



Parasramka Holdings Pvt. Ltd. & Ors. v. Ambience Private Ltd. & Anr. (Order dated 15 January 2018, C.S. (O.S.) Nos. 125-127 of 2017, Delhi High Court)

BACKGROUND

The Plaintiffs entered into an Apartment Buyer's Agreement and Maintenance Agreement (collectively, "**the Agreements**") with the Defendants, which contained arbitration clauses providing for reference of all disputes to a sole arbitrator. However, when disputes arose between the parties, the Plaintiffs filed suits before the Delhi High Court ("**Court**") for recovery of monies. The Defendants in response to the same filed an application under Order VII Rule 11 of the Code of Civil Procedure ("**CPC**") for rejection of the plaint. Subsequently, on 20 May 2017, the Defendants filed their Written Statements. The said Written Statements contained an averment to the effect that a valid and binding arbitration clause existed between the parties. Thereafter, on 7 September 2017, the Defendant's Order VII Rule 11 Applications were dismissed by the Court. Once the said Applications were rejected, within 120 days, the Defendants filed an application under section 8(1)¹ ("**Section 8 Application**") of the Arbitration and Conciliation Act, 1996 ("**Act**") for the disputes to be referred to arbitration.

The issue before the Court was (a) whether limitation for filing an application under section 8 expires the day the written statement is submitted, or on the last date when the written statement can be filed; and (b) whether the Defendant has to specifically pray for reference of the dispute to arbitration in its written statement, or a mere averment as to the existence of an arbitration agreement in the written statement would satisfy the requirements of a section 8 application.

RULING

The Court considered the wording of section 8(1) of the Act, and concluded that the meaning of the expression "*so applies not later than the date of submitting his first statement on the substance of the issue*" therein was a reference to the outer limit for filing of a written statement. In the present case, such an outer limit would be 120 days from the rejection of the Order VII Rule 11 Applications, in accordance with the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Thus, though the Section 8 Application was filed after the filing of the Written Statement, the Section 8 Application would be maintainable since it was filed prior to the date of expiry of the time period for filing the Written Statement. The Court also noted that the Section 8 Application could not have been filed earlier than the rejection of the Order VII Rule 11 Applications, as it would have effectively constituted waiver of the right to press for rejection of the plaint.

Next, the Court examined three earlier judgments² to conclude that under section 8(1) of the Act, as it stood prior to the Arbitration and Conciliation (Amendment) Act, 2015 ("**the 2015 Amendment**"), a preliminary objection in the written statement bringing to the court's notice the existence of an arbitration clause, would be treated as an application under section 8 of the Act. The Court thereafter examined whether, in light of the 2015 Amendment, the above position had been altered in a manner so as to necessitate a specific prayer in the written statement for the disputes to be referred to arbitration.

Mindful of the limited change in language in Section 8(1) from "*not later than when submitting*" to "*not later than the date of submitting*", and the pro-arbitration Statement of Objects and Reasons of the 2015 Amendment, the Court found that the above position had not been altered by the 2015 Amendment. The Court further noted that, under section 8 of the Act, it was mandatory to refer the parties to arbitration, unless the arbitration agreement was found to be "*null and*

¹ "**Section 8. Power to refer parties to arbitration when there is an arbitration agreement:** (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists."

² *Eastern Medikt v. R.S. Sales Corporation*, (2007) 137 DLT 626; *Sharad P. Jagtiani v. Edelweiss Securities Limited*, 2014 SCC Online Del 949; *Sharad P. Jagtiani v. Edelweiss Securities Limited*, FAO(OS) 188/2014 [a Division Bench judgment, affirming the earlier judgment.]

void, inoperative, or incapable of being performed”.

Being thus satisfied that the averment in the Written Statement relating to existence of an arbitration agreement in the present case fulfilled the requirements under section 8 of the Act, the Court was pleased to refer the parties to arbitration.

ANALYSIS


The Court in light of the previous precedents on the subject, held that it is not mandatory for a party invoking arbitration to file a formal application before the court, seeking reference of the dispute to arbitration, so long as an objection has been raised in the written statement that the suit would not be maintainable due to the presence of an arbitration clause in the agreement.

While the decision in the present case is based on the aforementioned premise, the Court’s observation with regard to the change in the language of Section 8(1) – as discussed above – must also be noted.

By this observation, the Court has effectively relaxed the requirement for filing of a Section 8 application before the submission of the first statement of defense as the Court has laid emphasis on the amended Section 8 which now provides “*not later than the date of submitting his first statement on the substance of the dispute*”. Therefore, a party which has already filed a written statement may still be permitted to file a section 8 application, as long as the application is filed before the expiry of the time period for filing of a written statement.

Given such an interpretation, it would appear that if a Section 8 application is filed subsequent to filing of a written statement but within the time limit for the same, the application may be allowed despite the absence of any averment in the written statement bringing to the court’s notice the existence of an arbitration agreement.

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