

(2009) 09 DEL CK 0089

In the Delhi High Court

Case No : Arbitration Petition 299 of 2008

Mistcold Sales and Services Pvt. Ltd.

APPELLANT

Vs

Mayer Health Resort Ltd.

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6)

Citation : (2010) 7 RCR(Civil) 2114

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Asad Alvi and Faiz Hyder, for the Appellant; Sanjeev Ralli, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This petition u/s 11(6) of the Arbitration & Conciliation Act, 1996 has been preferred by the petitioner seeking appointment of an arbitrator by this Court on the ground that the respondent has failed to appoint an arbitrator despite a notice given by the petitioner. The defence taken by respondent is that there was no arbitration agreement between the parties.

2. Paragraph 7 of the petition reads as under:

7. That it was further agreed between non applicant/respondent and the petitioner that all terms and condition shall be as per petitioner's tender and the tender specification issued by KCB Associates. It is also mention worthy that as per the terms and condition of the tender there is an arbitration clause which has been agreed by non applicant/respondent and the petitioner. The Arbitration clause has been incorporated herein for the sake of facility:

Arbitration: In the event any dispute or difference between the parties arising from this contract shall be referred to Two Arbitrators one appointed by each arbitrator. These two Arbitrators shall appoint an Umpire before entering upon the reference.

3. The petitioner was asked to place on record the documents showing that the alleged arbitration agreement was executed between the parties. The petitioner failed to place on record any document showing that the arbitration agreement was signed between the parties. The petitioner's counsel took the plea that the arbitration agreement formed part of the tender document. The petitioner has placed on record a copy of the tender document, the general conditions of contract showing it to be as true copy of the tender document. The relevant clause regarding dispute resolution in the tender document reads as under:

q) Arbitration:

All disputes arising out or in any way connected with this agreement shall be deemed to have arisen in Delhi and the Courts in the state of Delhi shall have jurisdiction to determine the same.

4. It is obvious that the clause relied upon and reproduced by the petitioner in para 7 of the petition was not agreed between the parties and the petitioner deliberately filed this petition alleging that there was an arbitration clause in the nature as given hereinabove.

5. The petitioner relied upon an alleged Annexure-5 stating that this was a part of the general terms and conditions. Annexure-5, copy of which was placed by the petitioner on record contained following arbitration clause:

Arbitration: In the event of any dispute or difference between the parties arising however from this contract the same shall unless amicably settled, be referred to two arbitrators one to be appointed by each party. The two arbitrators shall before entering upon the Reference appoint an umpire. The decision of the two arbitrators or the umpire as the case may be shall be final and binding between the parties the arbitration proceeding shall take place in Delhi. This is an agreement for arbitration within the meaning of Indian Arbitration Act, 1940 including any statutory re-enactment or modification thereof.

6. The petitioner during arguments placed before the Court a copy of tender document containing Annexure-5. However, this did not match with the tender document filed by the petitioner earlier. The petitioner had filed entire tender document on record which was a tender issued by the M/s K.S.B. Associates Pvt. Ltd., a consultant of respondent, looking after this work. The tender document contained an arbitration clause as given in para 3 above. There was no annexure-5 with this tender document. The general conditions of the contract have been given in this tender document and these general conditions of contract contained clause reproduced in para 3above. A perusal of this clause makes it clear that this was not an arbitration clause though the marginal note of the clause was "Arbitration" but the clause only provided about the jurisdiction and it was only a jurisdiction clause. It is settled law that where clause itself is quite clear, its meaning cannot be derived from the marginal heading or from title. It is only when there is an ambiguity in the clause that help can be taken from the title in interpretation of the clause. In the clause contained in general conditions,

there is no mention of the disputes to be resolved through the means of arbitration.

7. In view of my foregoing discussion, I come to conclusion that there was no arbitration agreement between the parties. This petition u/s 11 of the Act is not maintainable and is hereby dismissed as such.