

YB XIII/NYC/India 16a
1st Judgement

Private U.
D.K. Sibal
Judicial Department
H.C. of Delhi

res'd from
Mr. R.K. Joshi,
New Delhi

H.C.D. -24

IN THE HIGH COURT OF DELHI

Suit No. 390/85

Appeal No. _____ of _____ from _____ Original _____ Decree _____
Revision Application No. _____ Appellate _____ Order _____

Date of Decision 30th July, 1986.

Chimimport Export.....plaintiff through Mr. D.K. Sibal, Advocate

Coram :—

Versus

State Trading Corporation of India...defendant, through Mr. R.K. Joshi, Advocate

The Hon'ble Mr. Justice

The Hon'ble Mr. Justice N.N. Goswamy

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordship wish to see the fair copy of the Judgement?

N.N. GOSWAMY, J. (Oral)

The plaintiff, Chimimport Export, Foreign Trade Company has filed a suit for declaration and permanent injunction to the effect that the arbitration agreement between the parties has come to an end and does not survive. In response to the summons having been received by the defendant, State Trading Corporation of India Limited, ~~submitted~~ this application under Section 3 of the Foreign Award's (recognition and enforcement) Act 1961 read with Article 2 of

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the schedule to the said Act has been filed for stay of the said suit.

It is stated in the application that the parties had entered into an agreement for the supply of Tetracycline HCL. Clause 8 of the said agreements was:-

"All matters, questions, disputes or differences whatsoever (excluding those relating to quality, for which the award of the Drugs Controller (India) or his nominee shall be final and binding on both the parties arising between the parties touching the contract construction, meaning, operation of effect of the contract or out of or relating to the contract or breach thereof shall be settled by arbitration, to be held in India in accordance with the rules of the Indian Council of Arbitration, New Delhi (India). The award shall be final and binding on both the parties."

It can not be disputed that the arbitration clause in the contracts squarely covers the dispute between the parties in as much as the matter is already before the arbitrator and the parties have submitted to its jurisdiction.

The contention of Mr. Syal, the learned counsel for the respondent is that this application is not maintainable in as much as it has not been clarified that the proceedings are covered by the Foreign Award's (recognition and enforcement) Act, 1961, this point is no longer res integra

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High Court of Madras

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In as much as in a similar situation, the Supreme Court had the occasion to deal with this contention in Renusagar Power Co. Ltd., Appellant Vs. General Electric Company and another, respondents, AIR 1985 Supreme court 1156 (V.D. Tulzapurkar and R.S. Pathak, JJ. Their lordships in paragraph 51 of the report observed : "The conditions required to be fulfilled for invoking Sec. 3 are"

- (i) there must be an agreement to which Article II of the Convention set forth in the Schedule applies. (It is not disputed that this is so in the instant case);
- (ii) a party to that agreement must commence legal proceedings against another party thereto. (It is again not disputed that Renusagar and G.E.S. are the two parties to the arbitration agreement and that Renusagar has commenced legal proceedings against G.E.C. by filing suit No.832 of 1982);
- (iii) the legal proceedings must be "in respect of any matter agreed to be referred to arbitration" in such agreement. (The question whether this condition is fulfilled here needs to be decided.);
- (iv) the application for stay must be made before filing the written statement or taking any other steps in the legal proceedings. (Admittedly this condition is fulfilled);
- (v) the Court has to be satisfied that the agreement is valid, operative and capable of being performed; this relates to the satisfaction about the 'existence and validity' of the arbitration agreement. (In the instant case these questions do not arise);

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(¶1) the Court has to be satisfied that there are disputes between the parties with regard to the matters agreed to be referred; this relates to effect(scope) of the arbitration agreement touching the issue of arbitrability of the claims. (It will have to be dealt with while considering the satisfaction of condition (iii) above). "

As regards, the first condition, it is not disputed that Article II of the Convention does apply to the agreements in question. Clause II is also satisfied in as much as legal proceedings had been commenced by the respondent. Clauses 3&4 also apply to the application because there is no dispute that the proceedings are as such which can be referred to the arbitration and the application has been filed before taking steps in the proceedings. The only dispute can be regarding Clause 5 because the suit itself is for declaration and injunction to the effect that there is no existing contract and the contract has exhausted itself. However, in the present proceedings no evidence to that effect has been ^{produced} ~~lapsed~~. In any case, I have gone through the contract and the proceedings. I find that in accordance with the contract, ^[The State Trading Corporation] ~~the petitioner~~ had sent the goods for examination. According to the ^[State Trading Corporation] ~~petitioner~~, the examination reports were to the effect that the goods are not according to the specifications. A claim had been lodged with ^[Chiminhent] ~~the respondent~~. ^[Chiminhent] ~~The respondent~~ had also been given a notice to the effect that the goods either ^{be} ~~got~~ removed or to be sold at his risk and cost.

The disputes arise out of this very agreement and the arbitration clause has been resorted to within a period of three years from the reports of the Laboratories which had tested the goods. As regards Clause 6 it is not disputed that the disputes are already before the arbitrator and are ^{existing} existed. Thus, the application satisfies all the six conditions ^{laid down} by their lordships ⁱⁿ the Supreme Court.

For the reasons recorded above, the application is allowed and the suit is stayed.

In the circumstances, there will be no order as to costs.

JULY 30, 1986.

Sd/- N. N. Goswami
Judge.

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EXAMINER

Dr. T. R. Ragh
Authorized Under
the Evidence Act

IN THE HIGH COURT OF DELHI AT NEW DELHI

OMP NO 88/84

State Trading Corporation

--Petitioner

Vs

M/s Chim Import Export

--RESPONDENTS

BEFORE,

THIS THE 30TH DAY OF JULY 1986

CORAM,

CORAM: HON'BLE MR JUSTICE N.N. GOSWAMY

Presents: Mr. R.K. Joshi for the petitioner,

Mr D.K. Syal for the respondents.

N.N. GOSWAMY J (ORAL)

The petitioner, the state Trading Corporation of India, has filed this application under Section 28 of the Arbitration Act, 1940 for extension of time for making the award by the Arbitrator. The disputes having arisen between the parties, the matter was referred to the arbitrator, who entered upon the reference on or around April, 2, 1984. There were some errors in filing the pleadings by the parties in as much as the power of attorney in favour of certain persons filing the pleadings was missing.

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Consequently, it took time to complete the pleadings. The documents were also filed by the parties which had also to be admitted and denied. The oral evidence has also been recorded at length by the arbitrator.

The cross-examination of the witness was continuing when an objection was raised that the 4 months' period having expired, the arbitrator could not proceed further. Consequently, the arbitrator adjourned the proceedings sine-die on 9th August, 1984 to enable the parties to seek extension of time.

As a consequence of the said order, the present petition under Section 23 of the Arbitration Act has been filed. The respondent had submitted before the arbitrator that he had no objection to the extension of time provided the arbitrator was willing to make a speaking award. To this the arbitrator did not agree, and, therefore, it became necessary for the petitioner to come to this Court. In reply to the application, various technical objections have been raised to the effect whether it will be a Foreign award or

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Hyderabad

an Indian award- In fact, there is no objection on merits to the extention of time. [The question whether the proceedings are covered by the Foreign Awards act or Indian Arbitration Act is immaterial. The Foreign Awards Act does not fix any period for publishing the award while the Indian Arbitration Act, has fixed a time limit of 4 months. If the time limit is applicable then obviously it can be extended under Section 28 of the said act. I have looked into the pleadings regarding the proceedings before the arbitrator and I do not find any unnecessary adjournment or delay on the part of the arbitrator.]

[Consequently, the application is allowed and the time for making the award is extended by a period of 8 months from today. This period of 8 months is being granted since it has been submitted by ^[counsel to Crimimpet] ~~Mr Syal~~ that his client is in Romania and has to seek instructions on certain points from that country. In the circumstances, it may not be possible for the arbitrator to publish the award earlier than the period fixed.]

-4/-

The parties are directed to appear before the arbitrator on 8th September, 1936, at 11.00 a.m.

This OMP is disposed of.

Sd/-M.N. GOSWAMY
JUDGE

JULY 30, 1936.

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EXAMINER

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Verified to be true Copy
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Signature J. d. ...
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