

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

ARBITRATION PETITION NO. 43 OF 2017

M/S RUBY CHEMICALS

Petitioner(s)

VERSUS

M/S. CHARABOT GROUP

Respondent(s)

O R D E R

1) In the present case, an Exclusive Distribution Agreement was entered into by the petitioner with the respondent. The arbitration clause contained in the said Agreement reads as follows:-

"All disputes arising in connection with this agreement shall be finally settled under the rules of conciliation and arbitration of the International Chamber of Commerce by one or more Arbitrators appointed in accordance with the said Rules."

2) A suit was filed in the High Court of Calcutta with respect to the same subject-matter by the petitioner herein in which a Section 8 application under the Arbitration and Conciliation Act, 1996 succeeded. By an order dated 01.12.2003, the Calcutta High Court referred the parties to arbitration. Thereafter, the petitioner knocked at the doors of the Tribunal of Commerce at Garassee in France,

which held, by an order dated 06.09.2004, that in view of the arbitration clause between the parties, it was not possible for the said Tribunal to go into the dispute.

3) It is only thereafter, that the petitioner approached the International Chamber of Commerce in Paris under Article 18 of the ICC Rules and filed a claim of Rs. 20,40,45,000/- against the respondent. Under the ICC Rules, half of the estimated costs have to be paid by the petitioner and the other half by the respondent.

4) Despite the fact that the petitioner paid their portion of the costs, the respondent refused to do so and, as a result, under the ICC Rules, the petitioner was called upon to pay the respondent's share of 50 per cent of the costs. This, the petitioner refused to do, as a result of which the International Court of Arbitration, by order dated 12.02.2010, stated that the proceedings could not be carried on as a result of non-payment of Court fee. A review was filed which was also dismissed on 28.05.2010.

5) Thereafter, a legal notice dated 03.09.2015 was sent by the petitioner to the respondent invoking arbitration under the 1996 Act. The reply filed by the respondent on 22.09.2015 stated that the arbitration clause was clear and that the respondent did not consent to any arbitration except arbitration under the ICC Rules.

6) This being the case, a petition under Section 11(6) of the 1996 Act has now been filed before us.

7) We have heard Mr. K.V. Viswanathan, learned Senior Counsel appearing for the petitioner.

8) From the narration of the facts afore-stated, it is clear that the International Court of Arbitration has now become abortive. It is equally clear that the respondent was correct in stating that it has not agreed to arbitration except under the ICC rules.

9) This being the case, it is obvious that a petition under Section 11(6) will, therefore, not lie. However, Mr. K.V. Viswanathan states that the order dated 01.12.2003 by a Single Judge of the Calcutta High Court still stands in his way inasmuch as in a Section 8 application under the 1996 Act, the Single Judge referred the parties to arbitration.

10) Having regard to the fact that the arbitration proceedings before the ICC have since proved abortive, the order dated 01.12.2003 has been superseded by subsequent events, as a result of which we permit the petitioner to pursue the suit filed, namely, C.S. 622 of 2001 before the Calcutta High Court.

11) With these observations, the aforesaid petition is disposed of.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(SANJAY KISHAN KAUL)

New Delhi;
October 24, 2017.

ITEM NO.3

COURT NO.12

SECTION XVI -A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Arbitration (Civil) No(s). 43/2017

M/S RUBY CHEMICALS

Petitioner(s)

VERSUS

M/S. CHARABOT GROUP

Respondent(s)

(IA No.95032/2017-EXEMPTION FROM FILING O.T.)

Date : 24-10-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. K.V. Viswanathan, Sr. Adv.
 Mr. Anup Kumar, AOR
 Ms. Neha Jaiswal, Adv.
 Mr. Ravi Ragunath, Adv.
 Mr. Mukul Dev Mishra, Adv.
 Mr. Mukunda Rao, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Exemption allowed.

The petition is disposed of in terms of the signed order.

(R. NATARAJAN)
COURT MASTER

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)