
(1994) 02 DEL CK 0018
In the Delhi High Court
Case No : OMP No. 155 of 1990

Imperial Surgical Co. (P) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-02-1994

Acts Referred:

Citation : (1994) 02 DEL CK 0018

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Rajesh Banati, for the Appellant; B.P. Aggarwal, for the Respondent

Judgement

Sat Pal, J.—This is a petition filed on behalf of M/s. Imperial Surgical Company Private Limited (hereinafter referred to as "the petitioner") u/s 33 read with Section 32 of the Arbitration Act, 1940 and in this petition the petitioner has prayed for a declaration that there exists no arbitration agreement since no valid, binding and concluding contract came into existence between the petitioner and the Union of India (hereinafter referred to as "the respondent") Notice of this petition was issued to the respondent. On receipt of the notice an application hearing is No. 2559/91 was filed on behalf of the respondent for stay of the proceedings on the ground that the dispute between the parties has to be adjudicated upon as per the terms of the arbitration clause. Reply to this application was filed on behalf of the petitioner and in the reply it was contended that since there was no valid, binding and concluded contact between the parties, the arbitration clause alleged to be in the contract could have not existed.

2. On 29th July, 1993 the parties were directed to file affidavit by way of evidence. Pursuant to this order the affidavit on behalf of the petitioner was filed on 20th August, 1993 but no counter affidavit has been filed on behalf of the respondent despite various opportunities having been granted for the said purpose.

3. Mr. Banati, learned counsel appearing on behalf of the petitioner drew my

attention to para 1 of the application bearing is No. 2559/91 filed on behalf respondent and submitted that in this para it has clearly been stated that the present case relates to the contract dated 28th December, 1989 for supply of Oxygenations and Craniotomy Reservoirs to Jipmer, Pondicherry. He also drew my attention to the letter dated 23rd November, 1989 sent by the respondent to the petitioner (copy of which is Annexure PA to the affidavit) and submitted that in terms of this letter the petitioner was asked to extend the validity of their offer till 26th December, 1989 and pursuant to this letter the petitioner vide their letter dated 2nd December, 1989 (copy of which is Annexure PB to the affidavit) informed the respondent that they had agreed to extend the validity of their offer for a further period upto 26th December, 1989. The learned counsel, Therefore, contended that since admittedly the offer of the petitioner was valid up to 26th December, 1989 and the acceptance of the contract according to the averments made by the respondents is on 28th December, 1989, there was no concluded and binding contract between the parties.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the records. As stated hereinabove no counter affidavit by way of evidence has been filed on behalf of the respondent. The learned counsel for the respondent even could not point out any material controverting the facts stated by the learned counsel for the petitioner. From the letters annexure PA and PB mentioned hereinabove, it is clear that the offer was extended by the petitioner only up to 26th December, 1989 but the offer was not accepted till that date. As stated by the respondent in para 1 of the application bearing is No. 2559/91, the acceptance of the contract is dated 28th December, 1989. Thus, the offer was not accepted by the respondent within the extended period. In view of this I hold that no contract came into existence between the parties. The view I have taken finds support from a judgment of the Supreme Court in Zodiac Electricals Pvt. Ltd. Vs. Union of India (UOI) and Others, , and my own judgment in M/s. Govind Narain & Brothers v. Union of India 1993 3 AD 294.

5. Since there was no binding and concluded contract between the parties, obviously, the arbitration clause said to be contained in the contract could have no existence. Accordingly, the petition is allowed and I hold that there was no binding and concluded contract between the parties and as such there existed no arbitration agreement between the parties. The parties are, however, left to bear their own costs.