

OD-1

ORDER SHEET

AP/179/2024

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SMT SONIA DHIR AND ANR.
VS
PRESTAR INFRASTRUCTURE PROJECTS LIMITED

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 8th October, 2024.

Appearance:

Mr. Harsh Tiwari, Adv.
Mr. Bhupendra Gupta, Adv.
Mr. Hamidul Haque, Adv.
Mr. Prithish Chandra, Adv.
...for the petitioners

Mr. Patita Paban Bishwal, Adv.
Mr. Aritra Basu, Adv.
Ms. Sohini Dey, Adv.
...for the respondent

The Court: The present application under Section 11 of the Arbitration and Conciliation Act, 1996 arises out of a dispute pertaining to two different agreements between the parties. The first agreement, being a leave and licence agreement, was entered into between the petitioner no.2, a company, and the respondent with regard to a particular property. The second agreement, which is a service agreement, was also entered into on the same day i.e., on July 18, 2023 between the respondent and the petitioner no.1, who is the wife of one of the erstwhile directors of the petitioner no.2 and also herself a director of the petitioner no.2 company.

Learned counsel for the respondent opposes a composite reference as sought in the invocation under Section 21 of the 1996 Act and in the present application under Section 11 of the said Act. It is contended that for there to be a composite reference, a common goal or objective is required to be achieved by both the agreements.

Learned counsel contends that there has to be a parent or superior agreement and an ancillary agreement. The parent agreement has to carry the ancillary agreement in order to achieve the self-same goal for there to be a composite reference. In the absence of any such factual component in the present case, since the service agreement and the leave and licence agreement operate in different fields, it is argued that there cannot be any composite reference as sought by the petitioner.

Learned counsel cites an unreported judgment of this Court in the matter of *GANTREX INDIA CRANE RAILS PRIVATE LIMITED vs. SIMPLEX INFRASTRUCTURE LIMITED AND ORS.* (AP 86 of 2023) where the Court held, *inter alia*, that although different purchase orders involved therein were distinct and different in identity, both the purchase orders pertain to the same work and in effect and for all practical purposes, the said orders were in aid of the same work process.

It is contended that in the present case, there is no singular work process or any other objective to which the two different agreements can be connected to.

Learned counsel for the respondent also cites *Ganapati Technology Services P. Ltd. Vs. State Fisheries Development Corporation Ltd.* reported at 2021 SCC OnLine Cal 4320 where a co-ordinate Bench had held that a

composite reference is permissible under the 1996 Act, for which various factors have to amalgamate so as to make such a reference possible. There has to be a mother agreement and ancillary agreement governing the parties. The concerned arbitration agreement or the mother agreement, it was further observed, should be comprehensive enough to bring within its fold agreements ancillary to the mother agreement so that the disputes arising out of or in connection with the mother agreement or the ancillary agreement can be settled by a composite reference.

It is submitted that in the absence of such a situation in the present case, no composite reference can be made.

Learned counsel appearing for the petitioner controverts such submissions and places reliance on the arbitration clauses incorporated in both the agreements, which are substantially the same.

It is argued that the service agreement itself, in Clause 4, mentions that it is expressly agreed and understood by and between the parties that the agreement shall be co-terminus and concurrent with the leave and licence agreement and in the event the leave and licence agreement is terminated for any reason whatsoever, the service agreement shall automatically stand terminated without any notice of such termination being required to be given by either party thereto and vice versa.

As such, it is argued that the two agreements are intertwined, as also contemplated by the learned Single Judge in *Ganapati Technology (Supra)*.

Learned counsel for the petitioner next cites *P.R. SHAH SHARES AND STOCK BROKERS PRIVATE LIMITED VS. B.H.H. SECURITIES PRIVATE LIMITED AND OTHERS* reported at (2012) 1 SCC 594 where the Supreme

Court had clearly elaborated the circumstances of a composite reference. In paragraph 19 thereof, it was observed, *inter alia*, that if A had a claim against B and C and if A had an arbitration agreement with B and A also had a separate arbitration agreement with C, there is no reason why A cannot have a joint arbitration against B and C. Obviously, having an arbitration between A and B and another arbitration between A and C with regard to the same claim would lead to conflicting decisions and multiplicity of proceedings and would cause injustice.

It is argued that in the present case, the situation is just the reverse, being that the petitioners have common claims against the respondent under two separate contracts which, however, are intertwined with each other.

Having heard learned counsel for the parties, a perusal of the two agreements indicates that apart from the said two agreements being contemporaneous on point of time, they were entered into in respect of the self-same premises.

A careful reading of the two agreements goes on to show that one is complementary to the other.

The service agreement has been entered into solely to provide amenities and services for the premises with regard to which the leave and licence has been granted to the respondent, for the purpose of enjoyment of the said leave and licence only.

Thus, for full and complete enjoyment of the leave and licence and to give full effect to the said leave and licence agreement, the rights and liabilities flowing from the service agreement are essential.

Even seen from the reverse perspective, the service agreement cannot, by itself, have any standalone existence without the leave and licence agreement, since the entire services to be provided by the service agreement revolve around the leave and licence agreement only.

There are several circumstances, as discussed by the learned Single Judge in *Ganapati Technology (Supra)*, where there can be composite references, one being where there is a mother and an ancillary agreement, which is not exactly the present case. This is not a case also where there is a single commercial project to be achieved by the two agreements. Rather, the facts of this case are akin to the third limb as discussed in paragraph 21 of *Ganapati Technology (Supra)* which envisages two or more contracts which are so intertwined with each other so as to prejudice the parties should separate arbitrations be held.

Conspicuously, in Clauses 2 and 3 of the service agreement itself, it is clearly stipulated that the services under the said agreement are to be provided at the licenced premises. The service agreement, in several places, relates back to the leave and licence and connects itself with providing service in respect of the licenced premises only. Importantly, Clause 4 of the service agreement also provides that the same is co-terminus and concurrent with the leave and licence agreement and shall stand automatically terminated without any notice on the termination of the leave and licence agreement.

Again, the leave and licence agreement provides several rights to be enjoyed by the respondent in respect of the premises for which the service agreement provides services. Thus, there can be fourth situation than that

envisaged in the cited decisions where although both the agreements may not achieve a common goal or objective as such, the underlying jural relationship, which is the common platform of both the agreements, may be the same.

In the present case, the jural relationship (licensor-licensee) created between the respondent on the one hand and the petitioners separately on the other pertain to enjoyment of the self-same premises. The said jural relationship holds together on a common fabric the lease and licence agreement, which confers rights on the respondent to enjoy the property, and the service agreement which provides the services for such enjoyment to effectively take place. Thus, the common underlying jural relationship vis-à-vis the property between the parties is the unifying factor which juxtaposes the rights flowing from the two agreements.

Hence, I find that in the event there is a separate reference to arbitration with regard to the two agreements, where the set of transactions and the developments leading to the disputes would be common, there is ample scope of unnecessary multiplicity of proceedings and a conflict of awards, which ultimately would not enure to the benefit of either party.

As rightly contended by learned counsel for the petitioner, this is a scenario which is exactly the reverse of that contemplated in *P. R. Shah (Supra)* by the Supreme Court. As such, I do not find any reason not to refer the matter to a common learned Arbitrator for a composite reference.

On the same reasoning, the common invocation under Section 21, clubbing the disputes arising out of both the agreements, is also tenable in the eye of law.

Accordingly, AP/179/2024 is allowed on contest, thereby appointing Mr. Tanmoy Mukherjee, a member of the Bar Association, as the sole Arbitrator to resolve the disputes between the parties by taking up the disputes arising out of both the agreements in a composite manner, subject to a declaration being obtained from him under Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall decide his own remuneration in consultation with the parties within the framework of the 1996 Act read with its Fourth Schedule.

It is made clear, however, that the merits of the respective contentions of the parties have not been entered into by this Court and are left open for being decided by the Arbitrator.

(SABYASACHI BHATTACHARYYA, J.)