

ITEM NO.402

COURT NO.9

SECTION XVIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION FOR ARBITRATION (CIVIL) NO(S). 9/2014

TATA GLOBAL BEVERAGES LTD.

PETITIONER(S)

VERSUS

ASIANA COLOMBO PVT. LTD.
(FOR FINAL DISPOSAL)

RESPONDENT(S)

Date : 02/02/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

For Petitioner(s)

Mr. Neeraj Sharma, Adv.
Ms. Anjali Agarwal, Adv.
for M/s Dua Associates

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The arbitration petition is disposed of in terms of
the signed order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

ARBITRATION CASE (CIVIL) NO.9/2014

TATA GLOBAL BEVERAGES LTD. . . .PETITIONER

VERSUS

ASIANA COLOMBO PVT. LTD. . . .RESPONDENT

ORDER

1. This application/petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 (for short "the Arbitration Act") has been filed by the petitioner in the following circumstances.

2. According to the petitioner, under a Supply Agreement entered into with the respondent in July, 2012 the petitioner was required to supply certain blends of packaged tea to the respondent as per the Purchase orders to be raised from time to

time. Under the terms of the agreement the respondent was required to use the said packaged tea only for on-board consumption in the various ships run and operated by it in the normal course of its business. According to the petitioner, under the agreement (clause 2) it was agreed that the products would not be sold to any other person and the same would not enter the retail markets either in Sri Lanka or in any other place.

3. The petitioner alleges that some of the products supplied by it under the Purchase orders raised by the respondent found its way to the retail market in New South Wales, Australia. This was in breach of the agreement and the same had caused loss to the petitioner on account of the refusal of one of its Australian customer

to take supply of the products as they had already received the products from the respondent at a lower price. The petitioner sought clarifications from the respondent as to how the products supplied only for on-board consumption could have reached the Australian market and that too a customer of the petitioner. Though according to the petitioner the respondent had assured that the matter would be enquired into, the respondent did not cooperate compelling the petitioner to terminate the agreement. The petitioner served a notice claiming compensation of Rs.26,14,13,802/- after adjusting the advance money paid in terms of the Purchase order raised in January, 2013 whereas the respondent in response also claimed compensation of US\$ 10 million for the alleged failure of the petitioner to

supply the products in terms of the Agreement. A dispute having arisen between the parties, the petitioner invoked the arbitration clause in the Agreement and appointed Mr. Justice Shivraj V. Pail, a former judge of this Court as its nominee. The respondent failed to respond to the notice leading to the present petition/application under Section 11(6) of Arbitration Act.

4. Though notice has been served on the respondent, it has chosen not to appear before this Court. From the stand taken by the petitioner in its pleadings before this Court, it is crystal clear that a dispute has been arisen between the parties. The arbitration clause under the Agreement is extracted herein below.

"12. ARBITRATION AND GOVERNING LAWS

12.1 All matters, questions, disputes, differences or claims arising between the Parties as to the effect, interpretation or application of the Agreement or as to their rights, duties or liabilities there under, or as to any act, matter or thing arising out of consequent to, or in connection with this Agreement, hereinafter referred to as the Dispute, shall be resolved amicably through negotiations. Such negotiations shall commence within a period of 30 (thirty) days of the issue of notice ("Notice") by either party calling for the same.

12.2 In the event that such negotiations fail to resolve the Dispute, within a period of 30 (thirty) days from the date of receipt of the Notice by the other Party, either Party may invoke this arbitration clause under notice to the other. The Dispute shall then be referred to and finally resolved by arbitration in accordance with the Indian Arbitration and Conciliation

Act, 1996.

12.3 The Arbitration shall be conducted by a panel of 3 (three) arbitrators, one each appointed by the Parties and the third arbitrator appointed by the other two arbitrators. The place of arbitration shall be Bangalore, Karnataka, India. The proceedings of Arbitration shall be conducted in English language. The Arbitrator's award shall be substantiated in writing. The Parties hereto shall submit to the Arbitrator's award and the award shall be enforceable in any competent court of law. The Parties shall bear their own costs.

12.4 This Agreement shall be governed by Indian law in every particular including formation and interpretation and the Courts of Bangalore, Karnataka, India shall have exclusive jurisdiction over the same."

5. The above clauses of the agreement contemplate resolution of any dispute arising between the parties under the agreement, initially by negotiation and thereafter by a process of arbitration. As negotiations have failed, the petitioner is entitled to have the dispute settled by a process of arbitration.

6. Though in terms of the arbitration clause under the Agreement, both sides have a right to appoint their nominee and the two arbitrators chosen by the two sides are required to appoint a third arbitrator, in the present case, the Court is inclined to take the view that the arbitration by a sole arbitrator would be more effective. Accordingly the Court appoints Shri Justice Mukul Mudgal, a former Chief Justice of the Punjab and

Haryana High Court as the sole arbitrator to go into the disputes and differences between the parties under the Agreement. The court requests the learned Arbitrator to enter into the reference forthwith and finalize the matter expeditiously. The terms of appointment of the sole arbitrator will be settled by the parties in consultation with the learned Arbitrator appointed by the present order.

7. It will be open for the learned Arbitrator to hold the arbitration proceedings at such venues within India as may be agreed upon by the parties.

8. Let this order be communicated to the learned Arbitrator so that the arbitration proceedings can commence and conclude as expeditiously as possible.

9. The Arbitration Petition is
disposed of accordingly.

.....,J.
(RANJAN GOGOI)

NEW DELHI
FEBRUARY 02, 2015