

(2005) 01 DEL CK 0088

In the Delhi High Court

Case No : IA 7534 of 2003 and Arb. P. 161 of 2003

Vijay Industries and Projects Ltd.

APPELLANT

Vs

Kanoria Chemicals and Industries Ltd.

RESPONDENT

Date of Decision : 06-01-2005

Acts Referred:

Citation : (2005) 01 DEL CK 0088

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Chandan Kumar and Shekhar Kr. Jha, for the Appellant; Nemo, for the Respondent

Judgement

Mukul Mudgal, J.—In this application u/s 11 of the Arbitration Conciliation Act 1996, (hereinafter referred to as the Act) reliance has been placed upon the agreement dated 21st March 1995 by the petitioner to seek reference to arbitration. Since the authenticity of the arbitration agreement was doubted by the respondent the court had by its order dated 8th January 2004 ordered as under:

a) the petitioner relied upon a document which contained the seal of the respondent as appearing on the AD card in respect of the communication issued by the petitioner to the respondent which was said to be bearing the seal and the signatures of the respondent. The authenticity of the seal and signatures appearing on page 13 and on the AD card was to be verified and ascertained by the Forensic Science Laboratory.

b) The matter was also referred to the Crime Branch to make investigation as to whether or not the commercial terms and conditions contained in the letter dated 21st March 1995 were received and approved by the respondent particularly, the seal and signatures appearing thereon were disputed by the respondents on the ground of their being forged.

The concluding portion of the consequent Crime Branch of the Delhi Police report

dated 14th May 2004 is as follows: On the basis of the above enquiries, it can be concluded that the seal/stamp appearing on the commercial terms and conditions with the Annexure "B" dated 1.3.1995 is not the same which was used by respondent during that period and the signature also does not appear to be genuine it is not possible to pinpoint as to who is responsible for this but it can also be concluded that the petitioner was going to be benefited by this act.

2. The report of the Forensic Science Laboratory and the Crime Branch were received and the copy thereof was directed to be given to the learned counsel for the petitioner. Thereafter on 7th October 2004, in view of the doubts raised about the authenticity of the said document dated 21st March 1995 produced by the petitioner, the petitioner was directed to file the arbitration agreement in original within 4 weeks. The matter was thereafter taken up first on 23rd November and thereafter on 15th December 2004 when the arguments were heard and the orders reserved.

3. The learned counsel for the petitioner wanted further time to file an affidavit regarding the non filing of the original arbitration agreement about which considerable doubts had been raised by the CFSL and the crime branch investigations. It is apparent that the plea to now file an affidavit is a belated attempt to prolong the proceedings. On 17th October 2004, the petitioner was granted 4 weeks time to file original arbitration agreement. This was not done within the stipulated period. In case the petitioner wanted to file the affidavit detailing the reasons for non filing of the said agreement it ought to have been filed within 4 weeks of the order dated 17th October 2004 Even till 15th December 2004, this was not done and further time was sought which in view of the aforesaid circumstances cannot be granted.

4. Since the whole dispute arises out of the arbitration agreement dated 21st March 1995, the original of which has not been filed by the petitioner in spite of the order of this Court and its authenticity having been doubted by the report of the CFSL and the Economic Offences Wing, this Court cannot go on to appoint an arbitrator in the absence of the original arbitration agreement, particularly, when the petitioner's counsel has failed to produce the original of the arbitration agreement dated 21st March 1995, the existence of which has been disputed by the respondent and its authenticity doubted by the reports of the CFSL and the Economic Offences Wing.

5. Accordingly the petition u/s 11 of the Act is dismissed.

IA also stands disposed of.