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

+ FAO 232/2020 & CM APPLN. 32258-59/2020

DELHI TOURISM AND TRANSPORTATION
DEVELOPMENT CORPORATION

..... Appellant

Through Mr. Sachin Datta, Senior Advocate with Ms.
Anisha Upadhyay, Advocate for DTTDC

versus

SWADESHI CIVIL INFRASTRUCTURE PVT LTD Respondent

Through Mr. Dinkar Singh, Advocate

Mr. Rajeev K. Virmani, Senior
Advocate/Amicus Curiae with Mr. Ankit
Virmani, Advocate/Amicus Curiae and Mr.
Rishabh Bhargava and Ms. Niharika Goyal,
Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

27.01.2021

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1. The hearing was conducted through video conferencing.
2. A legal question has arisen in this petition as is noticed in order dated 16.12.2020 as to whether, in terms of Section 13 (1A) of the Commercial Courts Act, 2015 (hereinafter referred to as the Act), appeals arising out of orders or judgments passed by a Commercial Court at the level of District Judge exercising Original Civil jurisdiction are to be heard by a Single Judge of this Court or should be placed before the Division Bench of this Court.

3. By order dated 14.01.2021, Mr. Rajeev Virmani, Senior Advocate assisted by Mr. Ankit Virmani, Advocate were appointed as Amicus Curiae to assist the Court on the said issue.

4. Mr. Rajeev Virmani, Senior Advocate/learned Amicus Curiae has sent his written submissions over e-mail of the Court Master. The same are taken on record.

5. It is pointed out by Mr. Rajeev K. Virmani, Senior Advocate, learned *Amicus Curiae* that when the Commercial Division of High Courts Bill (Bill No. 139 of 2009) was first introduced in 2009, it provided for creation of a Commercial Division of a High Court consisting of a Division Bench. The Bill was referred to Twentieth Law Commission of India for re-examination of various provisions thereof.

6. It is further submitted that in its 253rd report, the Law Commission made a recommendation that Commercial Divisions be set up in the High Courts having original civil jurisdiction and a Commercial Appellate Division be created at each High Court comprising one or more Division Benches to hear appeals from orders and decrees of the Commercial Division or Commercial Court, as the case may be.

7. It is submitted that on the basis of the recommendations of Law Commission, the President of India promulgated Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 on 23.10.2015.

8. It is pointed out that pursuant to the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015, this Court vide notification dated 17.11.2015, constituted Commercial Division comprising of six benches of Hon'ble Single Judges and also a Commercial Appellate Division comprising of four Division Benches.

9. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 provided for creation of (a) Commercial Courts at District level (where the High Courts did not have ordinary original civil jurisdiction), (b) Commercial Division of High Court having ordinary civil jurisdiction having one or more Benches consisting of a Single Judge and (c) Commercial Appellate Division of High Court having one or more Division benches to hear appeals against judgment and orders of the Commercial Divisions of the High Court and Commercial Courts.

10. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 was amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018. The act was renamed as the Commercial Courts Act, 2015.

11. The Act thus provided for (a) creation of Commercial Courts at the level of District Judge where the High Courts have ordinary original civil jurisdiction, (b) creation of Commercial Appellate Courts at the District Judge level for those territories over which the

High Courts did not have ordinary original civil jurisdiction, (c) appeals to the Commercial Appellate Courts against the judgments and orders of Commercial Courts below the level of District Judge; and (d) appeals to the Commercial Appellate Division of the High Court against the judgments and orders of Commercial Division of the High Court and Commercial Court at District Judge level.

12. Let us examine the legislative scheme of the Act as it stands post the 2018 amendment.

13. Section 13(1A) of the Act reads as under:

“13. Appeals from decrees of Commercial Courts and Commercial Divisions:

*(1) ******

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996.”

(Underlining supplied)

14. In terms of Section S. 13(1A) of the Act, appeal from a judgment or order of a Commercial Court at the level of the District

Judge exercising original jurisdiction would lie to the Commercial Appellate Division of the High Court.

15. The term 'District Judge' has been defined by Section 2(e) of the Commercial Courts Act as under:-

“District Judge” shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India;

16. Article 236 (a) of the Constitution of India defines the expression 'District Judge' as under:-

“the expression district judge includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;”

17. Thus the expression District Judge used in Section 13 (1A) of the Act would include an Additional District Judge.

18. S. 4(1) of the Act stipulates that *in all High Courts, having ordinary original civil jurisdiction, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under the Act.*

19. Further, S. 5(1) of the Act stipulates that *After issuing notification under subsection (1) of section 3 or order under subsection (1) of section 4, the Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one*

or more Division Benches for the purpose of exercising the jurisdiction and powers conferred on it by the Act.

20. S. 13(2) of the Act starting with a non obstante clause, stipulates that *Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of the Act.*

21. From the legislative scheme of the Act it is clear that a specific forum (i.e. Commercial Appellate Division) has been stipulated under Section 13(1A) of the Act for adjudicating appeals arising out of judgments and orders passed by either the Commercial Court at the level of District Judges (including Additional District Judges) or the Commercial Division of the High Court (comprising of a Single Judge of the High Court).

22. The expression used in Section 5 of the Act is “*the Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one or more Division Benches*”. There is thus a mandate by the Act that the Commercial Appellate Division shall be constituted of one or more Division Bench in contradiction to the Commercial Division of the High Court which would comprise of a Single Judge of the High Court.

23. As noticed above, in terms of Section 5 of the Commercial Courts Act, 2015, this Court has notified designated Division Benches of this Court as the Commercial Appellate Division.

24. In terms of Section 13(1A) of the Act, appeals arising out of orders or judgments passed by a Commercial Court at the level of District Judge (including Additional District Judge) exercising Original Civil jurisdiction are to be listed before the Commercial Appellate Division Bench of this Court, which are the designated Division Benches and not a single judge.

25. Report was also called for from the Registry with regard to the same by order dated 16.12.2020. Report has also been filed by the Registry. It is stated in the report that appeals arising out of orders passed by the Commercial Division of this Court (i.e. a Single Judge on the Original Side in commercial matters filed under Section 13 of the Act) is registered under the category “FAO(OS)(Comm)” and is listed before the Commercial Appellate Division.

26. It is further stated in the Report that since the appeals against the orders of the District Judge (Commercial Court) is filed under the category “FAO” and the Roster Bench for hearing “FAO” is that of a Single Bench, the appeals are being listed before the Single Judge.

27. In view of the above, Registry is directed to register all appeals filed under Section 13(1A) of the Commercial Courts Act, 2015, arising out of orders or judgments passed by a Commercial Court at the level of District Judge (including Additional District Judge)

exercising Original Civil jurisdiction as “FAO(Comm)”. Said appeals be listed before the Commercial Appellate Division Benches as per the notified Roster.

28. The Registry is accordingly directed to register this appeal as FAO (Comm) and list the same before the Commercial Appellate Division as per the Roster.

29. It is stated by learned counsel for the appellant that the proceedings are listed before the Arbitral Tribunal on 5th and 6th February, 2021 for final hearing. Registry is directed to list this appeal expeditiously before the concerned Commercial Appellate Division preferably before the said date.

30. This court would like to place on record appreciation for the assistance rendered by Mr. Rajeev Virmani, Senior Advocate assisted by Mr. Ankit Virmani, Advocate learned Amicus Curiae.

31. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

JANUARY 27, 2021

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