

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**ARB No.253-2017(O&M)
Date of decision : 25.5.2018**

M/s Smartedge Technical Services Private Limited

..... Petitioner

VERSUS

Quadrant Televentures Limited (formerly known as `HFCL
Infotel Limited')

..... Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE**

Present: Mr.Om Pal Sharma, Advocate for the petitioner.
Mr.Vishal Gupta, Advocate for the respondent.

AJAY KUMAR MITTAL, ACJ.

CM No.10657-CII of 2018

CM is allowed subject to all just exceptions.

Annexures P.5 and P.6 are taken on record.

ARB No.253-2017

This is a petition under Section 11(6) of the
Arbitration & Conciliation Act, 1996 (in short, the Act of 1996')
for appointment of an Arbitrator.

Upon notice having been issued, reply on behalf of
the respondent has been filed, wherein in para 10 of the reply,
objection has been taken that the present case involves
complicated questions of facts and law. Oral and documentary

evidence has to be led which is not possible in this summary jurisdiction before the Arbitrator. In the present case, it has further been alleged that allegations of fraud and cheating have been levelled and even the FIR has been registered against the petitioner. Para No.10 of the reply is reproduced as under:

“That the present petition is liable to be dismissed on the ground that the present case undoubtedly involves complicated question of facts and law. Oral and documentary evidence has to be led which is not possible in this summary jurisdiction as the matter is to be decided within a stipulated time frame. It is pertinent to mention here that as per the settled law in case of allegation of fraud, the parties to the agreement cannot be resorted to the arbitration as the exception has been carved out by the Hon’ble Supreme Court of India in case of fraud that the same is not Arbitrable. In the present case also since the allegation of fraud and cheating have been levelled against the petitioner Company and even FIR has been registered against the petitioner Company and even FIR has been registered against the petitioner company and as such as per the ratio of the Hon’ble Supreme Court of India in case titled as Booz Allen and Hamilton Inc. v. SBI Home Finance

Ltd. reported in 2011(5) SCC 532, has held as follows:-

"Arbitration and Conciliation Act, 1996, Section 8 – Arbitration - Mortgage suit – A mortgage is a transfer of a right in rem. A mortgage suit for sale of the mortgaged property is an action in rem, for enforcement of a right in rem – A suit on mortgage is not a mere suit for money – A suit for enforcement of a mortgage being the enforcement of a right in rem, will have to be decided by Courts of law and not by arbitral tribunals- A suit for sale, foreclosure or redemption of a mortgaged property, should only be tried by a public forum, and not by an arbitral tribunal- Consequently, it follows that the court where the mortgage suit is pending, should not refer the parties to arbitration – Even if some of the issues or questions in a mortgage suit (as pointed out by the appellant) are arbitrable or could be decided by a private forum, the issues in a

mortgage suit cannot be divided – Suit being one for enforcement of a mortgage by sale, it should be tried by the Court and not by an arbitral tribunal.”

Further it came up for consideration before the Hon’ble Supreme Court as to what kind of disputes cannot be referred for arbitration, the Hon’ble Supreme Court of India in case titled as Ayyasamy v. A. Paramasivam, reported in 2016 AIR (SCW) 4675 has held as follows:

“E. Arbitration and Conciliation Act, 1996
Section 8 Partnership deed contained an arbitration clause – The Act does not make any provision excluding any category of disputes treating them as non-arbitrable – However, certain kinds of disputes may not be capable of adjudication through the means of arbitration – Certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, cannot be referred to arbitration –

Following categories of disputes are generally treated as non-arbitrable:-

1. Patent, trademark and copyright;
2. Anti-trust/competition laws;
3. Insolvency/winding up;
4. Bribery/corruption;
5. Fraud;
6. Criminal matters."

Thus, as in the present case the allegation of cheating have been levelled against the petitioner company and its employees for causing loss to M/s Galactic Infotech Solution Pvt. Ltd. in respect of which as detailed above, an FIR No.213 dated 11.12.2016 under Section 420,34 IPC has been registered against Sh.Ashish Kumar Jindal son of Sh.Rattan Lal, Manoj Kadian, son of Sh.Dharambir Singh, Sampat Neogi son of Sh.Vishwanath Neogi and Sunil Mehendiratta son of Sh. Jagdish Lal with the allegation that the said persons were the employees of Galactic Infotech Solution Pvt. Ltd. and they have used data and network of the Galactic Infotech Solution Pvt. Ltd. and the above said Manoj Kumar got another company registered namely,

Smartedge Technical Services Ltd. and used the data of Galactic Infotech Solution Pvt. Ltd. without the permission of the said Company. As such the allegation of having caused loss to the tune of Rs.5 crores have been levelled against the petitioner company and the said company has raised the claim against the respondent company for payment of dues in respect of the services provided by the petitioner company by playing fraud upon the said company. As such serious allegations of fraud and cheating have been levelled against the petitioner company for which the proper recourse for determining the liability inter se between the petitioner company and M/s Galactic Infotech Solution Pvt. Ltd. would be a civil suit before the civil court and not the present proceedings which are summary in nature. Copy of the orders dated 22.12.2016 and 27.12.2016 passed by the Court of Additional Sessions Judge and High Court whereby bail application of the employees of the petitioner company has been dismissed are annexed herewith as **Annexure R-2 and R-3** respectively."

In view of the above, learned counsel for the petitioner states that he may be allowed to withdraw the present petition with liberty to approach the Civil Court for the redressal of its grievance, in accordance with law.

Dismissed as withdrawn.

It shall, however, be open for the petitioner to take recourse to the remedies as may be available to it, in accordance with law.

Needless to say that anything expressed hereinabove shall not be taken to be an expression of opinion on the merits of the controversy.

May 25, 2018
KD

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes / No