

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
ARBITRATION PETITION No. 2 OF 2017

KORES (INDIA) LTD. .. PETITIONER(S)

Versus

ARNAV INTERNATIONAL PTE. LTD .. RESPONDENT(S)

O R D E R

The present is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996. We are fully aware of the fact that after the amendment of 2016, with effect from 2015, ordinarily this Court will not go into questions of forgery or fraud at this stage. However, as this is an *ex facie* case of forgery, we are constrained to observe that petitions like this have to be dismissed at the threshold.

It is alleged by the petitioner that an Agreement was entered into on 1st August, 2013 between the petitioner and the respondent which contained an arbitration clause which read as follows:

"10.ARBITRATION, GOVERNING LAWS & JURISDICTION:

In the event of any dispute or difference between the Parties to this Agreement in respect of or concerning or connected with the interpretation or implementation of this Agreement or arising out of this agreement, such

dispute or difference shall be referred to sole arbitrator appointed with the mutual consent of party, in accordance with the (Indian) Arbitration and Conciliation Act, 1996, or any modification or amendment thereof. All such arbitration proceeding shall be in the English language and shall be held and conducted exclusively in Mumbai. The decision of such arbitration shall be binding and conclusive upon the Parties and may be enforced in any court of competent jurisdiction."

The learned counsel appearing on behalf of the respondent argued before us that on this date I.e. 1st August, 2013 his client was in Myanmar and therefore could not possibly have signed this Agreement. He also produced the passport of his client to this effect. Further he has shown to us the signature of his client contained in the passport is completely different from the signature on every page of the Agreement dated 1st August, 2013.

Undeterred, the learned counsel for the petitioner has stated that even if this be so, the petition ought to be allowed, and the arbitrator should go into whether or not there is, in fact, an Agreement. He has also cited before us a judgment in World Sport Group (Mauritius) Limited vs. MSM Satellite (Singapore) Pte. Limited reported in (2014) 11 SCC 639, in which he has placed reliance on paragraph 36 which states that where allegations of fraud have to be inquired into, they can be inquired into, by the arbitrator. We have no

quarrel with this proposition. We are impressed by only two facts that have been pointed out to us at this stage. The first fact is that the signature contained in the passport and the signature contained on every page of the Agreement dated 1st August, 2013 do not match at all. This is the first most important fact which has impressed us. Secondly, learned counsel for the petitioner also pointed out the emails that were exchanged between the parties. By an email dated 31st October, 2013, the respondent has specifically stated "please also send the agreement". This very email that has been shown to us by the learned counsel for the petitioner would clearly indicate that there was, in fact, no Agreement even by 31st October, 2013.

Realising this, an affidavit has been filed in this Court, in which a plea that the Agreement was signed some time in October/November, 2013 with effect from 1st August, 2013 is now shown to us. We are afraid that this only compounds the falsity of the petitioner's case. The Agreement dated 1st August, 2013 at the end clearly states, "signed and sealed on this date.....01/08/2013." The afore-stated plea is also, therefore, completely dishonest. In this view of the matter, we have no hesitation in dismissing this petition at the threshold. There is obviously no

Agreement at all between the parties. Inasmuch as a forgery seems to have taken place, we refer this matter to the Chief Metropolitan Magistrate, Delhi. After calling upon both sets of parties and examining all the documents, the Magistrate shall submit a report to this Court within a period of three months from today.

The present petition is dismissed with costs of Rs.1 lakh to be paid to the respondent within a period of two weeks.

.....J.
[ROHINTON FALI NARIMAN]

.....J.
[SANJAY KISHAN KAUL]

NEW DELHI,
SEPTEMBER 01, 2017.

ITEM NO.38

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). 2/2017

KORES (INDIA) LTD.

Petitioner(s)

VERSUS

ARNAV INTERNATIONAL PVT. LTD

Respondent(s)

Date : 01-09-2017 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. Karan Mehra, Adv.
Mr. Anand Srivastava, Adv.
Mr. Anshuman Nandi, Adv.
Mr.Nirnimesh Dube, AOR

For Respondent(s) Mr. R.Y. Kalia, Adv.
Mr. Shikh fakhruddin Kalia, Adv.
Mr. Seshatalpa Sai Bandaru, AOR

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

The arbitration petition is dismissed with costs of Rs.1
lakh in terms of the signed order.

(USHA RANI BHARDWAJ)
AR CUM PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER

Signed order is placed on the file.