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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2014
Pronounced on : 10..02..2015

C O R A M

The Hon'ble Mr. Sanjay Kishan Kaul, CHIEF JUSTICE
and
The Hon'ble Mr. Justice M. Sathyanarayanan

Original Side Appeal No.80 of 2014

1. Castrol India Limited,
having Registered Office at
Technopolis Knowledge Park,
Mahakali Caves Road,
Andheri (East), Mumbai-400 093.
2. M/s.Castrol India Limited,
represented by its Managing Director
Rayala Towers, 5th Floor, 781 -785, Anna Salai, Chennai 600 002.
... Appellants

versus

1. M/s.Apex Tooling Solutions,
A Registered Partnership Firm,
represented by its Managing Partner
Mr.J.Suresh, 129A, II Main Road,
VGP Selva Nagar, Velacherry,
Chennai 600 042.
2. M/s.British Petroleum AMOCO PLC,
Britannic House, 1 Finsbury Circus,
London EC 2M 7 BA, United Kingdom,
represented by its Agent
M/s.British Petroleum India Services Pvt. Ltd.,
represented by its Managing Director,
15th Floor, Dr.Gopal Das Bhavan,
28, Barakhamba Road, New Delhi.
3. M/s.Castrol India Limited,
represented by its Area Director
(India and Thailand) Mr.M.Hari Prakash,
Rayala Towers, 5th Floor,
781-785, Anna Salai, Chennai 600 002.



4. M/s.Castrol India Limited,
represented by its General Manager-Marketing-
Indirect Sales, Mr.Soumyadeep Bhattacharya,
Rayala Towers, 5th Floor, 781-785,
Anna Salai, Chennai-600 002.

5. M/s.Castrol India Limited,
represented by its Regional Distributor Manager,
Mr.Kartha Jaykrishnan, Rayala Towers,
5th Floor, 781 - 785, Anna Salai,
Chennai-600 002.

6. Mr.Soumyadeep Bhattacharya,
General Manager, - Marketing - Indirect Sales,
M/s.Castrol India Ltd., Rayala Towers,
5th Floor, 781 - 785, Anna Salai,
Chennai-600 002.

7. Mr.Kartha Jaykrishnan,
Regional Distributor Manager,
M/s.Castrol India Limited,
Rayala Towers, 5th Floor,
781 - 785, Anna Salai, Chennai-600 002.

8. M/s.Raghavendra Chemicals,
represented by its Proprietor Mr.R.Sathyaprakash,
S4, Orchid Plaza, 85, Razack Garden Main Road,
Arumbakkam, Chennai-600106.

... Respondents

Prayer : Memorandum of Original Side Appeal filed under
Order XXXVI Rule 9 of Original Side Rules read with Clause
15 of the Letters Patent Act against the judgment dated
3.1.2014 made in Application No.5597 of 2013 in C.S.
No.162 of 2012, on the file of this Court.

For Appellants :: Mr. Ramakrishnan Viraraghavan
for M/s. Udwadia Udeshi

For Respondents :: Mr. R. Selvakumar

J U D G M E N T

The Hon'ble Chief Justice

The validity of a dispute resolution clause giving the option to
one party alone to either institute civil proceedings or take



competent jurisdiction in the city where the said agreement was entered into, or by reference of the disputes or differences to the arbitration of the Managing Director of the appellant-company. This option had to be exercised by the appellants "alone" and therefore, it was pleaded that the appellants "hereby exercises its said option to refer the dispute to the arbitration of the Managing Director of the appellants as specifically provided in the said agreement".

8. The learned single Judge dismissed Application No.5597 of 2013 in Civil Suit No.162 of 2013 by the impugned order dated 3.1.2014 giving rise to the appeal by the appellant-company.

9. Learned counsel for the appellant-company pleaded that the real controversy was whether Clause 23 of the Distributorship Agreement amounts to an arbitration agreement under Section 7 of the said Act. Section 7 of the Act 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."

10. The counsel thus sought to contend that the agreement satisfied all the aforesaid parameters as it was an agreement to submit the disputes to arbitration. It was in the form of an arbitration clause in a contract, which was in writing and document was signed by both the parties. The existence of the arbitration clause was not disputed, but the objection raised by the learned counsel for the respondents before the learned single Judge was only



qua the alleged bias of the Managing Director. No reply had been filed to the application and the application was argued on demurrals. Insofar as the option being available with only one party is concerned, it was submitted that Section 7 of the said Act does not require the arbitration agreement to provide for bilateral reference to arbitration.

11. In support of his contentions, learned counsel referred to "Russell on Arbitration - 23rd Edition", where the aspect of mutuality has been dealt with in Para 2-017, opining that there was no requirement under English Law for an arbitration agreement to confer on the parties a mutual right to initiate a reference, and an arbitration agreement providing an option for one party alone to refer disputes to arbitration was valid (NB Three Shipping Ltd. vs. Harebell Shipping Ltd. [2005] 1 Lloyd's Rep. 509). In Para 2-018, while discussing the unilateral option to litigate, it has been observed that the option to litigate to one party would be upheld provided it is clear and unequivocal. The natural sequitur is that, while one party has a choice of litigating or arbitrating any dispute, the other party can be forced to arbitrate.

12. In Indian Oil Corporation and others vs. Raja Transport Pvt. Ltd., (2009) 8 S.C.C. 520, the Chief Justice of the High Court had exercised his power under Section 11(6) of the said Act appointing a retired Judge as the sole arbitrator arising from a dealership agreement for retail sale of petroleum products, which contained Clause 69 providing for settlement of disputes by arbitration. The clause mandated that any dispute or difference of any nature whatsoever "shall be referred to the sole arbitration of the Director, Marketing of the Corporation or of some officer of the Corporation who may be nominated by the Director (Marketing)". Not only that, the clause mandated that, "it is also a term of this contract that no person other than the Director, Marketing or a person nominated by such Director, Marketing of the Corporation as aforesaid shall act as arbitrator hereunder". The Supreme Court held that such an arbitration clause was valid and binding on the parties and a party cannot refuse to be bound by any part of the agreement unless such part is impossible of performance or is void for repugnancy to the Act. Thus, unless the named arbitrator was the controlling or dealing authority in regard to the subject contract or was a direct subordinate to the officer whose decision was subject matter of the dispute, the mere fact that he was an employee of one of the parties was not ipso facto a ground to raise a presumption of bias or lack of independence or impartiality on his part. We may extract the relevant paragraphs as under :-

"34. The fact that the named arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or partiality or lack of



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independence on his part. There can however be a justifiable apprehension about the independence or impartiality of an Employee-Arbitrator, if such person was the controlling or dealing authority in regard to the subject contract or if he is a direct subordinate (as contrasted from an officer of an inferior rank in some other department) to the officer whose decision is the subject matter of the dispute.

35. Where however the named arbitrator though a senior officer of the government/statutory body/government company, had nothing to do with execution of the subject contract, there can be no justification for anyone doubting his independence or impartiality, in the absence of any specific evidence. Therefore, senior officer/s (usually heads of department or equivalent) of a government/statutory corporation/ public sector undertaking, not associated with the contract, are considered to be independent and impartial and are not barred from functioning as Arbitrators merely because their employer is a party to the contract.

36. The position may be different where the person named as the Arbitrator is an employee of a company or body or individual other than the state and its instrumentalities. For example, if the Director of a private company (which is a party to the Arbitration agreement), is named as the Arbitrator, there may be valid and reasonable apprehension of bias in view of his position and interest, and he may be unsuitable to act as an Arbitrator in an arbitration involving his company. If any circumstance exists to create a reasonable apprehension about the impartiality or independence of the agreed or named Arbitrator, then the court has the discretion not to appoint such a person.

....

45. If the arbitration agreement provides for arbitration by a named Arbitrator, the courts should normally give effect to the provisions of the arbitration agreement. But as clarified by Northern Railway Administration, where there is material to create a reasonable apprehension that the person mentioned in the arbitration agreement as the Arbitrator is not likely to act independently or impartially, or if the named person is not available, then the Chief Justice or his designate may, after recording reasons for not following the agreed procedure of referring the dispute to the named arbitrator, appoint an independent Arbitrator in



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accordance with section 11(8) of the Act. In other words, referring the disputes to the named arbitrator shall be the rule. The Chief Justice or his designate will have to merely reiterate the arbitration agreement by referring the parties to the named arbitrator or named Arbitral Tribunal. Ignoring the named Arbitrator/Arbitral Tribunal and nominating an independent arbitrator shall be the exception to the rule, to be resorted to for valid reasons."

13. Learned counsel for the appellants sought to distinguish the pronouncement of the Supreme Court in *Wellington Associates Ltd. vs. Kirit Mehta*, (2000) 4 S.C.C. 272, which was relied upon by the learned single Judge to arrive at his conclusion. In that context, learned counsel referred to paragraph 9 of the judgment which extracted the dispute resolution clause and read as under:-

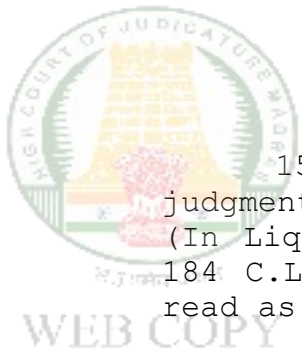
"9. Before referring to the said sections, I shall refer to the relevant clauses 4 and 5 in the two agreements dated 15.8.1995. They read as follows:

"4. It is hereby agreed that, if any dispute arises in connection with these presents, only courts in Bombay would have jurisdiction to try and determine the suit and the parties hereto submit themselves to the exclusive jurisdiction of the courts in Bombay.

5. It is also agreed by and between the parties that any dispute or differences arising in connection with these presents may be referred to arbitration in pursuance of the Arbitration Act, 1947, by each party appointing one arbitrator and the arbitrators so appointed selecting an umpire. The venue of arbitration shall be at Bombay."

In the aforesaid context, it was submitted that the arbitration clause contained the words "may be referred to arbitration" and was thus only an enabling clause or an agreement to agree. It is in that context, the Supreme Court held that further consent of both parties was required for arbitration.

14. In any case, without prejudice to the aforesaid contentions, it was pleaded that the appellant-company was willing to accept the appointment of a former Judge of this Court as the sole arbitrator, a statement made at the Bar under instructions before the learned single Judge, by which statement the appellants stood even before this Court.



15. Learned counsel for the appellants also referred to the judgment of the High Court of Australia in PMT Partners Pty. Limited (In Liquidation) vs. Australian National Parks and Wildlife Service, 184 C.L.R. 301. The settlement of disputes Clause 45 in that case read as under :-

"All disputes or differences arising out of the Contract or concerning the performance or the non-performance by either party of his obligations under the Contract whether raised before or after the execution of the work under the Contract shall be decided as follows :

- (a) The Contractor shall, not later than fourteen days after the dispute or difference arises, submit the matter at issue in writing, specifying with detailed particulars the matter at issue, to the Superintendent for decision and the Superintendent shall, as soon as practicable thereafter, give his decision to the Contractor.
- (b) If the Contractor is dissatisfied with the decision given by the Superintendent, he may, not later than fourteen days after the decision of the Superintendent is given to him, submit the matter at issue in writing, specifying with detailed particulars the matter at issue, to the Principal for decision and the Principal shall, as soon as practicable thereafter, give his decision to the Contractor in writing.

If the Contractor is dissatisfied with the decision given by the Principal pursuant to the last preceding paragraph, he may, not later than twenty-eight days after the decision of the Principal is given to him, give notice in writing to the Principal requiring that the matter at issue be referred to arbitration and specifying with detailed particulars the matter at issue, and thereupon the matter at issue shall be determined by arbitration. If, however, the Contractor does not, within the said period of twenty-eight days, give such a notice to the Principal requiring that the matter at issue be referred to arbitration, the decision given by the Principal pursuant to the last preceding paragraph shall not be subject to arbitration.

Where a notice is given by the Contractor to the Principal pursuant to the last preceding paragraph requiring that the matter at issue be referred to arbitration no proceedings in respect of that matter at issue shall be instituted by either the Principal or the Contractor in any court unless and until the arbitrator has made his award in respect of that matter at issue."



16. In terms of the aforesaid clause, if the Contractor is dissatisfied with the decision given by the principal, he can give a notice in writing to the principal requiring that the matter at issue be referred to arbitration, such action being within 28 days of the decision of the principal. If, however, the contractor does not within the said period of 28 days give the notice to the principal requiring the matter at issue be referred to arbitration, the decision given by the principal pursuant to the preceding paragraph was not to be subjected to arbitration. This was given as an illustration of the established international practice of such clauses being in existence. It was held that in Australia, there was no decision to the effect that as a matter of general law, there can only be an arbitration agreement if there are mutual or bilateral rights of reference. It was further observed thus :-

"It is of fundamental importance that statutory definitions are construed according to their natural and ordinary meaning unless some other course is clearly required. It is also of fundamental importance that limitations and qualifications are not read into a statutory definition unless clearly required by its terms or its context."

In the context of the aforesaid clause, Brennan CJ observed as under :-

"The argument in favour of construing cl 45 as permitting the Contractor to choose between having its claims determined in the courts or by arbitration is based, substantially, on the difference between the language in sub-clause (a), which directs that "(t)he Contractor shall ... submit the matter at issue ... to the Superintendent" and that found in sub-clause (b) and the following paragraph allowing, respectively, that "he may ... submit the matter ... to the Principal for decision" and that "he may ... give notice ... requiring that the matter ... be referred to arbitration". As well, the argument draws attention to the absence of any prohibition on the bringing of proceedings in the courts, other than that which is expressed to operate "(w)here a notice is given by the Contractor to the Principal ... requiring that the matter at issue be referred to arbitration".

The change in language from "shall" in cl 45(a) to "may" in cl 45(b) and the paragraph following provides no reason for thinking that cl 45 does not provide an exclusive regime for the resolution of disputes. Rather, the provisions, if read in their entirety, confirm the view that disputes are to be determined in accordance with and



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only in accordance with the procedures: if the Contractor wishes to raise a dispute he must - "shall" - give notice to the Superintendent who has power to decide the matter; however, once the Superintendent has decided the matter, the Contractor may accept the decision or, if dissatisfied, "may ... submit the matter at issue ... to the Principal for decision"; so, too, the Contractor may accept the decision of the Principal or, if dissatisfied, "may ... give notice ... requiring that the matter at issue be referred to arbitration".

Similarly, the absence of a prohibition on the bringing of proceedings in the courts except "(w)here a notice is given ... requiring that the matter at issue be referred to arbitration" provides no reason for treating the clause as conferring on the Contractor the right to elect between pursuing its claim in the courts or by arbitration. To the extent to which a decision by the Superintendent or the Principal is in favour of the Contractor, the Contractor, if it accepts the decision, may sue to secure the benefit of it. The provision limiting access to the courts "(w)here a notice is given ... requiring that the matter at issue be referred to arbitration", prevents the Contractor from proceeding in the courts to secure the benefit of so much of the Principal's decision, if any, as is in its favour and, also, proceeding by way of arbitration to contest that part with which it is dissatisfied. It also prevents the Principal from pursuing any claim it might have in parallel court proceedings. The express limitation on access to the courts ensures that the dispute is dealt with in its entirety by arbitration, and also ensures that the final paragraph of cl 45 has full effect, with it being at the discretion of the Principal whether or not to "withhold payment of moneys in respect of any matter that is the subject of arbitration proceedings".

The Court of Appeal erred in construing cl 45 as permitting the Contractor to elect between proceeding in the courts and by way of arbitration prior to the giving of notice requiring arbitration. Rather, it should have held that cl 45 provides exclusively as to the procedures to be followed in the event of a dispute to which it applies."

In a separate judgment, Toohey and Gummow, JJ. observed that the impugned judgment of the Court of Appeal imported requirements of 'exclusivity' and 'obligation' into the definition of the arbitration agreement. In this context, the Law and Practice of Commercial Arbitration in England (1989 Edition) by Lord Mustill and Mr. Boyd was quoted with approval as under :-



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"Commercial contracts occasionally give a unilateral right of arbitration. Sometimes they provide that claims by one party are to be the subject of arbitration, whereas claims by the other are not. In other cases, one party has an option to call for arbitration, whilst the other party does not. Such clauses are recognised by the Court as binding."

17. Another example was given of the arbitration clause discussed in *Law Debenture Trust Corp plc vs. Elektrim Finance BV*, (2005) 2 All ER (Comm) 476, the relevant clauses of which are reproduced hereunder :-

"29.2 Any dispute arising out of or in connection with these presents ... may be submitted by any party to arbitration for final settlement under ... (the UNCITRAL Arbitration Rules), which rules are deemed to be incorporated by reference into this of 29.2.

29.7 Notwithstanding of 29.2, for the exclusive benefit of the Trustee and each of the Bondholders, [EFBV] and [ESA] hereby agree that the Trustee and each of the Bondholders shall have the exclusive right, at their option, to apply to the courts of England, who shall have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with these presents ... and that accordingly any suit, action or proceedings (together referred to as 'Proceedings') arising out of or in connection with any of the above may be brought in such courts..."

18. In *NB Three Shipping Ltd. vs. Harebell Shipping Ltd.*, [2004] EWHC 2001 (Comm) = [2005] 2 C.L.C. 29, the Charterparty of Agreement contained the following clause :-

"47.01 This Charterparty shall be governed by, and construed in accordance with, English law.

47.02 The courts of England shall have jurisdiction to settle any disputes which may arise out of or in connection with this Charterparty but the Owner shall have the option of bringing any dispute hereunder to arbitration."

It was held in the context of the aforesaid clause that the said clause was designed to give "better rights to Owners than to the Charterers and thus, although charterers were limited to action in English Courts, Owners were given the right to bring proceedings in any Court which has jurisdiction by virtue of a Convention and Charterers waive objections on grounds of forum non conveniens. Thus, if the Charterers seek to bypass the Owners' determination to have the disputes resolved by arbitration, then the Owners' option of bringing the disputes to arbitration remains, continuing Owner's



control over the issue of arbitration or Court. Charterers can obtain no advantage from 'jumping the starting gun'.

19. In sum and substance, the submission of the learned counsel for the appellants was that the well established practice of non-necessity of mutuality in arbitration clause must be made applicable to the Indian Courts to bring them in conformity with the international practices.

20. A perusal of the impugned judgment shows that the reasoning which permeates it is the silence in the agreement as to what the distributor/first respondent has to do in the event of any dispute or difference between the parties to the agreement, as it gives the right to the appellants to either move a civil court of competent jurisdiction or opt for arbitration. The learned single Judge thus concluded that the clause did not satisfy the requirement of the section of the said Act. Does the first respondent had to keep waiting for the appellants to exercise their option, depriving it of the right to initiate legal proceedings or is it required to call upon the appellants to exercise one mode of resolution of dispute or whether that position would arise only in case of litigation to be initiated by the appellants and the first respondent have the right to file a suit as has been done?

21. Learned counsel for the first respondent sought to support the impugned judgment by relying upon the observations in Wellington Associates Ltd. vs. Kirit Mehta (supra) which is also the bedrock of the impugned judgment. It was submitted that the view expressed in the said judgment cannot be read in the narrow sense it was sought to be read by the learned counsel for the appellants. The common factor was that the initial clause provided for adjudication of disputes by courts, while the subsequent clause provided for a discretion to refer it to arbitration in the same manner, it was pleaded, as Clause 23 in the present agreement in question, apart from the fact that it gave the exclusive right to the appellant to invoke the arbitration clause.

22. Learned counsel also referred to the judgment in Bihar State Mining Development Corporation vs. Encon Builders (I) P. Ltd., (2003) 7 S.C.C. 418 on the issue of bias emanating from a reference to arbitration of the Managing Director of the Company and the requirement of a domestic tribunal being an impartial one under the said Act. In this context, while referring to IOCL vs. Raja Transport Corporation Ltd. (supra), it was emphasised that a distinction was made between the policy of the Government/statutory authorities of the public sector undertakings to provide for arbitration by the employee arbitrator and a person named as an arbitrator being an employee of a company or body or individual other than the State and its instrumentalities (as in the present case).



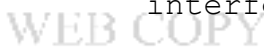
It was thus submitted that since the arbitration clause provided for arbitration of the Managing Director of the appellant-company alone, the said clause was not a valid arbitration clause. By merely offering to have the arbitration through a retired Judge, the arbitration clause could not be saved.

23. The aforesaid was apart from the fact that Clause 23 actually left the first respondent in the lurch without knowing what to do if it had to take recourse to legal proceedings.

24. Before parting with the arguments of the learned counsel for the parties, we may notice an element of similarity between Clause 29 providing for settlement of disputes in P. Dasaratharama Reddy Complex vs. Government of Karnataka, (2014) 2 S.C.C. 201, and the arbitration clause in PMT Partners Pty. Limited (supra). Clause 29 provided for the dispute to be first referred to the Chief Engineer in case of a dispute with the contractor and his decision was to be final and binding upon the contractor. If this decision was not acceptable to the contractor, the contractor was free to approach the law courts at Karwar for settlement of disputes after giving due written notice in this regard to the Chief Engineer. Similarly, if the Chief Engineer failed to give notice of his decision within the prescribed time, the contractor could approach the court, but the contractor was not to stop the work. The Supreme Court opined that independence and neutrality of the arbitrator was the essence of an arbitration agreement and the officer or authority of one of the parties overseeing/having jurisdiction over the subject matter of the contract cannot be an arbitrator, nor can an arbitration clause empower such a person to resolve the disputes.

25. We have given our thought to the matter, especially keeping in mind the wide conspectus of judgments from different jurisdictions cited before us.

26. The emphasis on the part of the learned counsel for the appellants has been on the international practice followed in such matters, i.e., that the arbitration clause need not necessarily have mutuality. This is the current trend in England, Australia and elsewhere, as referred to in the discussions as aforesaid. The judgments are quite clear on this aspect and we need not repeat it, and suffice to say that in PMT Partners Pty. Limited, Law Debenture Trust Corp plc. and NB Three Shipping Ltd. (supra), the view adopted is that conferment of the discretion to pick up either arbitration or the courts as the form for resolution of disputes was not per se bad in law. It is also no doubt that the world being a smaller place and our arbitration law being brought in conformity with the UNCITRAL Model law, construction ought to be given to the statute and the clauses under it in conformity with international practices.



28. There are two aspects which weigh with us while declining to interfere with the impugned order in appeal.

30. Once the arbitration clause itself names the arbitrator, he is the person designated to carry on the arbitration. If the arbitration has to be of some other kind, i.e. by a retired Judge of the High Court as proposed by the learned counsel for the appellant-company, there has to be an agreement for the same. Such an agreement is absent in view of the stand of the learned counsel for the first respondent. Apart from anything else, learned counsel emphasized that the appellants have already affixed court fees in the suit and it would be well nigh impossible to get a refund of the same even under the Tamil Nadu Court Fees and Suits Evaluation (Amendment) Act, 2007, especially Section 69-A, which provides for refund on settlement of the dispute under Section 89 of the Code of Civil Procedure, 1908.

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32. Secondly, if the initiation of litigation had been by the appellant-company, the option would have been with them. However, in the present case, the initiation of litigation was by the first respondent, which was preceded by a number of notices. The appellant, in its notice dated 1.11.2012, had clearly held out a threat of prosecuting the noticees, making them liable for the cost and consequences on failure to meet with the legitimate and genuine demands of the first respondent. The appellant, in its reply/rejoinder, never claimed that it was willing for resolution of disputes by arbitration and that such threats ought not to have been held out.

33. We are unable to accept the plea of the learned counsel for the appellant-company that the word "prosecute" is used in the context of criminal proceedings and that is how it was understood by the appellants. The appellants were legally advised by the best of law firms and the contents of the notice made it clear that what was being claimed was civil liability and damages. In fact, the word "prosecute" has to be read with the subsequent sentence of "mulcting you liable for the cost and consequences". Thus, it is clear that the first respondent had held out a threat of civil proceedings, which did not meet with any response from the appellants of preferring the course of arbitration.

34. The first respondent could not be made to wait indefinitely and not enforce its rights, especially in the absence of any clarity on part of the appellants and its response to the notice and rejoinder expressing a wish to take recourse to arbitration to resolve the dispute. Thus, if the appellant-company did not want the civil proceedings to be initiated by the first respondent in the manner threatened by them, but to get the disputes adjudicated by arbitration, then it should have stated so in response to the communications of the first respondent, which it had failed to do. It is only when the suit was filed that the appellant-company sought to stall the same by claiming recourse to arbitration. Thus, in the given facts of the case, the first respondent cannot be faulted to have taken recourse to the remedy of institution of a civil suit. This is, of course, apart from the rationale we have given as the first one for not relegating the parties to arbitration.

35. The aforesaid two reasons are sufficient why the said proceedings ought to continue despite the general international practice referred to by the learned counsel for the appellant-company permitting the unilateral option.



36. The appeal is thus dismissed for the aforesaid reasons, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ab

to

The Sub Assistant Registrar
Original Side, High Court, Madras

1 cc to Mr. R. Selvakumar ,Advocate, SR.No.7504
2 cc to Mr.M/s. Udwadia Udesb ,Advocate, SR.No.76133/15

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CA (CO)
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