IN THE HIGH COURT OF BOMBAY AT GOA

APPLICATION FOR APPOINTMENT OF ARBITRATOR NO.2/2020

OVERSEAS BEVERAGES PVT. LTD.,
THR. ITS DIRECTOR, K. DHANAKUMAR. ... Applicant.
VS
KRITARA ENTERPRISES PVT. LTD.,
THR. ITS DIRECTOR, SHIVAM GINGLANI. ... Respondent.

Mr. Nigel John Fernandes, Advocate for the Applicant.

Mr. P.A. Kamat with Mr. Rajiv Saxena, Advocates, for the Respondent.

Coram : M.S. SONAK, J.
Date : 4th March, 2021

P.C.:

Heard Mr. Nigel Fernandes for the Applicant and Mr. P.A. Kamat and Mr. Rajiv Saxena for the Respondent.

2. This is an application under section 11 seeking appointment of Arbitrator based on the premise that disputes have arisen between the parties concerning manufacturing agreements entered into between them.

3. There is no dispute that there is an Arbitration agreement between the parties. Also, it cannot be disputed that disputes have indeed arisen between the parties.

4. Therefore, ordinarily, there would have been no difficulty in proceeding to make the appointment of an Arbitrator.

5. However, the record indicates that the Respondent has instituted in the Court of the District Judge, South East, Saket Court, New Delhi a civil suit against M/s Sai Wines, its partners (Defendants No.1 to 4) and the Applicant herein (Defendant No.5). The reliefs in this suit before the Delhi Court read as follows:-

> *a) pass a decree in the sum of Rs.1,08,76,262/- (Rupees One Crore Eight Lacs Seventy Six Thousand Two hundred Sixty Two Only) in favour of the Plaintiff and against the Defendants No.1 to 5 holding the Defendants jointly and severally liable to pay the said amount alongwith updated interest due thereon to the Plaintiff,*
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> *b) pass a decree in favour of the plaintiff and against the Defendants No. 1 to 4, thereby directing the said Defendants No.1 to 4 to release C Forms in favour of the Defendant No.5 for and on behalf of the Plaintiff, for goods delivered to the Defendants No.1 to 4, as mentioned in Schedule-I hereto, or in the alternative to pay the entire amount of differential tax, interest and penalty as accruable in lieu of the said C Forms,*
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> *c) pass a decree in favour of the plaintiff and against the Defendant No. 5, thereby directing the said Defendant No. 5 to release C Forms or Form H against invoices for raw material supplied by the parties as mentioned in Schedule-II hereto for and on behalf of the Plaintiff, or in the alternative to pay the entire amount of differential tax, interest and penalty as accruable in lieu of the said C Forms or Form H,*

> *d) award interest pendente lite and future @ 18% per annum or at any such other rate, as this Hon'ble Court may deem fit and proper, upon the amount as may be decreed by this Hon'ble Court in favour of the Plaintiff and against the Defendants,*
>
> *e) Pass such further or other orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of this case and in the interest of justice, equity and fair trial."*

6. Now the dispute between the parties before me relates to the payments which the Applicant claims for manufacturing bottles. It is the case of the Respondent that payments have been made and in any case, the allegedly unpaid portion relates to the non release of C Forms by Sai Wines in respect fo the sales. Mr. Kamat clarifies that even this amount is not really due, but the Applicant apprehends that there will be demand from the GST and CST authorities in respect of such sales, which, the Applicant, may have to satisfy in the absence of the C Forms.

7. Now if the pleadings in the plaint as well as the reliefs in the plaint are perused, it does appear that the disputes raised by the Applicant and the disputes which the Respondent has raised M/s Sai Wines and its partners, are, to a great extent, inextricably interlinked. This is only a prima facie observation, because, the matter is writ large before the Civil Court at New Delhi.

8. In the civil suit at New Delhi, the Applicant has already taken up an application under section 8 of the Arbitration and Conciliation Act,

1996 (said Act). Therein, the Respondent, has already raised the defences based on the principles laid down in *Sukanya Holdings Pvt. Ltd., Vs. Jayesh H. Pandya & Ors.*[1] and Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. & Ors.[2]. Mr. Kamat also urged before me that there would be no point in bifurcating the disputes or the claims, given the principles laid down in the said two decisions.

9. According to me, it would not be appropriate for me at this stage to go into all such contentions because the matter is writ large before the Civil Court at New Delhi. However, suffice to note that the jurisdiction of this Court entertaining an application under section 11 of the said Act is narrower than the jurisdiction of the Civil Court considering an application under section 8 of the said Act as was observed in paragraph 20 in *Booz Allen and Hamilton Inc.* (supra). Therefore, in the peculiar facts of the present case, it would be appropriate if the Applicant is left to pursue its application under section 8 of the said Act rather than invoke the jurisdiction of this Court under section 11 of the said Act. This is more so now that the provisions of sub-section 6 (A) have been omitted from section 11, by Act 33 of 1919.

10. Therefore, by keeping open all contentions of all parties to be raised or which have already been raised before the Civil Court at New Delhi, this application is disposed off. Since, no issues have been decided

1 AIR 2003 SCC 2252
2 (2011) 5 SCC 532

on merits, as such, the parties will always have liberty to file fresh application if the occasion so arises.

11. The application is accordingly disposed off in the aforesaid terms. There shall be no order as to costs.

M.S. SONAK, J.

jfd/-