M/S Young Achievers vs Ims Learning Resources Pvt.Ltd on 22 August, 2013

Equivalent citations: AIRONLINE 2013 SC 386

Author: K.S. Radhakrishnan

Bench: A.K. Sikri, K.S. Radhakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6997 OF 2013
(Arising out of SLP(C) No.33459 of 2012)

M/s Young Achievers ..... Appellant

Versus

IMS Learning Resources Pvt. Ltd. ....Respondent

J U D G M E N T

K.S. Radhakrishnan, J.

Leave granted.

2. IMS Learning Resources Private Limited, the respondent herein, filed CS (OS) No.2316 of 2011 in the High Court of Delhi at New Delhi for a permanent injunction restraining infringement of a registered trademark, infringement of copyright, passing off of damages, rendition of accounts of profits and also for other consequential reliefs against the appellant herein. Appellant preferred IA No.18 of 2012 under Section 8, read with Section 5 -of the Arbitration and Conciliation Act, 1996 for rejecting the plaint and referring the dispute to arbitration and also for other consequential reliefs. Respondent-plaintiff raised objection to the said application stating that the suit is perfectly maintainable. The High Court rejected the application vide its order dated 16.04.2012 holding that that earlier agreements dated 01.04.2007 and 01.04.2010, which contained arbitration clause stood superseded by a new contract dated 01.02.2011 arrived at between the parties by mutual consent. Defendant aggrieved by the said order filed FAO (OS) No.290 of 2012 before the Division Bench of the Delhi High Court, which confirmed the order of the learned Single Judge and dismissed the appeal against which this appeal has been preferred by special leave.

3. Mr. Manu T. Ramachandran, learned counsel appearing for the appellant raised the following question of law:

> "a) Whether an arbitration clause is a collateral term in the contract, which relates to resolution of disputes, and not performance and even if the performance of the contract comes to an end on account of repudiation, frustration of breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract?
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> b) Whether the impugned judgment is contrary to the law settled by this Hon'ble Court in Branch -

Manager, /s Magma Leasing & Finance Limited and another v. Potluri Madhavilata and another (2009) 10 SCC 103 and National Agricultural Cooperative Marketing Federation India Ltd. V. Gains Trading Ltd. (2007) 5 SCC 692?

c) Whether the Hon'ble High Court is correct in holding that the law settled by this Hon'ble Court in The Branch Manager, M/s Magma Leasing & Finance Limited and another v. Potluri Madhavilata and another (2009) 10 SCC 103 and National Agricultural Cooperative Marketing Federation India Ltd. V. Gains Trading Ltd. (2007) 5 SCC 692 is applicable in case of unilateral termination of agreement by one of the parties and not in mutual termination for accord and satisfaction of the earlier contract?"

4. Learned counsel also submitted that arbitration clause is a collateral term in the contract, which relates to resolution of disputes and not performance and even if the performance of the contract comes to an end on account of repudiation, frustration of breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract. Learned counsel also submitted that the court has erroneously held that the case of the appellant is not a case involving the assertion by the respondent of accord and satisfaction in respect of earlier contracts, especially when the sole purpose of the Exit paper dated 01.02.2011 was to put an end to the contractual relationship between them under the -aforesaid earlier contracts. Apart from the decisions referred hereinbefore, reliance was also placed on the judgment of the U.S. Court in Nolde Bros., Inc. v. Bakery Workers 430 US 243.

5. Mr. Sai Krishna Rajgopal, learned counsel appearing for the respondent placing reliance on the detailed counter affidavit filed on behalf of the respondent submitted that the arbitration clause in the agreements dated 01.04.2007 and 01.04.2010 cannot be invoked since both the above-mentioned agreements were superseded and abrogated by the new agreement dated 01.02.2011. Learned counsel also submitted that in the new agreement it was mutually decided by the parties that any violation of the respondent's trade mark IMS would entitle the respondent to take legal recourse against the appellant. Reference was made to clause 4 of the penultimate paragraph of the new agreement dated 01.02.2011. Learned counsel also submitted that Suit No. CS (OS) 2316 of 2011 was based on prior trade mark rights and not on the agreements dated 01.04.2007 and 01.04.2010. Further it was also pointed out that the new agreement dated

01.02.2011 records the mutual agreement between the parties that the appellant shall not be eligible to use -the trade mark IMS in any form and any breach thereof entitles respondent to seek legal recourse on violation of trade mark IMS.

6. We are of the view that survival of the arbitration clause, as sought by the appellant in the agreements dated 01.04.2007 and 01.04.2010 has to be seen in the light of the terms and conditions of the new agreement dated 01.02.2011. An arbitration clause in an agreement cannot survive if the agreement containing arbitration clause has been superseded/novated by a later agreement. The agreement dated 01.04.2010 contained the following arbitration clause:

> "20. Arbitration All disputes and questions whatsoever which may arise, either during the substance of this agreement or afterwards, between the parties shall be referred to the arbitration of trhe managing director of IMS Learning Resources Pvt. Ltd. Or his nominee and such arbitration shall be in the English language at Mumbai. The arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactment thereof for the time being in force and award or awards of such arbitrator shall be binding on all the parties to the said dispute."
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> 7. We have now to examine terms of the subsequent agreement titled "Exit paper" dated 01.02.2011. It is the common case of the parties that the Exit paper/agreement entered into -between the parties does not contain any arbitration clause. It is useful to extract the relevant portion of the Exit paper, which is as follow:
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> "With reference to your mail/letter dated 1st February, 2011 on closing the center, from the aforesaid date with mutual consent we have agreed on the following:
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> "1. Enrolled students All enrolled students of IMS with you will be serviced by you with respect to their classes, workshops and conduct of test series, GD/PI and any other servicing required as per the product manual.

2. Premises IMS will reserve the first right of utilization to occupy the premises. In an eventuality of IMS exercising the right to use the premises, then IMS will reimburse the monthly rent for the corresponding months before changing the rental agreement onto IMS name.

3. Marketing From the above-mentioned date you are not eligible to do any marketing and promotional activities in the name of IMS.

4. Brand "From the above-mentioned date you are not eligible to use IMS brand in any form.

5. Monthly claims The partner abides to deposit all the course fees collected for any of IMS programs till now as per the deposit policy of IMS. All monthly claims will be settled till 31st January, 2011 and the claims would be

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released after the date of termination of the partner agreement.

6. Security Deposit The security deposit amount will be refunded back to you after the completion of servicing of all enrolled IMS students. In case of any due on partner to the company (unsettled fees, loan or advance for centre activities etc.), same amount will be deducted from the security deposit.

7. Non Compete Clause The partner has averred that neither he, nor his family members are directly or indirectly interested in any business in direct competition with that of IMS and the partner agrees and undertakes to ensure that neither he nor his family members shall be involved in or connected to any business in direct competition with that of IMS at any time during the currency of this agreement and for a further period of six months therafter.

8. Full and final settlement I/We accept all the above-mentioned points and confirm that upon receipt of the sum stated hereinafter in full and final settlement of all my/our claims, neither me/we nor any person claiming by or through me/us shall have any further claims against IMS whatsoever.

Any violation of points 1,3,4,5 & 7 from the partner's end will attract legal course of action and penalties from IMS ranging from forfeiture of the security deposit & pending claims. I hereby accept above terms and conditions."

8. Exit paper would clearly indicate that it is a mutually agreed document containing comprehensive terms and conditions which -admittedly does not contain an arbitration clause. We are of the view that the High Court is right in taking the view that in the case on hand, is not a case involving assertion by the respondent of accord a satisfaction in respect of the earlier contracts dated 01.04.2007 and 01.04.2010. If that be so, it could have referred to arbitrator in terms of those two agreements going by the dictum in Union of India v. Kishorilal Gupta and Bros. AIR 1959 SC 1362. This Court in Kishorilal Gupta's case (supra) examined the question whether an arbitration clause can be invoked in the case of a dispute under a superseded contract. The principle laid down is that if the contract is superseded by another, the arbitration clause, being a component part of the earlier contract, falls with it. But where the dispute is whether such contract is void ab intio, the arbitration clause cannot operate on those disputes, for its operative force depends upon the existence of the contract and its validity. The various other observations were made by this Court in the above-mentioned judgment in respect of "settlement of disputes arising under the original contract, including the dispute as to the breach of the contract and its consequences". Principle laid down by the House of Lords in Heyman v. Darwins Limited 1942 (1) All. E.R. -337 was also relied on by this Court for its conclusion. The Collective bargaining principle laid down by the US Supreme Court in Nolde Bros. case (supra) would not apply to the facts of the present case.

9. We may indicate that so far as the present case is concerned, parties have entered into a fresh contract contained in the Exit paper which does not even indicate any disputes arising under the original contract or about the settlement thereof, it is nothing but a pure and simple novation of the original contract by mutual consent. Above being the factual and legal position, we find no error in

the view taken by the High Court. The appeal, therefore, lacks merit and stands dismissed, with no order as to costs.

.....J. (K.S. Radhakrishnan) .....J. (A.K. Sikri) New Delhi, August 22, 2013