

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.98 OF 2017

BIRD AIRPORT HOTEL PVT. LTD.	APPELLANT(S)
VERSUS	
BHAYANA BUILDERS PVT. LTD.	RESPONDENT(S)

O R D E R

1. This appeal by special leave is directed against the order dated 18.11.2015 passed by the High Court of Delhi at New Delhi in Arbitration Petition No.454 of 2013.

2. Relying on the communications exchanged between the parties, an application seeking appointment of Arbitrator in terms of Section 11 of the Arbitration and Conciliation Act, 1996 was made by the respondent herein.

3. The communications relied upon by the respondent were:-

(a) Letters bearing Nos.BBPL/Bird/2010-267, BBPL/Bird/2010-267-A and BBPL/Bird/2010-271 dated

30.03.2010.

(b) Along with the aforesaid letters, the draft Contract Documents were also sent which, *inter alia*, consisted of the Arbitration clause as well as the clause regarding penalty.

(4) The response sent by the appellant to the aforesaid communications on 07.04.2010 referred to aforesaid two letters mentioned and stated as under :

"Total Work Order Value - 28,63,53,080 inclusive of WCT & Service taxes.

Time Frame to complete the structure- 15.02.2011.

All other Terms & Conditions shall be as per our contract docs except

Penalty - Penalty @ 1.5% per week applicable after scheduled delivery.

We look forward to this relation."

5. The penalty provision referred to in said communication dated 07.04.2010 was from the documents which were exchanged between the parties. The communication dated 07.04.2010 thus unequivocally stated that "all other terms and conditions shall be as per the contract documents exchanged between the parties".

6. It is, thus, clear that though there was no formal agreement signed and executed between the

parties, the correspondence exchanged between them clearly showed the existence of the arbitration clause and the intent to have any dispute(s) between the parties resolved through arbitration.

7. While considering the application so preferred, the High Court found substance in the submission of the respondent herein. It, therefore, allowed the application and proceeded to pass following directions :

"5. On careful consideration of the submissions of the parties, this Court is of the view that there is a valid arbitration agreement and invocation by the petitioner. The letter dated 7th April, 2010 clearly reflects that the contract had concluded on 7th April, 2010 and the general conditions of contract were sent along with the letter.

6. The petition is allowed and Justice R.V. Easwar (Retd.) is appointed as a sole arbitrator to adjudicate the disputes between the parties including their claims and counter claims.

7. The arbitrator shall ensure the compliance of the provisions of the Arbitration & Conciliation (Amendment) Ordinance, 2015 before commencing the arbitration."

8. We have heard Mr. Virender Mehta, learned counsel for the appellant and Mr. Siddharth Bhatnagar, learned senior counsel for the respondent.

9. In *Shakti Bhog Foods Limited Vs. Kola Shipping Limited*, reported in (2009) 2 SCC 134, which

presented similar facts situation, this Court relied upon the correspondence exchanged between the parties to come to a conclusion about the existence of Arbitration Agreement between the parties.

10. In the circumstances, we see no reason to take a different view in the matter. This appeal, therefore, deserves dismissal.

11. Since, as a result of the interim orders passed by this Court, the entire process stood suspended, we direct that the Registry shall immediately send a communication to Justice R.V. Easwar (Retd.), who was appointed as Arbitrator in terms of the order passed by the High Court.

12. The learned Arbitrator shall immediately take appropriate steps. Needless to say that the time limit as prescribed by Section 29A of the Arbitration and Conciliation Act, 1996 shall also be adhered to.

13. We must, at this juncture, say that the facts referred to above were only by way of narration of events and this order not be taken to be reflection on merits of the matter and the parties shall be entitled to advance such submissions as are open to them in law.

14. With these observations, the Civil Appeal is disposed of. No costs.

.....CJI.
(UDAY UMESH LALIT)

.....J.
(J.B. PARDIWALA)

NEW DELHI
SEPTEMBER 29, 2022

ITEM NO.101

COURT NO.1

SECTION XIV-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

Civil Appeal No(s). 98/2017

BIRD AIRPORT HOTEL PVT. LTD.

Appellant(s)

VERSUS

BHAYANA BUILDERS PVT. LTD.

Respondent(s)

(IA No. 25772/2018 - I.A. FOR VACATION OF STATUS QUO)

Date : 29-09-2022 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) Mr. Virender Menta, Adv.
Mr. Sonal Jain, AOR
Mr. Kunal Mehta, Adv.
Mr. Ishkaran Singh, Adv.
Ms. Kajal Sharma, Adv.
Ms. Shreeya Prasad, Adv.

For Respondent(s) Mr. Siddharth Bhatnagar, Sr. Adv.
Ms. Nandini Gore, Adv.
Ms. Tahira Karanjawala, Adv.
Mr. Arjun Sharma, Adv.
Ms. Neha Khandelwal, Adv.
Mr. Shreyas Maheshwari, Adv.
Mr. Ritwik Mohapatra, Adv.
Ms. Pracheta Kar, Adv.
Mr. Nadeem Afroz, Adv.
Mr. Aditya Sidhra, Adv.
M/S. Karanjawala & Co., AOR

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

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

Pending applications also stand disposed of.

(NEETU KHAJURIA)
ASTT. REGISTRAR-cum-PS

(MATHEW ABRAHAM)
COURT MASTER

(Signed order is placed on the file.)