
(2018) 02 DEL CK 0185

In the Delhi High Court

Case No : Civil Suit (OS) No. 2781 Of 2015

IFCI Factors Ltd

APPELLANT

Vs

Spanco Limited & Anr

RESPONDENT

Date of Decision : 05-02-2018

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 5, 8

Citation : (2018) 02 DEL CK 0185

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Anupam Srivastava, Shreya Mehta, Dhairya Gupta, Sunil Choudhary

Judgement

Manmohan, J

I.A. 3918/2017 in CS(OS) 2781/2015

1. Present application has been filed on behalf of the defendant No.2 under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996.

2. In the present application, it has been averred that the Clause 25 of the Agreement for the Factoring of Receivables dated 26th July, 2011 executed between the plaintiff and defendant No.1 contains an arbitration clause.

3. Learned counsel for defendant No.2 states that since the plaintiff has filed the present suit jointly against defendants No.1 and 2, it will have to first prove that the defendant No.1 has defaulted in making repayments under the said Agreement for the Factoring of Receivables dated 26th July,

2011 which contains an arbitration clause. In support of his submission, he relies upon the judgment of the Apex Court in Chloro Controls India

Private Limited Vs. Severn Trent Water Purification Inc. & Ors., (2013) 1 SCC 641.

4. Per contra, learned counsel for plaintiff submits that the present application is not maintainable as the Guarantee Deed executed by the defendant

No.2 in favour of the plaintiff does not contain an arbitration clause. He submits that as bifurcation of subject matter of suits is not contemplated by

the Arbitration and Conciliation Act, 1996, the plaintiff's only remedy was to file a substantive suit " which it has done in the present case. In

support of his submission, he relies upon the judgment of the Supreme Court in Sukanya Holdings (P) Ltd. Vs. Jayesh H. Pandya & Anr., (2003) 5

SCC 531.

5. Learned counsel for plaintiff also points out that the judgment of the Supreme Court in Sukanya Holdings (P) Ltd. (Supra) has not been overruled in

Chloro Controls India Private Limited (Supra). In support of his submission, he refers to the Division Bench judgment of this Court in Ameet Lalchand

Shah & Ors. Vs. Rishabh Enterprises & Ors., 2017(4) ARBLR 1(Delhi).

6. Having heard learned counsel for the parties, this Court is of the view that admittedly the defendant No.2 has defences which are independent of

the Agreement for the Factoring of Receivables dated 26th July, 2011 executed between the plaintiff and defendant No.1.

7. Consequently, this Court is of the view that if plaintiff is directed to invoke the arbitration clause in the agreement executed between the plaintiff

and defendant No.1, it would amount not only to bifurcation of causes of action, but the arbitral tribunal would have no jurisdiction to decide the

additional defences taken by the defendant No.2.

8. In fact, a Coordinate Bench of this Court in an identical suit filed by the plaintiff itself i.e. IFCI Factors Limited Vs. Shyam Forgings Private Limited

& Ors., CS(COMM) 1265/2016 vide order dated 02nd January, 2018 has rejected an identical argument. The relevant portion of the order dated 02nd

January, 2018 is reproduced hereinbelow:-

9. 13. A perusal of the Agreement dated 7th May, 2010 at page 68 of the paper book, and which is stated to contain arbitration clause,

shows the same to be between the plaintiff and the defendant no.1 only and though it is a term of the said Agreement that the defendants

no.2 to 5 will / have submitted their personal guarantees but arbitration clause contained in the said Agreement is as under:

25. ARBITRATION All disputes, differences, claims, questions and

controversies arising in connection with this Agreement which the Parties are unable to settle between themselves, shall be referred to Arbitration, in accordance with the Arbitration and Conciliation Act, 1996 or any statutory amendment or modification thereof. The Arbitration proceedings shall be held in the English Language and shall be held at Mumbai / New Delhi.â??

14. Each of the defendants no.2 to 5 have executed separate Deeds all dated 7th May, 2010, of guarantee in favour of the plaintiff

guaranteeing to the plaintiff payment of the dues by the defendant no.1 jointly and severally with the defendant no.1 and the said Deeds

also provide that the same are independent of the agreement of the plaintiff with the defendant no.1. Admittedly the said Deeds of

Guarantee do not contain any arbitration clause. I have also scanned one of the Deeds of Guarantee executed by defendant no.2 Brijesh

Kumar Agarwal and do not find any clause therein which may incorporate therein the arbitration clause as contained in the Agreement

between the plaintiff and the defendant no.1.

15. The counsel for the defendants states that the Deeds of Guarantees executed by defendants no.3 to 5 are identical to that executed by

the defendant no.2.

16. The counsel for the plaintiff / non-applicant has relied on Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya (2003) 5 SCC 531 where

the Supreme Court has inter alia held, that where a suit is commenced as to a matter which lies outside the arbitration agreement and is also

between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8; that the words

'a matter' indicates entire subject matter of the suit should be subject to arbitration agreement; that it would be difficult to give an

interpretation to Section 8 under which bifurcation of the cause of action, that is to say the subject matter of the suit or in some cases

bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. The counsel for the plaintiff has

also referred to the dicta of the Division Bench of this Court in Ameet Lalchand Shah Vs. Rishabh Enterprises MANU/DE/1010/2017 laying

down that Chloro Controls India Pvt. Ltd. Vs. Severn Trent Water Purification Inc.

(2013) 1 SCC 641 does not overrule Sukanya Holdings

Pvt. Ltd. supra which continues to hold the fray.

17. Per contra, the counsel for the defendants / applicants, without citing any judgment, merely referred to the language of Section 8 and

contended that once the parties have agreed to the dispute being referred to arbitration, it would cover the guarantees as well. Else, the

emphasis of the counsel for the defendants is on the merits of the claim and which are not to be gone into at this stage.

18. The Courts, in the judgments aforesaid having already pronounced on the language of Section 8, it is not open for this Bench to

reconsider the same.

19. It is also the contention of the counsel for the defendants that all the documents were executed in pursuance to the sanction letter dated

7th April, 2010 at page 56 of the documents filed and since all the documents are part of the same transaction, the arbitration clause in the

main agreement would apply to the supplementary documents as well.

20. Owing to the claim of the plaintiff in the suit, besides against the defendant no.1 with whom the plaintiff admits arbitration agreement,

being also against the defendants no.2 to 5, following the judgments aforesaid, the application is dismissed.â??

10. Keeping in view the aforesaid, the present application is dismissed.

I.As. 1655/2017 & 3919/2017 in CS(OS) 2781/2015

List for arguments on 19th July, 2018.