
Female Health Company UK PLC Vs HLL Lifecare Limited

1 of 2017

Court: High Court Of Kerala

Date of Decision: Feb. 20, 2017

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 9](#), [Section 36](#), [Section 27](#), [Section 2\(2\)](#), [Section 2\(f\)](#), [Section 2\(e\)](#),

[Hon'ble Judges: P.B. Suresh Kumar](#)

[Bench: SINGLE BENCH](#)

[Advocate: K.N. Shi @APPELLANT @hash hankar, Sunil Shankar, E.K.Madhavan](#)

Judgement

[1. This Original Petition is instituted invoking Section 9 of the Arbitration and Conciliation Act, 1996 \("the Act"\), seeking orders for interim](#)

[measures in relation to the subject matter of an international commercial arbitration. The Registry entertained a doubt as to the maintainability of the](#)

[Original Petition and the matter was accordingly placed before the Court for a decision on that issue. As per order dated 1.3.2017, Court directed](#)

[the Registry to number the Original Petition, subject to the decision on the maintainability. Accordingly, the matter has come up for decision on the](#)

[maintainability of the Original Petition.](#)

[2. Heard the learned counsel for the petitioner as also, the learned counsel for the respondent.](#)

[3. Going by the definition of "international commercial arbitration" as contained in Section 2\(f\) of the Act, there cannot be any doubt that the](#)

[arbitration involved in this matter is an international commercial arbitration. Disputes between the parties pertain to the terms of Ext.P4 agreement.](#)

[Ext.P4 agreement provides that the disputes are to be resolved by recourse to arbitration in accordance with the rules of the International Chamber](#)

[of Commerce. As regards the governing law and jurisdiction, Ext.P4 agreement provides that the agreement shall be construed and interpreted in](#)

accordance with the laws of India and shall be subject to the courts of Thiruvananthapuram in the State of Kerala in India. Ext.P4 agreement also

provides that unless otherwise agreed by the parties, the place of arbitration shall be Singapore. It is on account of the fact that the place of

arbitration is Singapore, the Registry entertained the doubt as to the maintainability of the Original Petition. As noted above the Original Petition is

one instituted under Section 9 of the Act. Section 9 of the Act provides that a party may, before or during arbitral proceedings or at any time after

the making of the arbitral award but before it is enforced in accordance with Section 36, apply to the Court for the interim measures referred to in

the Section. Section 2(e) of the Act defines ""Court"" as under:

Court"" means

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and

includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of

the arbitration if the same had been the subject-matter of a suit does not include any Civil Court of a grade inferior to such principal Civil Court, or

any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to

decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court

having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

It is clear from clause (ii) of Section 2(e) that the Court, as far as international commercial arbitrations are concerned, is the High Court, exercising

ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of arbitration if the same had been the

subject matter of a suit, and in other cases, the High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High

Court. This Court is not exercising ordinary original civil jurisdiction, but it has jurisdiction to hear appeals from decrees of courts subordinate to it.

This Court, therefore/satisfies the requirements of the definition ""Court"" as contained in the Act as far as international commercial arbitrations are

concerned. Then the question is whether this Court can exercise the power under Section 9 of the Act in relation to an international commercial

arbitration when the place of arbitration is beyond the territorial jurisdiction of this Court. The provisions contained in sub-section (2) of Section 2

of the Act which is relevant in the context read thus;

(2) This Part shall apply where the place of arbitration is in India:

Provided that subject to an agreement to the contrary, the provisions of Sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of

Section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to

be made in such place is enforceable and recognised under the provisions of Part II of this Act.

It is evident from the plain language used in the proviso to sub-section (2) of Section 2 that subject to an agreement to the contrary, the provisions

contained in Section 9 shall apply to international commercial arbitration, even if the place of arbitration is outside India if an arbitral award made

or to be made in such place is enforceable and recognised under the provisions of Part II of the Act. The specific case of the petitioner is that the

parties have not excluded the application of Section 9 in the matter. Ext.P4 agreement specifically provides that the agreement shall be construed

and interpreted in accordance with the laws of India and shall be subject to the courts of Thiruvananthapuram in the State of Kerala in India. In

other words, lex arbitri as far as the subject matter of the arbitration is concerned, is laws of India. Further, the provisions in the agreement,

especially the provision that unless otherwise agreed by the parties, the place of arbitration shall be Singapore, indicate that Singapore is only the

venue of arbitration and not the seat. The said circumstances reinforce the plea of the petitioner that the parties have not excluded the application of

Section 9 in the matter, In the circumstances, I am of the view that the Original Petition is maintainable before this Court.

Admit. Adv. E.K. Madhavan takes notice for the sole respondent. Post for hearing on 21.03.2017.