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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO. 129 OF 2017

M/s. Nagpal Pesticides & Ors

...Petitioners

V/s.

M/s. Bayer Crop Science Limited

...Respondent

Mr. Amit Khare for the Petitioner.

Mr. Nitin Thatai a/w. Mr. S.C. Thatai a/w. Mr. Vikas J. Takalkar for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 25TH JANUARY, 2018.

P.C. :-

1. By this petition filed under Section 30 of the Arbitration Act, 1940, the petitioners have impugned arbitral award dated 06th December, 2006 passed by the learned Arbitrator.

2. The learned counsel for the respondent at the threshold raises an objection about the maintainability of this arbitration petition under Section 30 of the Arbitration Act, 1940 on the ground that the agreement entered into between the parties was executed some time in the year 2000. The learned Arbitrator was appointed in the year 2006. The respondent has filed execution application for executing

the arbitral award in the Court at Punjab. The petitioners had filed an arbitration application under Section 34 of the Arbitration and Conciliation Act, 1996 impugning the said arbitral award in the Court of learned Additional District Judge, Fazilka, Punjab. The said arbitration application was dismissed on the ground of jurisdiction by the learned Additional District Judge, Fazilka, Punjab.

3. The learned counsel for the respondent places reliance on the judgement of Supreme Court in the case of **"National Aluminium Co. Ltd Vs. Metallimpex Ltd 2000(3) ArbiLR 422 : 2001(6) SCC 372"**.

4. The learned counsel for the petitioners on the other hand submits that in the arbitration agreement entered into between the parties and more particularly in Clause-27, the parties have agreed that the arbitral proceedings will be governed by the Indian Arbitration Act, 1940. He submits that in view of the said agreement, though the said agreement was entered into in the year 2000 and the proceedings were conducted thereafter, the parties will be governed by the provisions of Indian Arbitration Act, 1940 and not by Arbitration and Conciliation Act, 1996.

5. The next submission of the learned counsel for the petitioners

is that the earlier proceedings filed under Section 34 of the Arbitration and Conciliation Act, 1996 by the petitioners in the Court of learned Additional District Judge, Fazilka, Punjab were not dismissed on the ground that the same were not maintainable under Section 34 of the Arbitration and Conciliation Act, 1996.

6. It is submitted by the learned counsel for the petitioners that when the earlier petition was filed by the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioners did not have a copy of the arbitration agreement and thus the said proceedings were filed erroneously.

7. A perusal of the record clearly indicates that the parties have entered into an agreement in the year 2000 which recorded the arbitration agreement in Clause-27 thereof, which provided that the arbitral proceedings shall be governed by the Indian Arbitration Act, 1940. It is however not in dispute that the said agreement was entered into after the Arbitration and Conciliation Act, 1996 came into force. It is also not in dispute that all the proceedings were initiated by the parties after enactment of the Arbitration and Conciliation Act, 1996. The petitioners does not dispute that the earlier petition filed by the petitioners for impugning the arbitral award was also filed under Section 34 of the Arbitration and Conciliation Act,

1996.

8. Supreme Court in the case of **National Aluminium Co. Ltd Vs. Metalimpex Ltd** (Supra) has construed Section 85 of the Arbitration and Conciliation Act, 1996 and has held that the arbitral proceedings commencing subsequently to the enforcement of the Arbitration and Conciliation Act, 1996 are to be governed by the provisions of Arbitration and Conciliation Act, 1996.

9. Supreme Court in the case of **“Thyssen Stahlunion GMBH Vs. Steel Authority of India Ltd., (1999) 9 SCC 334”** has held that the provisions of the Arbitration Act, 1940 shall apply in relation to the arbitration proceedings which have commenced before coming into force of the Arbitration and Conciliation Act, 1996. It is held that the 1996 Act would be applicable in relation to the arbitral proceedings which commenced on or after the 1996 Act came into force. It is further held that in cases where arbitral proceedings have commenced before the 1996 Act coming into force and are pending before arbitration, it is open to the parties to agree that new Act be applicable to such arbitral proceedings and they can agree to such applicability before coming into force of the new Act. After commencement of the new Act, the parties cannot agree that they would be governed by the Indian Arbitration Act, 1940.

10. In my view, the judgements of the Supreme Court in the case of **National Alluminium Co. Ltd Vs. Metalimpex Ltd** (Supra) and in the case of **Thyssen Stahlunion GMBH Vs. Steel Authority of India Ltd** (Supra) would squarely apply to the facts of this case. I am respectfully bound by these judgements. The petition filed under Section 30 of the Arbitration Act, 1940 is thus not maintainable and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)