

\$~1

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ARB.P. 506/2012

RADICO KHAITAN LTD AND ANR

..... Petitioners

Through: Mr. B L Wali, Advocate

versus

RAMPUR FERTILIZERS LTD AND ORS

..... Respondents

Through: Ms. Sandhya Kohli, Advocate

CORAM: JUSTICE S.MURALIDHAR

ORDER

09.12.2016

%

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act 1996 ('Act') seeking the appointment of an Arbitrator to adjudicate the disputes between the parties arising out of an Asset Transfer Agreement (ATA) dated 8th February, 2008.

2. A preliminary objection has been raised by the Respondent based on the decision of the Supreme Court in *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd. (2011) 14 SCC 66* that unless the ATA is duly stamped in accordance with the Uttar Pradesh Amendment to the Indian Stamp Act 1889 (ISA), the Court should not proceed to act on the ATA. It is submitted that the ATA is an agreement to sell an immoveable property where "the possession is delivered at the time of execution" thereby attracting Article 23 of the Schedule to the ISA.

3. Countering the above submissions, the learned counsel for the Respondent points out that the dispute between the parties is confined to one

of the immoveable properties mentioned in Clause 4.1.2.1 of the ATA, the possession of which has not been handed over to the Petitioner till now. In particular he points out that the dispute is not in relation to another parcel of land known as 'Hitachi land' the possession of which has been handed over on the date of the execution of the ATA.

4. The description of the immoveable assets, the transfer of which, *inter alia* forms the subject matter of the ATA, has been set out in Appendix 2 to the ATA. Clause 4.1.2.1 describes a 'leasehold land' admeasuring 32 *bighas* 14 *biswas* in District Rampur and the description of which is indicated in Appendix 2 to the ATA. There is no mention of the possession of this land being handed over to the Petitioner. In fact it envisages permissions having to be obtained from the State government in relation thereto. By contrast Clause 4.1.2.3 talks of the 'Hitachi land and sub-clause (b) expressly states that the possession thereof will be been handed over to the Petitioner on the date of execution of the ATA.

5. If indeed the dispute between the parties is confined to the leasehold land described in Clause 4.1.2.1 of the ATA then the fact remains that the possession of the said leasehold land has not yet been handed over to the Petitioner since the permission of the State government in respect thereof is yet to be obtained. Consequently, *qua* the said leasehold land the ATA cannot be construed to be an agreement to sell the said property coupled with delivery of possession at the time of execution thus bringing it within the scope of Article 23 of the Schedule to the ISA.

6. In that view of the matter, the Court rejects the preliminary objection of

the Respondent that the Court cannot act on the arbitration clause in the ATA since it is not duly stamped in accordance with the ATA.

7. The arbitration clause in the ATA contemplates a sole arbitrator being appointed. The said clause has been invoked by the Petitioner by sending a legal demand notice dated 3rd May, 2011. The Respondents on 3rd June 2011 replied thereto declining to appoint a sole arbitrator. The requirement of Section 11 (6) of the Act stands fulfilled.

8. In the circumstances, the Court appoints Mr. Justice Devender Gupta, a former Chief Justice of the High Court of Himachal Pradesh (Mob. No. 9818065456) as sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims.

9. The learned arbitrator will determine his own terms and fees and communicate it to the parties. The provisions of the Act as amended with effect from 23rd October 2015 will apply.

10. The venue for the first hearing (the date of which will be communicated to the parties to the learned Arbitrator) will be arranged by the Petitioner and communicated to the learned Arbitrator and the Respondent one week in advance. The expenses thereof shall be borne by both the parties equally.

11. The petition is disposed of. *Dasti*. A certified copy of this order be communicated to Justice Devender Gupta forthwith.

S.MURALIDHAR, J

DECEMBER 09, 2016/P