovery certificate dated 21.10.1998 also being set aside. The recovery notices have no life of their own and must necessarily depend for their sustenance on the existence of the recovery certificate and the cause of action for which arose entirely in Chandigarh. The recovery notices do not form an integral part of the cause of action. Thus, this court does not have territorial jurisdiction to entertain the present writ petition.

9. In the aforesaid decision, which clearly dealt with a similar situation, it was held that recovery notices such as the one impugned herein do not form an integral part of the cause of action and, therefore, this court would not have territorial jurisdiction to entertain the writ petition challenging the recovery notice. I see no reason to depart from this view. The lis is with PICUP. Consequently the cause of action is qua PICUP. Unfortunately that has entirely arisen outside the territorial jurisdiction of this court. The issuance of the recovery notice has no relevance with this lis that is involved in the case. It is the result of a purely ministerial act on the part of Respondent No. 1 who cannot be faulted for acting in the manner he did. The stature required him to do so. He had no discretion in the matter. He had no lis to decide. The recovery notice is merely an effect and not the cause. It is the cause which confers jurisdiction and not the effect. Then, the answer to question No. 2 is that the mere issuance of the impugned recovery notice at Delhi does not clothe this court with the territorial jurisdiction to entertain this petition."

25. In the judgment of the Apex Court reported at AIR 1992 SC 1514 M/s Patel Roadways Limited Bombay Vs. M/s Prasad Trading Company territorial jurisdiction of the court was held to be restricted to a place where cause of action has substantially arisen if the corporation had a subordinate office overlapping other places which may have jurisdiction under Section 20 of the CPC. The court was of the view that it would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability, the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place

where the Corporation has its principal place. That place should be convenient to the plaintiff; and since the Corporation has an office at such a place, it will also be under no disadvantage.

26. Such a view undoubtedly supports the objection taken by the respondent before this court.

27. Again, in 85 (1997) DLT 81 DB Sector 21 Owners Welfare Association Vs. Air Force Naval Housing Board & Ors., a Division Bench of this court has held thus:-

"The law as reflected by the aforesaid decisions is that the emphasis has shifted from the residence or location of the person or authority sought to be proceeded against to the situs of the accrual of cause of action wholly or in part. It is also clear that a trivial or insignificant part of the cause of action arising at a particular place would not be enough to confer writ jurisdiction; it is the cause of action mainly and substantially arising at a place which would be determinating factor of territorial jurisdiction. So also it shall have to be kept in view who are the real persons or authorities sought to be proceeded against or against whom the writ to be issued by the Court would run. Joining of proformas or ancillary parties, and certainly not the joining of unnecessary parties, would be relevant for the purpose of Article 226(1)."

28. These judgments indicate that the courts have shifted the emphasis from the place of residence or location of the respondent or defendant to the situs of the accrual of the cause of action. In JT 1994 (5) SC 1 Oil & Natural Gas Commission Vs. Utpal Kumar Basu & Ors., the work in question was to be executed in the state of Gujarat. However, the contractor read the advertisement inviting the tender at Calcutta. It was asserted that he had made his offer and representation from Calcutta and received a reply also in Calcutta. He has challenged the action of the other side by way of the writ proceedings in the Calcutta High Court and had urged that part of the cause of action arose within the jurisdiction of the advertisement in Calcutta. The Apex Court held that merely because the contractor read the advertisement at Calcutta and submitted offer from Calcutta and also made representation from Calcutta, would not constitute facts forming an integral part of the cause of action".

29. In this judgment, the court made strong observation on courts assuming jurisdiction on the sole ground that the petitioner before it resided or carried on business within its jurisdiction. It was specifically directed that a trivial event unconnected with the cause of action, occurring within the jurisdiction of the court where the litigation is filed, should not enable a court to exercise jurisdiction over the subject matter of the litigation.

30. Again, in (1996) 3 SCC 443 South East Asia Shipping Company Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd., it was held that the fact that the bank guarantee in question was executed at Delhi and transmitted for performance to Bombay, was wholly irrelevant and that the courts at Delhi would not have the jurisdiction to decide the dispute between the parties.

31. In a decision rendered on 23rd December, 2005 in Writ Petition (C) No.5133/2005 Jai Ganesh Petroleum Vs. Union of India & Anr., I had occasion to consider similar objections in respect of the writ jurisdiction. After a careful consideration of the principles laid down in the several pronouncements of the Apex Court and this court, so far as the cause of action and jurisdiction of the court is concerned, the following principles had been culled out:-

(i) making and signing of a contract is part of cause of action;
(ii) parties cannot by consent confer jurisdiction on a court;
(iii) In the case of several courts having jurisdiction, parties can legally agree to exclude the jurisdiction of any of such courts and elect to restrict territorial jurisdiction to one out of such courts which otherwise has jurisdiction;
(iv) the high court must be satisfied from the entire facts pleaded in support of the cause of action that those facts which constitute the cause or are necessary to decide the dispute have wholly arisen within its territorial jurisdiction, or, in any case, which have, atleast in part, arisen within its jurisdiction;
(v) each and every fact pleaded in the petition does not ipsofacto lead to the conclusion that those facts constitute cause of action vesting territorial jurisdiction upon the court to adjudicate upon the lis;
(vi) only those facts pleaded which have a nexus or relevance with the issues involved in the lis confer territorial jurisdiction on the court;
(vii) in determining an objection relating to lack of territorial jurisdiction, the court must take all the facts pleaded in support of the cause of action as pleaded in the petition into consideration without embarking upon an inquiry as to the correctness or otherwise to the fact that;
(viii) A question of territorial jurisdiction must be apparent on the facts pleaded in the petition, the source or otherwise of the averments made in the writ petition being immaterial. In matters where the parties have agreed to restrict jurisdiction to one or the other court out of several courts which may have territorial jurisdiction, such clause would be enforceable only if the litigation which has arisen falls within the domain of the subject matter which is being provided in such clause. The parties may have confined jurisdiction to litigation arising only under the agreement. In such cases, the court has to arrive at a finding that the litigation between the parties was within the domain of the clause confining jurisdiction. If it does not, then the territorial jurisdiction of the court could be barred;
(ix) The court must be satisfied that all relevant facts which have merely a substantial nexus with the lis are located within its territorial jurisdiction;
(x) Even if it were to be held that a court has jurisdiction, yet guided by principles of forum non-conveniens, the court may divert the parties to the court having a closer connection with the subject matter of the litigation. Residence of parties, location of evidence, situs of the dispute and such like considerations could guide the decision of the court to this effect.

32. To the above, yet another principle requires to be added. It also requires to be borne in mind that a trivial or insignificant part of the cause of action arising at a particular place or where it may have incidentally arisen, would not be sufficient to confer territorial jurisdiction on the court. It is the court within whose whose jurisdiction, the cause of action has substantially or predominantly arisen which would have territorial jurisdiction to adjudicate upon the lis.

33. In the instant case, even if it was to be assumed that the agreement had been executed at Delhi, yet this court would not be the proper court to exercise jurisdiction in this matter inasmuch as the contract has not been performed at Delhi. The respondent is located at Punjab. The records relating to the performance of the contract and the transactions in question would be located outside the jurisdiction of this court and the respondent admittedly has his office at Batala in Punjab which is the only office with which the plaintiff has transacted business. Therefore, even on application

of the doctrine of forum non-conveniens, the petitioner would merit being sent to the courts of competent jurisdiction at Punjab.

34. The issue relating to the place where a cause of action has accrued so as to confer jurisdiction on a court to adjudicate upon a petition under Section 9 of the Arbitration & Conciliation Act, 1996 has arisen for consideration before this court on earlier occasions as well. In M/s Engineering Projects (India) Ltd. Vs. M/s Greater Noida Industrial Development & Anr. reported at ILR (2004) II Delhi 88, the court considered several judgments and arrived at a conclusion that it is the place where the cause of action has substantially arisen which would confer jurisdiction on the court to adjudicate upon the subject matter of the lis. It was held that primacy has to be given to such place where the cause of action has mainly or substantially or predominantly arisen in preference to or exclusion of a place where it has incidentally or partially arisen. This, the court held, has a a great pragmatic purpose and ensures convenience of investigation and minimization of expenses. It was noticed that the forum of convenience from the perspective of the plaintiff has been looked askance at. A fortiori, where the defendant does not have its principal or concerned office and the cause of action has not substantially and overwhelmingly arisen at that particular place, courts situated there should decline to exercise jurisdiction in preference to the court possessing an umbical connection with the cause of action. This will root out the pernicious practice of forum shopping. Courts exercising jurisdiction in the context of the Arbitration and Conciliation Act should be mindful and vigilant in this regard also because Section 42 thereof bars all other courts from exercising jurisdiction over any further petitions/applications.

35. I find that before this court, there is nothing in the agreement or in any correspondence which would even remotely suggest or support the submission that the agreement was made, signed or executed at Delhi. It is not even contended on behalf of the petitioner that any part of the contract was to be executed at Delhi. No correspondence has been addressed by the petitioner to the respondent to any address in Delhi. There is no material to indicate that the petitioner dealt with any officer of the respondent at Delhi or with any address of the respondent at Delhi.

36. Having regard to the nature of the disputes raised and the matters which would be in issue in the instant case, certainly the deposit of the tax which was deducted by the respondent at source at Delhi, does not form part of the cause of action. The petitioner has contended that the certificates for the tax which was so deposited show that the respondent actually had an office at Delhi. In the light of the principles laid down in a catena of judicial pronouncements noticed by me hereinabove, I find that it has been repeatedly emphasised that the mere existence of an office within the jurisdiction of the court which is called upon to exercise jurisdiction, anything more, by itself, would not be sufficient to permit the court to exercise jurisdiction over the subject matter of the litigation.

37. The principles laid down by the court in this judicial pronouncement undoubtedly binds this court and the present matter as well. Certainly, deposit of the TDS even if it was deducted or deposited at Delhi, does not form part of the cause of action. The submission by the petitioner that the certificate shows that the respondent had a Delhi address is also of no consequence as admittedly the petitioner has conducted all dealings with the respondent's Punjab office. In any case, the admitted position is that the subject matter of the present dispute has arisen at Punjab,

outside the jurisdiction of this court and certainly all material aspects of the cause of action for bringing and maintaining the present petition have not arisen at Delhi and consequently, this court does not have the territorial jurisdiction on the subject matter of the present case.

38. In this view of the matter, it would be wholly improper to record any observations and findings on the other objections addressed by the respondent in their opposition to the present petition. The respondents shall be at liberty to press the same and seek adjudication thereof in the event the petitioner agitates its disputes further.

In view of the above discussion, this petition is dismissed.

Sd./-
GITA MITTAL,J

January 4th , 2007