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IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/74/2023

HMB ISPAT PVT. LTD. (PREVIOUSLY KNOWN AS "SUL STEEL PVT. LTD.)
VS
M/s. JINDAL ROLLING MILLS LIMITED AND ORS.

BEFORE :-
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
DATED : April 10, 2023.

Appearance :
Mr. Arnab Das, Adv.
Mr. Vinay Kumar Chowdhury, Adv.
...for petitioner
Mr. Amiya Kumar Dutta, Adv.
Mr. Swadesh Priya Ghosh, Adv.
...for respondents

The Court :-Learned Counsel for the petitioner contends that there was an arbitration clause in the agreement dated December 1, 2018, which was in the nature of a tripartite sub-license agreement, in clause 21.1 thereof, providing that in case of dispute regarding breach of the agreement, payment, financial transaction or otherwise, such dispute shall be referred to an Arbitrator, as appointed by the mutual consent, by either of the parties and the decision/award of the said Arbitrator shall be deemed to be binding upon the parties thereof.

It is contended that a dispute has arisen between the parties which falls squarely within the scope of the said agreement and, as such, in the absence of any agreement between the parties as regards the name of the

Arbitrator, this Court may fix an Arbitrator for resolving the dispute between the parties.

Learned counsel appearing for the respondent Nos. 1 and 2 submits on a pure question of law, that in view of Clause 21.2 of the agreement, the present application ought to be decided by the High Court at Rajasthan.

The said clause provides that the competent Courts at Rajasthan *only* shall have the jurisdiction to try *any action or litigation* arising out of the agreement or otherwise between the parties to the agreement, *solely and exclusively*.

It is submitted, by placing reliance on two judgments of the Court, that since there is a specific exclusion clause, the Chief Justice of Rajasthan High Court and/or her/his delegate has the exclusive jurisdiction to take up an application under Section 11 of the Arbitration & Conciliation Act, 1996.

The first judgment relied on by the respondents Nos. 1 and 2 is *SWASTIK GASES PRIVATE LIMITED versus INDIAN OIL CORPORATION LIMITED* ; reported at (2013) 9 Supreme Court Cases 32 and the next *A.B.C. LAMINART PVT. LTD. AND ANOTHER versus A.P. AGENCIES, SALEM*; reported at (1989) 2 Supreme Court Cases 163. In the said judgments, the contention raised by the respondent Nos. 1 and 2 was substantially held as a proposition. It was held by the Supreme Court in *SWASTIK GASES* (supra) that while providing for jurisdiction clause, in

the agreement words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have been used, but this in the view of the Supreme Court is not decisive and does not make any material difference. The intention of the parties was held to be clear and unambiguous that the Courts at Calcutta shall have jurisdiction, which means that the Courts at Calcutta only shall have such jurisdiction.

Again, in *A.B.C. LAMINART* (supra) the Supreme Court held in similar lines as well.

A consideration of the respective clauses as discussed above clearly indicates that the two can be harmoniously construed.

While Clause 21.1, the arbitration clause, specifically contemplates disputes regarding “breach of agreement, payment, financial transaction or otherwise” arising between the parties, Clause 21.2 or the purported exclusion clause deals with general jurisdiction to try “any action or litigation” arising out of the agreement or otherwise.

After the incorporation of the latest amendment in Section 11(6A) of the Arbitration & Conciliation Act, 1996, the Court considering an application under sub Sections (4), (5) or (6) of Section 11 shall, notwithstanding any judgment, decree or order of any Court, confine itself to the examination of the existence of an Arbitration agreement.

In such view of the matter, the purview of consideration in the present application under Section 11 of the 1996 Act is extremely limited and is more of an administrative than judicial nature. As such, it cannot

be said that the present proceeding is an “action or litigation” as contemplated in Cause 21.2 of the agreement in question.

That apart, Clause 21.2 is a general clause, whereas Clause 21.1 is a specific clause which deals with particular types of disputes, within the conspectus of which the present dispute falls. As such, there is no scope of derogating from the concept as envisaged in Article 226 (2) of the Constitution of India, by holding that this Court does not have jurisdiction to take up the present matter.

Although a relevant consideration in the present context might be Section 42 of the 1996 Act, since if the present application is adjudicated by this Court, the parties shall be restricted to this High Court within the contemplation of the said Section of the Arbitration & Conciliation Act in future, it cannot be said that merely in view of such future apprehension or the apprehended effect of a different provision, we can enlarge the scope of Section 11 of the 1996 Act. In the present case, the dispute falls within the scope of the Arbitration clause, which is a valid clause, the existence of which is not disputed by either of the parties. That apart, in view of the above findings, the objection as to the territorial jurisdiction is turned down.

Accordingly, AP No.74 of 2023 is allowed by appointing Mr. Siddhartha Banerjee, an Advocate practicing in this Court, as Sole Arbitrator to resolve the disputes between the parties, subject to

consent/declaration being obtained under Section 12 of the 1996 Act from the said proposed Arbitrator.

(SABYASACHI BHATTACHARYYA, J.)

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