

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision-01.08.2017

1. CR No.1419 of 2017(O&M)

Chandigarh Industrial & Tourism Development Corporation Ltd.
and another ... Petitioners
Versus

M/s K.B. Hotels Pvt. Ltd. ... Respondent

2. CR No.1423 of 2017

Chandigarh Industrial & Tourism Development Corporation Ltd.
and another ... Petitioners
Versus

M/s K.B. Hotels Pvt. Ltd. ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vishal Gupta, Advocate for the petitioners.

Mr. R.D. Vinayak, Advocate for the respondent.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.1419 of 2017 titled Chandigarh Industrial & Tourism Development Corporation Ltd. and another Vs. M/s K.B. Hotels Pvt. Ltd. and CR No.1423 of 2017 titled M/s K.B. Hotels Pvt. Ltd. are being decided. Since common questions of law and facts are involved in the aforesaid petitions, therefore, facts are being taken from CR No.1419 of 2017.

[2]. With the concurrence of learned counsel for the parties, the case is being taken up for final disposal.

[3]. Petitioners have challenged the order dated 18.01.2017 passed by Civil Judge (Junior Division), Chandigarh, vide which

application filed by the petitioner-Corporation under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to Arbitration was dismissed.

[4]. Petitioner-Corporation is a company incorporated under the Companies Act, 1956 and the same is owned by Chandigarh Administration. Petitioner-Corporation is engaged in the hospitality sector and is running various hotels in Chandigarh. Petitioner-Corporation invited tenders for supply of fresh vegetables in its hotels viz. Mountview, Shivalikview, Parkview and other units of CITCO. Respondent applied for the said tender and being a highest bidder, respondent was allotted the contract on 12.12.2014 for a period from 12.12.2014 to 31.03.2015. According to the terms and conditions of the contract, the respondent was required to supply the vegetables to the petitioner-Corporation at its various hotels and units as per approved rates. Necessary security deposit was made by the respondent. As per Clause No.9 of the terms and conditions of Contract, in the event of non-supply, short supply, inferior quality supply of the goods/items, the same shall be purchased by the petitioner-Corporation from open market at the risk and cost of the respondent. The amount spent in excess of the approved rates shall be recovered from the pending bills/security deposit of the respondent. As per Clause No.15 of the Agreement, in case of dispute arising out of the agreement, the same shall be referred to the Arbitration of the Managing Director, CITCO and any other

person appointed by him/her in his/her behalf. Arbitration Clause No. 15 of the Contract reads as under:-

“15. In the event of dispute, subject to the jurisdiction of Chandigarh only, the same shall be referred to arbitration to the Managing Director, CITCO, or any other person appointed by him/her. The decision of the arbitrator shall be final & binding on both the parties.”

[5]. The contract was duly accepted by the respondent. The contract was in operation for the period in question. After completion of the contract, the respondent filed a suit for recovery of Rs.2,12,460/- (amount of Rs.1,72,460/- was on account of illegal deduction and amount of Rs.40,000/- towards security amount) calculated with interest from the date of deduction till decree and if the amount becomes due over and above, the same shall be computed till the date of actual payment. During scrutiny, it was observed that the respondent charged for desi potatoes @ Rs.28/- per kg, instead of Rs.18/- per kg as per the orders placed by the petitioner-Corporation. Since the respondent had charged @ 28/- per kg as against the approved rate of Rs.18/- per kg for desi potatoes, therefore, the bills were approved @ 18/- per kg only. Respondent was issued with a show cause notice on 09.10.2015 to which reply was filed by the respondent.

[6]. Petitioner-Corporation filed an application under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996. The agreement is an admitted document between the parties. The

plaintiff has admitted in the plaint that there was an award of contract dated 12.12.2014 for supply of fresh vegetables to various hotels and units of the petitioner-Corporation. Clause No.15 of the Contract was duly stipulated therein.

[7]. The application was opposed by the respondent, wherein it was stated that the provision of Clause No.14 of the Contract has already been exhausted. The plaintiff vide letter dated 04.11.2015 had requested the petitioner-Corporation to refer the dispute to arbitrator within 15 days from the receipt of the letter. The said letter was duly received by the petitioner-Corporation, but the request of the plaintiff/respondent was not adhered to, therefore, after filing of the present suit and after service of notice upon the defendants, the matter cannot be referred to the arbitrator. It was stated that the petitioner-Corporation should have adhered to the request of the plaintiff/respondent at the relevant stage when notice dated 04.11.2015 was written to the petitioner-Corporation. Since the petitioner-Corporation did not show any interest in the arbitration, therefore, at this stage, they cannot seek ouster of the Civil Court jurisdiction. In the arbitration clause itself, the dispute was to be referred to the Managing Director of CITCO or any other person appointed by him/her, therefore, clause itself was inequitable and also against natural justice as no one can be judge of his own cause.

[8]. Civil Judge (Junior Division), Chandigarh vide order dated 18.01.2017 dismissed the application by observing that plaintiff vide letter dated 04.11.2015 had taken the initiative to request the defendants to refer the dispute to arbitration within 15 days of the receipt of the letter, which was duly received by the defendants on 04.11.2015 itself, but defendants did not reply to the letter, meaning thereby, it did not show any interest in the arbitration.

[9]. I have heard learned counsel for the parties.

[10]. In **Hindustan Petroleum Corporation Limited Vs. M/s Pinkcity Midway Petroleums, 2003 RCR (Civil) 686**, the Hon'ble Apex Court while interpreting under Sections 8 and 16 of the Arbitration and Conciliation Act, held that once the agreement and existence of arbitration clause are admitted then as per mandatory language of Section 8 of the Act, the Court is bound to refer the dispute to the Arbitrator. The question whether that arbitration clause applied to the facts of the dispute, has to be raised and decided before the Arbitrator. The Arbitrator is competent and has the jurisdiction to adjudicate upon and decide upon his jurisdiction and validity and existence of arbitration agreement with reference to arbitrability of the subject matter of dispute under arbitration clause. Once the existence of agreement between the parties is found containing arbitration clause, the jurisdiction of the civil Court in such matter is barred.

[11]. The application under Arbitration and Conciliation Act is meant to encourage alternate mode of redressal of dispute. Once the bilateral agreement is executed between the parties and the same provides for arbitration clause by way of alternate mode of redressal, then, it would be just and appropriate to honour the onerous obligations. The ratio of **Hindustan Petroleum Corporation Limited's case (supra)** was approved in **Swiss Timing Ltd., Vs. Commonwealth Games 2010 Organizing Committee, (2014) 6 SCC 677.**

[12]. In **Rewa Electricals Vs. Movil, 2012(II) SCC 93**, it was held by the Hon'ble Apex Court that the Legislature in Section 16 of the Act made it clear that any obligation with regard to objection or validity of arbitration agreement has to be treated as an agreement independent of other terms of the contract. The contentious issues should not be gone into or to be decided at the stage of appointment of arbitrator and no time should be wasted in such an exercise. The remedy of the aggrieved party is to raise the objections before the arbitral Tribunal. The arbitral Tribunal is always empowered under Section 16 of the Act to rule about its own jurisdiction. It is, therefore, open to the plaintiff to raise all these issues and pleas before the arbitral Tribunal, including all the pleas. The Arbitration Act in itself is a complete code and provides for all channels of adjudication.

[13]. In view of Section 16 of the Arbitration and Conciliation Act, 1996, it is explicitly clear that the arbitral Tribunal has the power to rule on its own jurisdiction even when any objection with reference to existence or validity of arbitration agreement is raised. A conjoint reading of sub Sections (2), (4) and (6) of Section 16 of the Arbitration Act would make it clear that such a decision would be amenable to be assailed within the ambit of Section 34 of the Arbitration Act. The Act does not make any specific provision excluding any category of dispute on the ground of its being non-arbitrable. Once there is an arbitration clause with clear and unambiguous meaning, then in such an event, judicial intervention would be very limited and minimal. Even after the arbitral Tribunal rules on its jurisdiction and decides that arbitration clause is valid, the aggrieved party has to wait till final award is pronounced and thereafter, the aggrieved party would be entitled to raise any objection before the Court in the proceedings under Section 34 of the Act while challenging the arbitral award. The ratio in **Kvaerner Cementation India Ltd. Vs Bajranglal Agarwal and another, (2012) 5 SCC 214** has been relied by the Hon'ble Apex Court in a subsequent judgment i.e. **A. Ayyasamy Vs. A. Paramasivam and others, 2017(2) RCR (Civil) 518.**

[14]. From the aforesaid proposition, it can be noticed that respondent would be having a right to file objection in terms of Section 34 of the Arbitration Act only after passing of the award by the arbitral Tribunal/Arbitrators.

[15]. In **M/s Sundaram Finance Limited and another Vs. T. Thankan, 2015(2) RCR (Civil) 920,** it was held that once an application in due compliance of Section 8 of the Act is filed, the approach of the Civil Court should be not to see whether Court has jurisdiction, but it should see whether its jurisdiction has been ousted. The general law should yield to special law-*generalia specialibus non derogant*.

[16]. In the recent judgment passed by the Hon'ble Apex Court i.e. **Mrs. Hema Khattar and another Vs. Shiv Khera, 2017(3) RCR (Civil) 277,** the ratio of **P. Anand Gajapathi Raju and others Vs. P.V.G. Raju (Dead) and others, (2000) 4 SCC 539** was relied and it was endorsed that once the conditions which are required to be satisfied under sub Sections 1 and 2 of Section 8 of the Act are fulfilled, the Court is bound to refer the matter to a arbitrator/arbitrators. Conditions which are required to be satisfied are that:-

“(1) there is an arbitration agreement;

(2) a party to the agreement brings an action in the Court against the other party;

(3) subject matter of the action is the same as the subject matter of the arbitration agreement;

(4) the other party moves the Court for referring the parties to arbitration before it submits his first statement on the substance of the dispute.”

It was held that the language of Section 8 of the Act is pre-emptory in nature, therefore, it is mandatory for the Civil Court to refer the dispute to a arbitrator/arbitrators.

[17]. Similar view has been expressed by the Hon’ble Apex Court in **Greaves Cotton Limited Vs. United Machinery and Appliances, 2017(1) RCR (Civil) 737**, wherein while relying upon the ratio of **Booz Allen and Hamilton Inc. Vs. SBI Homes Finance Limited and others, 2011(5) RCR (Civil) 168**, the Hon’ble Apex Court emphasized upon the aforesaid proposition.

[18]. Respondent would be having remedy of objection under Section 34 of the Act only after passing of the arbitral award by the Arbitrator.

[19]. In view of observations made hereinabove, I deem it appropriate to allow this revision petition. The impugned order dated 18.01.2017 passed by Civil Judge (Junior Division), Chandigarh is set aside. Trial Court is directed to do the follow up action in pursuance of acceptance of this revision petition.

[20]. A photocopy of this order be placed on the file of connected case.

(RAJ MOHAN SINGH)
JUDGE

01.08.2017
Prince

Whether reasoned/speaking Yes/No

Whether Reportable Yes/No