



2025:DHC:5523-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07th JULY, 2025

IN THE MATTER OF:

+ **FAO (COMM) 133/2021 & CM APPL. 30350/2021**

SHAMBHAVI AGENCIES & ORS.Appellants

Through: Ms. Mehak Kalra, Advocate.

versus

HAVELLS INDIA LTDRespondent

Through: Mr. Rajiv Shankar Dwivedi, Mr. S.K. Sarkar, Ms. Sugandha Bhardwaj, Advs & Mr. Shantanu Singh, AR

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The challenge in this Appeal is to the Order dated 09.07.2021 passed by learned District Judge (Commercial-03), Patiala House Courts, New Delhi, in CS (COMM.) No.504/2019 dismissing an application filed under Section 8 of the Arbitration and Conciliation Act filed by the Appellants herein.
2. At the very outset, it is clarified that the Appellants herein were the Defendants, while the Respondent herein was the Plaintiff who had filed the recovery suit before the learned Trial Court.
3. Shorn of unnecessary details, the facts leading to the filing of the instant Appeal are that:



- a. The Respondent filed a Suit for recovery of Rs.1,11,68,378.02/- under Order XXXVII CPC read with Commercial Courts Act, 2015 against the Appellants, alleging therein that the Appellant No. 2, being the Proprietor of Appellant No. 1 had executed an “*Havells Galaxy Agreement*” dated 01.04.2017 for a period of three years commencing from 01.04.2017, wherein Appellant No. 1 had been appointed as a ‘Trader’ for the products of the Respondent/Plaintiff.
- b. It is stated that goods have been supplied by the Respondent to the Appellant No. 1 herein and invoices had been raised. There is no objection *qua* the quality and quantity of the supplies and the payments were being made by the Appellant No.1 herein in the usual course of business through the finance facility created by the Axis Bank (“**the Bank**”). It is stated that Appellant No. 3 has been arrayed as a Guarantor.
- c. It is stated that the since the Appellant No. 1 failed to make repayment to the Bank, the process of blacklisting the Appellant No. 1 was initiated by the Bank. It is further stated that at that time, the Appellant No.1 had admitted that a sum of Rs. 1,31,88,912.15 is due and it will clear the dues. It is stated that the Appellant No.1 offered a payment plan for the repayment of dues *vide* letter dated 01.12.2017 and gave 16 cheques of Rs. 5,00,000/- each to the Respondents. At the request of Appellant No.1, Plaintiff made payments to the Bank for the amount which is due by the Defendant to the Bank by issuing debit instructions on 07.12.2017. It is stated that after the transactions, a separate SAP Code was opened by the Respondent for Appellant No.1 for clearance of the outstanding dues.



d. It is stated that Respondent presented five cheques, which were dishonored. It is stated that Respondent further alleged that the Appellant No. 1 only paid Rs. 5,00,000/- and admitted its liability of Rs.1.31 crores. It is stated that Appellant No. 2, on 18.04.2019, issued another confirmation admitting the principal outstanding of Rs.1,11,68,378.02/- along with the late payment charges. Appellant No. 3, father of Appellant No. 2, owner of an agricultural land at Village Khopali Durg (CG) agreed to hand over the original documents of the land to the Respondent as security towards the outstanding amount undertaking on an undated letter that he will not sell the land which will be pledged to the Respondent as security. It is stated that Appellant No.3 also stood guarantor to the above amount.

e. It is stated that since Appellant No.1 failed to pay the outstanding amount despite repeated assurances, the Respondent filed the suit claiming the principal amount of Rs. 1,11,68,378.02 along with interest @18% p.a.

f. It is stated that after getting summons of the Suit, the Appellants filed applications seeking leave to defend. The Appellants also preferred applications under Order VII Rule 11 CPC for dismissal of the Suit. It is stated that the Appellants also filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”) stating that the Havells Galaxy Agreement dated 01.04.2017 had been entered into between the Respondent and Appellant No.2 contains an Arbitration Clause. It is this application filed under Section 8 of the A&C Act which has been rejected by way of the Impugned Order under Appeal.



g. The primary reason given by the learned Trial Court while dismissing the application filed under Section 8 of the A&C Act is that Appellant No. 3, who had acted as a guarantor, is not a party to the Arbitration Agreement between the Appellant No. 1 & 2 and the Respondent. The learned Trial Court was of the opinion that two simultaneous proceedings cannot be permitted to proceed; one for arbitration between the Respondent and Appellant No.1 with Appellant No.2 as the proprietor, and a separate suit against Appellant No.3 who stood as a guarantor. Moreover, since Appellant No. 3 was not a party to the Arbitration Agreement, the learned Trial Court was of the opinion that the application under Section 8 of the A&C Act filed by the Appellant No. 1 & 2 is not maintainable. It is this Order which is under challenge in the present Appeal.

4. By way of the present Appeal, the Appellants have challenged the Impugned Order *inter alia* on the following grounds:

- (i) The learned Trial Court had exceeded its jurisdiction in deciding the Section 8 Application of the Appellants on merits, while it only had jurisdiction to see whether a *prima facie* valid arbitration agreement exists or not, and that only the Arbitral Tribunal is empowered to decide the objections with respect to the existence and validity of arbitration agreement;
- (ii) The learned Trial Court has committed material illegality in holding that the subject-matter of the Suit is not the subject-matter of the agreement since the invoices/bills are ancillary to the main agreement dated 01.04.2017;
- (iii) The learned Trial Court has erred in holding that the Agreement



dated 01.04.2017 does not relate to the dispute between the Appellants No. 1 & 2 and the Respondent *qua* payment of outstanding dues, but only relates to the appointment, expenditure for beautification of shops, etc., as laid down in Clause 1 of the Agreement;

(iv) The learned Trial Court could not have entertained the Suit filed by the Respondent as all disputes regarding transactions between the parties should necessarily have been referred to arbitration in accordance with Clause 9 of the Agreement dated 01.04.2017; and

(vi) The learned Trial Court has failed to appreciate that there is a direct relationship between the Appellant No. 3, who is a non-signatory to the Arbitration Agreement and the Appellants No. 1 & 2, who are signatories to the Arbitration Agreement.

5. In support of its contentions, the learned Counsel for the Appellants has placed reliance of the judgments of the Apex Court in Cheran Properties Limited v. Kasturi and Sons Ltd and Ors, (2018) 16 SCC 413, Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641, Ameet Lalchand Shah v. Rishabh Enterprises, (2018) 15 SCC 678, MTNL v. Canara Bank, (2020) 12 SCC 767, and Magic Eye Developers v. Green Edge Infra Pvt. Ltd. and Ors., 2020 SCC OnLine Del 597.

6. *Per contra*, the learned Counsel for the Respondent has supported the findings rendered by the learned Trial in the Impugned Order. To buttress its contentions, the learned Counsel for the Respondent has relied on the judgments of the Apex Court in Sukanya Holdings (P) Ltd. Vs. Jayesh H. Pandya & Anr. (2003) 5 SCC 531, Industrial Investment Bank of India Limited v. Biswanath Jhunjhunwala 1 (2009) 9 SCC 4781 and Usha Rani &



Anr. v. Delhi Finance Corporation & Ors. 2013 SCC OnLine Del 30051.

7. Heard the learned Counsel for the parties and perused the material on record.

8. Perusal of Clause 1 of the Agreement dated 01.04.2017 indicates that the Appellant No. 1 was appointed as a trader to sell the products of the Respondent in its showroom at Raipur, on a non-exclusive basis for a period of 3 years commencing on 01.04.2017. As per Clause 2 of the Agreement, the Appellant No. 1 had spent an amount of Rs. 7,06,462/- for the paneling, beautification, display, etc., to establish the “Havells Galaxy” arcade of the products of the Respondent. Clause 2 further provided that in case the Agreement is terminated prior to the period of 3 years, the Appellant No. 1 would refund the said amount with interest @ 12% per annum with damages and loss of reputation to the Respondent. As per Clause 3, the Appellant No. 1 was barred to use the trademarks of the Respondent without its permission. Further, as per Clause 4, the Appellant No. 1 was entitled to a monthly sum of Rs. 15,000/- towards maintenance, etc. and the incentive, at the sole discretion of the Respondent, in accordance with Clause 6 of the Agreement.

9. The Agreement dated 01.04.2017 also contains an arbitration clause which reads as under:

“9. Disputes- All disputes, differences, claims arising out of and touching this Agreement will be referred to the Sole Arbitrator to be appointed by HIL. The decision of the said Sole Arbitrator shall be final and binding on the parties. The Indian Arbitration and Conciliation Act, 1996 shall apply. The proceeding of the arbitration shall be in English and the venue would be Delhi. Courts at Delhi alone shall have jurisdiction.”



10. Perusal of the record further indicates that Appellant No. 1 purchased products from the Respondent, for which invoices/bills between the period 23.08.2017 and 06.10.2017. These invoices contained separate terms and conditions, as per which the prices of materials were on ex-work/depot basis and any disputes arising therefrom were subject to Delhi jurisdiction only. Notably, the invoices do not contain an arbitration clause.

11. Since the Appellant No. 1 had defaulted in the payment for the purchased products from the Respondent, a suit for recovery was preferred by the Respondent before the learned Trial Court.

12. The overarching question in the present Appeal is whether the suit for recovery filed by the Respondent against the Appellants could be considered as being covered within Clause 9 of the Agreement dated 01.04.2017 and if so, would the Appellant No. 3, who is a non-signatory to the Arbitration Agreement, also be subjected to the arbitration proceedings arising out the Agreement pursuant to the application under Section 8 of the A&C Act preferred by the Appellant No. 1 and 2.

13. Section 8 of the A&C Act reads as under:

“8. Power to refer parties to arbitration where there is an arbitration agreement — (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall



not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

14. The approach of a court, when a party prefers an application under Section 8 of the A&C Act, has been succinctly laid down by the Apex Court in Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531 in the following terms:

“12. For interpretation of Section 8, Section 5 would have no bearing because it only contemplates that in the matters governed by Part I of the Act, the judicial authority shall not intervene except where so provided in the Act. Except Section 8, there is no other provision in the Act that in a pending suit, the dispute is required to be referred to the arbitrator. Further, the matter is not required to be referred to the Arbitral Tribunal, if: (1) the parties to the arbitration agreement have not filed any such application for referring the dispute to the arbitrator; (2) in a pending suit, such application is



not filed before submitting first statement on the substance of the dispute; or (3) such application is not accompanied by the original arbitration agreement or duly certified copy thereof. This would, therefore, mean that the Arbitration Act does not oust the jurisdiction of the civil court to decide the dispute in a case where parties to the arbitration agreement do not take appropriate steps as contemplated under sub-sections (1) and (2) of Section 8 of the Act.

13. Secondly, there is no provision in the Act that when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators.

14. Thirdly, there is no provision as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement. As against this, under Section 24 of the Arbitration Act, 1940, some of the parties to a suit could apply that the matters in difference between them be referred to arbitration and the court may refer the same to arbitration provided that the same can be separated from the rest of the subject-matter of the suit. The section also provided that the suit would continue so far as it related to parties who have not joined in such application.

15. The relevant language used in Section 8 is: “in a matter which is the subject of an arbitration agreement”. The court is required to refer the parties to arbitration. Therefore, the suit should be in respect of “a matter” which the parties have agreed to refer and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced —



“as to a matter” which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words “a matter” indicate that the entire subject-matter of the suit should be subject to arbitration agreement.

16. The next question which requires consideration is — even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed.

17. Secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums.”

[emphasis supplied]



15. In addition, the concept of subjecting a non-signatory or third party to an arbitration has been discussed at length by the Apex Court. In the case of Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1, the Apex Court made the following observation while examining whether arbitration would be suitable when it impacts the rights and liabilities of persons not bound by the arbitration agreement, or in other words, has an *erga omnes* affect:

*“49. Exclusion of actions in rem from arbitration, exposits the intrinsic limits of arbitration as a private dispute resolution mechanism, which is only binding on “the parties” to the arbitration agreement. The courts established by law on the other hand enjoy jurisdiction by default and do not require mutual agreement for conferring jurisdiction. **The Arbitral Tribunals not being courts of law or established under the auspices of the State cannot act judicially so as to affect those who are not bound by the arbitration clause. Arbitration is unsuitable when it has erga omnes effect, that is, it affects the rights and liabilities of persons who are not bound by the arbitration agreement.** Equally arbitration as a decentralised mode of dispute resolution is unsuitable when the subject-matter or a dispute in the factual background, requires collective adjudication before one court or forum. Certain disputes as a class, or sometimes the dispute in the given facts, can be efficiently resolved only through collective litigation proceedings. Contractual and consensual nature of arbitration underpins its ambit and scope. **Authority and power being derived from an agreement cannot bind and is non-effective against non-signatories.** An arbitration agreement between two or more parties would be limpid and inexpedient in situations when the subject-matter or dispute affects the rights and*



interests of third parties or without presence of others, an effective and enforceable award is not possible. Prime objective of arbitration to secure just, fair and effective resolution of disputes, without unnecessary delay and with least expense, is crippled and mutilated when the rights and liabilities of persons who have not consented to arbitration are affected or the collective resolution of the disputes by including non-parties is required. Arbitration agreement as an alternative to public fora should not be enforced when it is futile, ineffective, and would be a no result exercise. [Prof. Stavros Brekoulakis, “On Arbitrability : Persisting Misconceptions and New Areas of Concern” essay in the edited collection, Arbitrability : International and Comparative Perspectives (Kluwer, 2009) pp. 19-45.]”
(emphasis supplied)

16. Applying wordings of Section 8 of the A&C Act as well as the law laid down by the Apex Court to the facts of the present Appeal as also the scope of interference permitted under Section 37 of the A&C Act, it is evident that the Agreement dated 01.04.2017 makes no mention of supply-purchase of products, nor does it contain any addendum specifying or referring to such supply and purchase, raising of invoices, payment terms, etc. Rather, no obligation has been cast on the Appellant No. 1 to purchase products from the Respondent under the Agreement dated 01.04.2017.

17. Appellant No. 1 has purchased the products from the Respondent in a manner which is separate and distinct from the Agreement dated 01.04.2017, and strictly as per the terms and conditions laid down in the invoices raised by the Respondent.

18. Appellant No. 3, who stood as the guarantor for the outstanding dues of Appellant No. 1, is not a party to the Agreement dated 01.04.2017. Given



the nature of obligations set out in the Agreement dated 01.04.2017, the performance or non-performance of the Appellant No. 3 as a guarantor would have no effect on the nature of relationship between the parties to the Agreement dated 01.04.2017 or their obligations thereunder, which were only of appointment, expenditure for beautification of shop, use of IP rights without permission, maintenance cost, display, incentives, etc. By no extension did these obligations relate to supply-purchase of products from the Respondent.

19. As such, the “action brought before the judicial authority,” being the suit for recovery of Rs. 1,11,68,378.02/- filed by the Respondent against the Appellants before the learned Trial Court cannot be said to be the “subject of the arbitration agreement” between the Respondent and Appellant No. 1 & 2 in terms of Section 8 of the A&C Act, as the same is only governed by the terms and conditions of the individual invoices raised upon the Appellant No. 1. The parties to the Agreement dated 01.04.2017, being the Respondent and Appellant No. 1 & 2 cannot be said to have agreed to refer the supply-purchase of products, raising of invoices and payment terms to arbitration, as the same is nowhere specified in the Agreement dated 01.04.2017.

20. For this reason and in line with the judgment of the Apex Court in Sukanya Holdings (supra) and Vidya Drolia (supra), we find that the recovery suit commenced before the learned Trial Court is in fact, a matter which lies outside the scope of the arbitration agreement. The recovery suit is also between some of the parties, i.e., the Appellant No. 3, who is not a party to the said arbitration agreement, who the learned Trial Court could not have referred to arbitration for the aforesaid reasons. Therefore, there rightfully arose no question of application of Section 8 of the A&C Act.



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Admittedly, it is not as if the rejection by the learned Trial Court to refer the parties to arbitration has left them without remedy.

21. Having observed the aforesaid, this Court finds it difficult to find infirmity in the findings of learned Trial Court. Accordingly, the present appeal is dismissed, and the order of the learned Trial Court is affirmed and upheld.

22. Pending applications, if any, stand dismissed.

23. No order as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

JULY 07, 2025

RJ/AP