

(2009) 09 DEL CK 0090

In the Delhi High Court

Case No : Arbitration Petition 145 of 2009

Anitha Gurukar

APPELLANT

Vs

Barista Coffee Company Ltd.

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2009) 09 DEL CK 0090

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Paras Khutton, for the Appellant; Kiran Suri, Purvesh Bhuttan and Apana Bhatt, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—This petition u/s 11 of Arbitration & Conciliation Act, 1996 ("the Act", for short) has been preferred by the petitioner for appointment of an arbitrator alleging breach of MoU dated 16th September 2008 on behalf of respondent and the petitioner suffering loses because of breach of MOU. The petitioner had given a notice dated 31st October, 2008 to the respondent for appointment of an arbitrator in view of failure on the part of respondent for implementing the terms and conditions of MOU. The respondent, however, did not appoint arbitrator, hence this petition.

2. The stand taken by respondent is that there was no concluded contract between respondent and the petitioner and the application for appointment of arbitrator was not maintainable.

3. It is not disputed by respondent that MOU dated 16th August 2008 was signed between the parties. Vide this MOU, respondent had agreed to take on rent the premises owned by the petitioner bearing number 30, Nehru Circle, Sheshadripuram, Bangalore -560 020. The MOU provided for terms and conditions on which the premises was to be taken. The MOU also provided that a

formal lease agreement shall be executed between the parties and the lease shall be for a period of 12 years. It was specifically provided that the lease so executed could not be terminated prematurely on the part of lessor. This MOU contained an arbitration clause to the following clause:

6. This MOU will be subject to the exclusive jurisdiction of the Courts in Delhi, India only.

7. In case any dispute cannot be settled amicably, the same shall be referred to the Arbitrator appointed in accordance with the Arbitration & Conciliation Act, 1996 or any subsequent enactment or amendment. The seat of Arbitration shall be at New Delhi and, the arbitration proceedings shall be held in English Language.

4. It is obvious that the MOU gave rise to a contract between the parties and the plea taken by respondent that there was no concluded contract between the parties, is a baseless plea. The respondent has relied upon Uniflex Cables Ltd. v MTNL and Anr. AA No. 155 of 2006 decided on 20th February 2009 wherein this Court considered various terms of tender document and observed that scheme of the tender document show that Arbitration clause could not have come into existence before awarding of contract and before furnishing of performance of security. The facts of the case referred to by the petitioner are altogether different from the facts of the present case. In the instant case, the parties had signed the contract containing an arbitration clause. Thus, the contract between the parties was concluded and the parties were bound by the terms of the contract as mentioned therein, including arbitration clause.

5. I, therefore, consider that there exists an arbitration agreement and the MOU dated 16th September 2008 was a contract duly signed between the parties and the disputes qua MOU dated 18th September 2008 could only be referred to arbitration. I hereby allow this petition u/s 11 of the Act and appoint Shri S.M. Chopra, Additional District Judge (retired) as the arbitrator in this case. Parties are directed to approach the learned arbitrator within 30 days from today.