

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.4173 of 2016 (O&M)
Date of Decision.23.07.2016

Avitel Post Studioz Ltd.

.....Appellant

Vs.

Ravindra Savla and others

.....Respondents

Present: Mr. Karan Bharihoke, Advocate and
Mr. Jaspreet Singh, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant-respondent No.1 is aggrieved of the order dated 19.07.2016 whereby the Principal Court had listed the matters for arguments and further proceedings, in the petition filed under Section 9 of the Arbitration and Conciliation Act, 1996.

Mr. Karan Bharihoke and Mr. Jaspreet Singh learned counsels appearing on behalf of the appellant submits that the aforementioned petition had been filed by a shareholder of the appellant-company, who, in the year 2008, had invested a sum of ₹1,81,25,000/-. On 25.04.2011, the HSBC PI Holdings (Mauritius) Ltd. (hereinafter called as “HSBC”) being investment holding company for principal investments in Asia Division entered into a share subscription agreement and another agreement SHA. Some dispute arose and the HSBC on 11.05.2012 invoked arbitration provisions under two agreements bearing No.88 and 89 of 2012 and sought

emergency relief under the Emergency Arbitration Provisions of SIAC 2010 Rules. On 14.05.2012, an Emergency Arbitrator was appointed. Some objections were raised before the Emergency Arbitrator owing to the applicability of Indian laws. On 28.05.2012, the Emergency Arbitrator passed interim award in respect of one agreement and on 29.05.2012 in another agreement namely freezing SHA account of the appellant. HSBC invoked the jurisdiction of the Bombay High Court by filing a petition bearing No.1062 of 2012 under Section 9 of the Arbitration and Conciliation Act, 1996 and vide order dated 21.01.2014, the Single Bench restrained the appellant-respondent therein from withdrawing the amount retained by the Corporation Bank in its account to the extent of USD 60 million and in case the amount is found short, the appellant-respondent was directed to deposit the shortfall in the said account. The aforementioned order was challenged by the appellant before the Division Bench in appeal bearing No.196 of 2014 and Hon'ble Division Bench of Bombay High Court partly allowed the appeal and directed the appellants therein to deposit the shortfall in the Corporation Bank, so as to maintain balance of USD 60 million was substituted by direction to the appellants therein to deposit the shortfall in the said account, so as to maintain a balance of USD 30 million within four weeks from the date of passing of the order. This order was challenged by the appellant in SLP bearing No.2496 of 2014. The orders passed by the Bombay High Court and the SLP filed before the Hon'ble Supreme Court have been attached as Annexures P-2 to P-4 respectively. It has further been submitted that in the aforementioned SLP, the Hon'ble Supreme Court granted the leave.

On 11.07.2016, Board of Directors held its meeting at

Company's office i.e. 205, Golden Square, Ambala Chandigarh Highway, Zirakpur, Greater Mohali, Punjab and certain agendas put up before the Board of Directors were considered. It was mentioned in the Minutes of Meeting that one Mr. Ravindra Savla i.e. the applicant in the petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 before the Principal Court at Mohali, would like to peruse the documents. Mr. Ravindra Savla was present in the meeting and requested that the dispute be decided by the Arbitrator and the Board unanimously consented that any dispute raised by Mr. Ravindra Savla, so long as, it is arbitrable under law shall be referred to arbitration in accordance with Indian law.

The counsel for the appellant further submits that there was no agreement of the appellant with respondent No.1-applicant before the Principal Court at Mohali with regard to resolution of dispute through arbitration. The decision was only a consent with regard to settlement and subject to terms and conditions which were yet to be set down but instead of waiting, the respondent No.1-applicant filed the petition bearing No.2376 of 2016 under Section 9 of the Arbitration and Conciliation Act, 1996 claiming the following interim reliefs:-

“(i) Direct the respondents No.1 to 4 to earmark moneys to the extent of the value of his investment being, ₹1,81,25,000/- along with interest @12% from the date of such investments in the Bank Accounts of respondent No.1 held at Corporation Bank, lying frozen in terms of order dated 31.07.2014 passed by Hon'ble Bombay High Court in Appeal No.196 of 2014 read with order dated 22.01.2014 passed by the Hon'ble Bombay High Court in Arbitration Petition No.1062/2012.

(ii) In the alternative, direct the respondent Nos.1 to 4 to provide adequate and satisfactory security with regard to the investment of the applicant same being ₹1,81,25,000/- along with interest at the rate of 12% per annum from the date of such investments.”

The counsel for the appellant further submits that the Principal Court did not examine its jurisdiction, much less, also the fact whether the alleged fraud being projected in the application can be a matter of consideration by Arbitrator or arbitrable. In other words, whether the Arbitrator can enter into dispute with regard to the allegations of fraud or not and whether the petition under Section 9 of the Arbitration and Conciliation Act, 1996 at the behest of a shareholder would be maintainable. There is every likelihood/apprehension that the respondent may not obtain the interim order, over and above the interim order already granted by the Division Bench of the Bombay High Court and thus, it is in these circumstances the impugned order has been challenged. He further submits that the Court at Mohali would not have jurisdiction as offices of both the companies are located at Bombay and all proceedings as noted above have also been held at Bombay and thus, urges this Court for setting aside of the impugned order and dismissal of the petition under Section 9 of the Arbitration and Conciliation Act, 1996. He further submits that once the matter is already seized before the Bombay High Court as well as the Hon'ble Supreme Court, the second exercise of seeking a restraint order at the best of the shareholder would open a new pondora of litigation for all shareholders.

I have heard the learned counsel for the appellant, appraised the

paper book and of the view that so far as the contention with regard to jurisdiction of the Principal Court at Mohali is concerned, it does not have any substance and force, for, on perusal of the Minutes of the Meeting dated 11.07.2016 (Annexure P-7), it is evident that the meeting had been held at the company's office located at 205, Golden Square, Ambala Chandigarh Highway, Zirakpur, Greater Mohali, Punjab and therefore, the Principal Court at Mohali, prima facie, would have jurisdiction to entertain and try any petition but the fact remains that whether it would have jurisdiction to try any application under Section 9 of the Arbitration and Conciliation Act, 1996, much less, at the behest of the shareholder would be a question of law to ponder upon as minutes reveals resolution of dispute vide arbitration. Since the matter is listed before the Principal court for 26.07.2016 instead of calling the other side by issuing notice, I deem it appropriate to issue direction to the Principal Court to decide the application bearing No.2376 of 2016 as expeditiously as possible and preferably within a period of one week from the date fixed i.e. 26.07.2016 *viz-a-viz*; the locus standi of the respondent to file the petition, whether the allegations of alleged fraud being raised by respondent No.1 in the aforementioned petition can be referable to the Arbitrator or not. The appellant shall be at liberty to take all legal objections/maintainability of application etc. and the Principal Court shall decide the same in accordance with law.

The appeal is disposed of on the aforementioned terms.

(AMIT RAWAL)
JUDGE

July 23, 2016
Pankaj*