
(2004) 04 DEL CK 0037
In the Delhi High Court
Case No : WP (C) No. 180 of 2004

Score Information Technologies Ltd.	APPELLANT
Vs	
Employees State Insurance Corp. and Others	RESPONDENT

Date of Decision : 20-04-2004

Acts Referred:

Citation : (2004) 2 ARBLR 18 : (2004) 111 DLT 475 : (2004) 75 DRJ 152

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Y.P. Narula and Seema Bengani, for the Appellant; M.P. Raju, for respondent Nos. 1-3 and Rekha Anand, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner filed the present writ petition seeking a direction to the respondents to revoke the suspension order dated 25.7.2003 and restore the work order. Petitioner claims that in the beginning of the project, it was not able to conform to the time frame in view of contributory deficiencies of the respondent. On petitioner's representation to respondent petitioner was asked to complete portion of work within 10 days on the assurance that if work was completed, the suspension order would be revoked and work restored. Petitioner's grievance is that despite the said work being done on time, work has not been restored. Respondent denied any such assurance and claimed failure to execute the work by petitioner. Petitioner claimed that there was an arbitration agreement. Matter was adjourned to enable parties to obtain instructions. Petitioner submitted that as per the arbitration clause, Director General or his nominee is to be the arbitrator. Petitioner stated that since in this case, assurances were held out by the Director General, independent arbitrator should be appointed. Respondents thereupon have taken the position that there is no arbitration agreement and were not willing for appointment of an arbitrator.

2. Mr.Y.P.Narula, learned senior counsel for the petitioner, submits that this Court should exercise the jurisdiction u/s 8 of the Arbitration and Conciliation Act, 1996

(hereinafter referred to as the Act) and appoint the arbitrator. Mr.Narula submits that having regard to the definition of the Court given in Section 2(e) of the Act, the expression "Judicial Authority" would include the Court exercising jurisdiction under Article 226 of the Constitution of India. Referring to the facts and circumstances of the case, Mr.Narula submits that to sub serve the ends of justice and to curtail delays, which is the object of the Act, the Court acting as Judicial Authority being aware of the arbitration agreement should refer the parties to arbitration. In support of his contention, Mr.Narula refers to P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Died) and Others, , where even during the appellate proceedings, the Appellate Court, exercised its jurisdiction u/s 8 and referred the parties to arbitration. This was a case, where the arbitration agreement was said to have come into being during the pendency of the appeal. The whole object of Section 5 of the Act was also expeditious and less expensive resolution of disputes.

3.Reference is next made to Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, . In the cited case, it was held that Section 8 was peremptory in nature and it was mandatory for the Civil Court to refer the disputes to the arbitration.

4.Learned counsel for the respondent in opposing the prayer for reference of disputes, submits that the very existence of the arbitration agreement is questioned. Respondent's case is that even though the tender conditions contained an arbitration agreement, the proposal submitted by the petitioner and as accepted and which crystalised in the agreement between the parties, the latter does not contain any arbitration agreement. Hence, resort cannot be had to arbitration clause in the terms and conditions of the tender. Secondly, it is submitted that neither any application has been moved nor the original arbitration agreement produced. Learned counsel further submits that the Court in exercise of writ jurisdiction cannot assume the functions of appointment of an arbitrator, especially when u/s 11, it is an administrative function.

5.Having heard the counsel for the parties, I am not persuaded to accept petitioner's contention that in the exercise of writ jurisdiction, the Court ought to appoint an arbitrator u/s 8 of the Act. The said jurisdiction is to be exercised by a Judge on the Original Civil jurisdiction. Moreover, in view of the controversy, sought to be raised regarding the non-existence of an arbitration agreement on the ground that the proposal submitted did not contain an arbitration agreement and the final agreement, which was executed, did not include arbitration clause, are questions, which ought to be decided in the exercise of original civil jurisdiction. Accordingly, petitioner's prayer for appointment of an arbitrator in the exercise of writ jurisdiction is declined. Petitioner may invoke the remedy by filing a petition on the original civil jurisdiction.

6.The writ petition is dismissed as withdrawn with liberty, as aforesaid. The observations made in this order are on a prima facie view on submissions made and are not to affect the determination of the existence or otherwise of the

arbitration agreement by the Court in exercise of original civil jurisdiction.

April 20, 2004

Manmohan Sarin, J.

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