MANU/DE/2959/2021

Equivalent/Neutral Citation: 2021:DHC:3517, 285(2021)DLT343

IN THE HIGH COURT OF DELHI

CM (M) 1520/2018

Decided On: 09.11.2021

Arun Srivastava **Vs.** Larsen & Toubro Ltd.

Hon'ble Judges/Coram:
Amit Bansal, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Randhir Jain and Bhoop Singh, Advocates

For Respondents/Defendant: Ankit Chaturvedi and Neeraj Sood, Advocates

JUDGMENT

Amit Bansal, J.

1. The present petition under Article 227 of the Constitution of India impugns the judgment dated 04th August, 2018 passed by the Additional District Judge - 05, South-East, Saket Courts, New Delhi in Suit No. 1462/2017, whereby the application filed on behalf of the respondent/defendant under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act') has been allowed.

2. This matter came up for hearing before this Court on 11th December, 2018 when notice was issued. Subsequently an application for early hearing was filed on behalf of the petitioner which was allowed by this Court on 9th September, 2021. The respondent has filed a reply and the petitioner has also filed a rejoinder.

3. The brief facts leading to the filing of the present petition are set out hereinafter:

3.1 On 20th October, 2019, a Letter of Intent was issued by the respondent to the petitioner for supply, installation and commissioning of electric works at the District Hospital Project at Gurgaon, Bhiwani and Hissar in Haryana. Letter of Intent was duly executed and signed between the parties at New Delhi. It was the contention of the petitioner that the respondent wrongly withheld an amount of Rs. 12,24,181/- in respect of bills raised by the petitioner on the respondent which led to filing of a recovery suit for an amount of Rs. 17,26,000/- before the court of ADJ on 22nd September, 2017. In the said suit, an application under Section 8 of the Act was filed on behalf of the respondent seeking that the parties may be referred to arbitration in terms of the arbitration clause contained in the Letter of Intent. On 22nd December, 2017, an application under Order 12 Rule 6 of the Code of Civil Procedure, (CPC), 1908, was filed on behalf of the petitioner seeking decree on the basis of admissions made by the respondent.

3.2 The application filed on behalf of the respondent under Section 8 of the Act was allowed by the impugned order observing - holding as follows:

(i) There was a comprehensive arbitration clause between the parties in terms of which the clear intention of the parties was reflected that the disputes between them had to be resolved through arbitration.

(ii) The application under Section 8 of the Act was filed by the respondent before filing the written statement.

(iii) The petitioner had admitted the receipt of Annexures 1, 2 and 3 to the Letter of Intent and therefore, a legally binding contract was entered into between the parties, even if the said annexures did not bear the signatures of the petitioner.

(iv) Petitioner has nowhere denied the existence of arbitration agreement contained in the documents annexed with the Letter of Intent.

(v) In a similar matter being CS(COMM.) 601/2017 titled as A.S. Nutech Electrical Pvt. Ltd. v. M/s. Larsen & Toubro Ltd., this Court has already referred the matter for arbitration and the petitioner is one of the directors in the said plaintiff company.

(vi) The petitioner had deliberately withheld the proceedings in CS(COMM.) 601/2017 as well as the complete documents that were annexures to the Letter of Intent.

(vii) Judgment of this Court in Fenner India Ltd. V. Brahmaputra Valley Fertilizer Corporation Ltd., MANU/DE/0048/2016 : 227 (2016) DLT 285 is not applicable to the facts of the case as there is no specific admission on the part of the respondent.

4. In view of the Section 8 application filed by the respondent being allowed, the application filed by the petitioner under Order 12 Rule 6 of CPC was dismissed as being infructuous.

5. Counsel appearing on behalf of the petitioner has drawn attention of this Court to an email dated 10th November, 2016 (page 69 of the electrical file) to contend that the same constitutes an acknowledgement of liability of the respondent of a sum of Rs. 12,24,181/- and that all documents as sought by the respondent had already been supplied by the petitioner to the respondent and therefore, there was no reason to withhold the aforesaid amount. Counsel for the petitioner has placed reliance of the judgment of this Court in Fenner India Ltd. (supra) to contend that when no disputes exist between the parties and the amount claimed by the plaintiff is admitted by the defendant, the same cannot be subject matter of arbitration proceedings.

6. Counsel appearing on behalf of the respondent questions the maintainability of the present petition under Article 227 of the Constitution of India by placing reliance on the judgment of this Court dated 26th July, 2017 in CM(M) 84/2017 titled as Asha Saini v. Omaxe Limited. Counsel also places reliance of the judgment of the Supreme Court in Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums, MANU/SC/0482/2003 : (2003) 6 SCC 503 to contend that when an arbitration agreement exists between the parties it is obligatory for the courts to refer the parties to arbitration in terms of the arbitration agreement. The counsel for the respondent further contends that whether the documents as sought by the respondent from the petitioner vide email dated 10th November, 2016 were supplied by the petitioner to the

respondent is to be decided by the Arbitrator in the Arbitration Proceedings.

7. Coming first to the maintainability of the present petition, counsel for the respondent has rightly placed reliance on the judgment of this Court in Asha Saini (supra) wherein it has been observed that though Article 227 is a constitutional remedy and is not barred by a prohibition contained in statute, ordinarily the High Court would refrain from exercising this jurisdiction where the language of the statute gives a finality to the order. Unlike an order refusing an application under Section 8 of the Act for which statutory remedy of appeal has been provided under Section 37 of the Act, no remedy has been provided in respect of an application allowing a Section 8 application. The intent of the Act is that existence and validity of the arbitration agreement can be raised by a party before the Arbitral Tribunal and therefore, finality has been given to the orders passed by the court allowing application under Section 8 of the Act.

8 . In Deep Industries Ltd. v. Oil and Natural Gas Corporation Limited MANU/SC/1669/2019 : (2020) 15 SCC 706, the Supreme Court observed that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Arbitration Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy so that interference is restricted to orders which are patently lacking in inherent jurisdiction. It was further observed in the Deep Industries Ltd. (supra) that, if petitions under Articles 226 and 227 of the Constitution of India against orders passed in appeals under Arbitration Act were entertained, the entire arbitral process would be derailed and would not come to fruition for many years. The reasoning given by the Supreme Court in Deep Industries Ltd. (supra) would be equally applicable in the context of orders passed by courts allowing application under Section 8 of the Act.

9. The Division Bench of this Court in Black Diamond Track Parts Private Limited vs. Black Diamond Motors Parts Private Limited (of which I was a part), applying the ratio of the Supreme Court in Deep Industries Ltd. (supra) observed that jurisdiction under Article 227 of the Constitution of India has to be sparingly exercised in respect of orders passed by the commercial court so that the legislative intent and purpose behind the Commercial Courts Act of expeditious disposal of commercial suits is not defeated.

10. In view of the aforesaid position of law, the present petition under Article 227 of the Constitution of India against the impugned order allowing the Section 8 application would not be maintainable. All grounds in respect of existence and validity of the arbitration clause can be raised by the petitioner before the Arbitral Tribunal.

11. Even on the merits of the case, no grounds have been made for interference with the impugned order. In this regard, reference may be made to the observations of the Supreme Court in Hindustan Petroleum Corporation Ltd. (supra) in paras 14 and 16, which are set out as under:

> "14. This Court in the case of P. Anand Gajapathi Raju v. P.V.G. Raju [MANU/SC/0281/2000 : (2000) 4 SCC 539] has held that the language of Section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the civil court, there is a clause for arbitration, it is mandatory for the civil court to refer

the dispute to an arbitrator. In the instant case the existence of an arbitral clause in the Agreement is accepted by both the parties as also by the courts below but the applicability thereof is disputed by the respondent and the said dispute is accepted by the courts below. Be that as it may, at the cost of repetition, we may again state that the existence of the arbitration clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the courts below ought to have referred the dispute to arbitration.

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16. It is clear from the language of the section, as interpreted by the Constitution Bench judgment in Konkan Rly. [MANU/SC/0053/2002 : (2002) 2 SCC 388] that if there is any objection as to the applicability of the arbitration clause to the facts of the case, the same will have to be raised before the Arbitral Tribunal concerned. Therefore, in our opinion, in this case the courts below ought not to have proceeded to examine the applicability of the arbitration clause to the facts of the case in hand but ought to have left that issue to be determined by the Arbitral Tribunal as contemplated in clause 40 of the Dealership Agreement and as required under Sections 8 and 16 of the Act."

12. The entire case of the petitioner is based on the admission made by the respondent in respect of its alleged liability towards the petitioner. Nowhere has the petitioner disputed the existence of the arbitration clause. The impugned order has correctly noted that there is no specific admission made by the respondent. Therefore, the judgment of this Court in Fenner India Ltd. (supra) has been correctly distinguished. It may also be noted here that the Order 12 Rule 6 application was filed by the petitioner only after the Section 8 application had been filed by the respondent. As is being observed by the Supreme Court in Hindustan Petroleum Corporation Ltd. (supra) once there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of the said agreement. In the present case, the petitioner has not denied the existence of the arbitration agreement. The only case put by the petitioner is that in light of the admission made by the respondent, there is no arbitrable dispute to be referred for arbitration.

13. No merit is found in the petition.

14. Dismissed.