



ARBITRATION AND CONCILIATION

Foreign Award Unenforceable, If Arbitration Agreement Unsigned

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The Delhi High Court in a recent judgment refused the enforcement of the foreign award under section 48 of the Arbitration and Conciliation Act, 1966 ("the Act") as one party to the contract had not signed the same^[1].

Facts

The subject matter of the dispute arose out of three contracts ("**Contracts**") alleged to have executed between Virgoz Oils & Fats Pte Ltd. a Singapore based company ("**Virgoz**") and National Agricultural Co- operative Marketing Federation Of India LTD. ("**NAFED**") for import of edible oil. The Contracts were signed by Virgoz and a broker, who negotiated the deal between parties, but not signed on behalf of NAFED. Virgoz fulfilled its part of the contractual obligation, but NAFED didn't as it objected the existence of the Contract itself.

Virgoz invoked the arbitration clause in the Contracts and initiated arbitration before the arbitration tribunal constituted under the Palm Oil Refiners Association of Malaysia Rules of Arbitration and Appeal, 2005. The arbitral tribunal rejected NAFED's contention that the Contracts were not in existence. The arbitral tribunal relied up on a letter from NAFED requesting a deferred date of shipment, as an evidence for the existence of a contractual arrangement between the parties. It also relied up on the contention that executing contract by broker on behalf of buyer was a usual trade practice between parties trading palm oil in India at the time.

Virgoz file an enforcement petition before the High Court to enforce the award against NAFED.

Issue

Existence of a valid arbitration agreement between the parties.

Arguments on behalf of Virgoz and NAFED before the High Court

One of the main contention of Virgoz was that the parties were dealing through a broker and there was no necessity that the Contracts be separately signed by NAFED since the same had been signed by the broker. Virgoz also relied up on a letter from NAFED requesting a deferred date of shipment, as an evidence that NAFED has accepted the contractual relationship.

NAFED defended saying there was no communication directly between NAFED and Virgoz. The Contracts were not signed by NAFED and hence the award cannot be enforced against him.

Analysis /Judgment given by the High Court:-

1. The Court held that to recognize an award as a foreign award under section 44 of the Act, it is necessary that the award has been rendered in respect of an *agreement in writing between the parties*, to which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards applies. The said Convention stipulates that an agreement in writing would include an arbitral clause in a contract or an arbitration agreement signed by the parties or contained in exchange of letters or telegrams.^[2]
2. Therefore, an agreement in writing would include an arbitral clause in a contract or an arbitration agreement signed by the parties or contained in exchange of letters or telegrams. The Contracts were not signed by NAFED. Although, NAFED was described as a buyer in the Contracts and a place for the signatures of the buyer was spherically provided, no signatures of NAFED appeared at the designated place (or anywhere else in the document). The contention that the broker had signed the Contracts on behalf of NAFED was not accepted as the Contracts clearly indicated that the Broker signed the Contracts in his own capacity and not for and on behalf of NAFED.
3. An arbitration agreement can also be entered into between the parties by exchange of letters, telegrams or emails; however, in the present case, there was no correspondence between NAFED and Virgoz, which would establish a meeting of minds and an agreement on the part of NAFED to refer any dispute to arbitration. The "strongest evidence" submitted by Virgoz was a letter sent by them to NAFED to indicate their acceptance of Contracts. The High Court observed that, a plain reading of the said letter also did not indicate that NAFED had accepted or had agreed to be bound by the Contracts. NAFED had merely requested the Broker to take up the matter with the sellers for deferment of shipments. The said letter did not in any manner militate against NAFED's contention that bargains between the parties had not been finalized. The letter was not addressed to Virgoz and there was no document to indicate that the broker was authorised to act for and on behalf of NAFED. There was no communication between Virgoz and NAFED, which would even remotely suggest that NAFED had agreed to be bound by the terms and conditions stipulated in the Contracts.

The High Court therefore declined to enforce the award and the petition was dismissed

[1] *Virgoz Oils and Fats PTE Ltd. Vs. National Agricultural Co-operative Marketing Federation of India Ltd.* EX.P. 149/2015 & EA(OS) No.66/2016

[2] Paragraph 2 of Article II of the New York Convention is read as follows:-“2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.