

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 24th February, 2011
Date of decision: 10th March, 2011

+ FAO (OS) No.387/2010

A. P. NIRMAN LTD. Appellant
Through: Mr. Siddharth Yadav, Advocate.

-versus-

SINDHU TRADE LINKS LTD & ANR. Respondents
Through: None.

FAO (OS) No.388/2010

A. P. NIRMAN LTD. Appellant
Through: Mr. Siddharth Yadav, Advocate.

-versus-

SINDHU TRADE LINKS LTD & ANR. Respondents
Through: None.

FAO (OS) No.389/2010

A. P. NIRMAN LTD. Appellant
Through: Mr. Siddharth Yadav, Advocate.

-versus-

SINDHU TRADE LINKS LTD & ANR. Respondents
Through: None.

% CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. By the impugned judgment dated 20th January, 2010 the Single Judge has collectively dismissed OMP No.242/2002, OMP No.170/2005 and OMP No.169/2005 filed by the Appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').

2. By the aforementioned petitions the Appellant herein had challenged the Award dated 30th October, 2000 passed by the sole Arbitrator by virtue of objections under Section 34 of the Act. The present three Appeals seek to challenge the impugned judgment dated 20th January, 2010 of the Single Judge whereby the petitions of the Appellant have been dismissed with costs of ₹25,000/- each.

3. As the factual matrix of the present Appeals are similar therefore the same are being dealt with by way of this common order.

4. The facts as are necessary for the adjudication of the present Appeals are that:

- (a) Since the Appellant was interested in purchasing Tippers, it approached the Respondent No.1 for financing of the said vehicles. The Appellant and the

Respondent No.1 entered into a hire purchase agreement dated 15th April, 1998 whereunder the Appellant having taken a loan for purchase of the said Tippers were required to repay the same to the Respondent No.1 in 22 installments.

- (b) The dispute arose between the parties on account of non-payment of the installments by the Appellant to the Respondent No.1. Thereafter Respondent No.1 invoked Clause 7 of the agreement between the parties which contained an agreement to arbitrate. Resultantly, a sole Arbitrator, the Respondent No.2 was appointed after following the procedure to be adopted in appointing the Arbitrator.
- (c) It is an admitted fact that notice of the claim issued to the Appellant on 2nd August, 2000 with a direction to appear before the Arbitrator on 16th August, 2000 was received by the Appellant. Since the Appellant did not appear on 16th August, 2000, fresh notice was issued to the Appellant for appearance on 7th September, 2000 which was duly received by the Appellant on 30th August, 2000. None appeared on behalf of the Appellant before the Arbitrator on 7th September, 2000. However, the Arbitrator received

an application under Section 13(2) of the Act objecting to the jurisdiction of the sole Arbitrator. However, neither the Appellant attended any of the further arbitration hearings before the Arbitrator nor did they file a statement of defence. Furthermore, none appeared on behalf of the Appellant to argue or press the application under Section 13(2) of the Act as aforesaid filed by the Appellant.

- (d) Consequently, vide order dated 30th October, 2000 the Respondent No.2 was pleased to pass the ex-parte Award against the Appellant. This Award dated 30th October, 2000 was assailed by the Appellant by raising objections under Section 34 of the Act before the Single Judge. The impugned judgment dated 20th January, 2010 passed by the Single Judge is being challenged before us by way of present Appeals under Section 37 of the Act.

5. Since no one entered appearance on behalf of the Respondent No.1 and 2 despite being duly served, the Appeals before us are being heard after setting the Respondents ex-parte.

6. On behalf of the Appellant, it was urged by Mr. Siddharth Yadav, Advocate that the Appellant did not have sufficient time to contest the arbitration proceedings, as the Appellant-Company is based in Korba, Chhattisgarh, since the interval between the dates fixed by the Arbitrator for hearing during arbitration proceedings was comparatively short. Next, predicated on the decision in *Aoki India Limited and Anr.-vs-Mira International and Anr.*, 2006(3) Arb. LR 503 (Madras), it was contended that the application under Section 13 was not decided prior to passing of the Award on merits. Thirdly, it was urged that the Arbitrator had no jurisdiction to enter into the dispute, inasmuch as no prior notice of invocation had been served by the Respondent No.1 on the Appellant and, consequently, no consent was given by the Appellant for the appointment of the sole Arbitrator. Lastly, it was argued that the sole Arbitrator did not possess the territorial jurisdiction to entertain the claim, since no cause of action arose in Delhi.

7. In the instant case, it is observed that the Single Judge came to the conclusion that if the Appellant was vigilant and in fact wanted to pursue its right there was nothing which prevented it from appearing before the Arbitrator. In this behalf, it is seen that the submission made on behalf of the Appellant that the interval between the dates was comparatively

short is emphatically negated by the fact that the date of 7th September, 2000 was fixed by the Arbitrator after adjourning the matter from the previous date of 16th August, 2000 and that the Appellant did not appear on either of these dates despite sufficient time having been granted for appearance before the Arbitrator on 7th September, 2000. If the Appellant was serious about his representation before the Arbitrator it could have appeared on 7th September, 2000 or on any of the dates fixed thereafter for the proceedings in the arbitration. In this behalf, it is also seen that the Appellant apart from filing the application under Section 13(2), as aforesaid, did not even file a statement of defence before the Arbitrator. In this view of the matter, the contention raised on behalf of the Appellant that they did not have sufficient time to address the arbitration proceedings is untenable and without merit.

8. On the submission made on behalf of the Appellant that the application under Section 13(2) was not decided by the Arbitrator before proceeding to pass the Award on merits, it is observed that the application in this behalf was received by the Arbitrator along with a letter on behalf of the Appellant on 13th August, 2000. The copy of the said application was supplied to the Respondent No.1 who was directed to file a reply to the same. When the arbitration was conducted on 11th September,

2000 the Appellant did not appear before the Arbitrator and the reply to the application filed on behalf of the Appellant was filed by the Respondent No.1. The Arbitrator on that date proceeded ex-parte against the Appellant and directed that intimation be sent to the Appellant for 25th September, 2000, fixing the said date for the arguments and evidence. It is further seen that thereafter on 25th September, 2000 the Appellant did not appear once again and arguments were thereupon heard on the application of the Appellant, which was dismissed. Thus, it is seen that the contention of the Appellant that the sole Arbitrator did not decide the application under Section 13(2) of the Act filed by the Appellant before proceeding to pass the Award on merits does not hold any water.

9. Even otherwise, the judgment of the Madras High Court in *Aoki India Limited (supra)* does not apply to the present case for the following reasons. Firstly, in the present case the application under Section 13 was simply sent by post and none appeared on behalf of the Appellant despite repeated opportunity to argue the application. Secondly, in *Aoki India Limited* the application under Section 13 was straightaway dealt with in the award and not earlier, whereas in the present case the application was decided on 25th September, 2000 after a reply had been filed to it on behalf of the Respondent No.1.

Lastly, in *Aoki India Limited* the arbitrator who had been appointed was a director in the company that appointed him as an arbitrator and his brother was the CEO of that company at the relevant time. Furthermore, the arbitrator in that case had also signed the agreement entered into between the parties and in such circumstances it was held that a duty was cast upon him to disclose in writing any circumstances likely to raise justifiable doubts as to his independence and impartiality. By not doing so, the arbitrator had put himself in a position in which it was very difficult for him to come out unscathed.

10. As regards the contention raised on behalf of the Appellant with regard to invocation of the arbitration without consent of the Appellant is concerned, the same is without any substance, for the reason that the learned Single Judge has noted that the objection is factually incorrect, because a legal notice dated 3rd July, 2000 invoking arbitration was duly issued by the Respondent No.1 to the Appellant as has been noted by the sole Arbitrator in subject Award. As regards the issue of consent of the Appellant is concerned, it has been held that the Arbitrator had been appointed as per the procedure prescribed in the arbitration agreement by the Respondent No.1 which is in consonance with the agreement entered into between the

parties. Resultantly, the said contention raised on behalf of the Appellant is devoid of merit.

11. Lastly, we come to the objection relating territorial jurisdiction of this court. In this behalf, it would be suffice to state that the arbitration agreement was entered into between the parties at Delhi and further in terms thereof the objections to the Award have also been filed by the Appellant before this Court.

12. In view of the foregoing, we find no infirmity in the impugned order that warrants interference by us under Section 37 of the Act. Consequently, the Appeals are dismissed, however, with no order as to costs.

SIDDHARTH MRIDUL, J.

VIKRAMAJIT SEN, J.

March 10, 2011

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