2025:PHHC:164929-DB

21 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-CARB-36-2018 (O&M)
Date of Decision: 27.11.2025

NITIN SHARMA ... APPELLANT

VS.

HINDUSTAN PETROLEUM CORPORATION LTD. & ANR ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR

Present: Mr. Akshay Jindal, Senior Advocate with
Mr. Yashvardhan, Advocate,
for the appellant.

Mr. Raman Sharma, Advocate,
for the respondents.

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<u>ASHWANI KUMAR MISHRA, J. (ORAL)</u>

This appeal under Section 37 of the Arbitration and Conciliation Act seeks to assail an order dated 01.08.2018, passed by the Commercial Court, Gurugram, whereby the objections raised by the appellant to the award of the Arbitrator have been rejected.

Undisputed facts of the case are that the respondent-Hindustan Petroleum Corporation Limited (HPCL) entered into a dealership agreement with the appellant on 28.01.1994. The agreement was signed on 28.02.1994. The initial agreement was for a period of 15 years, which was later renewed on 27.01.2010. The agreement contains Clause 39, as per which any dispute or difference of any nature whatsoever, or regarding any right, liability, act, omission or account of any of the parties arising out of or in relation to this agreement, was to be referred to the Sole Arbitrator. It transpires that during reconciliation of accounts, the respondent-HPCL found that an amount of about 49 lac was lying outstanding in the account of the appellant. The matter was probed further and it transpired that the appellant had availed supply of LPG to the tune of Rs.7.16 crores but payments against it were not made. The *modus operandi* followed was that cheques for such amounts were issued to HPCL at Panipat whereas supplies were availed from Jind. In the planned conspiracy, some of the employees of HPCL were also involved, who never presented cheques received from the appellant. Consequently, the respondents instituted arbitration proceedings and the claim was referred to the Arbitrator for such purpose.

In proceedings before the Arbitrator, the appellant submitted objections stating that the basis of the claim raised by the respondents is an act of alleged fraud, which required adjudication by the competent Civil/Criminal Court, and that such issues could not have been examined/adjudicated by the Arbitrator.

The Arbitrator has gone into the factual issue and has allowed the claim of the Corporation. The objections filed under Section 34 have also been rejected. Hence, the present appeal.

Learned Senior Counsel for the appellant argues that the respondent had itself pleaded that it could be a case of fraud in which employees of the Corporation were also involved and, therefore, the question as to who ultimately is responsible for committing the fraud has to be determined by the competent forum before any liability could be imposed upon the appellant. It is also the case of the appellant that during the relevant period, withdrawals were made from the bank account of the appellant to the tune of Rs.4 crores approximately, which were paid to the

Corporation through its employees, but such payments have not been adjusted while allowing the claim of the respondents. It is also submitted that the criminal proceedings pursuant to the FIR lodged by the respondents are admittedly pending, and hence it would not be safe to conclude that the fraud in the matter has been committed by the appellant.

The submissions advanced on behalf of the appellant are refuted by the counsel for the respondents-Corporation, who submits that the issue before the Arbitrator was with regard to settlement of accounts and that jurisdiction flowed from the arbitration clause contained in the binding agreement between the parties. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***'A. Ayyasamy v. A. Paramasivam & Ors', 2017 (2) RCR (Civil), 518*** in order to submit that issues of accounting can always be adjudicated by the Arbitrator.

Incidentally, this judgment is also relied upon by the counsel for the appellant, who places reliance upon the observations made by the Supreme Court in para 20.

Since both parties rely upon the same judgment, it is appropriate to refer to relevant paragraphs of the judgment at the outset.

In para 20, the Supreme Court has held as under:-

> "In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the Court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence that needs to be produced, the Court can sidetrack the agreement by dismissing application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious

> allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. Reverse position thereof would be that where there are simple allegations of fraud touching upon the internal affairs of the party inter se and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration. While dealing with such an issue in an application under Section 8 of the Act, the focus of the Court has to be on the question as to whether jurisdiction of the Court has been ousted instead of focusing on the issue as to whether the Court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories of non- arbitrable subjects are carved out by the Courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not capable of adjudication and settlement by arbitration and for resolution of such disputes, Courts, i.e. public for a, are better suited than a private forum of arbitration. Therefore, the inquiry of the Court, while dealing with an application under Section 8 of the Act, should be on the aforesaid aspect, viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between the parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject matter rather than relegating the parties to arbitration, then alone such an application under Section 8 should be rejected."

Again in para 36, the concurring view of the other Hon'ble Judge is also reproduced as under:-

> "The position that emerges both before and after the decision in N. Radhakrishnan is that successive decisions of this Court have given effect to the binding precept incorporated in Section 8. Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the

subject matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration. The judgment in N. Radhakrishnan has, however, been utilised by parties seeking a convenient ruse to avoid arbitration to raise a defence of fraud. First and foremost, it is necessary to emphasise that the judgment in N. Radhakrishnan does not subscribe to the broad proposition that a mere allegation of fraud is ground enough not to compel parties to abide by their agreement to refer disputes to arbitration. More often than not, a bogey of fraud is set forth if only to plead that the dispute cannot be arbitrated upon. To allow such a plea would be a plain misreading of the judgment in N. Radhakrishnan. As I have noted earlier, that was a case where the appellant who had filed an application under Section 8 faced with a suit on a dispute in partnership had raised serious issues of criminal wrongdoing, misappropriation of funds and malpractice on the part of the respondent. It was in this background that this Court accepted the submission of the respondent that the arbitrator would not be competent to deal with matters "which involved an elaborate production of evidence to establish the claims relating to fraud and criminal misappropriation". Hence, it is necessary to emphasise that as a matter of first principle, this Court has not held that a mere allegation of fraud will exclude arbitrability. The burden must lie heavily on a party which avoids compliance with the obligation assumed by it to submit disputes to arbitration to establish the dispute is not arbitrable under the law for the time being in force. In each such case where an objection on the ground of fraud and criminal wrongdoing is raised, it is for the judicial authority to carefully sift through the materials for the purpose of determining whether the defence is merely a pretext to avoid arbitration. It is only where there is a serious issue of fraud involving criminal wrongdoing that the exception to arbitrability carved out in N. Radhakrishnan may come into existence. Allegations of fraud are not alien to ordinary civil courts. Generations of judges have dealt with such allegations in the context of civil and commercial disputes. If an allegation of fraud can be adjudicated upon in the course of a trial before an ordinary civil court, there is no reason or justification to exclude such disputes from the ambit and purview of a claim in arbitration. Parties who enter into commercial dealings and agree to a resolution of disputes by an arbitral forum exercise an option and express a choice of a preferred mode for the resolution of their disputes.

> Parties in choosing arbitration place priority upon the speed, flexibility and expertise inherent in arbitral adjudication. Once parties have agreed to refer disputes to arbitration, the court must plainly discourage and discountenance litigative strategies designed to avoid recourse to arbitration. Any other approach would seriously place in uncertainty the institutional efficacy of arbitration. Such a consequence must be eschewed."

It would also be appropriate to refer to and rely upon the observations of the Court contained in para 21.

> "When we apply the aforesaid principles to the facts of this case, we find that the only allegation of fraud that is levelled is that the appellant had signed and issued a cheque of `10,00,050/- dated 17.06.2010 of 'Hotel Arunagiri' in favour of his son without the knowledge and consent of the other partners i.e. the respondents. It is a mere matter of accounts which can be looked into and found out even by the arbitrator. It does not involve any complex issue. If such a cheque is issued from the hotel account by the appellant in favour of his son, it is easy to prove the same and then the onus is upon the appellant to show as to what was the reason for giving that amount from the partnership firm to his son and he will have to account for the same. Likewise, the allegation of the respondents that daily collections are not deposited in the bank accounts is to be proved by the respondents which is again a matter of accounts."

The facts of the present case when are analyzed in light of the observations made by the Hon'ble Supreme Court in the case of *A. Ayyasamy (supra)*, we find that the issue raised before the Arbitrator was with regard to quantification of the liability of the appellant to pay the amount for supplies availed of LPG cylinders from the respondents. It is undisputed that such supplies were availed by the appellant and that he had also submitted cheques for such amount. This factual aspect has been noticed by the Arbitrator and is not in dispute. Once that is so, the liability of the appellant to pay such amount to the respondents-Corporation cannot be doubted. Whether the cheques were not presented maliciously in collusion with the appellant or for other reasons would be an aspect to be gone into by the appropriate forum. However, so far as the liability of the appellant to pay such amount to the Corporation is concerned, there can be no issue regarding the jurisdiction of the Arbitrator to adjudicate such aspects of account. We, therefore, are of the view that the Commercial Court has correctly interpreted the statutory scheme and has rightly observed that none of the grounds for entertaining an objection under Section 34 is made out on facts.

In that view of the matter, the appeal lacks merit and is dismissed.

Pending applications, if any, stand disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

27.11.2025
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No