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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 28.1.2008

Date of Order: 21.2.2008

+ Arb. Petition No. 92/2003

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21.2.2008

The Travel Agents Association of India Ltd. ... Petitioner

Through: Mr. S.C.Rana, Advocate

Versus

M/s Kwick Travel (P) Ltd. & Ors. ... Respondents

Through: Mr. H.D.Talwani, Advocate for R-1

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether judgment should be reported in Digest ?

ORDER:

This application has been filed by the petitioner/applicant under Section 11(6) of the Arbitration and Conciliation Act, 1996 requesting this Court to appoint Mr. Kavi Kohli, Chairman, NR-TAAI as Sole Arbitrator and to refer to him dispute as enumerated by the applicant in para 17 of Annexure 1. The dispute as stated was that the applicant claimed a sum of Rs.11,76,018/- from the respondent no. 1 on account of applicant having paid this amount to Indian Airlines under the Guarantee Agreement for the respondent no.1's default. Applicant also claimed 24% p.a. Interest w.e.f. 24th April, 1998.

2. A perusal of statement of claim filed by the applicant would show that applicant asserted that respondent no. 1 was member of Applicant Association and being member, it had signed an Agreement dated 30th April, 1992 to secure and safeguard the interests of the applicant company and deposited a sum of Rs.1 lac as security with the applicant to become an active member. The applicant was informed by AIP-9 that respondent no. 1 had defaulted under the Guarantee Agreement and the applicant was under a contractual agreement to pay

this defaulted amount. So, in order to discharge this contractual obligation, applicant made payment of Rs.8,19,056/- and Rs.5,66,838/- through cheques on 27.4.1998 to Indian Airlines (AIP-9) on behalf of Respondent No. 1. After making this payment applicant made repeated requests to respondent no.1 to repay the amount of Rs.1,385,894/- less refund received from IATA of Rs.2,09,876/- i.e. Rs.11,76,018/- however, no fruitful results got yielded by sending demand notices and not a paisa was paid. Respondent just kept on making false promises, hence this application invoking arbitration clause.

3. In reply to the application, the respondent denied the existence of Arbitration Agreement between the applicant and respondent no. 1 and stated that what has been filed by the applicant was photocopy of a blank agreement on which somebody had filed names of the signatories and written sd/- against the names. It is stated that this was not an Arbitration Agreement bearing signatures of the applicant. The second defence taken was that the claim raised by the applicant was barred by limitation and could not be raised. Even according to applicant the payment was made on 27th April, 1998 while the application under Section 11(6) was filed on 3rd April, 2003.

4. This Court vide order dated 16th February, 2004 directed the petitioner/applicant to file the original Arbitration Agreement before the Court however, the original Arbitration Agreement was not filed and the stand was taken that the original Arbitration Agreement was misplaced. This Court therefore, vide order dated 27th January, 2005 directed the parties to lead evidence by filing affidavits on the issue of agreement. Applicant examined one witness viz. Harkripal Singh, PW-1. He testified that he was working as Chief Representative and Principal Officer in the office of Applicant Company. All the members of the Association enter into an agreement with the Association, Proforma of which was Annexure II. All members were supposed to execute this agreement to protect the interests of the Applicant Association. In case of respondents, the

agreement was entered into between applicant and respondent no. 1, however, the applicant was unable to lay hands on the original Agreement which got misplaced and was irretrievable. He deposed that he did not remember the names of the witnesses, who had witnessed the agreement. The agreement was not executed in his presence. He was asked to produce the membership record of the Association. In response to this, he brought directory of members for the year 1999 showing that respondent no. 1 company was a member and Mr. Ajay Goyal and Mr. Pradeep Goyal were representing the respondent no. 1. He could not produce any other document relating to membership of respondent company. He admitted that AIP-9 pertains to International Airlines, whereas the Agreement produced on record by the applicant was in respect of Indian Airlines. He stated that no fresh agreement was required to be signed by members for the purpose of AIP-9.

5. Mr. Ajay Goyal filed affidavit on behalf of respondent no. 1 and stated that M/s Kwick Travels Private Limited had become member of the Applicant Association prior to taking over of the management of this company by the present management.

6 The fact that the respondent no. 1 was a member of the Applicant Association stands admitted by the respondent. It goes without saying that in order to obtain membership, respondent had to sign an agreement indemnifying the Applicant Association and the agreement Annexure II was signed between the parties though original has been misplaced by applicant. The correspondence exchanged between the parties also shows that the respondent no.1 was a member.

7. It has been admitted that respondent no.1 company had deposited security deposit of Rs.1 lac being member of applicant company. Although, the respondents have stated that Mr. Ajay Goyal, who took over the management, had not signed the agreement but it must be kept in mind that the Agreement was not between Mr. Ajay Goyal and the applicant. The Agreement was between respondent no. 1

company and Applicant Association and this Agreement could have been signed by any authorized person on behalf of the company. Company is a separate legal entity. It is a case of respondent itself that respondent no. 1 company was member of Applicant Association before respondent no. 2 took over the management. The respondent no. 1 company was therefore, bound by the Membership Agreement between the applicant and the respondent no.1 company. Respondent No. 1 company was in the traveling business and the applicant/petitioner was an association of the travel agents. This Association admittedly was formed for the benefit of the travel agents in order to secure concessions from the Indian Airlines and other Airlines. There was an Agreement between Indian Airlines and the Applicant Association to protect the interests of Indian Airlines on behalf of the members since Indian Airlines was giving concessions in ticketing to the members. Since the respondent no.1 had been taking benefits of these concessions and had also deposited a security deposit of Rs.1 lac as required under the membership agreement, it is evident that respondent no. 1 did enter into an Membership Agreement with the applicant/petitioner. It has not been disputed by the respondent that the Proforma Agreement filed by the applicant was the one which is signed by a member. It has also not been disputed by the respondents that respondent no.1 company was an active member therefore, it stands proved that because of the membership of the respondent company with the Applicant Association, there was an agreement between respondent company and applicant and this agreement contained arbitration clause. I, therefore, consider that applicant has successfully proved that there was a written arbitration clause between the parties.

8. However, the second objection of the respondent is that no claim of the applicant can be referred to Arbitration since claim itself is time barred. It is settled law that the Court can appoint sole Arbitrator only where there is a live dispute existing between the parties. The law of limitation applies in respect of the claims before the Arbitrator as it is

applicable in respect of the claims before the Court. It is the case of the applicant itself that the liability against respondent no. 1 arose on 27th April, 1998 when the applicant paid this amount on behalf of the respondent o. 1 to Indian Airlines. It is also the case of the applicant that applicant had been writing to respondent no. 1 soon after 27th April, 1998 to pay back this amount. The limitation period for recovery of the amount is three years. The application for arbitration has been filed by the applicant in April, 2003 i.e. after a period of five years. The claim raised by the applicant therefore was not a live claim but a dead claim and was barred by limitation. The applicant has not placed on record any acknowledgment of the respondent admitting this claim on any date after 27th April, 1998. The applicant has only placed on record its own letter demanding amount from the respondent. In absence of any acknowledgment from the respondent, the period of limitation would come to an end on 27th April, 2001. The Court cannot refer time barred claim to the Arbitrator.

I, therefore, consider that the application made by the applicant for appointment of Arbitrator is liable to be dismissed and is hereby dismissed.

February 21, 2008.
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SHIV NARAYAN DHINGRA, J.