

(2001) 07 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : OMP No. 247 of 2001 and OMP (M) No. 15 of 2001

Union of India (UOI)

APPELLANT

Vs

Haryana Telecom Ltd.

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6), 34, 42
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151

Citation : (2001) 3 ShimLC 305

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Vinod Sharma, Additional C.G.S.C, for the Appellant; Bimal Gupta, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Verma, J.—An application (OMP No. 247 of 2001) u/s 42 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as "the Act") read with Order 7 Rule 11 and Section 151 of the CPC praying for dismissal of the OMP (M) No. 15 of 2001 i.e. an objection petition u/s 34 of the Act preferred by the Union of India against the award dated 7.8.2000, has been filed by M/ s. Haryana Telecom Ltd.

2. In brief the facts leading to the presentation of this application are that a dispute arose between the parties in respect of a contract regarding supply of telephone cables by M/s. Haryana Telecom Ltd. to the Union of India wherein the Union of India invoked the clause of the agreement which enabled it to impose liquidated damages on account of delayed supply of goods by M/s. Haryana Telecom Ltd. in respect of various purchase orders. Therefore, M/s. Haryana Telecom Ltd. filed an arbitration application u/s 11(6) of the Act in the High Court of Delhi seeking appointment of an Arbitrator as per the agreement to decide the aforesaid dispute between the parties. The Delhi High Court vide order dated 22.9.1998 referred the dispute for adjudication of the sole Arbitrator Mr. Justice

P.K. Bahri (Retd.) of the High Court of Delhi. The Arbitrator entered on the reference and made the award in question against which the Union of India preferred objection petition i.e. OMP (M) No. 15 of 2001 in this Court. In the present application, M/s. Haryana Telecom Ltd. has averred that since the application for appointment of Arbitrator was made in the High Court of Delhi and the reference has been made by the said Court, therefore, only the said Court has jurisdiction over the proceedings arising out of the award.

3. The Union of India filed a reply to the application controverting the objection regarding jurisdiction though not disputing that the reference to the Arbitrator was made by the High Court of Delhi.

4. I have heard the learned Counsel for the parties and have also gone through the record.

5. Section 42 of the Act reads as follows:

Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

It is clear from a bare reading of the provisions of the above Section which opens with a non-obstante clause and is comprehensive in character that it not only confers exclusive jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitration agreement on the Court to which application under Part-I of the Act has been made with respect to such an arbitration agreement but simultaneously ousts the jurisdiction of any other Court even if it may have jurisdiction in the matter.

6. In the instant case, it is not in dispute that an application u/s 11(6) of the Act was made by M/s. Haryana Telecom Ltd. for appointment of Arbitrator for adjudication of the dispute between the parties and vide order dated 22nd September, 1998 the said Court appointed Mr. Justice (Retd.) P.K. Bahri as the sole arbitrator to adjudicate upon the dispute arising out of the agreement between the parties and accordingly referred the matter to the Arbitrator so appointed. The Arbitrator has made an award dated 7.8.2000 pursuant to the aforesaid appointment and reference. The Union of India has preferred objection petition u/s 34 of the Act against the said award in this Court. However, in view of the provisions of Section 42 of the Act, as discussed herein-above, any application arising out of the arbitral proceedings will lie to the Delhi High Court and this Court has no jurisdiction to entertain any such application.

7. As a result, this application is allowed and as a consequence the objection petition u/s 34 of the Act preferred by the Union of India i.e. OMP (M) No. 15 of 2001 is rejected.

OMP No. 77/2001 ;

8. In view of the rejection of the main petition, this application having become infructuous is dismissed as such.