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

**CR No.7454 of 2014
Date of Decision: 10.01.2019**

M/s Proma Industries Ltd., Mumbai and another

Petitioners

Versus

M/s Girnar Fibers Ltd., Ludhiana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajat Khanna, Advocate
for the petitioner.

Mr. Rahul Rampal, Advocate
for the respondent.

AVNEESH JHINGAN, J (Oral):

The present civil revision petition has been filed being aggrieved of the order dated 10.09.2014 passed by Civil Judge, Junior Division, Ludhiana [hereinafter referred to as 'lower Court'], dismissing the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 [for brevity 'the Act'].

The facts in brief are that the petitioners and the respondent entered into an agreement dated 11.01.2009. In the agreement, there was an arbitration clause and same is quoted below:-

“28. Any dispute or difference arising out of the agreement

shall be referred to the arbitration. The arbitration shall be conducted by an Arbitrator who shall be a retired judge of the High court or ADJ to be appointed by the consent of all parties. In the event the parties hereto are unable to reach an agreement to the appointment of an arbitrator, an application shall be filed by either party before Hon'ble High Court of Delhi for appointing an arbitrator and its decision shall be final and binding on the parties and such arbitration shall be governed by and be subject to the provisions of the arbitration and conciliation Act 1996 as modified from time to time or re-enactment thereof for time being in force and the decision of the arbitrators shall be final and binding in between the parties hereto, their representatives and successors. The arbitration proceedings shall be held at Delhi.”

On the basis of the said clause, the petitioners moved an application under Section 8 of the Act. On notice, the respondent filed reply to the application raising various objections. The lower Court dismissed the application on the ground that Section 8(2) of the Act was not complied with as the petitioner had not attached the original or certified copy of the agreement. Aggrieved of the said order, the present civil revision petition has been filed.

Learned counsel for the petitioners contends that the photocopy of the agreement was attached with the application and the respondent is neither disputing the agreement dated 11.01.2009 nor the fact that there is an arbitration clause in the agreement. Hence, the lower Court erred in dismissing the application for non-compliance of Section 8(2) of the Act. He relies upon the decision of the Supreme Court in **Bharat Sewa Sansthan Vs. U.P. Electronics**

Corpn. Ltd. (2007) 7 SCC 737.

Learned counsel for the respondent defends the award and argues that compliance of Section 8(2) of the Act is mandatory and the application has rightly been dismissed.

The contention raised by learned counsel for the petitioners deserves acceptance. Section 8 of the Act is reproduced below:-

|8. Power to refer parties to arbitration where there is an arbitration agreement.—

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof. Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) Notwithstanding that an application has been made

under subsection (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

As per Section 8(2) of the Act, the application preferred under sub-section (1) of Section 8, shall not be entertained unless it is accompanied by original arbitration agreement or its certified copy.

There is no dispute that the application made under Section 8(1) of the Act by the petitioners was accompanied by a photocopy of the agreement. At this stage, it would be pertinent to note here that learned counsel for the respondent is not in a position to dispute the agreement dated 11.01.2009.

The Supreme Court in **Bharat Sewa Sansthan's** case (supra) held as under:

*“The respondent Corporation placed on record of the trial court photocopies of the agreements along with an application under **Section 8(1)** of the Arbitration Act. The High Court, in our view, has rightly held that the photocopies of the lease agreements could be taken on record under **Section 8** of the Arbitration Act for ascertaining the existence of arbitration clause. Thus, the dispute raised by the appellant-Sansthan against the respondent-Corporation in terms of the arbitration clause contained in the lease agreement is arbitral.”*

Since in the present case there is no dispute between the parties with regard to agreement dated 11.01.2009. Keeping in view the decision of the Supreme Court, the order dated 10.09.2014 is set aside. The lower Court shall decide the application afresh but the

same shall not be dismissed on the ground that certified copy or the original agreement has not been attached.

The civil revision petition is allowed.

[AVNEESH JHINGAN]
JUDGE

January 10th, 2019
pankaj baweja

1. Whether speaking/reasoned : Yes/ No
2. Whether reportable : Yes/ No