IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.2173 of 2011 (O&M)
Date of Decision: September 24, 2015

Punjab State Warehousing Corporation, Chandigarh

...Appellant

Versus

M/s Vohra Agro Pvt.Ltd., Guru Har Sahai, Distt.Ferozepur & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Harsh Aggarwal, Advocate,
for the appellant.

Mr.Manav Satija, Advocate for
Mr.S.K.Singla, Advocate,
for respondent No.1.

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AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the impugned order, whereby the petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 (for short "1996 Act") for setting-aside the award dated 27.12.2006 has been dismissed and the objections thereto have also been declined, on the premise that the agreement was not signed by the appellant.

Mr.Harsh Aggarwal, learned counsel appearing on behalf of the appellant submits that the arbitrator as well as the objecting court have committed illegality and perversity in not referring to the provisions of Section 7(4)(c) of 1996 Act. In support of this contention, relies upon the ratio decidendi culled out by the Hon'ble Supreme Court in **M/s. Govind Rubber Ltd. Versus M/s.Louids Dreyfus Commodities Asia Pvt.Ltd., 2015(1) R.C.R. (Civil) 572** to contend that it is not material, whether the agreement is signed by second party or not and the parties ad idem to the terms of the sale contract containing forum of dispute between the parties through arbitration.

Mr.Manav Satija Advocate for Mr.S.K.Singla, Advocate appearing for respondent No.1 submits that there is no illegality and perversity in the impugned order, much less, award as the agreement was not signed by the appellant and, therefore, there was no complete contract and rightly so the claim has been dismissed.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to refer the provisions of Section 7(4)(c) of 1996 Act. The same reads thus:-

> "*7. Arbitration agreement.-*
>
> *xxx xxx xxx*
>
> *(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."

On perusal of the aforementioned provisions, it is evident that the arbitration agreement would be treated to be in writing in case it is alleged by one party and not denied by the other party where parties to the agreement filed a claim and defence in respect of a dispute arising out of the agreement. The Hon'ble Supreme Court, while interpreting the aforementioned provisions of the Act in paras 15, 16 and 20, laid down that it would be immaterial that where the agreement is not signed by one of the party, it cannot be treated to be an agreement and where the forum has been prescribed for settlement through arbitration. It would be apt to reproduce the aforementioned paras, which are as under:-

> "*15. Perusal of the aforesaid provisions would show that in order to constitute an arbitration agreement, it need not be signed by all the parties. Section 7(3) of the Act provides that the arbitration agreement shall be in writing, which is a mandatory requirement. Section 7(4) states that the arbitration agreement shall be in writing, if it is a document signed by all the parties. But a perusal of clauses (b) & (c) of Section 7(4) would show that a written document which may not be signed by the parties even then it can be arbitration agreement. Section 7(4)(b) provides that an arbitration agreement can be culled out from an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.*
>
> *16. Reading the provisions it can safely be concluded that an arbitration agreement even through in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication. Section 7(4)(c) provides there can be an*

arbitration agreement in the exchange of statements of claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. If it can be prima facie shown that the parties are at ad idem, then mere fact of one party not signing the agreement cannot absolve himself from the liability under the agreement. In the present day of E-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. In such agreements, if the identity of the parties is established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties. Therefore, signature is not a formal requirement under Section 7(4)(b) or 7(4)(c) or under 7(5) of the Act.

20. From the documents available on record and also referred in the impugned order, it is evident that at the request of the appellant, the invoice was split into two invoices and in the said letter of request reference was made to the sale contract. The appellant proceeded to supply the goods on the terms contained in the sale contract. The intention of the parties, as appearing from the correspondence, it can safely be inferred that there had been meeting of mind between the parties and they were ad idem to the terms of sale contract which contained the forum of dispute resolution at Singapore Commodity Exchange. Apart from that, after the dispute was referred to Singapore Commodity Exchange for arbitration, the appellant in response to the notice made a counter claim before the Arbitral Tribunal contending that the appellant had incurred huge loss in view of the failure on the part of the respondent to supply the goods in time. By making a counter claim, the appellant indeed submitted to the jurisdiction of the arbitrator."

In view of the ratio decidendi culled out by the Hon'ble Supreme Court in **M/s. Govind Rubber Ltd.'s case (supra)**, the impugned order and as well as the award are not sustainable and the same are set-aside.

The parties shall be at liberty to seek appointment of the arbitrator in accordance with law.

The appeal stands disposed of.

September 24, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**