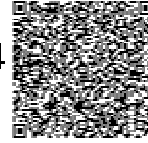


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ARB-148-2016

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

217

ARB-148-2016

Date of Decision : 25.07.2024

M/S ESSIX BIOSCIENCES LIMITED

.... APPLICANT

V/S

KARAN VEER SINGH & ORS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Ms. Mehak Sood, Advocate and
Mr. Rajesh Sood, Advocate
for the applicant.

Mr. ADS Sukhija, Advocate
for respondent No.1 and 2.

Mr. N.S. Bhoparai, Advocate and
Mr. Puneet Verma, Advocate
for respondent No.5.

JAGMOHAN BANSAL, J. (Oral)

1. The applicant through instant application is seeking appointment of Arbitrator to resolve the dispute which has arisen out of agreement dated 28.04.2010 entered into between the parties.

2. The applicant is a limited company which entered into an agreement dated 28.04.2010 with M/s Dashmesh Medicare Pvt. Ltd. and its shareholders. As per agreement executed between the parties, shares of all the shareholders namely Karan Bir Singh, Harsimran Singh, Ram Parkash Singh, S. Jaswant Singh and Bubli Brar came to be transferred to applicant. In clause 2.2.7 of the agreement, it is categorically provided that M/s Dashmesh Medicare Pvt. Ltd and its shareholders would be



responsible for the civil and criminal liability which may arise on account of pending or subsequent litigation. Clause 2.2.7 of the agreement, for the ready reference, is reproduced as below:

“Litigation.-The following litigations are pending against DMPL

- a. Arbitration matter no. ARB 143/2008 titled as “Dashmesh Medicare Private Limited v/s Mann Builders” connected with CM 21384-CII of 2008 in the P&H High Court. It was last listed on 06.04.2010 and is now listed on 13.05.2010.
- b. Arbitration matter no. ARB 160/2008 titled as “Mann Builders v/s Dashmesh Medicare Private Limited” connected with CM 25179-CII of 2008 was last listed on 06.04.2010 and is now listed on 13.05.2010.
- c. Winding Up Petition in the High Court of Punjab & Haryana being CP No. 86/2009 with CA 438/2009 titled as “Pravin K Aggarwal v/s Dashmesh Medicare Private Limited”. The petition was listed for hearing on 08.4.2010 and the Hon’ble High Court has disposed off the petition.
- d. S.R. Steel Co. through its Prop. Mukesh Chauhan, 202, Iron Market, Sector 29-D, Chandigarh has filed a civil suit against Dashmesh Medicare Private Limited for the recovery of Rs. 213,335/- plus interest. This case was last listed on 05.03.2010 and is now listed on 16.04.2010.
- e. G.S. Metal Tube through its Prop Girwar Singh, 202, Iron Market, Sector 29-D, Chandigarh has filed a civil suit against Dashmesh Medicare Private Limited for the recovery Rs.775,780/- plus interest. This case was last listed on 24.02.2010 and is now listed on 24.04.2010.
- f. Project Equipment, Delhi has filed a civil suit against Dashmesh Medicare Private Limited in Tis Hazari Courts



for the recovery of Rs. 363,753/- plus interest. The next date of hearing is 09.04.2010.

Apart from the above litigations, no other litigation, arbitration or any other judicial, quasi judicial or administrative proceedings are taking place, pending or threatened against DMPL in relation to its assets, liabilities, statutory dues, taxation, labour or otherwise which could have a material adverse effect on the performance of this Agreement. Further, it has been unconditionally represented and agreed to by DMPL and the Shareholders that whatever the litigation either civil or criminal that has been or may have been filed by or against the DMPL shall be settled and disposed off by DMPL and its shareholders so as to give effect to this agreement.”

3. Clause 8 of the agreement adverts with dispute resolution. It specifically provides that in case of dispute between the parties, the matter would be referred to an Arbitrator. The procedure for appointment of Arbitrator has been prescribed therein. Clause 8 of the agreement reads as :

“8 DISPUTE RESOLUTION:

8.1 Parties-For the purposes of this Article, the DMPL and Shareholders shall be considered as one Party

8.3 Initiation of proceedings-- In the event of any controversy or claim relating to arising out of or in any way connected to this Agreement, the Parties shall seek to settle their differences amicably between themselves, including entering into non-binding mediation. Any unresolved dispute shall be finally resolved by final and binding arbitration in



accordance with this Article. Whenever a Party shall decide to institute arbitration proceedings, it shall give written notice to that effect to the other Party. The Party giving such notice shall refrain from instituting the arbitration proceedings for a period of thirty (30) days following such notice to allow the Parties to attempt to resolve the dispute between them. If the Parties are still unable to resolve the dispute, the Party giving the notice may institute the arbitration proceeding under provisions of Arbitration and Conciliation Act, 1996.

8.3 Venue, Language and Number of Arbitrators--
Arbitration shall be held in Chandigarh India, in the English language The arbitration shall be conducted before three arbitrators with each Party to select 1 (one) arbitrator and with the third arbitrator to be appointed by the two arbitrators.

8.4 Finality of Award.--
Any award shall be by majority vote and shall be final and binding on the Parties. Nothing contained in this clause shall prevent either Party from seeking temporary restraining orders, injunctions or other temporary relief in any court of competent jurisdiction.”

4. A litigation, as discussed in para 2.2.7 of the agreement, on the date of execution of agreement, was pending between M/s Dashmesh Medicare Pvt. Ltd and M/s Mann Builders Pvt. Ltd. The matter was pending before an Arbitrator who vide award dated 20.09.2011 awarded a sum of Rs.70 lakhs in favour of M/s Mann Builders Pvt. Ltd. The Company had already been taken over by the new management, thus, new management i.e. applicant herein had to discharge liability arising out of said award. The liability arising out of said award stands paid by



applicant which is evident from order dated 08.07.2020 passed by Additional District Judge, SAS Nagar, Mohali in execution application filed by M/s Mann Builders Pvt. Ltd.

5. Mr. ADS Sukhija, Advocate and Mr. N.S.Bhoparai, counsel for respondents No.1, 2 and 5 submit that agreement which is foundation of present application was signed only by Bubli Brar i.e. respondent No.5, thus, it was an incomplete agreement and this Court cannot appoint an Arbitrator. The agreement was required to be signed by all the shareholders whereas it was signed only by one of the Director-cum-shareholder i.e. Bubli Brar.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. On being asked, counsel for the respondents confirmed that shares held by Karan Bir Singh (5000), Harsimran Singh (5000), Ram Parkash Singh (1000), S.Jaswant Singh (11,39,250) and Bubli Brar (5,00,000) i.e. respondents No.1 to 5 stand transferred in favour of applicant pursuant to aforesaid agreement. They further concede that company has been taken over by the applicant and since the execution of aforesaid agreement, they have no role in the business of M/s Dashmesh Medicare Pvt. Ltd and it is the present management i.e. applicant who is looking after entire affairs of said company.

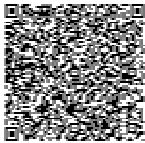
8. Section 11(6A) of the Arbitration Act which was proposed to be omitted by Act of 2019 provides that High Court while considering any application shall confine to the examination of existence of an arbitration agreement. The said Section is reproduced as below :



(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration.

9. From the perusal of agreement dated 28.04.2010, it is evident that there was an agreement between the parties. Few shareholders were Directors of the company and company along with its shareholders entered into an agreement with the applicant. The respondent, just to avoid their responsibilities and reference of the matter to Arbitrator, are pleading that agreement is incomplete and it was not signed by all the respondents. The respondent No.4 i.e. S. Jaswant Singh was holding 11,39,250 shares and Bubli Brar i.e respondent No.5 was holding 5 lakh shares. They have transferred their shares. The other three shareholders were holding meagre shares i.e. 11,000 and they have also transferred their shares. The transfer of all the assets and shareholding to applicant indicates that respondents herein acted upon the agreement and just to deflect litigation or avoid the responsibilities are pleading that they have not signed the agreement and the matter cannot be referred to Arbitrator.

10. The scope of scrutiny of this Court is confined to existence of arbitration agreement and as per judicial pronouncements question of limitation. This Court finds that there was an agreement between the parties wherein arbitration clause was embodied, thus, matter/dispute arising out of said agreement needs to be referred to an Arbitrator.



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11. In the wake of above discussion and findings, this Court is of the considered opinion that the application needs to be allowed and accordingly allowed.
12. Mr. Justice Harbans Lal (Retd.), resident of H.No.3006-A, Sector 39-D, Chandigarh, Mobile No.7508011577 is requested to act as an Arbitrator to adjudicate the dispute between the parties. He is further requested to comply with mandate of Section 12 of 1996 Act before proceeding further.
13. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at his convenience.
14. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.
15. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.
16. Needless to mention, parties will be at liberty to raise all the claims/defences/counter claims/pleas including that of limitation before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.
17. A request letter along with a copy of this order be sent to Mr. Justice Harbans Lal (Retd.).

25.07.2024

anju

(JAGMOHAN BANSAL)

JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No