

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

ARBITRATION PETITION NO. 9 OF 2006

Meguin GmbH & Co. ... PETITIONER (S)

VERSUS

Nandan Petrochem Ltd. ... RESPONDENT (S)

O R D E R

A counter affidavit has been filed on behalf of the respondent but nobody appears on its behalf. It is not in dispute that there exist an arbitration clause in the contract entered into by and between the parties herein. It is also not in dispute that the respondent had moved the Bombay High Court for appointment of an arbitrator. However, the petitioner has filed an application under Section 11 of the Arbitration and Conciliation Act, 1996, (for short 'the Act') as the Bombay High Court opined and in my opinion rightly, that the said Court has no jurisdiction and as the respondent did not move this Court in relation thereto.

In its counter affidavit, the respondent inter alia has alleged fraud.

In my considered view, the question as to whether the entire contract is vitiated by reason of alleged commission of any fraud on the part of either of the parties thereto, the matter can be gone into by the Arbitrator. Even the question as to the jurisdiction of the Arbitrator can be gone into by the Arbitral Tribunal itself. In this view of the matter, I do not see any reason why an Arbitrator shall not be appointed in terms of the arbitration agreement of the parties by this Court in exercise of its jurisdiction under Section 11(6) of the Act.

The respondent is a company having its registered office at Bombay.

The petitioner herein is a German company. The contract provides and as agreed to by Mr. A.S. Bhasme, learned counsel for the petitioner, the arbitration proceedings are to be held at Bombay. In that view of the matter, Justice S.N. Variava (a former Judge of this Court) is appointed as an Arbitrator for resolution of the disputes and differences between the parties.

The learned Arbitrator is requested to complete the arbitration proceedings within a period of four months. Fees and other expenses of the learned Arbitrator requisite for conducting the arbitration proceedings may be fixed by him.

This application is allowed on the aforementioned terms.

.....J

(S.B. SINHA)

3

NEW DELHI,
SEPTEMBER 5, 2006.

CHAMBER MATTER

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

ARBITRATION PETITION NO. 9 OF 2006

MEGUIN GMBH & CO.

...

PETITIONER (S)

VERSUS

NANDAN PETROCHEM LTD.

...

RESPONDENT (S)

4

(With office report)

Date : 05/09/2006:

This Petition was taken up for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

For the Petitioner(s)

Mr. Ajit S. Bhasme, Adv.

Mr. Varun Thakur, Adv.

For the Respondent(s)

Mr. Vijay Kumar, Adv. (not present)

UPON hearing counsel the Court made the following

O R D E R

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

(A.S. BISHT)

(PUSHAP LATA BHARDWAJ

COURT MASTER

COURT MASTER

(Signed order is placed on the file)