

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

*% Judgment Reserved on: March 01, 2013*  
*Judgment Pronounced on: March 04, 2013*

**+ Arb.P.No.291/2012**

M/S SUNSOVI INFOTECH PVT LTD ..... Petitioner  
Through Mr.Sandeep Sharma, Adv. with  
Mr.Vikas Sharma, Adv.

versus

LALA RAM SARUP INSTITUTE OF TUBERCULOSIS &  
RESPIRATORY DISEASES ..... Respondent  
Through Mr.Ravi Sikri, Adv. with  
Ms.Neha Bhatnagar, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The petitioner has filed the abovementioned petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 seeking prayer for appointment of an independent sole Arbitrator for adjudication of disputes/claims between the parties. The details of the claims are mentioned in para 7(xiv) of the petition.
2. It is stated in the petition that the petitioner is a company engaged in computer business, i.e. Hardware and Software etc. The respondent invited the tender under the name and style “Development and Implementation of Web Enabled Financial Accounting Software Package” for its Accounts Section. In response to the said invitation to tender, the petitioner submitted the quotation dated 23<sup>rd</sup> March, 2008 and thereafter, the work was awarded to the petitioner vide work order dated 3<sup>rd</sup> June, 2008. The said work order provides for settlement of disputes to arbitration.

3. It is further stated that after completing the work in all respects, the petitioner submitted the same with the In-charge of computer section of the respondent vide letter dated 18<sup>th</sup> October, 2008 who on being satisfied with the work executed by the petitioner-Company issued a completion certificate dated 15<sup>th</sup> December, 2008. Despite that, the respondent released only ₹2,00,844/-, i.e. 65% amount to the petitioner in the month of June, 2009 but did not release the remaining payment to the petitioner despite various letters issued to the respondent demanding the balance amount. Instead, the respondent issued a letter dated 3<sup>rd</sup> March, 2012 thereby blacklisting the petitioner-company for a period of two years on the allegation that the work was not completed in terms of the work order.

4. The petitioner-company refuted the same vide its detailed reply letter dated 19<sup>th</sup> March, 2012 requesting the respondent to withdraw the said letter. Finding no alternative, the petitioner invoked the arbitration clause as mentioned in the work order dated 3<sup>rd</sup> June, 2008 vide its letter dated 15<sup>th</sup> June, 2012 requesting the respondent to appoint the arbitrator to adjudicate the claims, followed by another letter dated 6<sup>th</sup> July, 2012 whereby the petitioner requested the respondent to refer to more claims for adjudication to the Arbitrator. The respondent failed to appoint the Arbitrator either within the notice period or till date. Hence, this petition has been filed.

5. The prayer made in the petition is strongly opposed by the respondent, *inter-alia*, on the ground that the petition is not maintainable as there exists no arbitration clause in the agreement and/or work order dated 3<sup>rd</sup> June, 2008 entered into between the parties and in the absence of any arbitration clause, the present petition is not maintainable under Section 11(6) of the Act. The respondent, however, has not denied that the heading of the said

clause 10 of the work order dated 3<sup>rd</sup> June, 2008 contain the expression “Arbitration”, but the same is not an arbitration clause in strict sense, as from the plain reading of the aforesaid clause, it can easily be seen that the said clause nowhere suggests that in case of any dispute between the parties, the same shall be referred to an arbitrator for arbitration, rather it suggests that in case of any dispute arising out of the work order or breach of any condition, the same shall be resolved by the Incharge of the Accounts Section/Computer Section of the respondent and the representative of the company and in case, the dispute is not resolved by them, then the same would be resolved by the Director of the respondent and the Head of the Company. Thus, the said clause does not indicate that in case of any dispute, the matter shall be referred to an arbitrator for arbitration.

6. It appears from the submissions of the learned counsels for the parties that the issue in the matter is very short and simple and requires interpretation of clause 10 of the work order dated 3<sup>rd</sup> June, 2008. Clause 10 of the work order reads as under:-

“10. Arbitration:

In the event of any dispute arising out of the work order and breach of any condition that the matter would be resolved by Incharge of the Accounts Section/Computer Section of the Institute and representative of the company. In case, if it is not resolved, the matter would be resolved by the director of the Institute and the head of M/s. Sunsovi Infotech Pvt. Ltd.”

7. It will be appropriate to refer Section 7 of the Arbitration and Conciliation Act, 1996 which reads as under:-

“7. Arbitration agreement

(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or

certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in –

- (a) a document signed by the parties;
- (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
- (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

8. The respondent in support of his submissions has referred the decision reported in AIR 1995 Delhi 111, titled as *M/s Garg Builders and Engineers vs. U.P. Rajkiya Nirman Nigam Ltd. and others*, particularly para-9 wherein the Court arrived to the conclusion that a clause in the agreement is an independent clause. It is not necessary that the party should intend that Arbitrator should determine the dispute in a quasi judicial manner. Mere agreement between two persons to be bound by the decision of a person does not constitute him an Arbitrator. An arbitration clause has to be broad and comprehensive enough to embrace all or any dispute between the parties in respect of the agreement or any provisions therein or anything arising out

of it, and if one of the parties seeks to avoid the contract, the dispute is referable to arbitration, if the avoidance of the contract arises out of the contract itself.

9. No doubt, this judgment is passed by this Court under the Arbitration Act (10 of 1940). However, it appears that after the Arbitration and Conciliation Act, 1996 coming into force, Hon'ble Supreme Court has dealt with the similar situation in many cases. The details of some of the cases are referred as under:-

- (i) ***Visa International Ltd. vs. Continental Resources (USA) Ltd.***, (2009)2 SCC 55, relevant paras read as under:-

“18. That an arbitration agreement is not required to be in any particular form has been reiterated in more than one decision. [see: **Bihar State Mineral Development Corporation Vs. Encon Building** AIR 2003 SC 3688]. What is required is to gather the intention of the parties as to whether they have agreed for resolution of the disputes through arbitration. What is required to be decided in an application under Section 11 of the Act is whether there is any arbitration agreement as defined in the Act? It needs no reiteration that Section 7 of the Act does not prescribe any particular form and it is immaterial whether or not expression ‘arbitration’ or ‘arbitrator’ or ‘arbitrators’ has been used in the agreement.

27. What is required to be gathered is the intention of the parties from the surrounding circumstances including the conduct of the parties and the evidence such as exchange of correspondence between the parties. The respondent in none of its letters addressed to the applicant suggested that the dispute between the parties is required to be settled through conciliation and not by arbitration. In response to the applicant's letter invoking the arbitration clause the respondent merely objected to the names inter-alia contending the suggested

arbitration would not be cost effective and the demand for arbitration itself was a premature one.”

- (ii) *Nandan Biomatrix Limited vs. D-1 Oils Limited*, (2009)4 SCC 495, relevant paras read as under:-

“17. This Court in **Rukmanibai Gupta v. Collector, Jabalpur & Ors.**, AIR 1981 SC 479, has held that what is required to be ascertained, while construing a clause is: whether the parties have agreed that if disputes arise between them in respect of the subject matter of contract such dispute shall be referred to arbitration, then such an arrangement would spell out an arbitration agreement.

18. In **M. Dayanand Reddy v. A.P. Industrial Infrastructure Corporation Limited & others**, (1993) 2 SCR 629, this Court has held that an arbitration clause is not required to be stated in any particular form. If the intention of the parties to refer the dispute to arbitration can be ascertained from the terms of the agreement, it is immaterial whether or not the expression "arbitration" or "arbitrator" or "arbitrators" has been used in the agreement.

21. I do not find any merit in the above contentions raised on behalf of the non-applicant. The question which needs to be asked is: what did the parties intend at the time of execution of the Supply Agreement dated 10.8.04? What did the parties intend when clause 15.1 came to be incorporated in the said Supply Agreement? The answer to the said questions undoubtedly is that any dispute that may arise between the parties shall be resolved by submitting the same to the Institutional Arbitration in India under the provisions of the 1996 Act. It may be mentioned that the name of a specific institution is not indicated in clause 15.1. The 1996 Act does not prescribe any form for an arbitration agreement. The arbitration agreement is not required to be in any particular form. [See: **Bihar State Mineral Development**

**Corporation & Another v. Encon Builders (I) (P) Ltd.**, AIR 2003 SC 3688]. What is required is to gather the intention of the parties as to whether they have agreed for resolution of the disputes through arbitration. In my view, in the present case, the parties unequivocally agreed for resolution of the disputes through Institutional Arbitration and not through an ad hoc arbitration. Therefore, in my view, there exists a valid arbitration agreement between the parties vide clause 15.1 in the Supply Agreement dated 10.8.04. The first issue is accordingly answered in favour of the applicant and against the non-applicant.”

- (iii) *Mallikarjun vs. Gulbarga University*, (2004)1 SCC 372, relevant paras read as under:-

“5. Clause 30 of the agreement, which reads as under:

"The decision of the Superintending Engineer of the Gulbarga Circle for the time being shall be final, conclusive, and binding on all parties to the contract upon all questions relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or material used on the work, or as to any other question, claim, right, matter, or thing whatsoever, in any way arising out of, or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or those conditions, or otherwise concerning the works of the execution, or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof in case of dispute arising between the contractor and. Gulbarga University."

(Emphasis supplied)

16. Once Clause 30 as constituted to be a valid arbitration agreement it would necessarily follow that the decision of the Arbitrator named therein would be rendered only upon allowing the parties to adduce

evidence in support of their respective claims and counter claims as also upon hearing the parties to the dispute. For the purpose of constituting the valid arbitration agreement, it is not necessary that the conditions as regards adduction of evidence by the parties or giving an opportunity of hearing to them must specifically be mentioned therein. Such conditions, it is trite are implicit in the decision making process in the arbitration proceedings. Compliance of the principles of natural justice inheres in an arbitration process. They, irrespective of the fact as to whether recorded specifically in the arbitration agreement or not are required to be followed. Once the principles of natural justice are not complied with, the Award made by the Arbitrator would be rendered invalid. We, therefore, are of the opinion that the arbitration clause does not necessitate spelling out of a duty on the part of the arbitrator to hear both parties before deciding the question before him. The expression decision' subsumes adjudicating of the disputes. Here in the instant case, it will bear repetition to state, that the disputes between the parties arise out of a contract and in relation to matters specified therein and, thus, were required to be decided and such decisions are not only final and binding on the parties, but they are conclusive which clearly spells out the finality of such decisions as also its binding nature.”

10. After having considered the judgments referred above as well as clause 10 of the work order dated 3<sup>rd</sup> June, 2008 in the present case, I am of the view that the contention of the petitioner is correct and there exists an arbitration clause in the work order dated 3<sup>rd</sup> June, 2008 as it appears from clause 10 that there was a clear intention of parties to go for arbitration in case of any dispute otherwise, there was no occasion to mention the clause under expression Arbitration. There is no doubt that they have agreed for resolution of ‘disputes’. In respect of the subject matter of contract. The

arrangement mentioned in the work order dated 3<sup>rd</sup> June, 2008 speaks for itself. Since, the respondent failed to appoint an Arbitrator in view of the said clause within the prescribed period after issuance of notice, the present petition has been filed. In view of settled law, the respondent has now lost its right to appoint an Arbitrator as per its choice. Thus, the prayer made in the petition is allowed. Ms.Meenakshi Sood, Advocate (Mobile No.9999969923) is appointed as the sole Arbitrator to adjudicate the disputes between the parties. Both the parties would be entitled to raise their claims and counter-claims in accordance with law. The fee of the Arbitrator is fixed at ₹50,000/- which shall be paid by both the parties in equal proportion.

11. A copy of this order be communicated to the learned Arbitrator.

**(MANMOHAN SINGH)**  
**JUDGE**

**MARCH 04, 2013/ka**