
(2001) 02 DEL CK 0020

In the Delhi High Court

Case No : Aa. 20/98

G.E. Capital Transportation Financial Service Ltd.

APPELLANT

Vs

SKS Limited and another

RESPONDENT

Date of Decision : 19-02-2001

Acts Referred:

Citation : (2001) 3 AD 550 : (2001) 2 RAJ 219

Hon'ble Judges : Sharda Aggarwal, J

Bench : Single Bench

Advocate : Ms. Anjali Sharma, for the Appellant; Ms. Bharti, for the Respondent

Judgement

Sharda Aggarwal, J.—The applicant. G.E.Capital Transportation Financial Services Ltd. formerly known as S.R.F. Finance Limited has filed the present application u/s 8 read with Section 11 of Arbitration and Conciliation Act 1996 (hereinafter referred as the Act) for the appointment of an Arbitrator in addition to the Arbitrator already appointed by them so that the two Arbitrators may appoint a presiding Arbitrator so that the Arbitral Tribunal may adjudicate upon the disputes having arisen between the applicants and the respondents relating to the lease agreement dated 21st March, 1992 executed between the parties.

2. By virtue of this lease agreement the applicants had leased out to the respondent No.1 seven numbers of equipments described as "Alloy Steel Rolls". The lease agreement was for a period of sixty months and the respondent No.1 had agreed to pay specific lease rentals to the applicants as per the terms of the lease. The lease equipment however, remained to be exclusive property of the Lesser that is the applicants. Respondent No.2 guaranteed the due performance and observance by respondent No.1 of the terms and conditions of the agreement. The respondent No.1 while continuing to enjoy the use of the equipment started defaulting in payment of lease rentals. When the lease agreement was not renewed after five years the applicants through a legal notice terminated the agreement on 27th October, 1997 and required return the equipment. The applicants claimed a sum of Rs.11,93,340.89. The respondents

failed to reply the notice.

3. Lease agreement between the parties contained an Arbitration Clause which is reproduced as under:

Article 37: Arbitration.

If any difference, dispute or question shall arise between the parties as to the interpretation, meaning or effect of this agreement or as to the rights or liabilities of the parties arising hereunder or as to any other matter or things relating to this Agreement or arising out of or in connection herewith either during the continuance of this agreement or after any termination or purported termination hereof the same shall be referred to the arbitration of two arbitrators one to be nominated by each and such reference shall deem to be a reference to arbitration under the provisions of the Indian Arbitration Act, 1940, or any statutory modification, re-enactment thereof for the time being in force and the decision of the arbitrators and/or of the umpire, whether on questions of law or of fact shall be final and binding on the parties. The venue of arbitration shall be New Delhi. Time for making reference to arbitration is within six months of the arising of a dispute regarding any matter arising out of this contract. Provide, however, that if the Lesser apprehends that the Lessee may alienate or charge or dispose of the Equipment/Property as may cause damage to the Equipment/Property, the Lesser is at liberty to seek redress in a Court of Law.

4. The Arbitration clause in the agreement envisages that disputes arising between the parties shall be referred to the Arbitration of two Arbitrators, one to be appointed by each party. The applicants appointed one Mr. Inderbir Singh Alag as an Arbitrator and vide their letter dated 3rd December, 1997 communicated the same to the respondents and also asked them to appoint an Arbitrator as per the arbitration clause. The respondents however, failed to appoint an Arbitrator.

5. Notice of the application was issued to the respondents who have filed a reply, wherein the lease agreement executed between the parties is not disputed. Respondent do not dispute the existence of an Arbitration Clause in the agreement. The only plea raised by the respondents is that they have already paid a substantial amount towards lease rental to the applicants which covers the claim of the applicants and according to the respondents nothing remained due to be paid. The respondents are however, willing to return the equipment.

6. The pleadings of the parties and the documents placed on record by the applicants clearly show that a dispute has arise between the parties. The existence of an Arbitration Clause is not disputed by the respondents. The Arbitration Clause provides that in the event of any dispute arising between the parties the same shall be referred to Arbitration of two Arbitrators one nominated by each party.

7. Applicants appointed one Arbitrator and communicated this fact to the respondents through their letter dated 3rd December, 1997. By virtue of the

same communication they also called upon the respondents to appoint an Arbitration but they failed to do so. The respondents have even declined to appoint an Arbitrator in their reply filed before the Court. The applicants, Therefore, had no other alternative, but to move the Chief Justice to appoint an Arbitrator.

8. In view of the facts and circumstances of this case set out above, it is for the Chief Justice or the person designated by him to make the appointment under the Act. I accordingly, appoint Sh. M.M.Sudan Advocate, Delhi High Court, as an Arbitrator in addition to the Arbitrator already appointed by the applicants. The two Arbitrators i.e. Sh.Inderbir Singh Alag already appointed by the applicants and sh.M.M.Sudan, Advocate now appointed shall appoint a third Arbitrator who shall act as the presiding Arbitrator, and the Arbitral Tribunal shall thereafter adjudicate upon the disputes having arisen between the parties.

9. Application is accordingly allowed with costs.