

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 11th February, 2019

+ FAO(OS) 11/2019

M/S IILM WORLD SCHOOL

..... Appellant

Through: Mr. Puneet Mittal, Sr. Adv. with Mr. Sandeep Mittal, Ms. Vasudha Bajaj and Mr. Vinod Kathwalia, Advs.

versus

S S MANN & ANR

..... Respondents

Through: Mr. Sandeep Sharma, Mr. Aman Dhyani and Ms. Kanchan Semwal, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM. No. 3010/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM. No. 3011/2019 (for delay)

This is an application filed by the applicant / appellant seeking condonation of 10 days delay in filing the appeal. For the reasons stated in the application delay of 10 days in filing the appeal is condoned.

Application stands disposed of.

FAO(OS) 11/2019

1. The challenge in this appeal is to the order dated 30th October, 2018 passed by the learned Single Judge in OMP No. 564/2010, which was a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in

short Act of 1996), whereby the learned Single Judge has disposed of the same.

2. The only plea advanced by Mr. Puneet Mittal, learned Sr. Counsel appearing for the appellant is that supplementary work order dated 7th December, 2005 did not contain any arbitration clause and as such the dispute qua that order could not have been adjudicated by the learned Arbitrator.

3. On a specific query to Mr. Mittal, assuming that there was no arbitration clause in respect of work order dated 7th December, 2005, did the appellant herein file any counter-claim, the answer was in the affirmative. If that being so, the appellant having submitted to the jurisdiction of the arbitrator through counter-claim cannot challenge the very jurisdiction of the Arbitrator to adjudicate disputes between the parties. That apart, we note that the learned Single Judge in Para 9 onwards held as under:

“9. The submission of the learned counsel for the Respondents cannot be accepted, that this issue is no longer in dispute, in view of the reference order dated 7th December, 2005. The order appointing the sole arbitrator does not go into the issue as to whether the supplementary work order is included in the reference or not.

10. It is, however, clear that the supplementary work order was in continuation of the main work order, which was awarded to the Contractor. The said supplementary work order has no independent existence. The wording used in the supplementary

work order also reveals the intention of the parties i.e. in clause 5. The said clause provides as under:

“5. Other Terms & Conditions

All other terms & conditions of this supplementary work like arrangement of water & electricity, payment terms, recovery of Income Tax (TDS) & Works Contract Tax, retention money, insurance, statutory obligation, notices, fees and charges etc would remain same as mentioned in our Work Order dated 01.04.2005 issued & accepted by you.”

The above clause is broad enough to hold that the intention of the parties was to treat the supplementary work order, in continuation of, in addition to and in furtherance of the main contract awarded to the contractor. All other terms and conditions of the supplementary work order, except the ones specified in the main contract were to remain the same as in the main work order dated 1st April, 2005.

11. Learned Arbitrator cannot be faulted with for having considered the two work orders as being integral to each other. The findings of the learned Arbitrator are set out herein below:

“..... I have carefully considered the respective contentions of the parties on the question as to whether the arbitration agreement as contained in the first agreement dated 1st April, 2005 will also form part of the agreement dated 7th December, 2005. While it is true that the arbitration agreement has not been specifically mentioned in the second agreement, however, one has to look to the intention of the parties as can be gathered from various documents including the agreements on record. The parties, in my opinion, had considered the works awarded both by the work order dated 1st April, 2005 as well as work order dated 7th December, 2005 as one contract. Separate bills

were never prepared in respect of the work executed under the second agreement. Running bills as well as the final bill were prepared as if the work executed under the two agreements was one. There is no reference anywhere in any of the correspondence exchanged between the parties that the work carried out under the second work order was under a separate contract or that the single bill cannot be prepared in respect of both the contracts. It is for the first time before the Arbitral Tribunal that the plea about there being two agreements in existence has been taken. I am, therefore, of the considered opinion that the arbitration agreement as contained in work order dated 1st April, 2005 also by incorporation forms part of the work order dated 7th December, 2005 and the disputes under the second agreement will be covered by the arbitration clause as contained in the first agreement. The judgments cited by Mr. Chawla, in my opinion, are on their own facts and are not applicable to the present proceedings.”

12. The above findings of the learned Arbitrator, on facts, are not disputed i.e. no separate bills were prepared and the running bills and final bill were treated as one. Parties themselves treated both the work orders as being part of one contract. It is also agreed by Ld. Counsel for the Petitioner, that the Petitioner raised a counter claim in respect of the supplementary work order before the Ld. Arbitrator.

13. Moreover, in a recent judgment of the Supreme Court in **Ameet Lalchand Shah and Ors. v. Rishabh Enterprises and Ors., A.I.R. 2018 SC 3041** the Supreme Court has held that when there are multiple work orders/agreements entered into in respect of a single commercial project, all the disputes ought to be resolved through arbitral proceedings. Paragraph 21 of the said judgment is set out herein below:

“21. In a case like the present one, though there are different agreements involving several parties, as discussed above, it is a single commercial project namely operating a 2 MWp

Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, Uttar Pradesh. Commissioning of the Solar Plant, which is the commercial understanding between the parties and it has been effected through several agreements. The agreement – Equipment Lease Agreement (14.03.2012) for commissioning of the Solar Plant is the principal/main agreement. The two agreements of Rishabh with Juwi India: (i) Equipment and Material Supply Contract (01.02.2012); and (ii) Engineering, Installation and Commissioning Contract (01.02.2012) and the Rishabh's Sale and Purchase Agreement with Astonfield (05.03.2012) are ancillary agreements which led to the main purpose of commissioning the Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, Uttar Pradesh by Dante Energy (Lessee). Even though, the Sale and Purchase Agreement (05.03.2012) between Rishabh and Astonfield does not contain arbitration clause, it is integrally connected with the commissioning of the Solar Plant at Dongri, Raksa, District Jhansi, U.P. by Dante Energy. Juwi India, even though, not a party to the suit and even though, Astonfield and appellant No.1 – Ameet Lalchand Shah are not signatories to the main agreement viz. Equipment Lease Agreement (14.03.2012), it is a commercial transaction integrally connected with commissioning of Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, U.P. Be it noted, as per clause(v) of Article 4, parties have agreed that the entire risk, cost of the delivery and installation shall be at the cost of the Rishabh (Lessor). Here again, we may recapitulate that engineering and installation is to be done by Juwi India. What is evident from the facts and intention of the parties is to facilitate procurement of equipments, sale and purchase of equipments, installation and leasing out the equipments to Dante Energy. The dispute between the parties to various agreements could be resolved only by

referring all the four agreements and the parties thereon to arbitration.”

14. In view of the latest decision of the Supreme Court and in view of the facts of the present case, the objection is not sustainable and the findings of the Arbitrator do not warrant any interference. The main contract and the supplementary work order were part of a comprehensive assignment which was rightly adjudicated in the arbitration proceedings.”

4. We also agree with the reasoning given by the learned Arbitrator on the arbitrability of the dispute pursuant to supplementary order dated 7th December, 2005. This being the only issue urged by Mr. Mittal, we do not see any merit in the appeal.

The same is dismissed.

CM. NO. 3009/2019 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRUARY 11, 2019/jg