RECKITT BENCKISER (INDIA) V. REYNDERS LABEL PRINTING INDIA (2019) 7 SCC 62

Supreme Court of India; 2-judge, **A. M. Khanwilkar** and Ajay Rastogi JJ; decided on 01 July 2019

Binding non-signatory to arbitrator; burden of proof

A contract was executed between Reckitt Benckiser ("Reckitt") and Reynders Label, India ("Reynders India").

When disputes arose, Reckitt filed an application under Section 11 ACA for the appointment of arbitrator, in which it also impleaded Reynders Ttiket-ten, Belgium ("Reynders Belgium").[2]

Reckitt argued that Reynders Belgium, a non-signatory, was bound by the arbitration agreement because it was an 'integral party'; that the agreement was negotiated and executed by one Fredrick Reynders on behalf of Reckitt Belgium. It was common ground that Reynders Belgium was one of the "constituents" of the Reynders group of companies, but disputed that Reynders Belgium had anything to do with the agreement.

The Supreme Court dismissed the application and appointed an arbitrator to conduct a domestic arbitration between Reckitt and Reynders India. This is how the court reached its conclusions: -

(A) WHEN CAN A NON-SIGNATORY BE SUBJECTED TO ARBITRATION PROCEEDINGS?

The court first considered the legal position and said it is "no more res integra."

[2] An application for appointment lies directly to the Supreme Court if the arbitration is an international commercial arbitration. The application was filed by Reckitt on the premise that Reynders Belgium would be party to the arbitration proceedings making it an international arbitration.

First, it referred to *Chloro Controls* (India) (*P) Ltd. v. Severn Trent Water Purification Inc.*, (2013) 1 SCC 6413 and said that the 3-judge bench in that case held that "an arbitration agreement entered into by a company, being one within a group of corporate entities, can, in certain circumstances, bind its non-signatory affiliates."

Then the court referred to *Cheran Properties Ltd.* v. *Kasturi & Sons Ltd.*, (2018) 16 SCC 413[4] and reproduced paragraph 23 from that judgment saying that the paragraph contained the court's conclusions "after analysing the earlier decisions and including the doctrine expounded in *Chloro*."

The court then posed the "crucial question" which arose "keeping in mind the exposition" in *Chloro* and *Cheran*: namely, whether it was "manifest from the indisputable correspondence exchanged between the parties, culminating in the agreement" that the transactions between Reckitt and Reynders were essentially with the Reynder group of companies"? The court said, in other words, the question was whether the "indisputable circumstances" show that the "mutual intention of the parties" was to bind Reynders Belgium as well to the arbitration agreement.

The question having been posed, the court turns to the facts of the case.

(B) ASSESSMENT OF THE FACTS OF THE CASE

The court examined the pleadings and the correspondence and concluded that Reckitt could not establish that Fredrick Reynders acted on behalf of Reynders Belgium, or Reynders Belgium had "given assent to the arbitration agreement." The court observed that "in absence thereof" even if Reynders Belgium "happens to be a constituent of the group of companies of which [Reynders India] is also a constituent, that will be of no avail."

3 S.H. Kapadia C.J. and A.K. Patnaik, Swatanter Kumar JJ decided on 28 September 2012.

4 Dipak Misra C.J. and A.M. Khanwilkar, Dr. D.Y. Chandrachud JJ decided on 24 April 2018.

The court concluded that the burden was on the applicant Reckitt to establish that Reynders Belgium had an intention to consent to the arbitration agreement, which was not discharged.

(C) CONDUCT OF PARTIES AFTER THE EXECUTION OF THE INSTRUMENT

Reckitt had also relied on some post-contract negotiations. They were held to be "no basis to answer the matter in issue" because "post- negotiations in law would not bind … qua arbitration agreement" [citing to *Godhra Electricity Co. Ltd.* v. *State of Gujarat*, (1975) 1 SCC 199[5]].

This argument was rejected also because in any case this too assumed that Fredrick Reynders had the authority to negotiate on behalf of Reynders Belgium.

(D) EXISTENCE OF THE ARBITRATION AGREEMENT

The court also made an ancillary observation on Section 11(6A) of the ACA, which was introduced by the 2015 Amendment. The enquiry, the court said, "must confine itself to the examination of existence of an arbitration agreement. No more and no less".

[5] 2-judge bench, A.N. Ray C.J, and K.K. Mathew J.