

(1981) 04 GUJ CK 0033
In the Gujarat High Court

Lakhani and Co.

APPELLANT

Vs

National Textile Corporation and Another

RESPONDENT

Date of Decision : 08-04-1981

Acts Referred:

Arbitration Act, 1940 — Section 34

Sick Textile Undertakings (Nationalisation) Act, 1974 — Section 4, 4(1), 4(2), 4(2)

Citation : (1982) GLH 290 : (1982) 1 GLR 273

Hon'ble Judges : A.M. Ahmadi, J

Bench : Single Bench

Judgement

A.M. Ahmadi, J.—By a contract dated 10th September 1973 between Messrs The Rajnagar Spinning, Weaving and Manufacturing

Company, Limited, and Messrs Lakhani and Company through Messrs Maheshkumar Dhirajlal and Company, certain goods were sold on the

terms and conditions of the contract to the appellants Messrs Lakhani and Company, Clause 19 of the contract reads as under:

Clause 19:- All disputes and questions whatsoever which shall arise between the parties hereto out of or in connection with the contract or as to

the construction or application thereof or the respective rights and obligations of the parties hereunder clause or thing herein contained or any

account of valuation to be made hereunder or as to any other matter in any way relating to these presents shall be referred to arbitration in

accordance with the Rule for the time being in force as applicable to piecegoods for export and which will be framed by the Bombay Mill owners

Association in consultation with the Exporter's Representatives selected in accordance with the provision therein nothing in the rules or arbitration

or any implication thereof which runs counter to the terms and conditions shall

be applied thereto.

Subsequently, Messrs Rajnagar Spinning, Weaving and Manufacturing Company, Limited, a sick-textile undertaking, was taken over by the

Central Government by virtue of the provisions contained in the Sick Textile Undertakings (Nationalisation) Act, 1974 (hereinafter called "the

Act"). Section 3 of the Act deals with acquisition of rights of owners of sick textile undertakings. It provides that on the appointed day, every sick

textile undertaking and the right, title and interest of the owner in relation to every such sick textile undertaking shall stand transferred to, and shall

vest absolutely in, the Central Government. It further provides that every such sick textile undertaking which has vested in the Central Government

shall stand transferred to, and vested in, the National Textile Corporation. The National Textile Corporation, therefore, filed a Summary Suit No.

3514 of 1976 to recover the price of the goods supplied to the appellant by the sick textile undertaking. Immediately on the service of summons of

the said suit, the appellant took out a Notice of Motion for stay of the suit u/s 34 of the Arbitration Act, 1940, on the strength of the abovequoted

arbitration clause. The learned Chamber Judge examined the provisions of the Act and came to the conclusion that the scheme of the Act indicated

that what stood transferred and vested in the respondent No. 1 was only the right, title and interest of the owner in relation to the sick textile

undertaking and not any liability of such owner and the requirement of Clause 19 to refer the dispute to arbitration being a liability could not be

taken as transferred to respondent No. 1. In this view that he took, the learned Chamber Judge rejected the summons for stay of proceedings u/s

34 of the Arbitration Act even though on facts he came to the conclusion that the appellant was at the date of the taking out of the Chamber

Summons and even prior thereto always ready and willing to do all things necessary to the proper conduct of the arbitration. The appellant being

aggrieved by the order passed by the learned Chamber Judge rejecting his application for stay of proceedings has preferred the present appeal.

2. In order to understand the scheme of the Act it is necessary to refer to a few provisions on which reliance was placed at the hearing of this

appeal. The Act was enacted to provide for the acquisition and transfer of the sick textile undertakings, and the right, title and interest of the

owners in respect of the sick textile undertakings, specified in the First Schedule to the Act with a view to re-organising and rehabilitating such sick

textile undertakings so as to subserve the interests of the general public by the augmentation of the production and/ distribution, at fair prices, of

different varieties of cloth and yarn, and for matters connected therewith or incidental thereto. Section 2 contains the dictionary of the Act. The

expression ""appointed day"" means the 1st day of April, 1974. The expression ""owner"" when used in relation to a sick textile undertaking, means

any person or firm who or which is, immediately before the appointed day, the immediate proprietor or lessee or occupier of the sick textile

undertaking or any part thereof. The expression ""sick textile undertaking"" means a textile undertaking, specified in the First Schedule, the

management of which has, before the appointed day, been taken over by the Central Government under the Industries (Development and

Regulation) Act, 1951, or as the case may be, vested in the Central Government under the Sick Textile Undertakings (Taking Over of

Management) Act, 1972. Sub-section (1) of Section 3 with which we are concerned in the present appeal leads as under:

3. (1) On the appointed day, every sick textile undertaking and the right, title and interest of the owner in relation to every such sick textile

undertaking shall stand transferred to, and shall vest absolutely in, the Central Government.

Sub-section (2) of Section 3 next provides that every sick textile undertaking which stands vested in the Central Government by virtue of Sub-

section (1) shall, immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation. Section 4(1) next

provides that the sick textile undertaking referred to in Section 3 shall be deemed to include all assets, rights, lease-holds, powers, authorities and

privileges and all property; movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash

balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were

immediately before the appointed day in the ownership, possession, power or control of the owner of the sick textile undertaking, whether within

or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to

include the liabilities and obligations specified in Sub-section (2) of Section 5. Sub-section (2) of Section 4 on which reliance was placed by Mr.

Shah may now be reproduced:

4. (2) All property as aforesaid which have vested in the Central Government under Sub-section (1) of Section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other in cumbrances affecting it, and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn.

The rest of the sub-sections of Section 4 are not relevant for our purpose. Section 5 provides that every liability, other than the liability specified in

Sub-section (2) of the owner of a sick textile undertaking, in respect of any period prior to the appointed day, shall be the liability of such owner

and shall be enforceable against him and not against the Central Government or the National Textile Corporation. The liabilities set out in Sub-

section (2) of Section 5 are not material for our purpose. It is not necessary to refer to any other provision in the Act as no reliance was placed on

those provisions by the learned advocates for the parties in this appeal.

3. Mr. Trivedi, the learned advocate for the appellant, contended that the Rajnagar Spinning, Weaving and Manufacturing Company, Limited, was

admittedly a sick textile undertaking within the meaning of Section 2(j) of the Act. Ordinarily but for the acquisition of the rights of the owners of

that undertaking by virtue of Section 3 of the Act the said Company would have been entitled to file a suit to recover its dues from the appellant. If

the said Company had instituted the suit, it would have been open to the appellant to invoke Clause 19 of the contract and seek stay of further

proceedings u/s 34 of the Arbitration Act. Infact, according to Mr. Trivedi, the said Company had instituted Summary Suit No. 2-91 of 1974 and

in that suit a summons was taken out for stay of proceedings u/s 34 of the Arbitration Act, invoking Clause 19 of the contract. While the said

proceedings were pending, under the provisions of the Act the rights of the owners of the Company sick textile undertaking-were acquired and the

National Textile Corporation withdrew that suit with permission to file a fresh suit and accordingly the present suit came to be instituted. Mr.

Trivedi, therefore, argued that the National Textile Corporation has stepped into

the shoes of owners of the sick textile undertaking and, therefore, it was incumbent upon it to resort to arbitration under clause 19 of the contract instead of filing a suit to recover its dues from the appellant. Since the National Textile Corporation has chosen to file a suit without resorting to arbitration, the appellant is entitled to invoke Clause 19 of the contract and ask for stay of proceedings u/s 34 of the Arbitration Act as the appellant was, at the time when the summons was taken out and still is ready and willing to do all things necessary to the proper conduct of the arbitration. There is considerable merit in the submission of Mr. Trivedi.

4. It is not in dispute that Messrs Rajnagar Spinning Weaving and Manufacturing Company Limited was a sick-textile undertaking on the appointed day, that is, 1st April 1974. By virtue of Sub-section (1) of Section 3 of the Act, on the appointed day the said undertaking and the right, title and interest of the owner in relation thereto stood transferred to and vested absolutely in the Central Government, By the thrust of Sub-section (2) of Section 3 of the Act the said sick textile undertaking stood transferred to, and vested in, the National Textile Corporation. On a plain reading of Sub-section (1) of Section 3 of the Act it becomes clear that on the appointed day the sick textile undertaking and the right, title and interest of the owner in relation thereto stood transferred to, and vested absolutely in, the Central Government. Sub-section (1) of Section 4 then indicates the general effect of such vesting. Sub-section (2) of that section which was relied upon by Mr. Shah next provides that the property which has vested in the Central Government under Sub-section (1) of Section 3 shall, by force of such vesting, be freed and discharged from any trust obligation, mortgage, charge, lien and all other incumbrances affecting it, and any attachment, injunction or decree or order of any Court restricting the use of such property in any manner shall be deemed to have been withdrawn. According to Mr. Shah the right to recover the unpaid price of the goods supplied becomes vested in the Central Government without any obligation or any restriction and hence the same can be enforced in ordinary course by instituting a suit in a civil Court. In other words, according to Mr. Shah, it is an obligation so far as the National Textile Corporation is concerned to be required to resort to arbitration and stay of proceedings u/s 34 of the Arbitration Act and amounts to

restricting the right of the National Textile Corporation to recover its dues from the appellant in ordinary course by instituting a suit in the municipal

Court. It is difficult to agree with this submission of Mr. Shah.

5. Sub-section (2) of Section 4 merely lays down that the property which has vested in the Central Government under Sub-section (1) of Section

3 shall, by force of vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other in cumbrances affecting it. The

expression ""obligation"" used in this sub-section takes colour from the other expressions preceding it and immediately following it. It has the effect of

freeing the property from certain financial obligations such as mortgage, charge, lien or in cumbrance of any other sort whatsoever. The term

obligation"" must be understood in that context and it cannot be given the meaning which Mr. Shah wants me to give, namely, that it has the effect

of freeing the National Textile Corporation from the arbitration clause contained in the contract. The latter part of Sub-section (2) of Section 4

further provides that any attachment, injunction or decree or order of any Court restricting the use of such property in any manner shall be deemed

to have been withdrawn. I find it difficult to agree with Mr. Shah that the expression ""restricting the use"" has the effect of doing away with the

arbitration clause in the contract. If there is an arbitration clause in the contract it is incumbent on the parties to the contract in the event of a dispute

covered by the arbitration clause to refer the matter to arbitration. This is so because the parties have mutually chosen the forum for resolving their

disputes and differences should they arise. The effect is that by the contract the parties say that instead of going to Court to have their disputes and

differences resolved, they will resort to the speedier remedy of approaching an arbitrator for adjudicating upon it. Such a clause in the contract can

never be said to be an obligation or a restriction referred to in Sub-section (2) of Section 4 of the Act. As stated earlier, the expression ""obligation

used in Sub-section (2) takes colour from the words preceding and immediately following that expression and if read in that context, it becomes

obvious that the purpose of the statute is to free the properties from certain financial obligations incurred earlier by the owner of the silk textile

undertaking. The latter part of Sub-section (2) of Section 4 has the effect of lifting the restrictions on the use of the property imposed by any order

of attachment, injunction decree or order of any Court. The contractual requirement to resort to arbitration can never be said to be an obligation or a restriction of the type referred to in Sub-section (2) of Section 4 of the Act. The essence of arbitration is that some dispute is referred by the parties for settlement to a tribunal of their choosing, instead of a Court. Arbitration, therefore, is nothing but an agreement by which the parties to a dispute agree to substitute a tribunal of their choosing in place of a Court. The rights of the owner of the sick textile undertaking which stood transferred to the National Textile Corporation were those arising under the contract. Whenever a right is transferred it carries with it the corresponding obligations also. The right which stood transferred to the National Textile Corporation was to claim the price of the goods supplied to the appellant. If there was any dispute in that behalf it has to be settled by arbitration. When the rights are transferred the transferee incurs corresponding obligations. All such obligations are not carved out by Sub-section (2) of Section 4 of the Act but only obligations which are fiscal in nature. Therefore, assuming that the agreement to refer a dispute to arbitration is an obligation (the learned Chamber Judge calls it a liability), it is certainly not an obligation of the type referred to in the aforesaid sub-section so as to relieve the National Textile Corporation there from. I have, therefore, no hesitation whatsoever in concluding that the view taken by the learned Chamber Judge on the language of Sub-section (2) of Section 4 of the Act is un-sustainable.

6. The learned Chamber Judge seems to think that because respondent No. 2 has not applied for stay it is not necessary to stay the proceedings u/s 34 of the Arbitration Act at the behest of the appellant. This approach is thoroughly misconceived. Respondent No. 2 was merely the broker who had brought about the transaction. The real parties to the contract were the appellant and the sick textile undertaking. The appellant will be liable to pay for the goods supplied. Prima facie the suit is directed against the appellant. Therefore, the appellant as a party to the contract is entitled to invoke Clause 19 of the contract. Assuming for the sake of argument that the respondent No 2 is also sought to be made liable, merely because he does not invoke Section 34 of the Arbitration Act is no reason to deny the appellant's right to resort to arbitration. I, therefore, do not

see any merit in this ground also.

In the result this appeal is allowed. The order passed by the learned Chamber Judge refusing to stay the proceedings u/s 34 of the Arbitration Act

is set aside. The summons taken out by the appellant is restored. The suit pending in the trial Court will stand stayed u/s 34 of the Arbitration Act.

Parties will take further action to have the dispute resolved through arbitration in accordance with law. There will be no order as to costs.