

(2011) 08 AP CK 0041

In the Andhra Pradesh High Court

Case No : Arbitration Application No. 49 of 2011

Aessal India Private Limited

APPELLANT

Vs

K. Nageswara Rao, Md. Sultan Patel and Standard Mechanical
Seals (India) Private Limited

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(5), 11(6), 2(1), 34

Citation : (2011) 5 ALD 778 : (2011) 6 ALT 458

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; Anand Kumar Kapoor, for Respondent No. 1, G.M. Mohiuddin and I.V. Radha Krishna Murthy, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—This application has been taken out by M/s. Aesseal India Private Limited under Sub-section (5) of Section 11 of the Arbitration and Conciliation Act, 1996, (for short, "the Act") seeking appointment of an arbitrator for resolution of disputes relatable to the agreement dated 3rd September 2008.

2. Stephen Shaw, Chairman and Group Engineering Director of the applicant Company has sworn to the affidavit filed in support of the application. The application averments, in brief, are:

(a) The applicant is a company registered under the Companies Act, 1956 having its registered office at Gat No. 85, Varve Post, Tal. Bhore District, Pune-412205 and branch office at Plot No. 20/Part, Sy. No. 50, Industrial Development Area, Phase-III, Jeedimetla, R.R. District. M/s. Standard Mechanical Seals (India) Private Limited-3rd Respondent is a company registered under the Companies Act, 1956 having its registered office at D. No. 5-55/44, Doolapally Road, IDA Phase V-Extn, Jeedimetla; R.R. District and it is engaged in the business of manufacture and distribution of mechanical seals. K. Nageswara Rao and Md.

Sultan Patel-Respondents 1 and 2 were the former Directors and promoters of the Respondent No. 3 Company. The applicant Company is a part of the Aes seal group of companies and 100% owned subsidiary of AESSEAL Engineering Limited, U.K., a company registered in and under the laws of England. The applicant company is in the business of manufacture of mechanical seals. It started its operations in India in the year 2003. The Respondents 1 and 2, in the capacity of the Directors and the Promoters of the Respondent No. 3 Company, approached the applicant company with the proposal for extension of the applicant's business through collaboration, association, joint venture. Pursuant to series of discussions between the applicant Company and the Respondents, a purchase agreement came to be executed between the parties where under Respondent No. 3 would sell certain assets belonging to it including proprietary, technical know-how and intellectual property for manufacture of mechanical seals and transfer certain persons employed with it to the applicant company. An Asset Purchase Agreement dated 3rd September 2008 came to be executed between the applicant company and the Respondents. The Respondents agreed to receive Rs. 17.20 crores under the said Asset Purchase Agreement and received an amount of Rs. 12.90 crores as on 3rd September 2008. The balance sale consideration of Rs. 4.3 crores was agreed to be paid on the expiry of 3 years from the completion date as defined in the Asset Purchase Agreement. As a condition precedent to the execution of Asset Purchase Agreement, Respondents 1 and 2 had also executed respective Employment Agreements with the applicant Company on 3rd September 2008.

2(b) Thereupon, the applicant Company appointed Respondent No. 1 as the Managing Director and Respondent No. 2 as Manufacturing Director. By virtue of the Asset Purchase Agreement and the Employment Agreements, the entire operations of the applicant company came under the control of the Respondents 1 and 2. Respondent No. 1 had to account for all the accounts of the applicant's Hyderabad branch and whereas Respondent No. 2 acted as the sole person in charge of applicant's registered office at Pune. During internal investigation initiated by the parent company into the accounts and management of the applicant company, various instances of illegal acts and financial irregularities and operational misconduct in respect of business and affairs of the applicant were noticed, which were found to be attributable to the fraudulent misconduct on the part of the Respondents 1 and 2. The Respondents 1 and 2 transacted the business without following the procedure and overdrawn amounts towards local conveyance and stay expenses. Respondents 1 and 2 in collusion with the Ex. Chairman of the applicant company misappropriated the company's funds and committed breach of trust. The applicant company checked the accounts with the assistance of third party consultant expert. The internal audit reveals several irregularities committed by Respondents 1 and 2.

2(c) The Respondents 1 and 2 got proceedings initiated through their respective wives (Directors) before III Additional Chief Judge, City Civil Court, Hyderabad u/s 9 of the Act being O.P. (Arbn.) No. 2599 of 2010 contending inter alia that the

Asset Purchase Agreement was entered into without due authority and is void ab initio. An interim injunction has also been sought for in the above OP. The said OP came to be allowed granting injunction against the applicant from removing or shifting or transferring or alienating the "Acquired Assets" from the premises bearing Plot No. 20/Part, Sy. No. 50, Industrial Development Area, Phase III, Jeedimetla, R.R. District. The applicant initiated disciplinary proceedings against Respondents 1 and 2 for committing criminal breach of trust and misappropriation of the applicant company's funds and terminated their services under the employment clause in the Employment Agreements. The applicant issued a legal notice on 9th March 2011 to the Respondents calling upon them to pay a sum of Rs. 10.11 crores under various heads. Under the said notice, the applicant invoked arbitration Clause 15.13 of the Asset Purchase Agreement and proposed Sri Justice T.Ch. Surya Rao, a retired High Court Judge, as sole arbitrator and called upon the Respondents to communicate their consent for his nomination as arbitrator. In response, the third Respondent issued a reply dated 28.3.2011 while disputing the claim of the applicant company, consented for appointment of Sri Justice T.Ch. Surya Rao, a retired High Court Judge, as arbitrator for resolution of the dispute as to the validity of the Asset Purchase Agreement. The Respondents 1 and 2 neither consented for the name proposed by the applicant nor nominated arbitrator on their behalf to resolve the disputes arising out of Asset Purchase Agreement and Employment Agreements. Hence, this application under Sub-section (5) of Section 11 of the Act for appointment of sole arbitrator for settlement of disputes between the applicant Company and Respondents arising out of and/or in connection with the Asset Purchase Agreement and Employment Agreements dated 3rd September 2008.

3. Notice to the Respondents came to be ordered on 28.6.2011. The Respondents entered appearance through their respective counsel. Respondents 1 and 3 filed individual counters. The 2nd Respondent filed memo adopting the counter of the 1st Respondent.

4. The counter of the 1st Respondent, in brief, is:

Initiation of proceedings seeking appointment of arbitrator is only with a malafide intent. The notice invoking arbitration clause is per se null and void for the reason that the notice on behalf of the applicant Company has been caused by an unauthorized person. The Employment Agreements does not contain arbitration clause and therefore, question of referring the disputes between the applicant and the Respondents 1 and 2 to the arbitrator does not arise. Serious allegations of fraud and misappropriation take out the matter from the arbitral resolution of the disputes. When honor of an individual is sought to be tarnished, the closed-door arbitration proceedings cannot be allowed and only open flora of ordinary civil Courts has to be resorted. The two employment agreements are separate and distinct from the Asset Purchase Agreement. The Employment Agreements do not contain arbitration clause, in which case the application seeking appointment of an arbitrator is liable to be dismissed. There is No.

connectivity between the Asset Purchase Agreement and Employment Agreements and therefore, the arbitration clause in the Employment Agreements cannot be imported into the Employment Agreements.

5. The counter of the 3rd Respondent, in brief, is:

The applicant has not indicated the dispute in the legal notice dated 9.3.2011 nor the present application discloses any dispute between the applicant and the 3rd Respondent companies. The former Directors of the Respondent company entered into Asset Purchase Agreement with the applicant Company behind the back of the present Directors of this Respondent company. Para (8) of the counter needs to be noted and it is thus:

8. In reply to para 7 of the affidavit it is a fact: that the Respondents 1 and 2 herein entered into APA with the applicant company behind the back of other Directors. In fact that there was No. meeting of Board of Directors and Share Holders meeting. The present directors of this Respondent company having come to know that the Respondents 1 and 2 acted against the interest of this company, hence the present directors of this Respondent caused notice on Respondents 1 and 2. The Respondents 1 and 2 are No. longer directors of this Respondent company.

It is also stated in the counter affidavit that the whole allegations are against Respondents 1 and 2 relatable to their Employment Agreements. This Respondent is not concerned with the disputes between the applicant's company and Respondents 1 and 2 relatable to their Employment Agreements.

6. The applicant filed reply affidavit. Along with the reply affidavit, a copy of the Board Resolution dated 23.12.2010 authorizing Mr. Stephen Martin Shaw, and Mr. Yogesh Karia, to represent the company in all matters relating to the business of the company and of AES Engineering Limited including proceedings in relation to Asset Purchase Agreement and the Employment Agreements dated 3rd September 2008. For better appreciation, I may refer para (11) of the reply affidavit, which reads as hereunder:

I say that the Applicant is seeking recovery of amount from the Respondents arising out of the breach of the APA and the Employment Agreements. I say that the Applicant is not seeking any criminal action by the arbitral tribunal and that the Applicant has already taken appropriate step in that regard. I also say that the Applicant is not seeking relief from the arbitral tribunal regarding the illegal acts undertaken by the Respondents of downloading and copying Applicant's IPR, trade secret, drawings and confidential information. I say that the Applicant is entitled to seek recovery of amount under the arbitration arising out of and/or in connection with the APA and the Employment Agreements. Further contention that it is only Civil Court that can adjudicate the issue is clearly misconceived in law. It is also pertinent to mention that purported issue raised the disputes under the Asset Purchase Agreement; the Respondent No. 3 had instituted OP No. 2599 of 2010 on the file of III Additional Chief Judge, City Civil Court, Hyderabad u/s 9

of the Arbitration and Conciliation Act, 1996. The Respondents 1 and 2 herein was arrayed as Respondents in the said OP and had filed their counters without raising the issue of the habitability of the dispute. It would therefore not be open for the Respondents to now contend that the subject matter of disputes is not arbitral. The averments that the filing of the above application is an abuse of process of law are incorrect and untenable.

7. Heard Sri S. Niranjan Reddy, learned Counsel appearing for the applicant, Sri Anand Kumar Kapoor, learned Counsel appearing for the 1st Respondent, Sri G.M. Mohidduin, learned Counsel appearing for the 2nd Respondent, Sri I.V. Radhakrishna Murthy, learned Counsel appearing for the 3rd Respondent.

8. Learned Counsel appearing for the applicant submits that the Respondents 1 to 3 entered into Asset Purchase Agreement with the applicant company, whereby and where under the Respondents 1 and 2 as promoters of the Respondent No. 3, agreed to sale of assets including proprietary technical know how and intellectual property for manufacture of mechanical seals for a consideration of Rs. 17.20 crores. Pursuant to the said agreement, an amount of Rs. 12.90 crores has been paid and balance consideration of Rs. 4.3 crores is to be paid on expiry of three years from the completion date as defined in the agreement. A further submission has been made that the Employment Agreements executed between the applicant company and the Respondents 1 and 2 individually form part and parcel of Asset Purchase Agreement and during the implementation of the Asset Purchase Agreement, disputes cropped up between the parties and the said disputes, as per Clause [15.13] of the Asset Purchase Agreement are required to be resolved by way of arbitration and thus the application filed by the applicant for appointment of sole arbitrator deserves to be allowed. Learned Counsel took me to Clause 1.2.7 of the Asset Purchase Agreement, in support of his contention that the Employment Agreements entered between the applicant on one hand and the Respondents 1 and 2 on the other hand form part and parcel of the Asset Purchase Agreement. The clauses on which much emphasis has been laid by the learned Counsel read as hereunder:

I. DEFINITIONS AND INTERPRETATION

In this Agreement (including the Annexure, Recitals and Schedules), unless the context otherwise requires or unless otherwise expressly provided, the following terms shall have the meaning assigned hereunder:

1.1 Definitions

"Acquired Assets" means all right, title and interest to the assets relating to the Business viz., (a) Order Book (b) Leased premises; (c) Intellectual properties; (d) Plant, Machinery and Equipment; (e) Stocks and (f) Goodwill;

"Adverse Consequences" means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments,

orders, decrees, rulings, damages, dues, penalties, fines, costs, liabilities, obligations, taxes, liens, losses, expenses, and fees, including court costs and reasonable attorney's fees and expenses;

"Business" means the business of SMSPL i.e., as mentioned in Recital A;

"Completion" means completion of the sale and purchase of the Assets in accordance with Clause 9;

"Completion Date" means such date as the Parties may agree upon;

"Conditions Precedent" means the conditions required to be complied prior with completion and specified in Clause 4 hereto;

"Confidential Information" means any information concerning the Business and affairs of the Acquired Assets and the Employees that is not already generally available to the public;

"Cut Off Date" means the close of business on 3rd September, 2008;

"Encumbrance" means (i) any mortgaged, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, deed of trust, title retention, security interest

xx xxx xxx xxxx

1.2 Interpretation

Xx xxx xxxx xxx

1.2.7 reference to this Agreement means this Agreement together with its Recital and Schedules and references to this Agreement or any other agreement, deed or instrument is to the same as amended, notated, modified or replaced from time to time with the agreement of the parties:

XX XXX XXX

9. It is also contended by the learned Counsel that the applicant invoked arbitration clause in the Asset Purchase Agreement and issued notice dated 9.3.2011 nominating Sri Justice T.Ch. Surya Rao, a retired High Court Judge, as sole arbitrator for which the third Respondent consented whereas Respondents 1 and 2 issued reply dated 5.4.2011 and 7.4.2011 respectively questioning the very authority of the person on whose instructions the legal notice dated 9.3.2011 has been issued. Learned Counsel further submits that the applicant issued a rejoinder notice dated 9.4.2011 clarifying the preliminary objection taken by Respondents 1 and 2 in their reply notice dated 5.4.2011 and 7.4.2011 respectively and in spite of issuing clarification, Respondents 1 and 2 neither consented for the arbitrator proposed by the applicant nor nominated arbitrator on their behalf.

10. Learned Counsel appearing for the 1st Respondent submits that the Asset

Purchase Agreement and Employment Agreements are distinctive and they are independent agreements and there being No. arbitration clause in the Employment Agreements, the question of appointing the arbitrator for resolution of the disputes between the applicant and the Respondents 1 and 2 relating to the Employment Agreements does not arise. He would also submit that the Employment Agreements, which are annexure to the Asset Purchase Agreement, do not constitute integral part of the Asset Purchase Agreement, in which case, the arbitration clause contained in the Asset Purchase Agreement cannot be imported in the Employment Agreements. It is also contended by him that the applicant made serious allegations against Respondents 1 and 2 alleging that they had manipulated the accounts and defrauded the applicant company by cheating and such serious allegations should be tried in a court of law, which would be more competent. Learned Counsel by referring notice dated 9.3.2011 and rejoinder notice dated 9.4.2011 contends that the details with regard to whose instructions, such notices came to be issued by the counsel are silent and therefore, they cannot be construed as valid notices on behalf of the applicant company. His last contention is that there is No. Board Resolution authorizing the signatory to the application to represent the applicant company in which case it cannot be said that the application is validly instituted. In support of his contentions, reliance has been placed on the decision of Supreme Court in *Abdul Kadir Shamsuddin Bubere Vs. Madhav Prabhakar Oak*, and *N. Radhakrishnan Vs. Maestro Engineers and Others*, In *Abdul Kadir's* case (1 *supra*), the Supreme Court held that where serious allegations of fraud are made against a party and the party who is charged with fraud desires that the matter should be tried in open court, that would be a sufficient cause for the Court not to order an arbitration agreement to be filed and not to make the reference. But it is not every allegation imputing some kind of dishonesty, particularly in matters of accounts, which would be enough to dispose a Court to take the matter out of the forum which the parties themselves have chosen. Merely because some allegations have been made that accounts are not correct or that certain items are exaggerated and so on that is not enough to induce the Court to refuse to make a reference to arbitration. It is only in cases of allegations of fraud of a serious nature that the Court will refuse to order an arbitration agreement to be filed and will not make a reference. In *Radhakrishnan's* case (2nd *supra*), the Supreme Court held that if the dispute requires detailed investigations and production of elaborate evidence, the case does not warrant to be tried and decided by an arbitrator and it should be tried in a Court of law, which would be more competent and have the means to decide such a complicated matter.

11. In reply, learned Counsel appearing for the applicant submits that the person, who got issued the notice to the Respondents and who filed the application is a person, authorized by the Board of Directors of the applicant company and therefore, the plea taken by the Respondents 1 and 2 that the notices invoking arbitration clause are not valid notices, cannot be sustained. Learned Counsel refers copy of the resolution filed along with the reply affidavit.

12. The Respondents 1 and 2 filed counter in O.P (Arbn.) No. 2599 of 2010 before III Additional Chief Judge, City Civil Court, Hyderabad taking the stand that the disputes relating to Asset Purchase Agreement are required to be adjudicated by taking recourse to the arbitration clause. The Respondents 1 and 2 herein having taken such a stand in O.P (Arbn.) 2599 of 2010 before III Additional Chief Judge, City Civil Court, Hyderabad, cannot be permitted to take a different stand in the present application. Learned Counsel refers the counter filed by the Respondents 1 and 2 herein in O.P (Arbn.) 2599 of 2010 before III Additional Chief Judge, City Civil Court, Hyderabad. The relevant portion on which much emphasis has been laid by the learned Counsel reads as hereunder:

It is submitted that the Asset Purchase Agreement incorporates by reference the Employment Agreements, which is defined in the Definitions and interpretation clause as under: "Employment Agreements" shall mean the Employment Agreements of even date entered into between AESI and each of the Promoters as per the form set out in Annexure 8A and 8B hereto; and thus the Arbitration Clause at 15.13 of the Asset Purchase Agreement also governs the matters covered by Employment Agreements inasmuch as the Arbitration clause encompasses in its scope all disputes arising out of the Asset Purchase Agreement or "in connection therewith". It is submitted that the Respondent Nos. 3 and 4 herein shall invoke the arbitration clause and are taking all necessary steps for expeditious appointment of arbitrator and refer all disputes to arbitration.

13. The issue that arises for adjudication is:

Whether the applicant made out valid ground for appointment of a sole arbitrator for resolution of the disputes relatable to Asset Purchase Agreement and Employment Agreements?

14. Execution of Asset Purchase Agreement between the parties is not in dispute. Respondents 1 to 3 constituted one party and the applicant constituted another party to the Asset Purchase Agreement. The Employment Agreements executed between the applicant and Respondents 1 and 2 individually are annexure to the Asset Purchase Agreement. The third Respondent filed O.P (Arbn.) 2599 of 2010 seeking certain interim orders pending adjudication of the disputes by taking recourse to the arbitration clause in the Asset Purchase Agreement. The applicant herein is 1st Respondent and Respondents 1 and 2 herein are Respondents 3 and 4 in the above referred arbitration OP. Respondent No. 2 herein, who has been arrayed as Respondent No. 3 in O.P (Arbn.) 2599 of 2010 filed verified counter in the said OP. Respondent No. 3 herein, who has been arrayed as Respondent No. 4 in O.P (Arbn.) 2599 of 2010 had filed memo adopting the counter of Respondent No. 3 therein., The relevant portion of the counter filed by the 3rd Respondent therein has already been extracted supra. A reading of the counter filed by 3rd Respondent therein who is 2nd Respondent in the present application clearly indicates that the parties to the Asset Purchase Agreement understood that the Employment Agreements are part and parcel of

the APA. Even otherwise, it is evident from the definitions and interpretation of Asset Purchase Agreement that the annexure, recitals, schedules forms part and parcel of the APA. It was held by the Supreme Court in National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd., that when an application is filed u/s 11, the Chief Justice or his designate is required to decide only two issues, that is whether the party making the application has approached the appropriate court and whether there is an arbitration agreement and whether the party who has applied under this section is a party to such agreement. The Supreme court in SBP and Company v. Patel Engg. Ltd. (2005) 8 SCC 618 considered the scope of Section 11 of the Arbitration and Conciliation Act, 1996 and held that the scheme of Section 11 of the Act required the Chief Justice or his designate to decide whether there is an arbitration agreement in terms of Section 7 of the Act before exercising his power u/s 11(6) of the Act and its implications. Paras 39 and 47 of the cited judgment need to be noted and they are thus:

39. it is necessary to define what exactly the Chief Justice, approached with an application u/s 11 of the Act, is to decide at that stage. Obviously, he has to decide his own jurisdiction in the sense, whether the party making the motion has approached the right High Court. He has to decide whether there is an arbitration agreement, as defined in the Act and whether the person who has made the request before him, is a party to such an agreement. It is necessary to indicate that he can also decide the question whether the claim was a dead one; or a long barred claim that was sought to be resurrected and whether the parties have concluded the transaction by recording satisfaction of their mutual rights and obligations or by receiving the final payment without objection. It may not be possible at that stage, to decide whether a live claim made, is one which comes within the purview of the arbitration clause. It will be appropriate to leave that question to be decided by the arbitral tribunal on taking evidence, along with the merits of the claims involved in the arbitration. The chief Justice has to decide whether the applicant has satisfied the conditions for appointing an arbitrator u/s 11(6) of the act. For the purpose of taking a decision on these aspects, the chief Justice can either proceed on the basis of affidavits and the documents produced or take such evidence or get such evidence recorded, as may be necessary. We think that adoption of this procedure in the context of the Act would best serve the purpose sought to be achieved by the Act of expediting the process of arbitration, without too many approaches to the court at various stages of the proceedings before the Arbitral tribunal.

47. (iv) The Chief Justice or the designated judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be, his own jurisdiction, to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators

15. In the decision cited by the learned Counsel appearing for the Respondents 1

and 2, i.e., Abdul Kadir's case (1 supra), one of the parties to the arbitration agreement approached the civil Court. The opposite party filed an application u/s 8 of the Act seeking reference of the dispute to arbitration. The Supreme Court considered the scope of Section 8 of the Act and observed that where serious allegations as to fraud and malpractice are made against one party by the other party, the case should be tried in a court of law, which would be more competent and have means to decide such complicated matters.

16. There is a distinction between the scope of application u/s 8 and application u/s 11 of the Act. This distinction came to be considered by the Supreme Court in *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and Ors.* Civil Appeal No. 5440 of 2002 decided on 15.4.2011. The Supreme Court while pointing out the distinction between Sections 8 and 11 of the Act has observed as hereunder:

The nature and scope of issues arising for consideration in an application u/s 11 of the Act for appointment of arbitrators, are far narrower than those arising in an application u/s 8 of the Act, seeking reference of the parties to a suit to arbitration. While considering an application u/s 11 of the Act, the Chief Justice or his designate would not embark upon an examination of the issue of "habitability" or appropriateness of adjudication by a private forum, once he finds that there was an arbitration agreement between or among the parties, and would leave the issue of habitability for the decision of the arbitral Tribunal. If the arbitrator wrongly holds that the dispute is arbitral, the aggrieved party will have to challenge the award by filing an application u/s 34 of the Act, relying upon Sub-Section 2(b)(i) of that Section. But where the issue of "habitability" arises in the context of an application u/s 8 of the Act in a pending suit, all aspects of habitability have to be decided by the court seized of the suit, and cannot be left to the decision of the Arbitrator. Even if there is an arbitration agreement between the parties, and even if the dispute is covered by the arbitration agreement, the court where the civil suit is pending, will refuse an application u/s 8 of the Act, to refer the parties to arbitration, if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special Court or Tribunal.

In view of the proposition of law laid down in the above-referred decisions, the decision on which much emphasis has been made by the learned Counsel appearing for the Respondents 1 and 2 are of No. help to advance their contention.

17. Indisputably, the Employment Agreements forms part and parcel of the Asset Purchase Agreement and therefore, the Employment Agreements are integral part of the Asset Purchase Agreement. Since the Asset Purchase Agreement contains an arbitration clause, disputes between the parties are required to be adjudicated by taking recourse to the arbitration.

18. Accordingly, the Arbitration Application is allowed appointing Sri Justice B. Subhashan Reddy, a retired Chief Justice of Madras and Kerala high Courts, as

sole arbitrator for resolution of the disputes among the parties relatable to agreement dated 3rd September 2008 and Employment Agreements dated 3rd September 2008. The arbitrator is at liberty to fix his own fee.