

B C Power Controls Ltd vs Ugro Capital Limited & Anr on 24 August, 2020

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 339/2020

B C POWER CONTROLS LTD

.....Plaintiff

Through : Mr. Rajshekhar Rao with Mr. Deep Vohra, Advs.

versus

UGRO CAPITAL LIMITED & ANR.

....Defendants

Through : Mr. Krishendu Datta with Mr. Manish Srivastava, Mr. Gulshan Sachdev Mr. Dhruv Suri, Advs. For D-1. Mr. Mohit Chaudhary with Ms. Garima Sharma, Advs. For D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER
ORDER

% 24.08.2020 [Court hearing convened via video-conferencing on account of COVID-19] I.A. No. 7237-38/2020

1. Allowed, subject to the plaintiff curing the deficiencies referred to in the captioned applications within five days of the lockdown qua this court being lifted notwithstanding the order passed today in the main suit. CS(COMM) 339/2020 & I.A. No.7235-36/2020

2. Issue summons in the suit and notice in the captioned applications. 2.1 Mr. Manish Srivastava accepts service on behalf of defendant no. 1 while Mr. Mohit Chaudhary accepts service on behalf of defendant no. 2.

3. It is not in dispute that there is an arbitration agreement incorporated in Clause 24 of the Master Facility Agreement dated 20.05.2019 [hereafter referred to as "Facility Agreement"].

4. Mr. Rajshekhar Rao, who appears for the plaintiff, says that since defendant no. 2 is not a party to the Facility Agreement, the instant suit action has been filed.

5. Mr. Chaudhary, on the other hand, submits that there is an agreement i.e. Master Service

Agreement dated 18.05.2019 [hereafter referred to as "Service Agreement"] obtaining between defendant nos. 1 and 2, which provides for adjudication of disputes between defendant nos. 1 and 2 via an arbitration mechanism.

5.1 According to Mr. Chaudhary, the arbitration agreement is contained in Clause 13 of the Service Agreement.

6. Both, Mr. Rao and Mr. Srivastava, don't dispute this position.

7. Given the aforesaid position, I have put to counsel for the parties, if they would be agreeable to a sole arbitrator being appointed for adjudication of the disputes obtaining between the parties before me. 7.1 Counsel for the parties, after obtaining instructions from their respective clients, confirmed that they would have no objection to an arbitrator being appointed by this Court.

7.2 Counsel also agreed that this Court should direct that the sole arbitrator would be paid his fee as per the provisions of the Fourth Schedule appended to the Arbitration and Conciliation Act, 1996 [in short "1996 Act"].

7.3 A suggestion is also made by the counsel for the parties that before the learned arbitrator enters upon reference, the matter be referred to a mediator under the aegis of the Delhi High Court Mediation and Conciliation Centre [hereafter referred to as the "Centre"] and that the arbitration proceedings should get triggered only if the mediator is not able to cobble up a settlement agreement within a defined timeline.

8. Thus, having regard to the submissions made by the counsel for the parties, albeit, based on instructions, the following directions are issued:

(i) The parties and their respective counsel will appear before the Centre.

The Centre will appoint a senior mediator in the matter, who is well- conversant with commercial law.

(ii) The mediator will have her/his first meeting via video-conferencing on 27.08.2020 at 03:00 P.M. In the event, for some reason, the said date is not convenient to the mediator, the mediator will fix another date, with the consent of the parties and/or their respective counsel, which is proximate to the date given hereinabove. The mediator shall engage in this process up- until 24.09.2020. In case the mediator is not able to forge a settlement by that date, the arbitrator appointed by this Court will enter upon reference.

(iii) Hon'ble Mr. Justice R.V. Easwar, former Judge, of this Court is appointed as an arbitrator in the matter.

(iv) In case the parties need further time beyond 24.09.2020 to forge a settlement, they would submit a joint application, in writing, both, to the mediator as well as the learned arbitrator and,

only in such an eventuality, the learned arbitrator will defer entering upon reference post the date given hereinabove i.e. 24.09.2020.

(v) However, the learned arbitrator will have the discretion to decline such a request if he finds that the proceedings are getting delayed beyond a reasonable timeframe.

(vi) The timeframe for concluding the arbitration proceedings will commence as per the provisions of the 1996 Act.

(vii) The learned arbitrator will be paid his fee in terms of the provisions of the Fourth Schedule appended to the 1996 Act. The learned arbitrator, before entering upon reference, will file a declaration in terms of Section 12 and other attendant applicable provisions of the 1996 Act.

9. Mr. Rao, on instructions of Mr. Deepak Vohra, says that the court fees amounting to Rs. 5, 42,124/- has been paid and given the fact that the suit is disposed of on the very first date, this Court may consider refund of the court-fee.

10. I tend to agree with the aforesaid submission made by Mr. Rao.

11. It is directed that the entire court-fee paid by the plaintiff be refunded. The Registry will take necessary steps in that behalf.

12. The suit is decreed in the aforesaid terms. A decree will be drawn-up accordingly.

13. The suit papers shall stand consigned to record.

RAJIV SHAKDHER, J AUGUST 24, 2020 pmc/KK Click here to check corrigendum, if any