

(1999) 10 DEL CK 0065

In the Delhi High Court

Case No : A.A. No. 99/98 and I.A. No. 8231/98

Prakash Industries Limited

APPELLANT

Vs

Raunaq Finance Limited

RESPONDENT

Date of Decision : 12-10-1999

Acts Referred:

Citation : (2000) 3 AD 334 : (2000) 52 DRJ 643

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

Bench : Single Bench

Advocate : Mr. A.S. Chandhiok and Mr. Alok Singh, for the Appellant; Ms. Ketki Goswami and Mr. Siddharth Agarwal, for the Respondent

Judgement

S.N. Kapoor, J.—Heard on this petition u/s 11(4) of the Arbitration and Conciliation Act (hereinafter called the "Act" for short) for appointment of an arbitrator on behalf of the respondent-company.

2. In this case, there is no dispute in between the parties that disputes have arisen between the parties as mentioned in clause (o) of the petition in para 7 and they have also entered into an arbitration agreement which reads as under :

"8.19 In any dispute or difference or question of interpretation arise between the parties hereto in anyway arising out of this contract, this Deed or as to their rights, duties, or liabilities under this contract, then and in every such case, the matter under dispute shall be decided through arbitration by two arbitrators one to be appointed by each party and in the case of Arbitrators disagreement to an arbitrator to be appointed by the said arbitrators whose decision shall be final, conclusive and binding upon the parties and the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof for the time being will apply. Reference to arbitration as above shall be made within six months of the arising of the rights to refer to arbitration."

3. It is apparent that disputes shall be decided by two arbitrators, one to be appointed by each party and in case of arbitrators" disagreement by an arbitrator

to be appointed by the said arbitrators whose decision shall be final.

4. In this case, the petitioner-company has already appointed Mr. P.B. Menon, Senior Advocate as their arbitrator.

5. Learned counsel for the respondent Ms. Ketki Goswami submits that in another matter the parties consented to the appointment of Hon''ble Ms. Justice Santosh Duggal (Retd.) as sole arbitrator. She submits that Hon''ble Ms. Justice Santosh Duggal (Retd.) should be appointed as sole arbitrator to adjudicate all disputes between the parties. This is being disputed by the learned counsel for the petitioner and he submits that he would be moving an appropriate application in that case seeking review of the order to clarify the situation.

6. In such a circumstance, the only course open for this Court is to act under sub-section (4) of Section 11 of the Arbitration Act to appoint an arbitrator on behalf of the respondent though one would like to appoint sole arbitrator to save the cost of the parties. One could not afford to ignore the arbitration agreement itself which does not provide for sole arbitrator but for arbitration by two persons and in case of disagreement between them, to appoint a third arbitrator.

7. Section 11(4) of the Act applies to the case in hand for appointment procedure is provided. Respondent has failed to appoint an arbitrator as required under the agreement. Consequently, this Court can appoint an arbitrator on behalf of the respondent. At this stage Ms. Ketki Goswami, counsel for the respondent prays the Hon''ble Ms. Justice Santosh Duggal (Retd.) may be appointed as arbitrator on behalf of the respondent to adjudicate upon all the disputes between the parties relating to this matter. Accordingly, Hon''ble Ms. Justice Santosh Duggal (Retd.) is appointed arbitrator on behalf of the respondent. She may fix her own appropriate fee. Parties are also directed to take further appropriate steps in terms of the arbitration agreement and Section 11(4) of the Act, as may be required in the circumstances to ensure fruitful arbitration.

8. Learned Arbitrators shall also consider taking appropriate measures to protect legitimate interests of the parties.

9. The petition and I.A. No. 8231/98 are disposed of accordingly.

10. Parties are left to bear their own costs.

11. A copy of the order be given dusty to the parties to expedite the matter.