

M/S. Reliable Engineering Company vs Ituk Manufacturing India Pvt Ltd on 22 September, 2023

Author: Sachin Datta

Bench: Sachin Datta

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IN THE HIGH COURT OF DELHI AT NEW DELHI
ARB.P. 472/2022 & IA No. 2364/2023

M/S. RELIABLE ENGINEERING COMPANY

Through: Mr. Harpreet Singh
Gupta, Mr. Utsav
Advocates.

Versus

ITUK MANUFACTURING INDIA PVT LTD

Through: Mr. Sourav Roy, Mr.
Mr. Kaushal Sharma
Kotwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% 22.09.2023

1. The present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the "A&C Act 1996"), seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes have arisen in the context of Memorandum of Understanding ("MoU") dated 29.08.2018 executed between the parties. The said Memorandum of Understanding contains an arbitration clause which reads as under:-

"10. Settlement of Disputes - Any dispute in connection with this contract or for the execution thereof shall be settled amicably by both parties through negotiations.

If the disputes cannot be settled in an amicable way between parties, the dispute will be settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996 and the award made in pursuance thereof shall be binding on the parties. Parties shall nominate the sole arbitrator mutually. The venue of arbitration shall be New Delhi. This is a digitally signed order.

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by both the parties and the proceedings of the arbitration shall be in English.

If the dispute cannot be settled through arbitration, the Delhi Courts will have the sole and exclusive territorial jurisdiction to decide the issues in dispute between parties herein."

3. The aforesaid MoU dated 29.08.2018 is unstamped. As such, the same is required to be impounded as mandated in terms of the judgment of the Constitution Bench of the Supreme Court in the case of N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) 7 SCC 1.

4. It is submitted by the respective counsel for the parties that although execution of the MoU dated 29.08.2018 is admitted, the original of the same is not traceable and none of the parties is in the position to produce the same.

5. After some hearing, learned counsel for the parties submit that for the purpose of the present proceedings, the copy of the aforesaid MoU dated 29.08.2018 filed by the petitioner alongwith the present petition be treated as the original.

6. It is also notable that in terms of Section 7(4)(b) of the Arbitration and Conciliation Act, 1996, an arbitration agreement can be evinced even from exchange of letters, telex, telegrams or other means of telecommunications which provides a "record of the agreement". In the present case, the "record of the agreement" is available in the form of the admitted copy of the MoU, filed by the petitioner. Since the execution of the said MoU is admitted and the existence of the arbitration agreement is clearly discernable therefrom, even in the absence of the original MoU, the admitted copy of the same can be treated to be in the nature of documents referred to in Section-7 (4) (b) and/or Section 7(4) (c) of the A&C Act, 1996. As such, there is no This is a digitally signed order.

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7. The above is consistent with the observations made by the Constitution Bench of the Supreme Court in N.N. Global (supra). In the context of arbitration agreements, the existence of which is to be deduced from exchange of letters or exchange of pleadings, it was specifically observed therein as under :-

"114. An arbitration agreement must be in writing [see Section 7(3) of the Act]. As to what all are comprehended within the requirement that the arbitration agreement must be in writing, is set out in Sections 7(4)(a) to 7(4)(c). It includes a document which is signed by the parties [see Section 7(4)(a)]. An arbitration agreement would be treated as contained in writing, if there is an exchange of letters, telex, telegrams or other means of telecommunications, including, communications through electronic means which provide a record of the agreement [see Section 7(4)(b)]. Next,

we may notice that an arbitration agreement will be treated as contained in writing, if there is an exchange of statements of claims and defence, in which, the existence of the agreement is alleged by a party and not denied by the other [see Section 7(4)(c)].

xxx xxx xxx

117. Section 7(4)(b) of the Act contemplates that an exchange of letters, telex, telegrams or other means of telecommunication, including communication through electronic means, which provide a record of the agreement, would constitute an arbitration agreement in writing within the meaning of Section 7(3) of the Act.

118. We may notice that proviso (c) to Section 35 of the Stamp Act reads as follows:

"35. (c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;"

119. Thus, the Stamp Act does contemplate a contract or agreement being formed through correspondence through two or more letters. It then suffices that any one of the letters bears the proper stamp. Even proceeding on the basis that an arbitration agreement is contained in letters and it is signed and, This is a digitally signed order.

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121. When it comes to Section 7(4)(c), what is constituted as an arbitration agreement as being in writing is an exchange of statement of claims and defence, wherein the existence of an agreement is alleged by one party and not denied by another. There must however be "an agreement", the allegation of the existence of which remains unrefuted. Since, Section 7(1) defines an "arbitration agreement" to be one, under which, parties submit "all" or "certain disputes", which have arisen or will arise, such an agreement must be alleged to exist and the allegation must remain undenied. The formation of such an agreement must necessarily be tested with reference to the indispensable requirements, such as, competency to contract and presence of sound mind."

8. In the circumstances, let the admitted copy of the MoU filed by the petitioner alongwith the present petition (at page nos.15-23 of the documents filed along with the present petition), be placed before the Joint Registrar (Judicial), who shall impound the same.

9. Learned counsel for the petitioner submits that the petitioner is agreeable to pay the requisite stamp duty alongwith the penalty as contemplated in Proviso (a) to Section 35 of the Indian Stamp Act, 1899.

10. Learned counsel for the petitioner submit that nature of the agreement is evident from bare perusal thereof and reading of the same, there is no doubt that it falls under the category of a General Agreement for which the relevant entry is Article 5(c) of Schedule 1A of the Stamp Act (as applicable to Delhi). The said entry reads as under:

Description of Instrument	
AGREEMENT OR MEMORANDUM OF	
AN AGREEMENT	
(a) xx	xx
(b) xx	xx
(c) if not otherwise provided for;	

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11. On the other hand, learned counsel for the respondent submits that the MOU is in the nature of a "conveyance" and falls under Article 23 of Schedule 1A of the Stamp Act. The contention of learned counsel for the respondent that the agreement must be treated to be falling under the category of a conveyance is on the basis that this MoU must be construed to be the purchase order itself. This contention of the learned counsel for the respondent is untenable.

12. A bare perusal of Clause 2.6 of the MoU makes it clear that it contemplates that after execution of the MoU, "REC" will issue a Purchase Order/Contract on "ITUK" for procurement of 5000 CNG Kits as per mutually agreed terms in this MoU. This Purchase Order/Contract will cover all commercial terms governing the supply of this 5000 Kits from "ITUK."

13. As such, it is evident that the MoU merely records the intention that in pursuance thereof, a purchase order would be placed by the petitioner on the respondent. The MoU itself cannot be treated as a purchase order as contended by the learned counsel for the respondent. The judgment relied upon by the learned counsel for the respondent in the case of State of Uttaranchal and Ors. Vs. Khurana Brothers (2010) 14 SCC 334, is also clearly distinguishable and inapplicable for the same reasons.

14. It is held that the MoU is covered by Article 5(c) of Schedule 1A of the Stamp Act (as applicable to Delhi). Accordingly, stamp duty amounted to Rs. 50/- is payable thereon. The penalty, which is ten times of the stamp duty as contemplated under Proviso (a) to Section 35 of the Stamp Act, works out to Rs. 500/-.

15. The petitioner undertakes to deposit the stamp duty along with the This is a digitally signed order.

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16. Upon the aforesaid deposit being made, the concerned Joint Registrar (Judicial) shall (i) make an endorsement on the original instrument (MoU filed alongwith the petition) in terms of Section 42(1) of the Stamp Act that the instrument is now duly stamped and the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them; (ii) prepare a copy of the original instrument (after endorsement) thereby ensuring the genuineness and exactness of the contents thereof, at the expense of the party paying the stamp duty (alongwith penalty), and expressly marking the copy thus prepared as an „authenticated copy of the original instrument; (iii) prepare a „certificate as provided in Section 38(1) of the Stamp Act stating the amount of stamp duty and penalty levied in respect of the original instrument; and (iv) Transmit the a) authenticated copy; b) certificate; and c) the total amount of the stamp duty and penalty collected, to the concerned Collector at the place where the instrument was executed.

17. List before the concerned Joint Registrar (Judicial) on 11.10.2023.

18. List before Court on 22.11.2023.

SACHIN DATTA, J SEPTEMBER 22, 2023/r This is a digitally signed order.

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