

BEFORE THE COMPANY LAW BOARD, MUMBAI BENCH, MUMBAI

**Present: Shri. Ashok Kumar Tripathi
Member (Judicial)**

C.A. No. 275 of 2014

**Under Section 8 of the
Arbitration & Conciliation Act,
1996.**

In the matter of:

- 1. Sh. Gaurav Chaturvedi (R2)**
- 2. Mrs. Jaya Chaturvedi (R3)**

**...Applicants.
(Orig. Respondent Nos.2 &3)**

Versus

- 1. Mr. Girdhar Gopal Bajoria (P1)**
- 2. Mrs. Vinita Bajoria (P2)**
- 3. Mr. Girdhar Gopal Bajoria (HUF) (P3)**

**...Non-Applicants
(Orig. Petitioner Nos.1 to 3)**

- 4. M/s J.J. Distillers & Beverages Pvt. Ltd. (R1)**
- 5. Mr. Jitendra Arora (R4)**
- 6. Ms. Renu Chaturvedi (R5)**
- 7. Ms. Aditi Chaturvedi (R6)**
- 8. Mr. Ankur Sharma (R7)**

**.. Non-Applicants
(Org Respondent
Nos. 1 and 4 to 7)**

**In
C.P. No.94 of 2013**

**Under Sections 397 , 398 read
with Sections 402 and 403 of the
Companies Act, 1956.**

- 1. Mr. Girdhar Gopal Bajoria (P1)**
- 2. Mrs. Vinita Bajoria (P2)**
- 3. Mr. Girdhar Gopal Bajoria (HUF) (P3)**

... Petitioners

Versus

- 1. M/s J.J. Distillers & Beverages Pvt. Ltd. (R1)**
- 2. Sh. Gaurav Chaturvedi (R2)**
- 3. Mrs. Jaya Chaturvedi (R3)**
- 4. Mr. Jitendra Arora (R4)**
- 5. Ms. Renu Chaturvedi (R5)**
- 6. Ms. Aditi Chaturvedi (R6)**
- 7. Mr. Ankur Sharma (R7)**

.... Respondents

Counsel appeared on behalf of the Parties :-

- 1. Mr. Satyan Israni, Advocate a/w Mr. Vinit Mehta, Advocate i/b M/s S.D. Israni Law Chambers.**



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2. Mr. Abhishek Singh, Advocate a/w Mr. Gaurav Chaturvedi, Managing Director of Respondent No.1 Company.

ORDER

(Reserved on December 4, 2014)

(Delivered on December 18, 2014)

1. By this order, I propose to dispose off the Company Application filed in Company Petition No.94 of 2013, by the Respondent Nos.2 and 3/ Applicants, under Section 8 of the Indian Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Arbitration Act" in short) whereby the Respondents/ Applicants have prayed to refer the parties for arbitration in terms of clause 40 of the Shareholders Agreement dated 20/06/2012 (hereinafter referred to as "SHA" in short) purportedly executed between Petitioners and the Respondent Nos. 1 to 3. It is further prayed that the C.P. may be dismissed accordingly.

2. The facts, in brief, leading to filing the present application are that the Petitioners namely Mr. Girdhar Gopal Bajoria, Mrs. Vinita Bajoria, and Girdhar Gopal Bajoria, HUF, claim to hold collectively 50% of the paid-up capital of the Company. The Company owns a piece of land admeasuring about 9.655 Hectares at village Firozpur Imiliya, Tehsil and District Morena-M.P. the details of which are more particularly set out in the petition. It is the case of the Petitioners that they were approached by the Respondent No.2 for carrying out implementation and execution of the project and also to extend financial assistance by way of investment etc. The Respondent Nos.2, 3 and Dr. Jitendra Chaturvedi (hereinafter is collectively referred to as "Chaturvedi Group" or Respondent Group") had meetings and discussions with the Petitioner Nos. 1 and 2 (hereinafter the "Bajoria Group" or the "Petitioner Group") for entering into an agreement on certain terms and conditions relating to (i) sell/purchase of shareholding, (ii) issues of management relating to directorial appointment, (iii) commitment of financial resources, (iv) internal management, (v) accounting aspects, (vi) control over financial matters, (vii) amendments /changes in Articles of Association of the Company and (viii) Memorandum of Association of the Company etc. After deliberations, a Shareholders Agreement dated 20/06/2012 came to be executed between both the groups and the Respondent No.1 Company.



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3. It appears that before the said project could be established, the disputes arose between the two groups i.e. the Chaturvedi Group and the Bajoria Group which led to filing of the instant Company Petition under Section 397/398 of the Act, *inter alia*, alleging certain acts of oppression and mismanagement purportedly committed by the Chaturvedi Group in the conduct of the affairs of the Company, wherein the Petitioners have sought various orders in terms of the prayers as contained in the Petition.

4. The Respondent Nos.2 and 3/Applicants have filed the above stated Company Application under Section 8 of the Arbitration Act for referring the disputes to the arbitration. The pleadings have been exchanged between the parties in respect of the instant Company Application.

5. It is pertinent to mention here that the Respondent No.2, vide notices dated 7/02/2013 and 10/02/2013, sought to invoke the arbitration clause of the Shareholders Agreement. It is further matter of record that the Respondent No.2, thereafter, has approached the Hon'ble High Court, Madhya Pradesh for appointment of Arbitrator in which an Arbitrator has already been appointed vide its order dated 7/03/2014 passed in A.C No. 11 of 2013.

6. I have heard the Ld. Counsel appearing on behalf of the respective parties. Both sides have also filed their respective Written Submissions supported with case laws. I have also gone through the same. I accordingly proceed to appreciate the contentions advanced by the Ld. Counsel appearing for the respective parties. For the sake of clarity, the Parties shall be referred to hereinafter in the manner they are originally ranked in the Company Petition.

7. At the outset, I would like to reproduce the provision contained in Section 8 of the Indian Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Arbitration Act") here as under:-

Section 8: Power to refer parties to arbitration when there is an arbitration agreement- A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration".

8. At the further outset, I would like to refer to a decision in the case of **P Anand Gajapathi Raju V/s P.V.G Raju & Ors. AIR [2000] SC Page 1886** wherein the Hon'ble Apex Court has interpreted the scope of the provisions



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contained in Section 8 of the Arbitration Act. The Hon'ble Supreme Court in the said decision has laid down as follows :-

"The language of Section 8 is peremptory. It is, therefore, obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement". "The conditions which are required to be satisfied under Sub-sections (1) and (2) of Section 8 before the Court can exercise its powers are (1) there is an arbitration agreement (2) a party to the agreement brings an action in the Court against the other party (3) subject matter of the action is the same as the subject matter of the arbitration agreement; [4] the other party moves the court for referring the parties to arbitration before it submits his first statement on the substance of the dispute".

9. Thereafter, the Hon'ble Supreme Court consistently in its other decisions in the cases of [1] **Hindustan Petroleum Corporation Ltd. V/s Pinkcity Midway Petroleums AIR [2003] SC 2881**, [2] **SBP & Co. v. Patel Engg. Ltd. [(2005) 8 SCC 618]** [3] **Rashtriya Ispat Nigam Ltd. V/s Varma Transport Company reported in (2006) 7 SCC 275**, [4] **Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits and Woven & Ors., (2007) 3 SCC 686**, [5] **Everest Holding Ltd. Vs Shyam Kumar Shrivastava (Dr.Sharma), (2008) 16 SCC 774**, has reiterated the same view. Lastly, the Supreme Court in the case of **Booz Allen and Hamilton Inc V/s SBI Home Finance Ltd. & Ors. [2011] 5** has discussed in the above cited decisions and has laid down the law as follows:-

19. *Where a suit is filed by one of the parties to an arbitration agreement against the other parties to the arbitration agreement, and if the defendants file an application under Section 8 stating that the parties should be referred to arbitration, the court (judicial authority) will have to decide:*

(i) whether there is a valid and subsisting arbitration agreement among the parties;

(ii) whether the defendant had applied under Section 8 of the Act before submitting his first statement on the substance of the dispute; and

(iii) whether all the parties to the suit are parties to the arbitration agreement;

(iv) whether the disputes which are the subject-matter of the suit fall within the scope of arbitration agreement;

(v) whether the reliefs sought in the suit are those that can be adjudicated and granted in an arbitration.

10. The Hon'ble High Court of Bombay in the Appeal (L) No.10 of 2013 in **Rakesh Malhotra vs. Rajinder Malhota & Ors.** has recently laid down that while applying the above stated proposition of law propounded by the courts, the CLB In a petition filed under Section 397/398 is required to



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examine the facts of the case and the reliefs sought in order to determine as to whether the petition is a malafide, vexatious and dressed up by the Petitioner in order to defeat the arbitration agreement or the petition is genuine and bonafide petition. The Hon'ble High Court of Bombay has further held that in doing so, the CLB will carefully examine the averments made in the petition and the nature of reliefs sought for, as well as other surrounding facts.

11. In light of the above stated law, I have examined the facts of the case in hand. In this connection, the first point which requires consideration is as to whether there is a valid and subsisting arbitration agreement. Upon a careful perusal of copy of the SHA available on the record, it cannot be disputed that there is a valid and subsisting Arbitration Agreement in which the Company is also a party. For the sake of convenience, I would like to reproduce the arbitration agreement as contained in clause 40 of the SHA, which runs as under:-

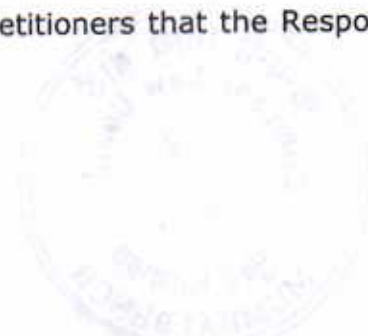
Clause 40 :

All the disputes in relation to the interpretation of any term and condition of this agreement and the rights, the liabilities of any party or any dispute arising out of this agreement shall be referred to Arbitration of a Sole Arbitrator to be appointed by mutual consent and this agreement shall be deemed to be an agreement to submit to the arbitration. If the parties do not agree upon the name of the Arbitrator then the Arbitrator shall be appointed as per the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification thereto. The venue of the Arbitration shall be at the place of business only and all the provisions of the Arbitration and Conciliation Act, 1996 will apply. The agreement would be subject to the jurisdiction of the courts at the place of business only.

12. The Ld. Counsel for the Petitioners has contended that the original agreement has not been filed by the Respondent Nos.2 and 3/Applicants. Although the Respondent Nos.2 and 3/Applicants have not filed original SHA and have filed only certified copy thereof, in my view, it cannot be valid reason to dismiss the application on this ground alone and therefore, the Application is liable to be dismissed. I have considered this submission.

13. I, therefore, hold that in so far as the first essential element for an application under Section 8 is concerned, the same is made out.

14. As regards the second issue, which requires that the Respondent Nos.2 and 3/Applicants must apply under Section 8 of Act before submitting his first statement on the substance of dispute, it was argued on behalf of the Petitioners that the Respondent Nos.2 and 3/Applicants have filed their



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short reply before filing the instant application and therefore, the present application deserves to be dismissed. Having examined this aspect, it is seen upon perusal of the record that the Respondent Nos.2 and 3/Applicants have filed a short reply, opposing the ad-interim reliefs. However, in my opinion, by filing a short reply to oppose ad-interim reliefs, the Respondents are barred from making an application under Section 8 of the Arbitration Act as held in a decision rendered by the Hon'ble Supreme Court in the case of *Rashtriya Ispat Nigam Ltd. & Anr. V/s Verma Transport Co. [2006] 7 SCC 275*. The relevant extract of the said decision is here as under:-

"The expression "first statement on the substance of the dispute" contained in Section 8(1) of the 1996, Act must be contradistinguished with the expression "written statement". It implies submission of the party to the jurisdiction of the judicial authority. What is, therefore, needed is a finding on the part of the judicial authority that the party has waived its right to invoke the arbitration Clause. If an application is filed before actually filing the first statement on the substance of the dispute, the party cannot be said to have waived its right or acquiesced itself to the jurisdiction of the court. What is, therefore, material is as to whether the petitioner has filed his first statement on the substance of the dispute or not, if not, his application under Section 8 of the 1996 Act, may not be held wholly unmaintainable. (Para 36)

In view of the changes brought about by the 1996 Act, what is necessary is disclosure of the entire substance in the main proceeding itself and not taking part in the supplemental proceeding. (Para 38)

*By opposing the prayer for interim injunction, the restriction contained in sub-section (1) of Section 8 was not attracted. Disclosure of a defence for the purpose of opposing a prayer for injunction would not necessarily mean that substance of the dispute has already been disclosed in the main proceeding. Supplemental and incidental proceedings are not part of the main proceeding. They are dealt with separately in the Code of Civil Procedure itself. Section 94 CPC deals with supplemental proceedings. Incidental proceedings are those which arise out of the main proceeding. A distinction has been made between supplemental proceedings and incidental proceedings in *Vareed Jacob, (2004) 6 SCC 378*. (Paras 39 and 40)*

15. In view of the aforesaid settled proposition of law, it is thus clear that mere filing a short reply to oppose the ad-interim prayers the Respondents are not debarred from making an application under Section 8 of the Arbitration Act. This point is answered accordingly.

16. The Ld. Counsel appearing on behalf of the Petitioners/Non-Applicants has next contended that there are no commonalities of parties in the Arbitration Agreement and the present petition and the application deserves to be dismissed. Elaborating the submissions with respect to non-commonalities of the parties, it was submitted by the Petitioners' Counsel



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that the Shareholders Agreement, reveals that it is a tripartite agreement between Mr. Gaurav Chaturvedi (Respondent No.2), late Dr. Jitendra Chaturvedi (Father of Respondent No.2) and Smt. Jaya Chaturvedi (Respondent No.3) of the One Part, Mr. Girdhar Gopal Bajoria (Petitioner No.1), Ms. Vinita Bajoria (Petitioner No.2) and Mr. Girdhar Gopal Bajoria, HUF, through its Karta Girdhar Gopal Bajoria (Petitioner No.3) of the Second Part and J. J. Distillers and Beverages Pvt. Ltd., (Respondent No.1 Company) of the Third Part. However, the Respondent Nos.2 and 3/ Applicants have conveniently ignored the fact that the present petition is also filed against Jitendra Arora (Respondent No.4), Renu Chaturvedi (Respondent No.5), Aditi Chaturvedi (Respondent No.6) and Ankur Sharma (Respondent No.7), who are not parties to the said Shareholders Agreement. According to the Ld. Counsel, the said Respondent Nos. 4 to 7 who are not parties to the said Arbitration Agreement shall not be bounded by the Arbitration Award. Further, the Ld. Counsel submitted that the Petitioners have alleged that the Respondent Nos. 4 to 7 are also committing the acts of oppression and mismanagement in the conduct of affairs of the Company. According to him, they are necessary parties for adjudication of the disputes that are raised in the above Company Petition. It was, therefore, argued that the arbitration clause contained in the Shareholders Agreement cannot be invoked against Respondent Nos. 4 to 7, who are necessary parties and are joined in the above Company Petition and hence Application deserves to be dismissed.

17. Relying to the above, contentions, the Ld. Counsel appearing on behalf of the Respondent Nos.2 and 3/Applicants submitted that merely by adding some additional parties to the company petition, the Petitioners cannot avoid the arbitration clause firstly for the reason that the Respondent Nos. 4 to 7 have been added as a party to the arbitration proceedings by the Hon'ble High Court. Further, according to the Ld. Counsel, in order to determine whether a matter has to be referred to arbitration or adjudicated upon by the CLB, it has to be seen as to whether the disputes between the parties or the substance of the dispute between the parties and the reliefs as sought for in the company petition are the same. According to the Ld. Counsel, the disputes are is between the two groups that is "Chaturvedi Group" and "Bajoria Group" and, as per the SHA itself, each group was to be represented by Mr. Gaurav Chaturvedi and Mr. Girdhar Gopal Bajoria, respectively. The Ld. Counsel for the Respondent

