



2024:DHC:7328



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 23.09.2024***

+ CS(OS) 2445/2015 &amp; I.A. 16831/2015

UNION OF INDIA

.....Plaintiff

Through: Mr.K.R. Sasiprabhu, Mr. Vishnu  
Sharma, Mr. Vinayak Maini,  
Mr. Prakhar Agarwal,  
Mr. Amitesh Mishra,  
Mr. Venkatesh Kaushik, Advs.

versus

CAIRN INDIA LTD &amp; ORS

.....Defendants

Through: Mr. Pallav Mongia, Mr.  
Anubhav Mishra Advs. for D-1.  
Mr. Aditya Thyagarajan,  
Mr. Krishna Tangirala, Advs.  
for D-2 & 3.

**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This suit has been filed by the plaintiff praying for the following reliefs:

*“(a) Declare that Rt.Hon.Sir Anthony Evans and Mr. Andrew Berkeley lacks jurisdiction to arbitrate on the claimants/defendants' cost claims being coram non judic and against Article 33.4 of the PSC.*

*(b) Declare that the Arbitral Tribunal has become functus officio consequent upon termination of the Arbitration Proceedings after the passing of the final Award dated 18.01.2011 and therefore lacks jurisdiction to proceed any further to adjudicate any defendants/ claimants claims as to costs.*



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*(c) Pass a decree of permanent injunction restraining the defendants and its officers, servants , agents and solicitors from pursuing or prosecuting in any manner or take any steps before the truncated Arbitral Tribunal of Rt. Hon. Sir Anthony Evans and Mr.Andrew Berkeley w.r.t. defentants/ Claimants' costs claim;"*

2. It is the case of the plaintiff that on passing of the Final Award dated 18.01.2011 by the Arbitral Tribunal constituted to adjudicate the disputes that had arisen between the parties in relation to the Production Sharing Contract dated 28.10.1994, the Arbitral Tribunal had been rendered *functus officio* and could not, thereafter, take a decision to continue with the arbitral proceedings for determining the cost of the arbitral proceedings.

3. This Court, by an *ad interim* Order dated 14.08.2015, restrained the defendants from participating in the arbitration proceedings which were taking place pursuant to the Ruling of the Arbitration Tribunal by majority dated 31.10.2014, and stayed the operation of the order of the Arbitration Tribunal by majority dated 31.10.2014.

4. The defendants, being aggrieved of the said Order, challenged the same by way of an appeal, being FAO(OS) 519/2015. The said appeal was allowed by the Division Bench of this Court by its Judgment and Order dated 03.05.2016, observing as under:

*"37. The suit filed by the Union of India in which the impugned order has been passed seeks a declaration that the arbitral Tribunal lack jurisdiction to quantify the costs once it had pronounced the award and therefore seeks to restrain Cairn and other two consortium members from pursuing their application before the Arbitral Tribunal to quantify the*



*costs. It is not the case of the Union of India pleaded that the proceedings before the Arbitral Tribunal is vexatious or oppressive, other than on the ground that the Arbitral Tribunal has become functus officio.*

38. Argument of Cairn, Ravva Oil (Singapore) and Videocon Industries, the appellants, is that the learned Single Judge has completely misunderstood the law concerning an arbitration dispute and that the governing law of the contract being the Indian law and as regards the curial remedies the seat of arbitration would confer jurisdiction. Response by Union of India is that since the contract has to be performed in India and as per the law in India, Courts in India could entertain the suit and for which reliance was placed on the decisions reported as (2012) 1 C.L.C. 326 Claxton Engineering Services Ltd. vs. TXM Olaj. Decision of the Delhi High Court dated December 22, 2014 in CS(OS) No.962/2014 Vikram Bakshi vs. McDonald's Pvt.Ltd. and the decision of the Calcutta High Court dated September 29, 2014 in CS No.220/2014 Board of Trustees of Port of Calcutta vs. Louis Dreyfus Armatures Sas and Ors.

39. It is settled law that an agreement between the parties can contemplate a trinity of laws applicable to a contract, but with respect to the different domains of a contract. The underlying law of the contract with reference where to the contract would be interpreted and with reference to the law applicable can be of one municipal jurisdiction. In what manner arbitration proceedings concerning adjudication of a dispute under the contract or in relation to or arising out of the contract have to be conducted can be governed by a law of another municipal jurisdiction. What would be the curial remedies concerning decisions by the Arbitral Tribunal can be the subject matter of the jurisdiction of a third municipal law.

40. The reasoning given by the learned Single



Judge that because the underlying law governing the contract is Indian law would mean that Courts in India have inherent jurisdiction to entertain the plaint is ex-facie contrary to law.

41. As we have highlighted hereinabove in the plaint the reasoning of the majority arbitrator is challenged and in effect the decision dated October 31, 2014 has been challenged. The curial remedies available to the parties are concededly in Kuala Lumpur where Union of India had challenged the award pronounced. There is an inherent contradiction in the impugned order because the learned Single Judge has relied upon Section 44 of the Malaysian Arbitration Act to hold, on the reasoning that any grievance relating to the award had to be as per the Malaysian Arbitration Act, that the remedy of Cairn, Ravva Oil (Singapore) and Videocon Industries i.e. the consortium members was to pursue the remedy as per clause B of sub-Section 1 of Section 44 of the Malaysian Arbitration Act. If this be so, the logical corollary would be that any decision taken by the Arbitral Tribunal could be challenged in the Court of Competent Jurisdiction in Kuala Lumpur and not in any other jurisdiction and especially when the challenge was to the merits of the decision.

42. Decisions relied upon by Union of India are clearly distinguishable inasmuch as in Claxton Engineering Services' case the view taken was that if a Court which otherwise had jurisdiction but for an exclusive jurisdiction clause found and hence gave a declaration that there was no arbitration agreement between the parties could issue an anti-suit injunction to restrain the opposite party from pursuing an arbitration claim laid before a Tribunal in a foreign jurisdiction. In Vikaram Bakshi's case clause 40(a) and 40(b) of the contract between the parties was considered which read as under:-

"40(a) Governing Law. This agreement



*shall be construed in accordance with and governed by this laws of India and will be subject to the jurisdiction of the Courts in New Delhi, India, except for any Indian choice of law or conflicts of law rules which might direct the application of the laws of any other jurisdiction.*

*(b) Arbitration. On demand of either JV Party, any unresolved dispute which may arise in connection with paragraphs 35, 36, 37, 38 or 39 of this Agreement shall be submitted for arbitration to be administered by the London Court of International Arbitration (the "LCIA"). Such arbitration proceedings shall be conducted in London, England and shall be conducted before a panel of three (3) arbitrators and shall be conducted in accordance with the then current commercial arbitration rules of the LCIA for international arbitrations. Partners and McDonald's shall each appoint one arbitrator and the two arbitrators so appointed shall appoint a third arbitrator to act as Chairman of the tribunal. If a JV Party fails to nominate an arbitrator within thirty (30) days from the date when the claimant's request for arbitration has been communicated to the other JV Party, such appointment shall be made by the LCIA. The two arbitrators thus appointed shall attempt to agree upon the third arbitrator to act as Chairman. If the two arbitrators fail to nominate the Chairman within thirty (30) days from the date of appointment of the second arbitrator to be appointed, the Chairman shall be appointed by the LCIA. The JV Parties shall have the right to broadest investigation of the facts surrounding the dispute, provided that any dispute between the parties*



*elating to such investigation shall be submitted to the arbitral tribunal for resolution. The arbitrators shall have the right to award or include in their award any relief which they deem proper in the circumstances, including without limitation, money damages (with interest on unpaid amounts from date due), specific performance, injunctive relief, legal fees and costs. The award and decision of the arbitrators shall be conclusive and binding upon the JV Parties and judgment upon the award may be entered in any court of competent jurisdiction. Partners and McDonald's waive and right to contest the validity or enforceability of such award. The JV Parties further agreed to be bound by the provisions of any applicable limitation on the period of time in which claims must be brought. "*

*43. Applying the principles of forum non convenience and finding prima facie waiver to enforce remedy under the arbitration clause, the anti-suit injunction was granted. In the Board of Trustees of Port of Kolkata decision the Court found that the arbitration agreement was enforceable only against the Union of India and not KoPT it was held that continuance of arbitration proceedings against KoPT would be oppressive in view of the reasons stated in the decision.*

*44. The three decisions are clearly distinguishable.*

*45. We terminate our discussion concerning FAO (OS) No.519/2015 that any decision pronounced by the Arbitral Tribunal quantifying the cost has to be challenged as per the Malaysian Arbitration Act before the Court of Competent Jurisdiction in Kuala Lumpur and therefore set aside the impugned order dated August 14, 2015 and allow FAO (OS) No.519/2015.*

(Emphasis supplied)



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5. Feeling aggrieved of the above Judgment, the plaintiff challenged the same by way of a petition under Article 136 of the Constitution of India, being Special Leave Petition (C) No.24053/2016. The same has been dismissed by the Supreme Court *vide* its Order dated 16.07.2024.

6. The learned counsel for the plaintiff submits that in spite of the above observation of the learned Division Bench of this Court, the present suit can still continue.

7. The above submission is opposed by the learned counsel for the defendants by stating that the Division Bench has categorically held that any decision that may be taken by the learned Arbitral Tribunal shall have to be challenged before the competent Court at Kuala Lumpur and not before any other Court including this Court.

8. Having considered the submissions made by the learned counsels for the parties, I find merit in the submission of the learned counsel for the defendants.

9. The Division Bench of this Court has clearly held that the curial remedies available to the parties are in Kuala Lumpur and therefore, in case it is aggrieved of the majority decision of the Arbitral Tribunal to continue with the proceedings for determination of the costs or the order that may be passed pursuant to those proceedings, it has to avail of its remedy in the competent Court at Kuala Lumpur. It has been categorically held that the decision of the Arbitral Tribunal to continue the proceedings cannot be challenged before this Court. The said finding has been affirmed by the Supreme Court by way of its Order



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referred to hereinabove.

10. It is therefore, held that this Court lacks territorial jurisdiction to entertain the present suit. The same is accordingly dismissed, leaving it open to the plaintiff to avail of its remedy in accordance with the law.

11. The pending application is also disposed of.

12. There shall be no order as to costs.

**NAVIN CHAWLA, J**

**SEPTEMBER 23, 2024/Arya/DG**

*Click here to check corrigendum, if any*