

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION (ARB) NO. 18 OF 2015.
(M/S. SHUBH ALLOYS ACTING THR. PROP & ANR..VS..FACOR STEELS LTD.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.
DATED : JUNE 23, 2015.

Heard Mr. Masood Shareef, the learned advocate for the applicants and Mr. A.T.Purohit, the learned advocate for the non-applicant.

The applicants have filed this application under Section 11 of the Arbitration and Conciliation Act, 1996 praying that the arbitrator be appointed to decide the dispute between the applicants and the non-applicant.

Mr.Shareef, the learned advocate for the applicants has pointed out the clause from the agreement which provides for referring the dispute to Sole Arbitrator to be appointed by the non-applicant company. The learned advocate for the applicant has submitted that the dispute is covered by the arbitration clause and is live dispute and it cannot be said that the claim made by the applicants is stale claim. It is further submitted that inspite of notice issued by the applicants on 19th August, 2014 the non-applicant has not referred the matter for arbitration and has not given name of the arbitrator and therefore, the applicant is constrained to approach this Court.

Mr. Purohit, the learned advocate for the non-applicant has pointed out the Pursis Stamp No. 4590 of 2015 filed by the non-applicant stating that the non-applicant company is registered with the BIFR (Board for Industrial and Financial Reconstruction) and it is submitted that Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 has been invoked by the non-applicant company. The learned advocate has submitted that in these facts the dispute cannot be referred for arbitration. In support of his submission reliance is placed on the judgment given by this Court in the case of *Tata Capital Ltd. Vs. Maven Ind. Ltd.*, reported in **2012(4) Mh.L.J. 376**. The learned advocate for the non-applicant, in the alternative, has submitted that if at all the matter is to be referred for arbitration, then it may be referred to Shri Vinod Saraf, Managing Director of the non-applicant company.

After considering the submissions made by the learned advocates for the respective parties, I am satisfied that the order passed by the Hon'ble Supreme Court in the case of *San-A Tradubg Company Limited (supra)* governs the present case. Paragraph 26 of the order reads as follows :

“26. Section 22 further prohibits taking up of the proceedings of the nature which would be coercive for recovery of money against a sick undertaking. Proceeding in arbitration is neither a suit under sub-section(1) of Section 22 of SICA nor the proceedings thereunder and, therefore, there is no prohibition under Section 22 of SICA to take up the arbitration proceedings to adjudicate the liability of the parties to the arbitration proceedings. In my view, Section 22 of SICA does not debar the arbitration proceedings under the Arbitration and Conciliation Act,

1996. The objections to the arbitration proceedings raised by the respondent fail for the aforesaid reasons and are rejected. Mr. Manabu Nonoguchi was appointed as an arbitrator by the parties.”

The order passed by this Court in the case of *Tata Capital Ltd.* (supra) does not deal with the point which arises for consideration in the present matter. Moreover, the order passed by the Hon'ble Supreme Court in the case of *San-A Tradubg* (supra) has not been noticed by this Court when the order was passed in the case of *Tata Capital Ltd.* (supra). Hence, the objection taken by the non-applicant for referring the matter for arbitration is rejected.

I am satisfied that the dispute is covered by the arbitration clause and it is not a stale claim. The matter, therefore, needs to be referred for arbitration by the Sole Arbitrator.

Considering the objection raised on behalf of the applicant for appointment of Shri Vinod Saraf, Managing Director of the non-applicant company as Sole Arbitrator, I am of the view that an independent arbitrator is required to be appointed to settle the dispute between the parties.

At this stage, the learned advocates for the respective parties suggest the name of Shri M.L.Somalwar, Retired District Judge to be the Sole Arbitrator.

The matter is accordingly referred for arbitration to Shri M.L. Somalwar, Retired District Judge.

The applicant shall deposit Rs.Three Thousand towards processing charges. In addition, the applicant shall deposit Rs.Twenty Five Thousand with the Registry of this Court towards security of fees of the learned Arbitrator.

The amount of Rs.Twenty Five Thousand will be kept in deposit with the Registry of this Court till the arbitration proceedings are concluded.

The learned Arbitrator shall determine his fees and the fees, as determined, would be paid by the applicants and non-applicant in equal proportion.

The application is allowed in the above terms.

JUDGE

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