

DEMERARA DISTILLERIES PVT. LTD. Vs. DEMERARA DISTILLERIES LTD.
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LAWS(SC)-2014-11-71
Supreme Court Of India
Decided on November 24,2014

DEMERARA DISTILLERIES PVT. LTD.

Appellant

VERSUS

DEMERARA DISTILLERIES LTD.

Respondents

JUDGEMENT

Ranjan Gogoi, J. - (1.) THIS application Under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") has been filed seeking directions for appointment of an Arbitrator to go into the disputes and differences with the Respondent -Company that the Petitioners claim to have occurred out of a Joint Venture Agreement dated 17 October, 2002 (hereinafter referred to as "the Agreement"). While the Petitioner No. 1 -M/s. Demerara Distilleries Pvt. Ltd. itself is the Joint Venture Company born out of the Agreement, the Petitioners Nos. 2 to 4 claim to represent M/s. Kanda and Associates on whose behalf the Agreement with the Respondent -Company, which is a Foreign Company incorporated in Guyana was signed by one B.S. Kanda.

(2.) ACCORDING to the Petitioners, the Agreement contemplated equal participation in the equity of the Joint Venture Company to be set up thereunder as well as transfer of technology, process know -how, etc. Under the agreement, the Joint Venture Company i.e. Petitioner No. 1 was also entitled to use the trade -marks of the Respondent -Company. The Petitioners have stated that the Respondent -Company failed to fulfill its contractual obligations for equity participation as well as for dissemination of technology. The process know -how imparted by the Respondent was claimed to be inadequate and defective hampering the business of the Joint Venture Company. Claims of inadequate assistance to further the business of the Joint Venture Company were also alleged, which, according to the Petitioners, hampered the business undertaken. Furthermore, according to the Petitioners, as correspondences and negotiations had failed to resolve the impasse, the issues of which the parties were at loggerhead were referable to Arbitration in terms of Clause 15 of the Agreement. As the proposal for Arbitration made by the Petitioners was not responded by the Respondent -Company, the Petitioners approached the International Centre for ADR, Hyderabad, who nominated one Mr. Justice T.N.C. Rangarajan as the Arbitrator. However, the Respondent -Company did not respond to the notice issued and did not nominate its Arbitrator leaving the Petitioners with no other option but to institute the present proceeding Under Section 11(6) of the Act. The application has been resisted by

the Respondent -Company to contend that the Petitioners are not signatories to the Agreement containing the Arbitration Clause. According to the Respondent -Company, M/s. Kanda and Associates were parties and signatories to the Agreement whereas the present petition has been filed by the Joint Venture Company which has been born out of the Agreement and by three other individuals, who though claim to be a part of M/s. Kanda and Associates, were not signatories to the Agreement. Relying on the decisions of this Court in Deutsche Post Bank Home Finance v. Taduri Shah [: (2011) 11 SCC 375] and Indowind Energy Limited v. Wescare (India) Limited and Anr. [: (2010) 5 SCC 306], it is contended that the Petitioners cannot seek to invoke the Arbitration Agreement not being parties or signatories thereto.

(3.) THE Respondent -Company further contends that invocation of the Arbitration Clause, even if the same is held to be applicable, is premature as Under Clause 3 of the Agreement, differences are required to be resolved first by mutual discussions, followed by mediation, and, only on failure of mediation recourse to Arbitration is contemplated. It is also contended that the disputes raised are not arbitrable inasmuch as what the Petitioners really want is the winding -up of the Company. It is further submitted that the Respondent -Company had initiated a proceeding alleging oppression and mismanagement in the administration of the Joint Venture Company, which is presently pending before the Company Law Board. It is stated that, in the said proceedings, the Petitioners have appeared and sought reference to Arbitration Under Section 8 of the Act. All the aforesaid facts have not been stated in the application/petition Under Section 11(6) of the Act. It is on the aforesaid broad basis that the assertions and the claims made in the present petition have been sought to be resisted by the Respondent. ;

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