
(1990) 09 DEL CK 0041

In the Delhi High Court

Case No : Criminal Suit No. 1046a of 1985, Interim Application No. 3400 of 1985 and Suit No. 2376A of 1985

Advance Sig Contacts and Others

APPELLANT

Vs

National Research Development Corporation

RESPONDENT

Date of Decision : 27-09-1990

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : (1991) 1 ARBLR 142 : (1990) 42 DLT 608

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : Anil Kumar, B.B. Sawhney and A.K. Sikri, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) Both these petitions are u/s 20 of the Arbitration Act, 1940.

(2) An agreement was entered into between M/s. Advance Sig Contacts, a partnership firm and National Research Development Corporation of India, a company registered under the Companies Act, 1956 on 24.4.1978. It is not necessary to refer to any detail as the terms of that agreement, which is styled as a "license Agreement". Reference may, however, be made to a recital. It is stated that the Corporation i.e. National Research Development Corporation of India was in possession of and was entitled to full rights of invention (subject matter of the agreement) by the National Physical Laboratory, New Delhi.

(3) In the 1st petition, there are three respondents, the first respondent being the Corporation. The second and third respondents are respectively National Physical Laboratory and Council of Scientific and Industrial Research, New Delhi.

(4) As noted above, the license agreement is only between M/s. Advance Sig Contacts and the Corporation. This agreement contains an arbitration clause, being clause No. 11. It constitutes the arbitration agreement between the parties. Respondents 2 and 3 in the 1st petition (S. No. 1046-A/85) are not

parties to the arbitration agreement. Mr. Anil Kumar, learned counsel for the petitioner, states that he imp leaded respondents 2 and 3 because the invention had been made by respondent No. 2 viz. National Physical Laboratory. This to my mind is not a ground to implead National Physical Laboratory or even the Council of Scientific and Industrial Research inasmuch as all the rights had been acquired by the Corporation, respondent No. 1 and further these respondents 2 and 3 are not parties to the arbitration agreement which is between the petitioner and the 1st respondent. Respondents 2 and 3 Therefore, do not appear to be necessary or proper parties to the 1st petition (Suit No. 1046-A/85).

(5) In the second petition (S. No. 2376-A"85), the petitioner is the Corporation and there are four respondents, 1st respondent being M/s. Advance Sig Contacts and respondents 2, 3 and 4 are the partners of the 1st respondent. The license agreement, aforementioned was entered into by respondent No. 2, 3 and 4 on behalf of respondent No. 1 with the Corporation. All these respondents, Therefore, in the second petition have been correctly imp leaded.

(6) Both the petitions, as stated above, are u/s 20 of the Arbitration Act. Both parties have made claim against each other. There certainly cannot be any objection if both the petitions are allowed and arbitration agreement is directed to be filed and subject disputes referred to arbitration.

(7) Learned counsel for the parties agree that on appointing the arbitrator the parties shall be given opportunity to raise all the disputes before the arbitrator. Under the terms of the arbitration agreement, the Chairman of the Corporation was to appoint an arbitrator. Mr.Sawhney says that there is at present no Chairman of the Corporation and in this view of the matter, he says that this Court may appoint an arbitrator. He suggested that a retired Judge of this Court could be appointed as the arbitrator. Mr. Anil Kumar, however, says that the disputes are matters of technical nature and it will be appropriate if a scientist or a technical person is appointed as an arbitrator. This appears to be rather a good suggestion. Mr. Anil Kumar says he has no objection if instead of the Chairman, the Managing Director of the Corporation is directed to appoint an arbitrator in terms of the arbitration agreement between the parties.

(8) I, Therefore, allow both these petitions and the arbitration agreement between the parties is directed to be filed and all the disputes between the parties are referred to the sole arbitration of the arbitrator to be appointed by the Managing Director of the Corporation, who will give his award in accordance with law. This 1st petition (S. No. 1046-A/85) against respondents 2 and 3 is dismissed. No costs.