

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 10.9.2009
Date of Order: 17th September, 2009

Arb. P. No. 42/2009

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17.09.2009

M/s Gujral Security Services

... Petitioner

Through: Mr. Deepender Hooda, Advocate

Versus

D.S.C.Limited

... Respondent

Through: Mr. Adarsh Priyadarshni, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

By this application/petition under Section 8 & 11 of the Arbitration & Conciliation Act, 1996 the petitioner has sought appointment of Sole Independent Arbitrator for adjudication of disputes between the parties.

2. Brief facts are that the petitioner was rendering security services to the respondent and was providing security guards. One of the conditions of the agreement for providing security guards was that in case of any theft taking place

in the respondent company, the value of the stolen goods shall be recovered from the petitioner. A theft took place in respondent's premises and respondent in terms of the contract recovered an amount of Rs.4 lac which was equal to the value of the stolen articles. The petitioner however, disputed its liability for the theft and submitted that the investigation of petitioner revealed that the Paver operators of the Rajokari Plant confessed for the act and raising of the debit note for Rs.4 lac was illegal and excessively penal in nature and protested against this debit note. Later on, the contract of services of the petitioner was terminated w.e.f. 31.8.2008. The petitioner sent a legal notice to the respondent under Sections 8 & 20 of the Arbitration Act and stated that arbitration clause provided under the contract was not a fair arbitration clause since as per this clause only Director of the company would be appointed as Arbitrator. The petitioner called upon respondent to concur in the appointment of an independent Arbitrator viz. some retired Government Official or retired Sr. Defence Official within 15 days.

The arbitration clause as agreed between the parties reads as under:

13. That the dispute, if any, arising between the parties shall be referred to arbitration and the decision of the Arbitrator shall be final and binding on both the parties and arbitrator shall be Director of the Company and his decision shall be final. For this either party shall not go to any court.

3. I consider that once the parties had agreed upon a particular arbitration clause the parties are bound by that arbitration clause. The petitioner in this case did not raise dispute about the Director of the respondent being named as the Arbitrator. If the petitioner was not agreeable to this arbitration clause, he could have refused to sign the contract in the very beginning.

4. In Indian Oil Corporation & Ors. v. Raja Transport (P) Ltd. (2009) 11 Scale 672, the Supreme Court observed that it was quite common for governments, statutory corporations and public sector undertakings while entering into contracts, to provide for settlement of disputes by arbitration, and further provide that the Arbitrator would be one of its senior officers. If the party, with open eyes and full knowledge and comprehension of the said provision enters into a contract with a government/statutory corporation/PSU containing an arbitration agreement providing that one of its Secretaries/Directors shall be the Arbitrator, the party cannot subsequently turn around and contend that the party was agreeable for settlement of disputes by arbitration, but not by the named Arbitrator, who is an employee of the company. Not the party could say that the party would be bound by only one part of the agreement and not by the other part, unless such other party was impossible of performance or was void being contrary to the provisions of the Act. A party to the contract cannot claim the benefit of arbitration clause under the arbitration agreement but ignore the

appointment procedure relating to the named Arbitrator, contained in the arbitration clause.

5. In view of this decision of the Supreme Court, I consider that the petitioner's prayer for appointment of Sole independent Arbitrator different from the one given in the arbitration clause cannot be accepted. The petitioner therefore has to raise dispute before the Arbitrator named in the arbitration clause. The petition is disposed of with the liberty to the petitioner of raising dispute before the named Arbitrator.

With these directions, the petition stands disposed of.

September 17, 2009
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SHIV NARAYAN DHINGRA, J.