(2004) 11 DEL CK 0010

In the Delhi High Court

Case No : Arbitration Petition 202 of 1998

Pasupati Fabrics Ltd. APPELLANT

Vs

Nirmal and Co. RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:

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

Citation : (2005) 1 ARBLR 72 : (2004) 115 DLT 585 : (2005) 79 DRJ 289

Hon'ble Judges : H.R. Malhotra, J

Bench : Single Bench

Advocate : Rajeev Sharma, for the Appellant; Nemo, for the Respondent

Judgement

H.R. Malhotra, J.

1.This is a petition filed under the provisions of Section 11(6)(c) of the Arbitration and Conciliation Act, 1996 seeking appointment of an independent Arbitrator as respondent has failed to adhere to the terms of agreement and also Delhi Stock Exchange has refused to entertain arbitration proceedings. Facts as set out in the petition are as under:-

2.That in the year 1996 the petitioner decided to come out with a public issue of 3,53,90,000 equity shares of Rs.10/- each for cash at par aggregating Rs.35,39,00,000/-. Negotiations thereafter took place between the petitioner and the respondent at Delhi regarding the appointment of the respondent as one of the underwriters to the said issue and finally an agreement dated 11.3.1996 was executed between the petitioner and the respondent whereby the respondent agreed to underwrite 50,000 shares of Rs.10/- each at par, aggregating to Rs.500000/-.

3.Petition further speaks about the manner and mode of computation of the underwriters obligation provided in Clause 10 and 11 of the agreement and also procedure for effecting discharge of underwriting obligation that the public issue of the petitioner opened on 6.6.1996 and closed on 15.6.1996. The issue, however, was not fully subscribed and the parties were duly informed about the under subscription of the issue and this being so, the respondent became liable to fulfill its underwriting commitments as mentioned in Clause 1 of the agreement dated 11.3.1996. It is further stated in the petition that though, respondent was reportedly reminded to make the payment of the underwriting amount in terms of their obligation but the respondent failed to discharge their underwriting obligation and did not subscribe to the subscription of the shares agreed to be underwritten. In view of the non-compliance by the respondent of its underwriting obligations, the petitioner again sent a reminder dated 28.10.1996 requesting him to discharge their obligations but without any response and thus, according to the petitioner, the respondent committed default in their obligations thus, necessitating the petitioner to ensure minimum subscription of 90% of the issued amount and to proceed with allotment of shares and enlistment of the same with the Delhi Stock Exchange, Bombay Stock Exchange, National Stock Exchange and UP Stock Exchange and also made arrangements with certain companies under Clause 11 (d) of the Underwriting Agreement to subscribe its shares. The said companies subscribed to the said shares at the request of the petitioner and were holding he shares in trust for and on behalf of the underwriters to whom the shares were ultimately transmitted.

4. Even legal notice dated 21.1.1997 to the respondent for referring dispute to the Arbitration Committee of its Regional. Stock Exchange went unheeded and, Therefore, finally on 17.5.1997 the petitioner submitted a statement of claim to the Delhi Stock Exchange Ltd. in terms of Clause 20 of the Agreement dated 11.3.1996 claiming Rs.633862/- being due from the respondent. The Delhi Stock Exchange vide letter dated 26.11.1997 refused to undertake the arbitration proceedings on the ground that it had never agreed to do so. Therefore, this petition has been filed for appointment of independent Arbitrator.

5.Though, notice of this petition was earlier sent to the respondent and matter came up before the Joint Registrar and the Joint Registrar found that in view of the decision made in Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., no response was necessitated in terms of that judgment and thereafter, matter was placed before this court.

6.Having heard learned counsel for the petitioner on this petition and also having gone through the averments made in the petition besides looking into various documents filed in this regard, including the agreement dated 11.3.1996 and also looking to the reply of the notice of Delhi Stock Exchange refusing to act as an Arbitrator, I am of the definite opinion that since disputes have arisen between the petitioner and the respondent and the respondent has failed to appoint the Arbitrator, in terms of the agreement, petitioner has become entitled to seek order from this court for appointment of an independent Arbitrator. It was further brought to my notice that matter of similar nature came up for hearing before Hon''ble Mr.Justice S.K.Mahajan as his Lordship was then and after dealing with the matter, allowed the petition and appointed an independent Arbitrator. Copy of the judgment has been placed on record. I have perused the same. Facts of that case are alike in nature as that of the instant petition.

7.Since respondent has failed and neglected to respond to the notice including legal notice for the purposes of appointment of Arbitrator, and the Delhi Stock Exchange having refused to take up arbitration proceedings, I am of the opinion that the petitioner has became entitled to appointment of an Arbitrator. Accordingly, Hon''ble Mr.Justice Mr.P.K.Bahri(Retd) Judge of this High Court is hereby appointed as an Arbitrator to adjudicate the disputes. Learned Arbitrator shall fix his own fee.

8. Petition stands disposed of.