

FAO-ICA No.1 of 2022

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

FAO-ICA No.1 of 2022
Date of decision : 20.04.2022

M/s Beri Udyog Pvt. Ltd.

.....Appellant

VERSUS

Jiangsu World Agriculture Machinery Co. Ltd. and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Sangram Singh Saron, Advocate, for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the order dated 15.12.2021 passed by the learned Single Judge of this Court dismissing the petition preferred by the appellant under Section 9 of the Arbitration and Conciliation Act, 1996.

2. The grounds for dismissal of the petition were that the injunctive relief which has been claimed by the appellant after the Memorandum of Understanding (hereinafter referred to as 'MOU'), dated 02.11.2019 (Annexure P-8), which was entered into between the appellant and respondent No.1, the alleged breach was admittedly brought to the notice of respondent No.1 by the appellant in March, 2020 at the first instance. Thereafter, there was number of communications between the parties but no step was taken by the appellant since March, 2020 till the

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filing of the petition in September, 2021 for the relief as has been sought. Another aspect, which was also emphasized and taken note of, was that the tenure of the agreement came to an end on 15.12.2019 and as per Clause 2.3 of the agreement, which envisages that respondent No.1 shall not supply 'Combine Harvester' or any other form of agricultural equipments to any other person, dealer or distributor without the prior consent would subsist *prima facie* during the tenure of the agreement. Even, as per Clause 2.4 of the agreement, which mentioned that the agreement shall remain in operation for two years after the expiry of the agreement and is said to be not contingent upon the termination, the said period had also expired. Another aspect, which has been taken note of, is that as per the agreement which had been entered into between the parties after the breach of contract, compensation of ₹2.5 crores was agreed upon by the parties to be paid by respondent No.1 to the appellant which was indeed deposited with the appellant on 19.05.2020 and therefore, the said claim was not sustainable especially in the light of the fact that the appellant had chosen not to seek relief under Section 9 of the Arbitration and Conciliation Act, 1996 till the filing of the petition in September, 2021. The aspect, which has further been observed, is that there is an arbitration clause which could have been invoked in case of violation of the terms and conditions of the contract, the said clause has not been invoked till the filing of the petition in September, 2021. Reference in this regard has been made to Clause 14 of the agreement dated 15.12.2016 and Clause 9 of MOU. It is, on these grounds, the Court had not found it a fit case where the discretion for granting relief as sought for under Section 9 of the Arbitration and Conciliation Act, 1996 should be

exercised in favour of the appellant.

3. Learned counsel for the appellant has, in the light of the above referred to order, submitted that the appellant would accept the order as has been passed by the Court but would state that after the passing of the order by the Commercial Court, the arbitration clause has been invoked by a notice dated 10.03.2022 (Annexure A-1). The said notice was for invoking Section 21 of the Arbitration and Conciliation Act, 1996. After the service of the said notice, reply has been filed from the side of respondent on 07.04.2022, where other side is also interested to the said proceeding and now, the Arbitrator has to be appointed. The offer as has been made by the appellant for appointing a particular person as an Arbitrator has been replied to by respondent by suggesting two names for appointment as Arbitrator. He, therefore, contends that an appeal would amount to continuation of the suit and therefore, now, this Court may grant the relief to the appellant by securing the claimed amount from the respondent. His contention is that respondent No.1 is a foreign entity and the appellant has invested a huge amount. Since the appellant has claimed damages towards irreparable loss/irretrievable injury caused and goodwill due to breach of the exclusivity in the agreement dated 15.12.2016 and the MOU dated 22.11.2019, when the arbitration is yet to begin, the Court may call upon the respondent to secure the satisfaction of any decree, which may be passed in favour of the appellant in pursuance to the arbitration proceedings.

4. This contention of the learned counsel for the appellant cannot be accepted in the light of the fact that the Court has come to a conclusions and rightly, so, that injunction which has been prayed by the appellant

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cannot be granted to it for the reasons which have been mentioned above. The non-invoking of the arbitration clause on the part of the appellant is also one of the reasons for denying it the benefit as has been claimed in the petition. Although it is a curable defect and by invoking the same, the appellant would have removed that defect but the claim as has been sought to be projected cannot be accepted in the present proceedings. The subsequent developments as invoked on the part of the appellant would not confer such a right which would revive the petition under Section 9 of the Arbitration and Conciliation Act, 1996 especially when no illegality has been found in the impugned order dated 15.12.2021 passed by the learned Single Judge.

5. In view of the above, there being no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

20.04.2022
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No