NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO.32/2020

Neilan International Co. Ltd. Petitioner(s)

VERSUS

Powerica Limited & Ors.

Respondent(s)

O R D E R

1. The Petitioner has filed the present Transfer Petition seeking the transfer of Comm. A. S. No.09/2019 filed by Respondent No.1 under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') before the CCH83 LXXII Addl. City Civil and Sessions Judge (Commercial Court) at Bengaluru, Karnataka to the Hon'ble Bombay High Court or any other court of competent jurisdiction in Mumbai, Maharashtra, in light of Petitioner having filed Arbitration Petition No.416 of 2019 before

the Hon'ble Bombay High Court under Sections 47 and 48 of the Act for the enforcement of arbitral award dated 27 September, 2018 passed by Arbitral Tribunal in ICC International Court of Arbitration Case No.19933/TO in London under the ICC Rules 2012.

2. Learned counsel for Petitioner argued the principle of exclusive jurisdiction to be applied in this case to avoid multiplicity of views arising out of the same agreement between the same parties and urged this Court to determine the jurisdiction of the cases filed in the subject proceedings, particularly when these matters are identical in nature as it would be possible for two courts to arrive at conflicting findings and turning the proceedings to an empty formality. Further, the Petitioner also contended that no prejudice will be caused to the Respondent if proceedings under Section 34 of the Act are heard in Mumbai as its head office is in Mumbai and even the promoter is based there. Learned counsel has also submitted that the Seat of arbitration was in London and the law of Sudan was to be applied. Based on the same, the Parties have clearly

excluded the application of Part I of the Act and as such the Respondent is not entitled to file a petition under Section 34 of the Act in the courts of Bangalore or anywhere else. Lastly, a submission was made that even if it is to be presumed that the courts in India hold jurisdiction, the same would not vest with Bangalore Principal City Civil Court as it has no jurisdiction to entertain an award passed in the International Commercial Arbitration. In such a case, the jurisdiction ought to lie with the Hon'ble High Court.

3. Per contra, the learned counsel for Respondent submits that the plea regarding the lack of jurisdiction of the Bengaluru Court to entertain the petition under Section 34 of the Act filed by Respondent No.1 cannot be taken in a transfer petition filed before this Court. To canvass the same, attention of this Court has invited to the order dated 2nd August 2021 passed by this Court in Transfer Petition (C) No.953/2021 titled as 'Naivedya Associates v. Kirti Nutrients Limited'. He further submits that the areas of operation of petition under Section 34 of the Act and a petition under Sections 47/48 of the Act are wholly different.

Thus, the argument of Petitioner qua commonality of issues between both the proceedings is without any foundation. Further, it was contended that mere convenience of the party is not a good ground to exercise the power of transfer under Section 25 of the Code of Civil Procedure, 1908. He also maintains that the Act is a self-contained code of Arbitration and relief cannot be sought under the provisions of the CPC, particularly under Section 25 in this instance.

4. After having heard both the sides, I infer that the primary issue for consideration before this Court at this juncture is whether the plea of territorial jurisdiction or the lack thereof can be entertained by this Court in its jurisdiction under Section 25 of CPC. In this regard, this Court vide its order dated 2 August, 2021 passed in Naivedya Associates v. Kirti Nutrients Limited (Transfer Petition (C) 953/2021) has held as follows:

> "In these circumstances, I do not think there is much scope for going into the question as to whether the Court in which the suit is instituted has territorial jurisdiction to try and determine the suit or not in a petition for transfer of a suit invoking Section 25 of the Code of Civil Procedure. This point is required to be

> urged before the Court in which the suit is pending. I accordingly decline the plea of petitioner for transfer of said suit"

5. Apropos, it is no longer *res integra* that there is limited scope vested in this Court while exercising its jurisdiction under Section 25 of CPC and the same cannot be extended to determine the question of territorial jurisdiction of the proceedings before it as the plea of jurisdiction or the lack of it can be prompted before the Court in which the proceedings are pending.

6. In view of the foregoing, the main argument raised by the Petitioner is bereft of merit, however, in my considered opinion other arguments are also of no substance warranting to exercise the jurisdiction to transfer the case as prayed for. Accordingly, the transfer petition filed by the Petitioner is bereft of any merit and hence dismissed.

.....J.
(J.K. MAHESHWARI)

New Delhi;
July 06, 2022