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

\+ CS(COMM) 276/2020
I.A. 6119/2020 (exemption)

SMC COMTRADE LIMITED ..... Plaintiff
Represented by: Mr.Ramesh Kumar Naroola, Mr.Udayan Mukerji, Mr.Nishant Bhargava and Ms.Krishna Parkhani, Advocates.

versus

THE HANDICRAFT AND HANDLOOMS EXPORT CORPORATION INDIA LTD. & ORS. ..... Defendant
Represented by: Mr.Atul Nagarajan, Advocate for the D1 and D3

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
% **29.07.2020**

The hearing has been conducted through Video Conferencing.

I.A. 6119/2020 (exemption)

1. Exemption is allowed subject to all just exceptions.

2. Application is disposed of.

CS(COMM) 276/2020

1. By the present suit under Order XXXVII CPC, the plaintiff seeks a summary judgment directing the defendant No. 1 to pay a sum of ₹ 2.48 Crores to the plaintiff along with interest @ 18% p.a. thereon.

2. The claim, according to the plaintiff is based on the acknowledgement of the defendant Nos. 1 and 3 as to their liability towards the plaintiff to pay

a sum of ₹ 2.48 Crores.

3. At the outset, learned counsel for the defendant Nos. 1 and 3 who enters appearance on advance notice, objects to the very maintainability of the suit on the ground that the two agreements between the plaintiff and defendant No.1 provided for a clause which required the parties to refer the disputes to arbitration. Plaintiff and defendant No. 1 entered into an agreement on 13th September, 2012 by virtue of which the plaintiff placed indents and the defendant No. 1 was to place order for import of bullions. This agreement was followed by another agreement between the plaintiff and defendant No. 1 on 25th February, 2014 requiring the defendant No. 1 to place orders for imports of the bullions on the plaintiff. The dispute between the parties is thus regarding payment of a sum of ₹ 2.48 Crores, which according to the plaintiff, has been acknowledged by the officers of defendant No. 1 six times and thus, under Order XXXVII CPC, the suit is maintainable.

4. In the suit, the plaintiff has impleaded the Handicrafts and Handlooms Exports Corporation of India Ltd. (in short, 'HHECIL') through its Chairperson Smt. Bindu Sharma as defendant No. 1 and the same party i.e. HHECIL through its Chief Finance Manager as defendant No. 3 giving the official address of the defendant No. 3. The defendant No. 2 in the suit is Ministry of Textiles through its Secretary.

5. Considering the fact that the defendant Nos. 1 and 3 are single identity, the acknowledgment, if any, is through defendant No. 1. Further, both the agreements i.e. the agreements dated 13th September, 2002 and 25th February, 2014 have arbitration clauses therein, which read as under:-

Agreement dated 13th September, 2002

"13. Dispute Resolution

13.1 Any dispute or difference of opinion arising out of this Agreement or in connection with its Implementation or execution, which cannot be settled amicably between the parties hereto through dialogue or discussion, shall be finally settled exclusively by Arbitration. The dispute shall be referred to the sole arbitration of a person to be appointed by HHEC and arbitration shall be held under the provisions of the Arbitration and Conciliation Act, 1996 or any re-enactment, modification or amendment thereto. The arbitration proceedings shall be conducted at New Delhi only. Any award by the sole arbitrator shall be final and binding upon both parties thereto. The fee (if any) or expenses of the ·Arbitration proceeding shall be borne by the parties equally".

Agreement dated 25th February, 2014:-

"12. DISPUTE RESOLUTION

Any dispute or difference of opinion arising out of this, Agreement or in connection with its implementation or execution, which cannot be settled amicably between the parties hereto through dialogue or discussion, shall be finally settled exclusively by Arbitration. The dispute shall be referred to the sole arbitration of a person to be appointed by HHEC and arbitration shall be held under the provisions of the Arbitration and Conciliation Act, 1996 or any re-enactment, modification or amendment thereto. The arbitration proceedings shall be conducted at New Delhi only. Any award by the sole arbitrator shall be final and binding upon both· parties thereto. The fee (if any) or expenses of the Arbitration proceeding shall be borne by the parties equally".

6. Learned counsel for the plaintiff opposing the plea of the learned counsel for the defendant Nos. 1 and 3 claims that the two agreements having expired and not surviving, the plaintiff cannot be relegated to the arbitration.

7. Admittedly, the plaintiff supplied the bullions under the two agreements as noted above, which provide for the resolution of the disputes through arbitration.

8. Learned counsel for the plaintiff states that he does not seek a decree for a sum of ₹2.48 Crores with interest, however, only seeks the defendants to pay in terms of the acknowledged liability. The suit clearly prays for a decree for ₹2.48 Crores with interest thereon, though the plaintiff may claim it as an execution without a decree. In view of the two clauses noted above in the two agreements, the present suit is not maintainable and is dismissed as such with the liberty to the plaintiff to take the remedies under the arbitration by appointment of an Arbitrator.

9. Since the present suit is not maintainable, the plaintiff is entitled to refund of the Court fees. It is, therefore, directed that the court fees be refunded to the authorized representative of the plaintiff. Necessary certificate in this regard will be issued by the Registry.

10. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JULY 29, 2020
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