

SUPREME COURT OF INDIA

Pricol Limited

Vs.

Johnson Controls Enterprise Ltd.

(Ranjan Gogoi J.)

16.12.2014

JUDGMENT

RANJAN GOGOI J.

1. Appointment of an Arbitrator under the Joint Venture Agreement dated 26th December, 2011 (for short "the JVA") by and between the parties has been sought by means of the present application.

2. There is no dispute between the parties with regard to the existence of the JVA and/or with regard to the fact that disputes and differences over the respective rights and liabilities of the parties under the JVA have surfaced. The Arbitration clause under the JVA is in the following terms:

| "ARTICLE 30 |

| ARBITRATION |

|30.1 |If any dispute arises between any of the| |Parties hereto during the subsistence or| |thereafter, in connection with the | |validity, interpretation, implementation| |or alleged material breach of any | |provision of this JVA or regarding any | |question, including the question as to | |whether the termination of this JVA by | |any Party hereto has been legitimate, | |the Parties hereto shall endeavour to | |settle such dispute amicably. The | |attempt to bring about an amicable | |settlement is considered to have failed | |as soon

as one of the Parties hereto, after reasonable attempts which attempt shall continue for not less than sixty (60) days, given fifteen (15) days notice thereof to the other Party in writing. 30.2 In case of such failure, the dispute shall be referred to sole arbitrator to be mutually agreed upon by the Parties. In case the Parties are not able to arrive at such an arbitrator, the arbitrator shall be appointed in accordance with the rules of arbitration of the Singapore Chamber of Commerce. 30.3 The arbitration proceedings shall be held at Singapore. The arbitration proceedings shall be in English language. The award shall be substantiated in writing. The court of arbitration shall also decide on the costs of the arbitration proceedings. The award shall be binding on the disputing Parties subject to applicable laws and the award shall be enforceable in any competent court of law. The provisions of this clause shall survive the termination of this JVA for any reason whatsoever. 30.4 Each of the Parties agree and acknowledge that damages would be inadequate to compensate for the breach of this JVA by either Party, and each Party shall be entitled to equitable relief by way of interim injunction or specific performance by recourse to courts/judicial forum with appropriate jurisdiction. ARTICLE 31 GOVERNING LAW 31.1 This JVA shall be governed and construed in accordance with the laws of India."

3. There are certain facts and events which have occurred during the pendency of the present proceeding which must immediately be taken note of.

4. The parties are not in dispute that the "Singapore Chamber of Commerce" mentioned in clause 30.2 of the JVA is not an Arbitration Institution having any Rules for appointment of Arbitrators. However, construing the said reference to the "Singapore Chamber of Commerce" to be one to the "Singapore International Arbitration Centre" ("SIAC" for short), the first respondent, invoking the arbitration clause, had moved the said Authority i.e. SIAC for appointment of an Arbitrator. This was so done on 5th September, 2014. A copy of the said notice/intimation was received by the petitioner on 11th September, 2014. Thereafter, the petitioner had instituted the present proceeding on 15th September, 2014. In the meantime, the SIAC, exercising its powers under Section 8(2) read with Section 8(3) of the Singapore International Arbitration Act (Cap. 143A) (for short "the IAA"), had appointed one Mr. Steven Y.H. Lim as the sole Arbitrator. In a preliminary meeting

between the parties and the learned sole Arbitrator held on 30th October, 2014, it was indicated by the petitioner that it would be challenging the jurisdiction of the sole Arbitrator appointed by the SIAC. Accordingly, on directions of the learned sole Arbitrator, there has been an exchange of written submissions on the issue of jurisdiction. A hearing on the question of jurisdiction was also held in Singapore on 18th November, 2014. Thereafter, by a partial award, dated 27th November, 2014, the sole Arbitrator had ruled that the appointment made by the SIAC under the IAA is valid as the parties have expressly agreed that Singapore would be the seat of Arbitration.

5. On behalf of the petitioner, it is contended that under clause 31.1, the rights of the parties under the JVA is to be governed by the laws of India. Therefore, in the absence of any contrary intention, even the arbitration agreement will be governed by Indian Law i.e. the Act of 1996. Clause 30.3 by which the parties had agreed that "arbitration proceedings shall be held at Singapore" has to be consequently construed to mean that the seat of Arbitration continues to be India and Singapore is only the venue of the hearings to be conducted in the Arbitration proceedings. On the said basis, it is contended that the present application under Section 11(6) of the Act would justify appropriate orders from the Court. It is also argued that the parties to the JVA have not excluded the application of Part I of the Act of 1996. The JVA has been signed earlier to the decision of this Court in *Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc.* [(2012) 9 SCC 552]. Therefore, the procedural law governing the conduct of the arbitration would be the law prevailing in India.

6. It is alternatively submitted that even assuming that the seat of Arbitration is Singapore, as the rights of the parties are to be governed by the Indian Law, it is only the curial law of Singapore that would apply to regulate the proceedings after the appointment of the Arbitrator is made and till the passing of the Award. Reference in this regard is made to *Sumitomo Heavy Industries Ltd. vs. ONGC Ltd. and others* [(1998) 1 SCC 305] On the aforesaid basis, it is claimed that the appointment of the sole Arbitrator by the SIAC is without jurisdiction and this Court ought to proceed to exercise its powers under Section 11(6) of the Act.

7. In reply, the respondents submit that clause 30.3 of the JVA makes it, *ex facie*, clear that the parties have agreed that the seat of Arbitration would be Singapore. Though the substantive Law that would govern the rights of the parties under the JVA would

be the Indian Law so far as the appointment of Arbitrator is concerned, it is the agreed terms (clause 30.2) which will prevail. It is submitted that on a reasonable understanding of clause 30.2, the request of the respondents to the SIAC for appointment of a sole Arbitrator and the appointment made does not suffer from any infirmity. It is claimed that the "Singapore Chamber of Commerce", not being an Arbitration Institution, the real intention of the parties in clause 30.2 was to approach the SIAC for appointment of an Arbitrator in the event of the failure of a mutual agreement on this score. This has been so done by the respondents. Learned counsel for the respondents has also taken the Court to the past history of the dispute between the parties commencing with the grant of interim measures by the Civil Court at Coimbatore under Section 9 of the Act and the failure on the part of the petitioner to agree to the appointment of a retired judge of the Supreme Court of India as the sole Arbitrator. The said facts have been pointed out in support of the contention that the petitioner has dragged its feet in the matter so as to gain maximum advantage of the interim order granted in its favour by the Civil Court at Coimbatore. Lastly, it is submitted that the Arbitrator having been appointed by the SIAC in accordance with the relevant Arbitration clause in the JVA and the petitioner having submitted to the jurisdiction of the Arbitrator and, in fact, a partial award having been passed by the sole Arbitrator on the issue of jurisdiction, the present is not a fit case for invoking the powers of this Court under Section 11(6) of the Act.

8. On a consideration of the respective submissions made by the parties and the several precedents cited at the bar, this Court is inclined to hold that clause 30.2, on a reasonable and meaningful construction thereof, would mean that in case the parties are not able to name a sole Arbitrator by mutual agreement, the Arbitrator is to be appointed by the SIAC inasmuch as the entity contemplated in clause 30.2 i.e. "Singapore Chamber of Commerce" is admittedly not an Arbitration Institution' having its own Rules for appointment of Arbitrators. Given the circumstance, the most reasonable construction of the said clause would be to understand the reference to "Singapore Chamber of Commerce" as to the "SIAC".

9. From the relevant facts of the case, it is also clear that the respondents at one time had suggested the name of a retired judge of the Supreme Court of India as the sole Arbitrator, which was not agreed to by the petitioner, who in turn, was inclined to nominate another learned judge. Be that as it may, in such a situation, the respondents by invoking Arbitration clause 30.2 had approached SIAC for appointment of an

Arbitrator. This was on 5th September, 2014 i.e. before the present proceeding was instituted by the petitioner. Though the notice of the said request was served on the petitioner on 11th September, 2014, no steps were taken by the petitioner to pre-empt the appointment of a sole Arbitrator by SIAC. Mr. Steven Y.H. Lim came to be appointed as the sole Arbitrator by the SIAC on 29th September, 2014. The petitioner has submitted to the jurisdiction of Mr. Steven Y.H. Lim. Even if it is held that such participation, being under protest, would not operate as an estoppel, what must be acknowledged is that the appointment of the sole Arbitrator made by SIAC and the partial award on the issue of jurisdiction cannot be questioned and examined in a proceeding under Section 11(6) of the Act which empowers the Chief Justice or his nominee only to appoint an Arbitrator in case the parties fail to do so in accordance with the terms agreed upon by them. To exercise the said power, in the facts and events that has taken place, would really amount to sitting in appeal over the decision of SIAC in appointing Mr. Lim as well as the partial award dated 27th November, 2014 passed by him acting as the sole Arbitrator. Such an exercise would be wholly inappropriate in the context of the jurisdiction under Section 11(6) of the Act, a view already expressed by this Court in a recent decision in *Antrix Corp. Ltd. vs. Devas Multimedia P. Ltd.* [Arbitration Petition NO.20 of 2011 decided on May 10, 2013, reported in (2013) 6 SCR 453].

10. For the aforesaid reasons, this application under Section 11(6) of the Act has to fail. It is, accordingly, dismissed, however, leaving it open to the petitioner to avail of such remedies as may be available to it in law.