

(2017) 12 DEL CK 0057

DELHI HIGH COURT

Case No: 556 of 2017

Syls Enterprises Pvt.
Ltd.

APPELLANT

Vs

India Flysafe Aviation
Ltd.

RESPONDENT

Date of Decision: Dec. 22, 2017

Acts Referred:

- Specific Relief Act, 1963, Section 41 - Injunction when refused
- Arbitration and Conciliation Act, 1996, Section 9 - Interim measures, etc., by Court

Hon'ble Judges: Yogesh Khanna

Bench: SINGLE BENCH

Advocate: Digvijay Rai, Syed Hassan, Pulkit Tyagi, Ravi Sikri, Prashant Mehta, Shreshth Sharma, Neha Tanwak

Final Decision: Dismissed

Judgement

IA No. 15625/2017

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

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3. Notice issued. The learned counsel for the respondent appearing on advance notice accepts the notice.

4. With the consent of learned counsels for parties the petition is heard.

5. This petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as the Act) with the following prayers:-

"A. To Pass appropriate order/direction by way of ad-interim injunction injuncting the Respondent and its authorized representatives, signatories, agents or any other person on behalf of the Respondent from implementation of the MOU dated 15.12.2017 and Agreement dated 15.12.2017 in favour of M/s Thumbby Aviation Pvt Ltd. till the expiry of the notice period i.e. 15.01.2018; and

B. Pass Ad-interim Ex- Parte order/direction injuncting the Respondent and its authorized representatives, signatories, agents or any other person on behalf of the Respondent to fly the Helicopter Agusta AW 139, Reg. No. VT-JSA from New Delhi to Hyderabad prior to 15.01.2018;"

6. Brief facts are as under:-

a) On 30.11.2017 the petitioner company and respondent entered into the charter agreement valid from 01.01.2018 to 30.06.2018 whereby the respondent agreed to operate the helicopter for the petitioner for nonscheduled passenger charters, for the use of the petitioner's bonafide passengers only, on the terms and conditions set out in the Agreement;

b) On 04.12.2017 an addendum to the agreement dated 30.11.2017 was carried out with regard to the Penalty Clause and Charter Service.

c) On 06.12.2017 the second addendum to the agreement was carried out with regard to tenure clause and crew.

d) On 13.12.2017 the petitioner based on the agreement dated 30.11.2017 participated in a tender floated by the Government of Telangana State Aviation Corporation Limited having reference No. TSACL/HC/T-1/2017-18 dated 15.11.2017 and submitted its bid on 13.12.2017. The technical bid is to be opened on 27.12.2017.

e) It is alleged on 15.12.2017 the respondent terminated the contract dated 30.11.2017 by giving notice per clause 13.2 of the agreement and further entered into a Memorandum of Understanding and an Agreement dated 15.12.2017 with one M/s.Thumby Aviation Private Limited. The said agreement with M/s.Thumby Aviation Private Limited is valid for two years from the date the Helicopter would fly from New Delhi to Hyderabad.

f) On 20.12.2017, the petitioner came to know of the factum of the Agreement dated 15.12.2017 between the respondent and M/s.Thumby Aviation Private Ltd; and hence this petition.

7. To appreciate the submissions of the parties, it would be apposite to refer to the termination clause in the agreement dated 30.11.2017, especially clause Nos. 13.1 and 13.2 and it note as under:-

"13. TERM AND TERMINATION

13.1 This agreement shall be in force for a period starting from 1st Jan 2018 to 30th June 2018. Extension, if any, shall be on mutually acceptable terms.

13.2 Both the parties i.e. Operator and Charterer reserve the right to terminate the contract with 30 days notice period at any given time, without assigning any reason.

13.3 xxx xxx"

8. Per above clauses any of the party has a right to terminate the contract while giving 30 days notice and without assigning any reason. It is alleged by the learned counsel for the petitioner that since its bid with the Telangana State by the petitioner was filed only on the strength of the agreement dated 30.11.2017 and if the agreement is allowed to be terminated then petitioner would automatically fail in its bid and hence, the respondent be restrained from removing the helicopter from Delhi to Hyderabad for use of M/s.Thumby Aviation Private Limited.

9. The contention of the petitioner has no force per clause No. 8 of the agreement dated 30.11.2017 which notes:-

"8. NON-RESTRICTIVE RELATIONSHIP

This Agreement does not prevent either Party from entering into similar agreements with others, whether or not in the same industry during the lease period."

10. Thus, the agreement dated 30.11.2017 not only entitle any of the parties to terminate the agreement without assigning any reason but also did not prevent them from entering into similar agreements with others, whether or not in the same

industry and even during the subsisting lease period. Hence, no fault can be found with the respondent's act of entering into separate agreement with M/s.Thumby Aviation Private Limited.

11. The learned counsel for the petitioner then argued the termination notice period per clause 13.2 above is of 30 days so till 15.01.2018, the helicopter should not be allowed to be used by M/s. Thumby Aviation Private Limited till 15.01.2018.

12. I am afraid this cannot be allowed. The contract provides for termination clause and per settled law if an agreement is determinable, the relief of specific performance cannot be given, per Section 41 of the Specific Relief Act, 1963. The only remedy available with the petitioner in such circumstance(s) would be to claim damages from the respondent. Reference is made to the decision of Coordinate Bench of this Court in Ministry of Road Transport and Highways, Government of India v. DSC Ventures Pvt Limited 219 (2015) DLT 596 wherein it was held as under:-

"29. In terms of the law explained by the Supreme Court in Indian Oil Corporation Ltd. even if the termination of the CA on 2nd March 2015 is ultimately found to be illegal, the highest relief that can be granted to the Respondent is one of damages. This is because in terms of Section 14 (1) (c) of SRA the CA is a contract which in its nature is determinable. In para 14 (SCC) of the decision it was explained that if the contract was not terminated according to the clauses of the contract, the only relief that could be granted would be compensation in terms of those very clauses. On the facts of that case it was held that no relief restoring the distributorship, which was terminated in alleged breach of the contract, could have been granted. Even in terms of Section 41 (e) SRA, no interim relief in order to prevent a breach of a contract which is otherwise not enforceable could be granted. The case of the Respondent essentially is that it could have recovered toll fee from an earlier date if the entire project site had been handed over earlier. The loss if any suffered by the Respondent is quantifiable and can be compensated if its ultimately succeeds on merits. Thus, no interim measure of the kind granted by the impugned order of the AT was legally permissible to be ordered."

13. In view of above the reliefs claimed in the petition under Section 9 of the Act by the petitioner cannot be granted. The petition is dismissed.

14. No order as to costs.