

INDIAN OIL CORPORATION LIMITED v. NCC Limited , 2022 SCeJ 908, (2022-3)207 PLR 218 (SC) (SN)

SUPREME COURT OF INDIA

Before: Justice M.R. Shah and Justice B.V. Nagarathna, JJ.

INDIAN OIL CORPORATION LIMITED - Appellant,

versus

NCC Limited - Respondent.

Civil Appeal No. 341 of 2022 (@ SLP (C) No. 13161/2019), With Civil Appeal No. 342 of 2022 (@ SLP (C) No. 13408/2019), Civil Appeal No. 344 of 2022 (@ SLP (C) No. 13815/2019), Civil Appeal No. 343 of 2022 (@ SLP (C) No. 13813/2019), Civil Appeal No. 345 of 2022 (@ SLP (C) No. 13816/2019) , Civil Appeal No. 341 of 2022 (@ SLP (C) No. 13161/2019); Civil Appeal No. 342 of 2022 (@ SLP (C) No. 13408/2019); Civil Appeal No. 344 of 2022 (@ SLP (C) No. 13815/2019); Civil Appeal No. 343 of 2022 (@ SLP (C) No. 13813/2019); and Civil Appeal No. 345 of 2022 (@ SLP (C) No. 13816/2019)

20.07.2022

- **Arbitration and Conciliation Act, 1996 - S. 11 (6-A) - Though the Arbitral Tribunal may have jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability, the same can also be considered by the Court at the stage of deciding Section 11 application if the facts are very clear and glaring and in view of the specific clauses in the agreement binding between the parties, whether the dispute is non-arbitrable and/or it falls within the excepted clause - Even at the stage of deciding Section 11 application, the Court may *prima facie* consider even the aspect with regard to 'accord and satisfaction' of the claims. [Para 89]**
- **Arbitration and Conciliation Act, 1996 - Section 11, 11(6) - Issue/aspect with regard to 'accord and satisfaction' of claims is seriously disputed and is debatable (on facts) - It cannot be said to be an open and shut case - claims had been settled or not is a debatable and disputable question, which is to be left to be decided by the Arbitral Tribunal - Therefore, even when it is observed and held that such an aspect with regard to 'accord and satisfaction' of the claims may/can be considered by the Court at the stage of deciding Section 11 application, it is always advisable and appropriate that in cases of debatable and disputable facts, good reasonably arguable case, the same should be left to the Arbitral Tribunal. *Vidya Drolia v. Durga Trading Corpn.* [(2021) 2 SCC 1, referred.. [Para 89, 90]**

Held,

Therefore, in the facts and circumstances of the case, though it is specifically observed and held that aspects with regard to 'accord and satisfaction' of the claims can be considered by the Court at the stage of deciding Section 11(6) application, in the facts and circumstances of the case, the High Court has not committed any error in observing that aspects with regard to 'accord and satisfaction' of the claims or where there is a serious dispute will have to be left to the Arbitral Tribunal. However, at the same time, we do not agree with the conclusion arrived at by the High Court that after the insertion of Sub-Section (6-A) in Section 11 of the Arbitration Act, scope of inquiry by the Court in Section 11 petition is confined only to ascertain as to whether or not a binding arbitration agreement exists qua the parties before it, which is relatable to the disputes at hand. We are of the opinion that though the Arbitral Tribunal may have jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability, the same can also be considered by the Court at the stage of deciding Section 11 application if the facts are very clear and glaring and in view of the specific clauses in the agreement binding between the parties, whether the dispute is non-arbitrable and/or it falls within the excepted clause. Even at the stage of deciding Section 11 application, the Court may *prima facie* consider even the aspect with regard to 'accord and satisfaction' of the claims. [Para 89]

- **Arbitration and Conciliation Act, 1996 - Notified Claim - Agreement provides that any dispute or difference on whether or not a claim sought to be referred to arbitration by the contractor is a Notified Claim falls within the excluded matters and the Arbitrator or Arbitral Tribunal shall have no jurisdiction and/or authority with respect thereto - The dispute or difference whether or not a claim sought to be referred to arbitration by the contractor is a Notified Claim shall not and cannot form the subject matter of any reference or submission to arbitration - Whether or not a claim sought to be referred to arbitration by the contractor is a Notified Claim or not, the Arbitrator or Arbitral Tribunal shall have no jurisdiction at all - Whether or not a claim is a Notified Claim or not shall have to be decided by the General Manager and that too, prior to arbitration proceeding with or proceeding further with the reference - Therefore, once the General Manager, on the basis of the material on record takes a conscious decision that a particular claim sought to be referred to arbitration is not a Notified Claim, such a claim thereafter cannot be referred to arbitration - The language used in Clauses 9.0.1.0 and 9.0.2.0 is very clear and unambiguous. [Para 91]**
- **Arbitration Act - Parties to the [contract](#) are free to agree on applicability of (1) proper law of contract, (2) proper law of arbitration agreement and (3) proper law of the conduct of arbitration. Parties to the contract also may agree for matters excluded from the purview of arbitration - Unless the effect of agreement results in performance of an unlawful act, an agreement, which is otherwise legal, cannot be held to be void and is binding between the parties.**

Food Corporation of India v. Sreekanth Transport (1999) 4 SCC 491, referred to.

Held,

High Court has misread and misinterpreted the clauses of the agreement and has seriously erred in holding that where there is contestation or the decision rendered by the General Manager leaves scope for argument as to whether the claims alleged by the contractor can be categorized as Notified Claim is best left to the Arbitral Tribunal. The dispute whether the claim is a Notified Claim or not is specifically excluded from the scope, purview and ambit of the arbitration agreement. Therefore, once such a dispute falls within the 'excepted matters', any decision by the General Manager on the issue of Notified Claims cannot be the subject matter of arbitration proceeding. Therefore, the High Court has erred in referring the dispute to arbitration and appointing a sole Arbitrator to adjudicate on the dispute with respect to the claims which as such are held to be not Notified Claims by the General Manager.

Cases Cited :

1. *Paras 8, 10: Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd., reported in (2017) 2 SCC 228*
2. *Paras 8, 10: United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd., reported in (2018) 17 SCC 607*
3. *Paras 8, 9, 10, 13: Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549*
4. *Paras 8, 10: Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg., (2019) 9 SCC 209*
5. *Paras 8, 10: Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd., (2018) 6 SCC 534*
6. *Paras 8, 13: Food Corporation of India v. Sreekanth Transport* (1999) 4 SCC 491
7. *Paras 8, 10: Harsha Constructions v. Union of India, (2014) 9 SCC 246*
8. *Paras 8, 10: Mitra Guha Builders (India) Company v. Oil and Natural Gas Corporation Ltd., (2020) 3 SCC 222*
9. *Para 8: China Petroleum Pipeline Bureau v. Indian Oil Corporation Ltd., [ARB.A. (COMM.) 35/2019, decision dated 10.01.2020]*
10. *Para 8: Srico Projects Pvt. Ltd. v. Indian Oil Foundation, [ARB. PET. 276/2016 decided on 09.01.2017 along with order dated 03.07.2017]*
11. *Para 8: Institute of Geoinformatics (P) Ltd. v. Indian Oil Corporation Ltd., [ARB. PET. 175/2012 decided on 19.05.2015]*
12. *Para 8: IOT Infrastructure and Energy Service v. Indian Oil Corporation Ltd., [ARB. PET. 334/2014 decided on 12.02.2015]*
13. *Para 8: Bongaigaon Refinery v. M/s. Buildworth Pvt. Ltd., [Arb.Appeal 10/2006 before Gauhati High Court]*
14. *Paras 9, 10: Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764*
15. *Para 9: United India Insurance Co. Ltd. v. Antique Art Exports (P) Ltd., [(2019) 5 SCC*

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16. *Paras 9, 10: Mayavati Trading (P) Ltd. v. Pradyut Deb Burman*, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441
17. *Para 9: Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.*, (2020)2 SCC 455
18. *Paras 9, 10: BSNL & Anr. v. Nortel Networks India Pvt. Ltd.*, (2021)5 SCC 738
19. *Para 9: Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd.*, (2021)5 SCC 671
20. *Para 9: Sanjiv Prakash v. Seema Kukreja*, (2021)9 SCC 732
21. *Para 9: Swiss Timing Limited v. Commonwealth Games 2010 Organizing Committee* [(2014) 6 SCC 677]
22. *Para 9: Ambica Construction v. Union of India* reported in (2006) 13 SCC 475
23. *Para 9: R.L. Kalathia & Co. v. State of Gujarat* reported in (2011) 2 SCC 400
24. *Para 9: BSNL v. Motorola India (P) Ltd.* reported in (2009) 2 SCC 337
25. *Para 9: National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.* reported in (2009) 1 SCC 267
26. *Para 9: Zostel Hospitality (P) Ltd. v. Oravel Stays (P) Ltd.* reported in (2021) 9 SCC 765
27. *Para 9: Datar Switchgears Ltd. v. Tata Finance Ltd.* reported in (2000) 8 SCC 151
28. *Para 10: DLF Universal Ltd. & Anr. v. Director, Town and Country Planning Department, Haryana & Ors.* [(2010) 14 SCC 1]
29. *Para 10: Rajasthan State Industrial Development and Investment Corporation & Anr. v. Diamond and Gem Development Corporation Ltd. & Anr.* [(2013) 5 SCC 470]
30. *Para 10: Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532
31. *Para 10: Keir v. Leeman*,
32. *Para 10: Soilleux v. Herbst*,
33. *Para 10: Wilson v. Wilson*,
34. *Para 10: Cahill v. Cahill*,
35. *Para 10: DLF Home Developers Limited v. Rajapura Homes Private Limited and Another*, [2021 SCC Online SC 781]
36. *Para 10: SBP & Co. v. Patel Engg. Ltd.*, (2005) 8 SCC 618

Petitioner Counsel: ARPUTHAM ARUNA AND CO

Respondent Counsel: K.PARAMESHWAR

The Judgment of the Court was delivered by

M.R. Shah, J.:—

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