



2023:TSHC:4226

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

ARBITRATION APPLICATION NO: 6 OF 2021

Between:

M/s. Ananda Bharathi Fertilizers (India) Private Limited, Registered Office at H.No.8-3-167/D/123 and 125/601, Visista Apartments, Phase-1, Kalyan Nagar Colony, Hyderabad-38, rep.by its Managing Director N.Rajasekhar Rao.

...APPLICANT

AND

M/s. Nagarjuna Fertilisers and Chemicals Limited, Registered Office at D.No.8-2-248, Nagarjuna Hills, Panjagutta, Hyderabad-82, Telangana, Rep.by its Authorized Officer.

...RESPONDENT

Arbitration Application Under Section 11 (5) of Arbitration and Conciliation Act praying that this Hon'ble Court may be pleased to appoint an Arbitrator to resolve the dispute raised by the Applicant against the Respondent in accordance with Arbitration Clauses at Clause No.17 in the Joint Venture Agreement dated 19/04/2013, Clause No.10 in the Lease Deed dated 27/06/2018 and Clause No.15 in the Operation Agreement dated 27/06/2018 .

**Counsel for the Applicant : Ms. PRATUSHA BOPANNA ,
rep. SRI A. VENKATESH**

Counsel for the Respondent: SRI VIKRAM POOSERLA

The Court made the following: ORDER



2023:TSHC:4226

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

ARBITRATION APPLICATION No. 6 of 2021

ORDER:

1. This Arbitration Application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act, 1996') for appointment of sole arbitrator to resolve the disputes between the parties.

2. Heard Ms. Pratusha Bopanna, representing Mr. A Venkatesh, learned counsel for the Applicant, Mr. Vedula Srinivas, learned Senior Counsel appearing for Mr. Vikram Pooserla, learned counsel for Respondent.

3. The Applicant i.e., M/s. Ananda Bharati Fertilizers (India) Pvt. Ltd (for short ABFIPL) entered into a long-term business tie-up with the Respondent M/s. Nagarjuna Fertilizers and Chemicals Limited (for short NFCL) under a Memorandum of Understanding (for short MOU) dated 07.07.2012, followed by a Joint Venture Agreement dated 10.04.2013 for manufacture and exclusive supply of Customized Fertilizers (for short CF). Subsequent to these agreements, the parties had entered into Supply agreement dated



19.12.2014, Lease Deed and Operations Agreement both dated 27.06.2018.

4. **Case of the Applicant:**

- The Applicant submits that, in furtherance of the Joint Venture, the Respondent under Clause 1 of the Supply Agreement dated 19.12.2014 had agreed to supply raw and packing material required by the Applicant for manufacturing CF. The Applicant had to convert such raw material into CF, as per the Respondent company's specifications.
- The Applicant contends that, it had applied for working capital loan with various institutions in order to carry out the agreed operations under the Joint Venture and supplementary agreements. The same was sanctioned to it by the Canara Bank, Balanagar branch for Rs. 9,00,00,000/- @ interest of 13.5%, on an undertaking given by the Respondent Company *vide* letter dated 29.11.2017.
- The Applicant submits that, as the samples from trial runs were meeting desired specifications, the Respondent



company proposed to procure 10,000 TPA of MACROS Soil Conditioner @ Rs.5,500/- per ton and had accordingly requested the Joint Secretary (INM), Ministry of Agriculture, New Delhi *vide* letter dated 04.06.2018 to accord permission for manufacture of CF at the Applicant's facility. After the permission was granted on 20.06.2018, the Respondent under Clause 5 of the Operations agreement dated 27.06.2018 had once again undertaken to provide the required raw material to the Applicant.

- It is contended that as the Respondent had demanded the Applicant for starting the plant from 01.07.2018, it had completed the erection of plant and machinery anticipating the supply of raw material by the Respondent, in order to meet the Respondent's requirement. But the Respondent company had neither converted nor purchased any Soil conditioners thereby utterly failing to supply the raw material to the Applicant.
- As the required raw material were not supplied, the Applicant could not complete the Respondent's orders.



Resultantly, the Applicant's Bank had not only refused to release sanctioned funds, but had also declared the Applicant as NPA and thereby issued a notice under the SARFEASI Act. It is also contended that Respondent company had breached Clause 4 of the Lease Deed dated 27.06.2018 by refusing to pay rents for use and occupation of the Applicant's facility.

- The Applicant contends that, although it had sent a legal notice dated 01.02.2020 aggrieved by the Respondent's willful negligence and violation of the terms of the agreements and called upon them to pay compensation of Rs. 14,75,00,000/-, the Respondent did not reply to the same. Thereafter, the Applicant had also tried to approach the Respondent to resolve their disputes amicably, but as the same proved futile, it had sent a notice dated 15.10.2020 invoking Clause 17 of the Joint Venture Agreement dated 19.04.2013, Clause 15 of the Operations Agreement, Clause 10 of the Lease deed both dated 27.06.2018, proposing to appoint Hon'ble Justice Vilas. V. Afzalpurkar (Retired) as an Arbitrator.



- As the Respondent failed to reply to the notice dated 15.10.2020 the present application is filed.

5. **Contentions of the Respondent:**

- Counter affidavit dated 10.08.2021 is filed by the Respondent denying the averments of the Applicant and contending that the Application itself is not maintainable.
- The Respondent contends that the present application is not maintainable as the Applicant had failed to issue a notice of default as per clause 17.2.2 of the joint venture agreement dated 19.04.2013.
- According to the Respondent, neither the legal notice dated 01.02.2020 nor the notice dated 15.10.2020 had been received by them. It is then contended that the issues raised in the notice dated 01.02.2020 are not arbitrable disputes; and that the Applicant had preferred the present application without making any attempts for settling the disputes amicably in order to cause loss and prejudice to the Respondent company.



- It is contended that in order to utilize subsidized fertilizers for production of CF, one had to be registered as a dealer. Since the Respondent was unable to register itself as a dealer/retailer, it was unable to procure raw material. Further the raw material could not be procured due to unavailability in the market as such the said breach could not be attributed to the Respondent Company.
- The Respondent also contends that as the Supply Agreement dated 19.12.2014 does not contain an arbitration clause, disputes arising thereunder cannot be referred to arbitration. Also, as the Lease deed dated 27.06.2018 is insufficiently stamped, the contents under the same including the arbitration agreement cannot be acted upon or enforced.
- It is further contended that the intention of the parties in executing separate contracts each containing independent Arbitration clauses, is to keep them independent and distinct from each other. Therefore, individual references have to be made under them for composition of separate Arbitral Tribunals. Placing reliance on the case of *Duro Felguera*



*S.A. Vs. Gangavaram Port Limited*¹ it is thus contended that there cannot be a single Arbitral Tribunal for three separate agreements.

6. By the reply filed, the Applicant contends that the decision of the Supreme Court in *Duro Felguera* (supra) is not applicable to the facts on hand as the Joint Venture Agreement dated 19.04.2013 is the parent agreement between the parties while the other agreements are entered for carrying out the purpose as set out under the Joint Venture Agreement. By placing reliance on *Chloro Controls (I) P. Ltd. Vs. Severn Trent Water Purification Inc. and Ors*² it is contended that as all the agreements are intrinsically connected and therefore a composite reference for arbitration is to be made.

7. The Respondent in its sur-rejoinder denied the reply of the Applicant by contending that, as neither the Operations Agreement nor the Lease deed refer to the Joint Venture Agreement, it cannot be considered as a parent agreement. Moreover, even if the Joint Venture Agreement was to be considered a parent agreement since

¹ (2017)9SCC729

² (2013)1SCC641



no notice of dispute under Clause 17.2.2 was given to the Respondent, the Applicant cannot invoke the Arbitration Clause by bypassing the procedure laid down for resolution of disputes in agreements.

Findings of the Court:

8. Before dealing with the issue at hand, it is relevant to note that the role of High Court under Section 11 of the Arbitration and Conciliation Act, 1996 is extremely limited. The Court has to only see whether *prima facie* an arbitration agreement exists. The Supreme Court in *Vidya Drolia v. Durga Trading Corpn*³, held as under:

244. Before we part, the conclusions reached, with respect to Question 1, are:

244.1. Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.

244.2. Usually, subject-matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act, unless it is a clear case of deadwood.

244.3. The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non-existence of valid arbitration agreement, by

³ (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549



summarily portraying a strong case that he is entitled to such a finding.

244.4. The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. "when in doubt, do refer".

244.5. The scope of the court to examine the prima facie validity of an arbitration agreement includes only:

244.5.1. Whether the arbitration agreement was in writing? or

244.5.2. Whether the arbitration agreement was contained in exchange of letters, telecommunication, etc.?

244.5.3. Whether the core contractual ingredients qua the arbitration agreement were fulfilled?

244.5.4. On rare occasions, whether the subject-matter of dispute is arbitrable?

9. Keeping in view the above decision of the Supreme Court, the following issues fall for consideration before this Court

- i. *Whether prima facie there exists an arbitration agreement between the parties?*
- ii. *Whether a single Arbitral Tribunal can be constituted for the resolving the disputes arising under multiple agreements?*

Issue No.1

10. Gist of agreements entered into by the parties in the present case:



Date of Agreement	Details of agreement	Parties to the agreement	Purpose of the agreement	Whether it contains arbitration clause
22.12.2011	Confidentiality, Non-Disclosure Agreement	ABFIPL and NFCL	Disclosure of proprietary information relating to manufacture of CF while exploring possible future business relationship	Yes
07.07.2012	MOU	NFCL and ABFIPL	Understanding to enter into a Joint Venture for Manufacture of CF	No
19.04.2013	Joint Venture Agreement	NFCL, Promoter of ABFIPL and ABFIPL	Manufacture of CF	Yes
19.12.2014	Supply Agreement	NFCL and ABFIPL	Supply of Raw Material for manufacture of CF	No
27.06.2018	Lease Deed	ABFIPL and NFCL	Lease of manufacturing Plant by NFCL	Yes
27.06.2018	Operations Agreement	NFCL and ABFIPL	ABFIPL to manufacture CF as per the specifications provided by NFCL	Yes

The disputes in the present application have arisen out of the Supply Agreement dated 19.12.2014, the Lease Deed and Operations Agreement both dated 27.06.2018. Admittedly all of these agreements except the Supply Agreement contain identical arbitration clauses. Therefore, *prima facie* there is an arbitration agreement between the parties for both the Lease Deed as well as the Operations Agreement. The Contention of the Applicant that



the disputes arising out of the Supply Agreement dated 19.12.2014 can be referred under the Joint Venture shall be examined along with Issue No.2.

Issue No.2:

11. As the dispute primarily revolves around the invocation of arbitration clauses in different agreements viz., Clause 17 of the Joint Venture Agreement dated 19.04.2013, Clause 15 of the Operations Agreement and Clause 10 of the Lease deed both dated 27.06.2018 through a single arbitration notice opposed to making separate references, it is apposite to consider circumstances when a composite reference can be made.

12. The Supreme Court in the case of *Chloro Controls (supra)* while expounding the 'Group of Companies' doctrine had examined composite transactions as under:

73. A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The Court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject matter and the agreement between the parties being a composite transaction. *The transaction should be of a composite nature where performance of mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively*



having bearing on the dispute. Besides all this, the Court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the Court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed.

Thus, a composite reference could be made by looking at the following factors:

- a. It should be a composite transaction consisting of a mother agreement and ancillary agreements.
- b. All ancillary agreements are relatable to the mother agreement.
- c. Performance of the mother agreement is intrinsically interlinked to the performance of ancillary agreements for achieving the common object and collectively have bearing on the dispute.
- d. The intention of the parties to refer all the disputes between them to the Arbitral Tribunal.
- e. A composite reference would serve the ends of justice.

13. From the table above it is seen that while the non-disclosure agreement contemplated a future long-term relationship between



the parties, the MOU had defined that entering into a Joint Venture Agreement would create contractual relationship between the parties. Thus it can be assumed that the Joint Venture Agreement dated 19.04.2013 is a potential mother agreement, provided if the subsequent agreements were ancillary in nature. Further, the terminology of Clause 'G' of the MOU shows that the parties had also agreed to enter into detailed future agreements regarding the *modus operandi* covering production and off-take of CF after the plant goes into production.

14. A perusal of the Joint Venture Agreement dated 19.04.2014, shows the following:

- Clause 'D' states that ABFIPL and NFCL shall enter into a separate supply agreement(*emphasis supplied*).
- Clause 4.1.1 states that NFCL shall provide expertise in technical assistance and direction in manufacture of products as briefed in Annexure – I.
- Clause 4.1.3 and 4.1.5 are synonymous and state that NFCL shall obtain necessary permits, approvals, licenses, contracts, clearances etc.,



- Clause 16 states that the Agreement shall be effective and binding between parties on obtaining requisite statutory approvals and approvals from financial institutions.
- Clause 22 of the same reads as under

Further Assurances: The Parties shall each perform such acts, execute and deliver such instruments and documents and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement(emphasis supplied).

- Annexure – I states that NFCL will supply major raw material requirements of CF plant as part of Investment strategy with ABFIPL and will store a minimum of two months raw material at ABFIPL's factory.

15. From the above it is clear the Joint Venture Agreement also provides for supply of raw material, though the modalities for such supply would be as agreed under a separate agreement to be executed. Thus, the Supply Agreement dated 19.12.2014 in the view of this Court, is *prima facie* interlinked with the Joint Venture Agreement and cannot be considered as an independent agreement. Hence, the absence of a separate arbitration clause in the Supply Agreement does not imply that the disputes arising thereunder are not arbitrable, as the Arbitration Clause in the



joint venture agreement would have to be read into the supply agreement. This view finds support in the arbitration clause of the Joint Venture Agreement, which reads as under:

17.2.4 Any disputes and differences whatsoever arising under or in connection with this Agreement which could not be settled by Parties through negotiations, after the period of thirty (30) days from the service of the notice of Dispute, shall be finally settled by arbitration in accordance with the rules framed under the provisions of the Arbitration and Conciliation Act, 1966

The above clause makes it amply clear that the parties by including the words '*in connection with this agreement*' had intended to give a comprehensive meaning to the word dispute. Therefore, the contention of the Respondent that disputes arising under the Supply Agreement dated 19.12.2014 in absence of a separate arbitration clause are not arbitrable cannot be accepted.

16. Further, in the letter issued by the Respondent on 26.08.2015 to various banks to facilitate the Applicant to obtain financial assistance, the Respondent had stated that it entered into an '**arrangement**' with the Applicant for supply of CF and that it would be entering into a lease and operations agreement with the Applicant on the plant facility being ready. The above said letter dated 26.08.2015 shows that the Respondent had envisioned the



execution of these documents to accomplish the transactions under the Joint Venture. In fact, this letter restates the intention of the parties to enter into future agreements relating to the *modus operandi* of production as stated in Clause 'G' of the MOU dated 07.07.2012 and Clause 22 of the Joint Venture agreement. A perusal of the Lease Deed and Operations Agreement both dated 27.06.2018 would also show that the obligations and duties of the parties in the manufacture of CF are unchanged from that of the Joint Venture Agreement.

17. In the very same letter dated 26.08.2015, the Respondent had also stated that it would apply for manufacturing permission to the Ministry of Agriculture. This statement relates back to the duty cast on the Respondent under Clause 4.1.3 of the Joint Venture agreement dated 19.04.2013. Therefore, the Respondent's action of applying for permission on 04.06.2018 once again relates back to the Joint Venture Agreement dated 19.04.2013.

18. The contention of the Respondent that multiple agreements each containing separate arbitration clauses were executed with an intention to keep them distinct and independent from each



other cannot be accepted as the subsequent agreements executed by the parties i.e., the Supply Agreement dated 19.12.2014, the Lease deed and Operations agreement both dated 27.06.2018 seek to accomplish the manufacture of CF in the manner and breadth of the Joint Venture agreement. The actions, conduct and the correspondences exchanged by the parties, lean towards the Joint Venture agreement thereby intrinsically correlating the subsequent agreements to the Joint Venture Agreement, thereby making it mother agreement.. The reliance placed by the counsel for the Respondent on *Duro Felgura (supra)* to contend that individual references have to be made is not applicable to facts on hand, since in the facts of the said case, there were five different packages and corporate guarantee, all of which were neither dependent on the terms and conditions of the original package nor on the memorandum of understanding executed between the parties.

19. The contention of the Respondent that the dispute resolution mechanism under clause 17.2.2 of the Joint Venture agreement dated 19.04.2014 was not followed and the Applicant had approached this court prematurely cannot be accepted as the



Applicant had sent the notices dated 01.02.2020 and 15.10.2020 to the address of the Respondent as per Clause 19.11 of the Joint Venture Agreement, Clause 17 of the Lease Deed and Clause 21 of the Operations Deed. But the Respondent had not replied to the same. However, without any prejudice it is open to the Respondent to raise all relevant disputes and pleas before the Arbitral Tribunal.

20. Therefore, this court is of the view that, the agreement between the parties is *prima facie* a composite commercial transaction, having a valid arbitration agreement in terms of Clause 17 of the Joint Venture Agreement dated 19.04.2013, Clause 15 of the Operations Agreement and Clause 10 of the Lease deed both dated 27.06.2018 and the disputes arising under them have to be resolved by constitution of a single Arbitral Tribunal. This view finds support from the decision of the Supreme Court in *Ameet Lalchand Shah and Ors. Vs. Rishabh Enterprises and Ors*⁴, as under

21. In a case like the present one, **though there are different agreements involving several parties, as discussed above, it is a**

⁴ (2018)15 SCC 678



single commercial project namely operating a 2 MWp Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, Uttar Pradesh. Commissioning of the Solar Plant, which is the commercial understanding between the parties and it has been effected through several agreements. The agreement-Equipment Lease Agreement (14.03.2012) for commissioning of the Solar Plant is the principal/main agreement. The two agreements of Rishabh with Juwi India:(i) Equipment and Material Supply Contract (01.02.2012); and (ii) Engineering, Installation and Commissioning Contract (01.02.2012) and the Rishabh's Sale and Purchase Agreement with Astonfield (05.03.2012) are ancillary agreements which led to the main purpose of commissioning the Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, Uttar Pradesh by Dante Energy (Lessee). **Even though, the Sale and Purchase Agreement (05.03.2012) between Rishabh and Astonfield does not contain arbitration clause, it is integrally connected with the commissioning of the Solar Plant at Dongri, Raksa, District Jhansi, U.P. by Dante Energy. Juwi India, even though, not a party to the suit and even though, Astonfield and Appellant No. 1-Ameet Lalchand Shah are not signatories to the main agreement viz. Equipment Lease Agreement (14.03.2012), it is a commercial transaction integrally connected with commissioning of Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, U.P. Be it noted, as per clause(v) of Article 4, parties have agreed that the entire risk, cost of the delivery and installation shall be at the cost of the Rishabh (Lessor). Here again, we may recapitulate that engineering and installation is to be done by Juwi India. What is evident from the facts and intention of the parties is to facilitate procurement of equipments, sale and purchase of equipments, installation and leasing out the equipments to Dante Energy. The dispute between the parties to various agreements could be resolved only by referring all the four agreements and the parties thereon to arbitration.**

22. Parties to the agreements namely Rishabh and Juwi India:(i) Equipment and Material Supply Agreement; and (ii) Engineering, Installation and Commissioning Contract and the parties to Sale and Purchase Agreement between Rishabh and Astonfield are one and the same as that of the parties in the main agreement namely Equipment Lease Agreement (14.03.2012). **All the four agreements are interconnected. This is a case where several**



parties are involved in a single commercial project (Solar Plant at Dongri) executed through several agreements/contracts. In such a case, all the parties can be covered by the arbitration Clause in the main agreement i.e. Equipment Lease Agreement (14.03.2012).

21. Consequently, the present arbitration application is allowed. I hereby appoint Sri. Justice M. Venkata Ramana, Retired High Court Judge, #A 204, Niharika Signature Apartments, Opp. NCC Urban, Gachibowli, Hyderabad – 500032, as sole arbitrator to resolve the disputes between the Applicant and Respondent. The learned arbitrator shall make necessary disclosure in terms of the provisions of the Act and shall be entitled to charge fees as per Schedule IV of the Arbitration and Conciliation Act, 1996.

22. Pending miscellaneous petitions if any shall stand closed.

No Costs.

Sd/- M. VIJAYA BHASKAR
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. Sri Justice M. Venkata Ramana, Retired High Court Judge # A 204, Niharika Signature Apartments, Opp. NCC Urban, Gachibowli, Hyderabad – 500032. (By Special Messenger) (Along with a copy of affidavit and material papers)
2. One CC to SRI. A. VENKATESH, Advocate [OPUC]
3. One CC to SRI. VIKRAM POOSERLA, Advocate [OPUC]
4. Two CD Copies

KUL

PR

✓



2023:TSHC:4226

HIGH COURT

DATED:27/01/2023



ORDER

ARBITRATION APPLICATION
No.6 of 2021

ALLOWING THE
ARBITRATION APPLICATION.

⑥
PM
23/2/23