

IN THE HIGH COURT OF DELHI.

SUIT NO. AA-118/1996.

DATE OF DECISION: OCTOBER 28, 1998.

M/S. BPL SANYO UTILITIES
AND APPLIANCES LIMITED.

PETITIONER THROUGH
MR. MUKUL ROHTAGI WITH
MR. ROY ABRAHAM, MR.
SAURABH KIRPAL AND
P.S. SUDHEER, ADVOCATES

VERSUS

M/S. PROFEOTUS WAREHOUSERS

RESPONDENT THROUGH
MR. ARUN K. SINHA,
ADVOCATE.

CORAM:-

HON'BLE JUSTICE DR. M.K. SHARMA:

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?

DR. M.K. SHARMA, J. (ORAL):

1. This is a petition filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator, in terms of the arbitration clause, for deciding the disputes arising between the parties. The parties hereto entered into a contract which is dated 2.4.1993. By the aforesaid contract the petitioner appointed the respondent as its clearing and forwarding agent for fan belts on the terms and conditions mentioned in the said

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contract. Clause 12 of the said contract contains the arbitration clause which provides that if any dispute arises in respect of the contract the same shall be subject to arbitration in accordance with the provisions of the Arbitration Act and/or any statutory amendment or modification thereof and that the venue of such arbitration would be at New Delhi. Certain other clauses which have relevance to the decision of the present case are extracted below:-

7. OWNERSHIP & LIEN:

It is expressly understood that the ownership of our goods shall at all times vest with us and you shall not have any lien on the same on any account whatsoever. You will also take adequate steps to ensure that no lien on our goods is claimed by any of your bankers, creditors or other customers, and shall undertake to indemnify us against any loss, damage cost or expenses incurred or suffered by us by reason of any such claim being made against our goods.

8. TERMINATION:

This arrangement can be terminated by either party giving notice of such termination atleast three months prior thereto. It is also open to us to terminate the arrangement by giving you notice in writing one month in advance, if it is found at any time that the performance of your duties is not to our entire satisfaction or in the event of breach of any of the terms, conditions and covenants thereof.

9. DELIVERY OF GOODS ON TERMINATION:

On termination of the arrangement as mentioned in para 8 hereinabove, you will return all the properties of the company

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in good order and will forthwith repay to the company any loss or damage caused due to your negligence.

2. In terms of the aforesaid clauses during the currency of the contract the ownership of the goods of the petitioner was to be vested with the respondent. It was also stipulated that the respondent would not have any lien on the same on any account whatsoever. The aforesaid contract was terminable and determinable by either party for the contract stipulates that it could be terminated by either party by giving notice of such termination atleast 3 months prior thereto. Clause 9 thereof stipulates that on termination of the arrangement in terms of para 8 the respondent was to return all the properties of the company in good order and will forthwith repay to the company any loss or damage caused due to its negligence. The aforesaid contract admittedly came to be terminated by the petitioner on 2.4.1993. However, according to the petitioner certain disputes arose between the parties in respect of the aforesaid contract and therefore, the present petition has been filed in this court for the aforesaid reliefs.

3. I have heard the learned counsel appearing for the parties. The counsel for the petitioner has drawn my attention to paragraph 24

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of the petition wherein the petitioner has set out the area of disputes between the parties. On perusal of the same I find that the said disputes arise out of the contract in question. The counsel for the respondent however, submitted that there was in fact a novation of the aforesaid contract and therefore, there could not be any reference of any disputes arising out of the said contract. He further submitted that as against the demand of the respondent for payment of a sum of Rs.7,66,612/- excluding interest on delayed payment as per bill the petitioner has made payment of 2 cheques for Rs.1,46,000/- and having made the said payment all the disputes between the parties got settled and therefore, there can not be any further disputes which are referable to the arbitrator. I am not persuaded to accept the contention of the learned counsel for the respondent. Admittedly, even as against the claim of the respondent for Rs.7,66,612/- as per the bill the respondent has released 2 cheques for Rs.1,46,000/-, that itself gives rise to a dispute between the parties. That apart the statements made in para 24 of the petition clearly set out the area of disputes arising between the parties which are referable to an arbitrator. Thus I am satisfied that the disputes have arisen between the parties which are required to be settled in terms of the arbitration

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agreement between the parties. I am also satisfied that there is a valid arbitration agreement between the parties in terms of which all disputes arising between the parties were required to be settled through the process of arbitration. Accordingly, all the disputes arising between the parties are referred to an arbitrator for his adjudication and decision. The arbitration agreement between the parties clearly stipulates that the venue of the arbitration would be at Delhi. In order to give effect to the agreement between the parties I appoint Justice D.R.Khanna, a retired Judge of this Court as Arbitrator to decide the disputes arising between the parties. It shall be open to the learned arbitrator to fix his remuneration. The arbitrator may enter into the reference at his earliest convenience and shall proceed and decide the matter in accordance with law. In terms of the aforesaid observations and directions the petition stands disposed of.


(DR.M.K.SHARMA)
JUDGE.

OCTOBER 28, 1998.
PSC.