

02.05.2024

Present: Sh. Abhijeet Kumar, Ld. Counsel for the Plaintiff.
Ms. Pratika Agarwal, Ld. Counsel for the Defendant.

1. Ld. Counsel for the Defendant, Ms. Pratika today states that the Arbitration Agreement between the parties makes it clear that the venue of Arbitration is Kolkata. She therefore submits that the Defendant is not willing to give any concession to the Plaintiff in this respect. It is also the submission of Ld. Counsel, Ms. Pratika that despite the fact that the Arbitration Clause is invalid to the extent that it gives sole power to the Defendant Company to appoint an Arbitrator, the whole Arbitration Clause cannot be held to be void. In support of this contention, she has relied upon the judgment of the Hon'ble Delhi High Court in the case titled and reported as **Apex Buildsys Limited Vs. Ircon Internaional Limited, 2024 SCC OnLine Del 1817**. It is being prayed that the application under Section 5 and 8 of the Arbitration and Conciliation Act filed by the Defendant be therefore allowed and that the parties be referred to Arbitration.

2. In rebuttal, Ld. Counsel for the Plaintiff, Sh. Abhijeet now states that he be granted time to file reply to the application under Section 8 of the Arbitration and Conciliation Act.

3. In the considered opinion of this Court, now no opportunity can be granted to the Plaintiff to file reply to the application under Section 8 of the Arbitration and Conciliation Act. Vide order dated 21.02.2024, this Court had granted the Plaintiff two weeks time to file its reply to the said

application and the case was fixed for arguments on the said application on 10.04.2024. On the said date, Ld. Proxy Counsel for the Plaintiff, Sh. A. Sharma had informed this Court that the Plaintiff is not filing any reply to the application and that the Plaintiff has no objection in case the Defendant wishes to refer the disputes to Arbitration. He however had prayed that the Defendant should agree to file a petition before the Hon'ble Delhi High Court seeking appointment of an Arbitrator. In view of such a statement given, Ld. Counsel for the Plaintiff cannot now seek an adjournment again to file reply to the said application. Further, on a query by this Court, Ld. Counsel for the Plaintiff, Sh. Abhijeet has fairly conceded that the work order placed on record by the Plaintiff itself reflects that the parties had agreed that in case of any disputes between them, the same shall be referred to Arbitration. He further concedes that the entire arbitration clause cannot be held invalid and that the parties will be at liberty to get an Arbitrator appointed under Section 11 of the Arbitration and Conciliation Act. He further states that he has no legal contentions to make as to why in view of such a Clause, the parties should not be referred to Arbitration. His only submission is that the Defendant should be made to agree that the venue of Arbitration should now be Delhi.

4. In rebuttal to the aforementioned contention, Ld. Counsel for the Defendant, Ms. Pratika has submitted that this Court has no powers to decide or to direct the Defendant to agree to a different venue of Arbitration than what is agreed in the Arbitration Agreement.

5. In the considered opinion of this Court, the contentions made by Ld.Counsel for the Defendant, Ms. Pratika are to be accepted.

6. At this stage, it would be relevant to reproduce Section 8 (1) of the Arbitration and Conciliation Act.

8. (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or a person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

7. Now in the present case, the existence of a valid Arbitration Agreement is not being disputed by the Plaintiff. A copy of the work order containing the agreement of parties to refer their disputes to Arbitration has been placed on record by the Plaintiff himself.

8. At this stage, it would be relevant to reproduce Clause 17 of the work order executed between the parties.

17. In the event of any difference or dispute arising out of or in connection with this work order, the same shall be first amicably settled by mutual dialogue. If the parties fail to settle their difference or dispute arising out of or in connection with this work order (including interpretation of the terms thereof) the same shall be referred to arbitration. The Arbitration proceedings shall be conducted by a single Arbitrator appointed by the Company Secretary of Simplex Infrastructures Ltd., and the award/decision of such arbitrator shall be final and binding upon both the parties. The venue of the arbitration shall be Kolkata. However, the work shall not be stopped during the pendency of the proceedings and it shall be ensured that such work is proceeded uninterruptedly.

9. In view of the aforementioned clause and the provisions of Section 5 and 8 of the Arbitration and Conciliation Act and the Arbitration Agreement executed between the parties, it is clear that this Court has to mandatorily refer the parties to Arbitration and this suit cannot be continued with. The language of Section 5 and 8 of the Arbitration and Conciliation Act has been held to be peremptory in nature by the Hon'ble Supreme Court in the case titled and reported as ***P Anand Gajapathi Raju and Ors. v. P. V. G. Raju (2000) 4 SCC 539***. The Hon'ble Supreme Court in the said judgment has interalia observed as follows:

“the language of Section 8 of the Arbitration Act is peremptory in nature and therefore, in cases where there is an Arbitration Clause in the

agreement, it is obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made, except to refer the dispute to an arbitrator”.

10. In view of the aforementioned judicial dicta and the agreement executed between the parties in the present case, the application filed by the Defendant under Section 5 and 8 of the Arbitration and Conciliation Act stands allowed and it is hereby held that the suit of the Plaintiff cannot be continued with. The parties are therefore hereby referred to Arbitration.

11. At this stage, it would be relevant to mention that while this Court was pronouncing this order, one Ld. Counsel, Sh. Sourav Dutta had also appeared on behalf of the Defendant and had sought to contend that this Court has no powers to refer the parties to Arbitration and that the suit of the Plaintiff should be dismissed. He has also vehemently stated that his submission be recorded in the order being passed. The said contention of Ld. Counsel, Sh. Dutta is found to be without any merit, in view of the unambiguous language of the statutory provisions of Section 8 of the Arbitration and Conciliation Act. In fact, the Defendant in its application filed under Section 5 & 8 of the Arbitration and Conciliation Act also seeks the relief that the suit be referred to Arbitration.

12. In view of above, this file be consigned to Record Room.

(Anu Grover Baliga)
District Judge (Commercial Court-04)
South-East District, Saket Courts
New Delhi/02.05.2024