

Aspire Human Capital Management Pvt. ... vs Baba Ghulam Shah Badshah (Bgsb) ... on 21 March, 2018

Author: Navin Chawla

Bench: Navin Chawla

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ARB.P. 407/2017

ASPIRE HUMAN CAPITAL MANAGEMENT PVT. LTD

..... Petitioner

Through: Mr.Ashish Dholakia, Mr.A.Mahajan,
Mr.Gautam Bajaj, Mr.Rohan Chawla,
Ms.Anubha Goel and Mr.Sarthak
Mehrotra, Advs.

versus

BABA GHULAM SHAH BADSHAH (BGSB) UNIVERSITY &

ANR.

..... Respondents

Through: Mr.Keshav Thakur & Mr.R.S.
Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 21.03.2018 This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Memorandum of Understanding (MOU) executed on 07.08.2009.

The MOU contains an Arbitration Agreement between the parties in form of Clause 15 thereof, which is reproduced herein below:

"15. Subject to the clause 14, all claims disputes, differences or disagreements of whatsoever nature arising out of, in connection with or in relation to this MOU whether during its term or after expiry thereof or prior termination, shall be finally decided by arbitration to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 in force as at the date of the invocation of the arbitration. Parties mutually agree to refer their disputes to the sole arbitration of a mutually agreed person, whose decision and award shall be final and binding between the Parties."

The disputes having arisen between the parties, the petitioner invoked the arbitration agreement vide its notice dated 31.10.2012 and as the parties could not consent on appointment of an arbitrator, filed a petition under Section 11 of the Jammu & Kashmir Arbitration and Conciliation Act, 1997, before the High Court of Jammu & Kashmir at Jammu. The said petition was however, dismissed by the High Court vide its order dated 20.11.2015 holding therein that the Court had no jurisdiction to entertain the said petition. Supreme Court dismissed the Special Leave Petition filed by the petitioner vide order dated 01.05.2017. The petitioner has thereafter filed the present petition in this Court.

The respondent, in its reply has raised two preliminary objections. The first objection being that the MOU expired by efflux of time on 16.08.2010 and therefore, the arbitration agreement cannot be said to survive. In my opinion, this contention of the respondent is ill-founded inasmuch as it is no longer res-integra that the arbitration agreement would survive even on the termination of the main agreement. In *Reva Electric Car Co. (P) Ltd. v. Green Mobil*, (2012) 2 SCC 93 Supreme Court held that an arbitration clause which forms part of the contract has to be treated as an agreement independent of the other terms of the contract and would continue to exist even upon termination of the MOU.

The second objection raised by the learned counsel for the respondent is that in terms of the Clause 14 of the MOU, the Courts at Jammu alone would have the jurisdiction to entertain any disputes between the parties. In my opinion, High Court of Jammu & Kashmir having held that it does not have the jurisdiction in the present case, the said objection of the respondent cannot be accepted. The parties by their consent cannot confer the jurisdiction on a Court which otherwise would not have the jurisdiction.

In the present case, the petitioner contends that the payments under the MOU were received by it in Delhi. This has not been specifically denied by the respondent. In *Boston Scientific International B.V. v. Metro Hospital*, 136 (2007) DLT 278, this Court had held that receipt of payment does constitute a part of cause of action and therefore would be sufficient to vest jurisdiction in a Court.

In view of the above, I find no impediment in appointing a Sole Arbitrator for adjudicating the disputes between the parties. I, accordingly appoint Mr. Ajay Uppal, Advocate, Mobile No. 9811740125, Office address: 1910/143, Tri Nagar, Delhi-110035 as a Sole Arbitrator to adjudicate the disputes that have arisen between the parties. Keeping in view of the amount of claim of the petitioner, his fees is fixed at Rs. 75,000/-, apart from other administrative expenses, to be shared equally by both the parties.

While the Sole Arbitrator is being appointed, the learned counsels for the parties submit that they would also like to make a last effort to amicably resolve the dispute.

At their request, the parties are referred to Delhi High Court Mediation and Conciliation Centre, where they shall appear on 18th April, 2018 at 2.00 p.m. In case the mediation is successful, the parties would inform the Arbitrator, so appointed, not to proceed with the reference.

The petition is disposed with the above directions. Dasti.

NAVIN CHAWLA, J MARCH 21, 2018/Arya