
(2013) 03 AP CK 0045

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 918 of 2012

Indian Industrial Growth Fund Limited

APPELLANT

Vs

Mrs. Anitha Nesanuru and Others

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9, 9(II)(b)(d)

Citation : (2013) 5 ALD 733 : (2013) 5 ALT 293 : (2013) 4 ARBLR 363

Hon'ble Judges : L. Narasimha Reddy, J;K.G. Shankar, J

Bench : Division Bench

Advocate : S. Ravi, for Sri. A. Krishnam Raju, for the Appellant; P. Veera Reddy for Respondent Nos. 1 and 2, for the Respondent

Judgement

L. Narasimha Reddy, J.—Respondents 1 and 2 filed A.O.P. No. 38 of 2010 in the Court of the IV Additional District Judge, Tirupathi u/s 9(II)(b)(d) and (e) of the Arbitration and Conciliation Act, 1996 (for short "the Act"), for interim measures. It was pleaded that there existed three agreements between them and the appellant, on the one hand, and the appellant and respondents 3 and 4, on the other, in relation to business transaction, and that though a request was made for appointment of an Arbitrator, for resolution of the disputes, there was no positive response. With this and other contentions, respondents 1 and 2 wanted the trial Court

(a) to stay the operation of the termination letter, dated 15.01.2010, issued by the appellant herein; and

(b) to grant injunction restraining the appellant from taking any further action under the share subscription and Shareholders Agreement, pledge Agreement and Share Purchase Agreement, dated 5-6-2008, and to direct the 4th respondent herein not to release the amount of Rs. 66,69,862/- lying with them till the dispute is resolved by an Arbitrator appointed in terms of the agreement.

On receiving the notices in the A.O.P., the appellant filed counter, raising an

objection as to the jurisdiction, apart from opposing the case on merits. According to it, the agreements provided for the arbitration, and that the place of arbitration is agreed to be at Mumbai, and in that view of the matter, the trial Court does not have jurisdiction. Through an order, dated 04-06-2012, the trial Court allowed the A.O.P. Hence, this appeal.

2. Heard learned counsel for the appellant and the learned counsel for respondents 1 and 2.

3. Heard Sri S. Ravi, learned Senior Counsel for the appellant and Sri P. Veera Reddy, learned counsel for the respondents 1 and 2.

4. The A.O.P. filed by the respondents 1 and 2 was, for grant of interim measures and protection, u/s 9 of the Act. There is no dispute that the relationship between the parties is governed by a set of agreements. As a matter of fact, the very basis for filing the AOP was the existence of an arbitration clause.

5. The appellant did not strongly dispute the existence of agreement, or the right of the respondents 1 and 2, to seek interim measures. Its principal objection was as to the territorial jurisdiction of the Court. The trial Court framed only one point for its consideration, viz., whether the respondents 1 and 2 are entitled for interim orders as prayed for, including the one of preserving the escrow amount, lying with the 3rd respondent. No oral evidence was adduced by the parties. The respondents 1 and 2 filed Exs.P-1 to P-10. The trial Court ordered the A.O.P., as prayed for.

6. The agreement, which contains the clause for arbitration is the one, dated 10-09-2009, titled as, "share purchase agreement". While clause 13(1) provided for arbitration, clause 13(2) indicated the venue and procedure. The relevant clauses read,

13.1. Number of Arbitrators. If any dispute or difference arises between the Parties with respect to this Agreement, such dispute shall be referred to arbitration. The Parties shall mutually appoint a sole arbitrator to resolve the dispute or differences. In the event the Parties are unable to agree upon a sole arbitrator, the dispute or the difference shall be referred to a panel of three arbitrators, one arbitrator to be nominated by each Party (the Seller on the one hand and the Purchasers on the other hand) and the third arbitrator to be appointed by the two arbitrators.

13.2. Venue and Procedure. The place of arbitration shall be Mumbai and the language of arbitration shall be English. The arbitration proceedings shall be governed by the (Indian) Arbitration and Conciliation Act, 1996. The arbitrator's award shall be substantiated in writing. The arbitrators shall also decide on the costs of the arbitration procedure. The Parties shall submit to the arbitrator's award and the same shall be enforceable in any competent court of law.

7. Similar clauses are incorporated in the escrow agreement dated 10-09-2009, under Clauses 12(1) and 12(2).

8. The factors, that determine the territorial jurisdiction of a Court, are mentioned in the C.P.C. By and large, the residence of the parties and the steps at which, the subject-matter of the proceedings is situated, assume significance. Law permits the parties to an agreement, what is known as "contract, to agree" upon the place at which, the proceedings are to be initiated, in the event of any disputes. The only difference is that, if a suit can be validly instituted in more Courts than one, and the parties agree upon institution of proceedings in one such Court, the agreement to that extent is binding on both the parties. If, on the other hand, if the parties agree for institution of proceedings in a Court, which otherwise does not have the jurisdiction, such clause shall not be binding.

9. In the instant case, substantial number of parties are in Mumbai, and the agreements are said to have been entered into at that place. When all of them have agreed for arbitration to take place at Mumbai, it is but natural that any proceedings before Courts of law, in relation to arbitration, must be at that place. In *Jyothi Turbo Power Services Pvt. Ltd., Hyderabad v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., Raipur* 2011 (3) ALD 795 (DB), a Division Bench of this Court has taken similar view. Apart from the question of legality, from the point of view of convenience also, it is better that the proceedings are instituted in a Court, within whose territorial jurisdiction the arbitrator functions.

10. On behalf of the respondents 1 and 2, it is pleaded that the appellant carried the matter to the Supreme Court, raising objection as to the territorial jurisdiction of the trial Court, and once the Supreme Court dismissed the Special Leave Petition, the jurisdiction of the trial Court gets affirmed. This does not appear to be correct. The appellant, no doubt, filed SLP before the Supreme Court, almost in the form of a Transfer C.M.P, seeking transfer of the AOP from the Court of Tirupati to the one, at Mumbai. The SLP was dismissed in limini. It is represented that the appellant was permitted to raise the question of jurisdiction before the trial Court. It hardly needs any mention that the parameters for transfer of proceedings from one Court to another are substantially different from those, that are relevant for determination of the territorial jurisdiction of a Court.

11. Hence, the C.M.A. is allowed, and the order under appeal is set aside. It is left open to the respondents 1 and 2 to institute proceedings in a Court of competent jurisdiction at Mumbai. We direct that the arrangement that has been directed by the trial Court shall remain in force for a period of four weeks from the date of receipt of a copy of this order, and thereafter, the matter shall be governed by the orders, that may be passed by the Court at Mumbai. The miscellaneous petition filed in this appeal shall also stand disposed of. There shall be no order as to costs.