
(2001) 08 DEL CK 0270

In the Delhi High Court

Case No : OMP. 6 of 1992

Curewel (India) Ltd.

APPELLANT

Vs

Pharmachim and another

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Arbitration Act, 1940 — Section 33

Citation : (2001) 08 DEL CK 0270

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. T.K. Ganju, for the Appellant; Mr. Gaurav Bahl, for the Respondent

Judgement

A.K. Sikri, J.—By this order I am disposing the present petition filed by the petitioner u/s 33 of the Arbitration Act. As per the respondents, certain disputes had arisen between the parties and relying upon the arbitration clause in an agreement entered into between the petitioner, viz., Curewel (India) Ltd. and M/s. Techno Export, the Respondent Pharmachim has approached Federation of Indian Chamber of Commerce and Industry for adjudication of the disputes. The case of the petitioner is that arbitration clause is contained in an Agreement entered into between the petitioner and M/s. Techno Export and respondent is not a party to the said Agreement. Therefore, the respondent cannot rely upon the said arbitration clause and otherwise there being no arbitration agreement between the petitioner and the respondent no arbitration of the alleged disputes is permissible. In order to appreciate the controversy, it would be appropriate to take stock of the admitted facts in brief:

The petitioner entered into an Agreement dated 6.4.1967 with M/s. Techno Export, an enterprise incorporated and registered under the Bulgarian Register of Foreign Trade Enterprises having its registered office in Sofia at Bulgaria. This was a joint venture agreement whereby said Techno Export have equity share capital in the petitioner and they were also to provide technical know-how and

purchase the products manufactured by the petitioner in collaboration with them. Under the Agreement Techno Export was entitled to dividend on the shares held by them as and when the same was declared by the petitioner and they were also entitled to Royalty @ 3% on the annual turnover for a period of seven years from the date of Agreement. Subsequently a Protocol dated 30.12.1972 was signed between Techno Export and the respondent. The petitioner is not a party to the said Protocol. As per that respondent took over all the rights and obligations in respect of the entire share capital of M/s. Techno Export in the petitioner company. The said Protocol also provided that Royalty w.e.f. 31.12.1972 may be remitted to the respondent. This Protocol provides for the following:

"That the entire shares of M/s. Techno Export in the petitioner Company shall stand transferred to Respondent w.e.f. 31/12/72.

That the Techno Export shall inform petitioner for payment of Royalty dues w.e.f. 31/12/1972 to be remitted to the Respondent instead of M/s. Techno Export".

2. The respondent alleged that certain Royalties were not paid by the petitioner to the respondent which became payable to the respondent because of the said Protocol. It, Therefore, invoked arbitration clause contained in Agreement dated 6.4.1967 between the petitioner and Techno Export. it is this invocation which is challenged by the petitioner on the ground that as far as petitioner and respondent are concerned there is no arbitration agreement and arbitration clause contained in Agreement dated 6.4.1967 between Techno Export and petitioner cannot be treated as arbitration agreement between respondent and the petitioner.

3. A perusal of the joint venture agreement dated 6.4.1967 shows that the said contract and /or its benefits could not be assigned to any third party without the written consent of the parties to the Agreement. it also stipulates that no amendments and supplements to the said agreement can be made except by mutual written agreement of both the parties. Even if it is presumed that petitioner had given subsequently tacit consent to the Protocol dated 30.12.1972 it cannot be said that the arbitration clause contained in Agreement dated 6.4.1967 becomes an Agreement between the petitioner and the respondent. After all as per Protocol dated 30.12.1972 the respondent is only entitled to hold shares of Techno Export in the petitioner company and may claim Royalties dues w.e.f. 31.12.1972. if these Royalties dues are not paid as alleged by the respondent the remedy for the respondent would be to file the suit against the petitioner and it would not be permitted to rely upon the arbitration clause in Agreement dated 6.4.1967 which was nt in fact an Agreement between petitioner and respondent. Precisely this very issue is answered by the Supreme Court in the case of Alimenta S.A. Vs. National Agricultural Co-operative Marketing Federation of India Ltd. and Another, in the same manner. it may be noted at this stage that respondent has already filed Suit being Suit No. 2397/91 against the petitioner for recovery of its dues. It appears that respondent was also doubtful

of there being an arbitration agreement between the parties and, Therefore, while invoking the said arbitration, respondent simultaneously filed the suit as well presumably when the petitioner took the objection before the FICCI, at the very outset, challenging the validity of the arbitration proceedings.

4. This petition is accordingly allowed. It is held that there is no arbitration agreement between the parties and, Therefore, respondent could not invoke the arbitration clause of the Agreement dated 6.4.1967 which was between the petitioner and the Techno Export. The said proceedings initiated by the respondent are without jurisdiction and are hereby quashed.

5. This petition stands disposed of.