
(2012) 6 ADJ 258 : (2013) 2 ARBLR 572 : (2012) 4 AWC 4116

Allahabad High Court

Case No: Arbitration Petition No. 29 of 2010

M/s. Ritika Agencies
And Another

APPELLANT

Vs

Add Corporation
Limited And Others

RESPONDENT

Date of Decision: April 6, 2012

Acts Referred:

Arbitration and Conciliation Act, 1996 " Section 11, 16, 7, 8

Citation: (2012) 6 ADJ 258 : (2013) 2 ARBLR 572 : (2012) 4 AWC 4116

Hon'ble Judges: Pankaj Mithal, J

Bench: Single Bench

Advocate: Om Prakash Lohia, for the Appellant;

Final Decision: Dismissed

Judgement

Hon"ble Pankaj Mithal, J.

Heard Shri O.P. Lohia learned counsel for the petitioners.

No one has put in any appearance on behalf of the respondents despite service of notice upon them was deemed to be sufficient by an earlier

order of the Court. Petitioner No. 1 is an unregistered firm and Petitioner No. 2 claims to be its proprietor.

Petitioners have filed this petition u/s 11 of the Arbitration and Conciliation Act, 1966 (hereinafter referred to as the Act) for the appointment of an

arbitrator.

Petitioners claim that the firm was appointed as a super stockiest of the respondents but respondents started marketing their products through

another concern of Lucknow which has resulted in heavy losses to the petitioners. The claim for settlement of losses so suffered by the petitioners

is referable to arbitrator.

2. I have perused the pleadings of the petitioners. The petitioners have not mentioned the date on which the firm was appointed as the super

stockiest. However, from Annexure-2 to the writ petition which is a letter dated 6.11.2007 issued by the Authorised Signatory of the respondents,

it appears that the petitioner firm was empanelled as the new super stockiest for the Eastern U.P. It is, however, not clear from the pleadings as to

how long the said empanelment/appointment of the petitioner firm continued; whether it was revoked and if revoked, the duration for which it

remained in operation.

3. The petitioners in the entire petition have nowhere pleaded a single word that in pursuance to the empanelment/appointment of the petitioner firm

as stockiest, any agreement was executed or arrived at between the parties containing an arbitration clause.

4. There is nothing on record to indicate that the dispute between the parties or the claims arising in respect of the appointment of the petitioner

firm as stockiest are referable to arbitration or that there was any arbitration agreement. No material has been brought on record in any form to

establish the existence of arbitration agreement. There is no document signed by the parties which may indicate the existence of an arbitration

agreement nor any such intention is reflected by the exchange of letters or any agreement or even by the statements of claim and defence made by

the parties.

5. The scheme for appointment for arbitrator by the Chief Justice of Allahabad, 1996 in Clause 2 provides that the request for appointment of an

arbitrator made to the Chief Justice shall be accompanied by the original arbitration agreement or duly certified copy thereof.

The petitioners have not filed any copy of the agreement alleged to have been entered into between parties.

Thus, I am of the opinion that there exists no arbitration agreement between the parties as contemplated by Section 7 of the Act.

6. In Jagdish Chander Vs. Ramesh Chander and Others, , their Lordships of the Supreme Court while considering the exercise of power u/s 11 of

the Act held that the same can only be exercised provided there exists an arbitration agreement between the parties as contemplated vide Section 7

of the Act. Thus, the existence of an arbitration agreement is a condition precedent for making an appointment of an arbitrator.

7. In view of the aforesaid facts and circumstances, it can safely be held that as there exist no arbitration agreement between the parties or any

agreement to refer the disputes or claims to arbitration, no arbitrator can be appointed to adjudicate the alleged dispute/claim.

8. Learned counsel for the petitioner has laid much emphasis upon the decision of the Supreme Court in Nimet Resources Inc. and Another Vs.

Essar Steels Ltd., and has argued that whether there exists an arbitration agreement or not should be left to be decided by the arbitrator. In the

aforesaid decision his Lordship of the Supreme Court has laid down that where there is doubt as to the existence of arbitration agreement, the

appropriate course is to leave the same for decision of the arbitrator u/s 16 of the Act.

9. The aforesaid authority would not be applicable where the arbitration agreement as contemplated by Section 7 of the Act does not exist at all.

Moreover, it does not absolutely oust the jurisdiction of the Chief Justice or his nominee in considering the existence of the arbitration agreement

while appointing an arbitrator in exercise of power u/s 11 of the Act. A Constitutional Bench of Seven Judges of the Supreme Court in S.B.P. and

Co. Vs. Patel Engineering Ltd. and Another, , observed that the fact that the arbitral tribunal has competence to rule on its own jurisdiction and to

define the contours of its jurisdiction, only means that when such issues arise before it, arbitral tribunal could possibly decide them. This happens

when the parties go to the arbitral tribunal without recourse to Section 8 or Section 11 of the Act, but where the dispute is referred u/s 11 of the

Act, the Chief Justice or his delegate has to decide whether there is an arbitration agreement as defined under the Act and whether the person who

has made request before him is a party to such an agreement and it is also open for him to decide whether the claim raised is a dead one and is a

long barred claim which is being sought to be resurrected. Thus, before referring a dispute to arbitral tribunal or appointing an arbitrator it is

obligatory to ensure the existence of the arbitration agreement.

Since, in the instant case, I have already ruled that there is no arbitration agreement as contemplated u/s 7 of the Act, it is not a fit case for referring

the dispute to an arbitral tribunal.

The petition is devoid of merits and is dismissed.