
(2007) 08 DEL CK 0024

In the Delhi High Court

Case No : First Appeal from Order (OS) No. 306 of 2006

Convenience Enterprises Pvt. Ltd. and Others

APPELLANT

Vs

Ozo Media Estate Ltd.

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 9

Citation : (2008) 2 ARBLR 551

Hon'ble Judges : T.S. Thakur, J;Kailash Gambhir, J

Bench : Division Bench

Advocate : Gagan Chhabra, for the Appellant; Sudhir Chandra R.C. Beri and K.S. Negi, for the Respondent

Judgement

1. This appeal arises out of an order passed by a learned Single Judge of this Court whereby an application filed by the appellant u/s 9 of the Arbitration and Conciliation Act, 1996 has been dismissed.

2. In terms of a collaboration agreement dated 14th July, 2006 executed between the parties, respondent-M/s. Ozo Media Estate Ltd. was to undertake development and construction of what was to be called the "Panipat Highway Resort" upon a plot of land admeasuring 21,901 sq. yards, fully described in the body of the agreement aforementioned. The agreement, inter alia, provided that in the event of any dispute and/or difference arising between the parties in respect of the proposed project, the same shall be settled by mutual consent and failing such a settlement through arbitration by the sole arbitration of Shri R.C. Beri, Advocate in accordance with the provisions of Arbitration and Conciliation Act, 1996. The arbitration clause reads:

35. The parties hereto agree that if any dispute and/or difference arises between the parties in respect of the present collaboration agreement, the same shall be settled by mutual consent or failing which through arbitration by the sole arbitrator namely Shri R.C. Beri, Advocate. It is also agreed between the parties that the arbitration process shall be in accordance with the Arbitration and

Conciliation Act, 1996. The award so made by the sole arbitrator shall be final and binding on the parties. It is agreed between the parties that the arbitration proceedings shall be conducted in Delhi only. Alternatively, since the agreement is being executed at New Delhi, the disputes, if any, arising out of or touching and/or concerning this transaction may be referred for adjudication to the Hon'ble High Court of Delhi or courts in Delhi subordinate to it, alone.

3. Disputes, it appears, arose between the parties in relation to the project in question as a result whereof the appellant herein filed a petition u/s 9 of the Arbitration and Conciliation Act, 1996 before a Single Bench of this Court praying for the following reliefs:

(a) Restrain the respondent company, its directors namely Shri Ashok Mahindru and Shri Vineet Handa or their agents/employees or anyone acting for and on their behalf from taking forcible possession of the Project Land (admeasuring 21,901 sq. yards comprising of 17,418.25 sq. yards falling in Khasra No. 137/16/1/1 (Part), 137/16/1/2, 137/16/2, 137/171 (Part), 137/17/2, 137/18/1 (Part), 137/18/2 (Part), 137/23/1 (Part), 137/24 (Part) and 137/25 bearing Khatoni Nos. 1051, 1053, 1274 and 1277 of the revenue estate of Village Siwah in Controlled Area - 1, Panipat + 3545 sq. yards falling in Khasra No. 137/17/1 Min, 137/18/1 Min, 137/18/2, 137/23/1, 137/1/2, 137/24 Min bearing Khatoni Nos. 1051, 1053, 1274 and 1277 + land admeasuring 937.75 sq. yards falling in Khasra No. 137/23/3 bearing Khatoni No. 1276 of the revenue estate of Village Siwah in Controlled Area - 1, Panipat and further restrain the respondent its directors/agents/servants or anyone acting for and on behalf of the respondent company from creating any hindrance or disrupting, disturbing, threatening to obstruct construction activities by the petitioners themselves or through a third party under a fresh collaboration agreement to be carried on the aforesaid project land situated in revenue estate of Village Siwah, Panipat, which is in possession of the petitioners.

(b) Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the given facts and circumstances of the case in the interest of justice.

4. The above application was opposed by the respondent company and eventually dismissed by the learned Single judge by his order dated 4th July, 2007. Aggrieved, the appellant has assailed the said order in the present appeal.

5. The matter first appeared before us on 14th August, 2007 for admission and was argued at some length. It was, in the course of the hearing, submitted by learned Counsel for the parties that given some time the parties could explore the feasibility of referring the disputes between the parties to an arbitrator for adjudication especially because a petition u/s 11 of the Arbitration Act had already been filed on the original side of this Court.

6. The appeal was accordingly adjourned to give to the parties time to reflect over the possibility of a reference to an arbitrator. Mr. Chhabra, appearing for the appellant and Mr. Sudhir Chandra, counsel for respondent company, today

submitted on instructions that parties were agreeable to the matter in dispute being referred to the sole arbitration of an arbitrator to be nominated by this Court in substitution of the arbitrator nominated in Clause 35 extracted earlier. They further state on instructions that pending adjudication of the disputes by the sole arbitrator to be nominated by the court, the parties would maintain status quo in regard to the plot of land upon which the proposed resort was to be constructed. They pray for disposal of this appeal on the above terms with appropriate directions.

7. In the circumstances, Therefore, and keeping in view the submissions made at the bar, we pass the following order:

(i) All disputes and differences that have arisen between the parties in relation to the collaboration agreement dated 14th July, 2006 shall stand referred to the sole arbitration of Justice V.N. Khare, former Chief Justice of India, as sole arbitrator. The parties shall be free to file their respective claims and counter-claims before the arbitrator in accordance with the directions, which the learned arbitrator may issue in that regard after the parties enter appearance before him.

(ii) Pending final adjudication of the disputes and differences as aforesaid by the sole arbitrator, the parties shall maintain status quo as it exists today in regard to the plot of land upon which the proposed resort was to be constructed, fully described in the collaboration agreement.

(iii) The findings recorded and observations made by the learned Single Judge in the body of the order impugned before us shall not be taken as a final expression of opinion on the issues and the contentions urged or available to the parties on facts as also in law. Needless to say that the arbitrator shall also remain uninfluenced by the findings recorded by the Single Judge while adjudicating upon the disputes between the parties.

(iv) The arbitrator shall be free to fix his fee.

(v) As a consequence of above, the appellant shall withdraw the petition filed by it u/s 11 of the Arbitration and Conciliation Act, 1996 as infructuous.

The appeal is disposed of with the above directions leaving the parties to bear their own costs.