

Dominant Offset Pvt. Ltd. Vs. Adamovske Strojirny A.S.

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Court : Delhi

Decided On : May-06-1997

Reported in : 68(1997)DLT157

Judge : M.K. Sharma, J.

Acts : [Arbitration Act, 1940](#) - Sections 8; [Arbitration and Conciliation Act, 1996](#);
[Code of Civil Procedure \(CPC\), 1908](#) - Sections 9

Appeal No. : A.A. Appeal No. 82 of 1996

Appellant : Dominant Offset Pvt. Ltd.

Respondent : Adamovske Strojirny A.S.

Advocate for Def. : Mr. L. R. Gupta, Mr. Gupta

Advocate for Pet/Ap. : Arun Jaitley,; Mukul Rohatagi,; Maninder Singh,;

Judgement :

M.K. Sharma, J.

(1) The petitioner entered into an agreement with Zavody Vseobecneho Strojirenstvi, hereinafter referred to as Zvs on 12th of July, 1982. In the said agreement, it was stipulated that Zvs had developed, tested and was manufacturing automatic offset press Adast Dominant 714 and that the petitioner

was desirous of acquiring the technical documentation and know how for the said product and that Zvs was able and willing to supply the petitioner with the technical documentation, know how and to grant to the petitioner the right to use said documentation and know how for the manufacture, assembly, use and sale of the product. Subsequently, the petitioner entered into the agreements dated 18.7.1986 and 25.7.1986 with Zvs for Adast Dominant 514 and Adast Dominant 725 respectively. Subsequent thereto, it is stated in the petition that disputes arose between the parties in respect of the aforesaid two agreements and accordingly the present petition has been filed by the petitioner praying for reference to arbitration in terms of the arbitration clause in the agreements concerning enforcement of the terms of the aforesaid agreements.

(2) The respondent on service of notice, appeared in the case and submitted its reply, contending inter alia, that the petition is not maintainable both on the ground of want of territorial jurisdiction and relating to the subject matter. It was further contended that the respondent was not party to the agreements dated 18.7.1986 and 25.7.1986 forming subject matter of the present arbitration petition and also that the said agreements having lapsed by efflux of time were not subsisting and, therefore, no reference could be made in terms of the arbitration clause of the said agreements. On the basis of the pleadings of the parties, this Court framed three issues in the following manner:-

(I) Whether there was any agreement valid and subsisting between the parties.

(II) Whether this Court has jurisdiction to try and decide the present petition.

(III) Whether the disputes raised in the petition could be referred for arbitration in terms of the arbitration clause?

(3) I have heard Mr. Arun Jaitley appearing for the petitioner as also Mr. L. R. Gupta appearing for the respondent at considerable length. In the light of the submissions advanced by the learned counsel appearing for the parties, let me first take up for consideration the issue raised by the respondent with regard to the maintainability of the petition on the ground that this Court has no jurisdiction to try and decide the present petition. Mr. Gupta appearing for the respondent submitted

that this Court has no jurisdiction to entertain the present petition in view of the fact that the present is a case of international commercial arbitration as defined in Section 2(f) of the [Arbitration and Conciliation Act, 1996](#), hereinafter referred to as 'the Act'. The learned counsel drew my attention to the definition of Section 2(f) of the Act which defines the expression 'international commercial arbitration'. The said definition is as follows :-

'2(F). 'International commercial arbitration' means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is:-

(I) an individual who is a national of, or habitually resident in, any country other than India; or

(II) a body corporate which is incorporated in any country other than India;

or

(III) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or

(IV) the Government of a foreign country.

(4) In terms of the aforesaid definition of the expression 'international commercial arbitration' where at least one of the parties is an individual having nationality of another country other than India or a body corporate which is incorporated in any country other than India or an association or a body of individuals whose central management and control is exercised in any country other than India or the Government of a foreign country, the same would be a case of international commercial arbitration. The respondent herein is a body corporate which is incorporated in a country other than India and, therefore, in terms of the aforesaid definition, the present admittedly is a case of international commercial arbitration. Relying on the provisions of Section 11(9) of the Act, the learned counsel submitted before me that the Chief Justice of India alone has jurisdiction to appoint arbitrators in view of sub-section 12(a) of Section 11. Reference to Chief Justice in sub-sections (4), (5), (6), (7), (8) and (10) of Section 11 is to be construed as a

reference to the Chief Justice of India under the said Act. On the basis of the said provisions, the learned counsel submitted that the present petition seeking a reference from the Chief Justice of Delhi High Court is wholly incompetent. According to him, the jurisdiction to entertain a petition under Sections 9 and 11 of the Act in the case of international commercial arbitration is only with Chief Justice of India and not with Chief Justice of Delhi High Court. His further contention was that the present petition having been filed under Sections 9 and 11 of the Act, which occur in Part I of the Act is not maintainable as Part I applies only to such arbitration where the place of arbitration stipulated in the agreement is in India and shall not apply to any arbitration agreement wherein the place of arbitration is not in India but is outside India. He further submitted that as per the arbitration clause 5.07 of the agreement, the place of arbitration is London (UK) while the arbitration tribunal is the International Chambers of Commerce in Paris (France). According to him, since part I of the Act does not apply to the present international commercial arbitration, it is only part II which applies to such an arbitration. He further submitted that the present petition filed by the petitioner under Section 11 of the Act is not maintainable since Section 11 is the machinery section for the appointment of arbitrators. According to him, the arbitrator under the agreement is named, namely, International Chambers of Commerce in Paris (France). He submitted that since no notice was served by the petitioner to the respondent calling upon the respondent to concur in the reference of the alleged disputes to the named arbitration tribunal, the present petition is not maintainable. The counsel further submitted that this Court also has no territorial jurisdiction to entertain the present petition as no part of cause of action has arisen within the jurisdiction of this Court as the arbitration agreement was admittedly executed in Czech Republic and drawings and designs, technology and technical know-how were required to be supplied by the respondent to the petitioner in Czech Republic. He further submitted that payment of consideration of Rs. 6.70 lakhs for the supply of technology/technical know-how is to be paid to the respondent in that country and thus no part of cause of action has arisen within the territorial jurisdiction of this Court.

(5) In view of the aforesaid objections raised to the maintainability of the petition and upon hearing the counsel appearing for the parties, I proceed to record my

decision on the aforesaid submissions.

(6) Mr. Jaitley, appearing for the petitioner, drew my attention to sub-section (2) of Section 1 and also to sub-section(5) of Section 2. Sub-section (2) of Section 1 provides that the Act extends to the whole of India. The said sub-section has a proviso which provides that Parts I, Iii and Iv would extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

SUB-SECTION(2) and sub-section (5) of Section 2 which are relevant for deciding the case are also quoted hereunder :-

(2)This Part shall apply where the place of arbitration is in India.

(3)Subject to the provisions of sub section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

SINCE provisions of Section 9 will also have some relevance, the relevant portion thereof is extracted below :-

SECTION 9

'A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court :-

(I).....

(II)for an interim measure of protection in respect of any of the following matters, namely :-

(A)the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement;

(B).....

(C).....

(D)interimjunction or the appointment of a receiver;

(E).....

AND the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.'

(7) My attention was also drawn by the counsel appearing for the parties to the provisions of Section 11 which relates to provisions of appointment of arbitrators including that of the power of the Court in respect of the same:-

(1)A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2)Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3)Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4)If the appointment procedure in sub-section (3) applies and-

(A)a party fails to appoint an arbitrator within three days from the receipt of a request to do so from the other party; or

(B)the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

THE appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(5).....

(6)Where, under an appointment procedure agreed upon by the parties,-

(A)a party fails to act as required under that procedure; or

(B)the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(C)a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

A party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7).....

(8).....

(9).....

(10).....

(11).....

(12)(A)Where the matters referred to in sub-sections (4),(5),(6),(7),(8) and (10) arise in an international commercial arbitration, the reference to 'Chief Justice' in those sub-section shall be construed as a reference to the 'Chief Justice of India'.

(12)(B).....'

(8) The present act, namely, the [Arbitration and Conciliation Act, 1996](#), has been divided into three parts. Part I deals with to arbitration and contains Section 2 to Section 43, whereas Part li deals with enforcement of certain foreign awards and includes within its ambit Section 44 to Section 60, whereas Part li deals with conciliation and includes Section 61 to Section 81. Supplementary provisions are contained in Part Iv and the sections relating thereto are from Section 82 to Section 86. Apparently, thereforee, all the aforesaid sections, extracted hereinabove, from Section 2 to Section 11, admittedly are contained in Part I. Sub-section (2) of Section 2 of the Act provides that this Part, thereby signifying Part I,

shall apply where the place of arbitration is in India. Relying on this provision, the learned counsel submitted that since part I applies only to the arbitration where the place of arbitration is in India, the said provision contained in Part I cannot be made application and shall not apply to any arbitration agreement wherein the place of arbitration is not in India but is outside India. The agreements involved in the present case stipulate that the place of arbitration is London (UK) while the arbitration tribunal is the International Chambers of Commerce in Paris (France). The place of arbitration being outside India, the learned counsel submitted that provisions of Part I does not apply.

(9) The aforesaid argument of the learned counsel appears to be attractive at the first glance of the provisions. However, on a closer look of the provisions of the Act relied upon by the counsel for the parties, the said impression does not appear to be correct. Reasons for the same are not far to seek. On a reference to the proviso to sub-section (2) of Section 1, it is crystal clear that Part I shall apply to a case of international commercial arbitration in the case of State of Jammu & Kashmir. thereforee, the provisions in Part I applies to a case of International Commercial Arbitration relating to the State of Jammu & Kashmir. Again, when one refers to sub-section (5) of Section 2 which states that subject to the provisions of sub-section (4) and save in so far as is otherwise provided by any law for the time being in force, this Part (meaning thereby Part I) shall apply to all arbitrations and to all proceedings relating thereto. Sub-section (12)(a) of Section 11 also provides that when the matter referred in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to 'Chief Justice' would be construed as a reference to 'the Chief Justice of India'. A conjoint reading of all the aforementioned provisions clearly indicate that sub-section(2) of Section 2 is an inclusive definition and that it does not exclude the applicability of Part I to those arbitrations which are not being held in India. The aforesaid interpretation gets support from the provisions of sub-section (5) of Section 2 which provides that Part I shall apply to all arbitrations and to all proceedings relating thereto which would also, in my considered opinion, include an international commercial arbitration. So far Section 8 and Section 11 are concerned, in my considered opinion, they operate in two different fields as Section 8 is the power vested on a judicial authority to make a reference of the

disputes arising between the parties to an arbitrator whereas Section 11 empowers a Court to appoint an arbitrator when there is a difference between the parties regarding appointment of an arbitrator.

(10) On a careful study of the aforesaid provisions, I find that the aforesaid distinction between the power of the Court to refer the disputes to an arbitrator and the power to appoint an arbitrator by the Court has been recognised under the present Act. Section 8 of the [Arbitration Act, 1940](#) confers powers upon the Court to appoint an arbitrator where the parties do not concur in his appointment while Section 20 of the said Act entitles a party to apply for the filing of the arbitration agreement in Court and empowers the Court to make an order of reference to the arbitrator appointed by the parties, or in the absence of such appointment, to the arbitrator appointed by it. Section 8 only empowers the Court to appoint an arbitrator where the parties do not concur in the appointment whereas Section 20 confers power on the Court to order the agreement to be filed and, further, to make an order of reference to the arbitrator appointed by the parties, or, where the parties cannot agree upon an appointment, to an arbitrator appointed by the Court. Similar distinction as was existing under the old Act in the nature of Section 8 and Section 20 appears to have been retained in the present Act in view of enactment of Section 8 and Section 11 of the Act.

(11) In the present agreement, the arbitrator is named, namely, International Chambers of Commerce in Paris. Admittedly, no notice was given by the petitioner to the respondent seeking for a reference of the disputes stated to have arisen between the parties to the said arbitrator. therefore, the present is a case where the provisions of Section 8 will apply and not the provisions of Section 11 of the Act, in as much as, no notice having been given to the respondent it cannot be said that there is any failure either on the part of the party or on the part of the appointed arbitrators to appoint the arbitrator or the third arbitrator as the case may be. Under such circumstances, the provision that would apply to the facts and circumstances of the present case is Section 8 of the Act under which a judicial authority, before whom an action is brought in a matter which is the subject matter of an arbitration agreement, shall refer the parties to arbitration. Although in the present case, no notice was given by the petitioner to the respondent seeking to

invoke the arbitration clause, yet when the matter is brought before this Court, this Court has the power and jurisdiction to refer the parties to arbitration, exercising the powers under Section 8 of the Act, provided the other objections raised by the respondent herein in the present case are found to be without merit.

(12) It is a recognised legal principle that even if it is held that a petition is not maintainable under the specific provision under which it is preferred but maintainable under any other provision of the Act, mere mention of a wrong provision does not render the petition non-maintainable.

(13) thereforee I have no hesitation in my mind to construe and hold that the present petition has been preferred by the petitioner is this Court under Section 8 of the Act which, in my opinion, is applicable in full force to the facts and circumstances of the present case, and not under Section 11 of the Act which is mentioned in the petition. The provisions of Section 11, as I have held above, are not applicable to the facts of the present case, and thereforee, it is not necessary for me to examine and decide the question raised by the respondent as to whether this High Court or the Supreme Court has jurisdiction to entertain the present petition. The said question would have arisen for my consideration if the parties would not have agreed upon the appointment of the arbitrator. But since in the present case the arbitrator is a named arbitrator under the agreement, the provisions of Section 11 are not attracted and, thereforee, in my considered opinion, this Court shall have jurisdiction to try and decide the present petition. The preliminary objection with regard to the maintainability of the petition on the ground of want of jurisdiction in respect of the subject matter, thereforee, is without merit.

(14) So far as the question raised by the respondents with regard to the maintainability of the petition on the ground of territorial jurisdiction, in my considered opinion, the said objection also has no force. The drawings and the technical know how and components of parts were to be supplied by the respondents to the petitioner within the jurisdiction of this Court. The respondent have entered into a separate contract with another firm which is also a subject matter of dispute in the present petition. The said firm also hails from Delhi. The approval for obtaining the drawings and the know how from Zvs was to be

obtained by the petitioner from the Central Government whose office is located at Delhi and, therefore, this Court shall have territorial jurisdiction to try and decide the present case and the objection on the ground of territorial jurisdiction is also rejected.

(15) Having decided the aforesaid preliminary issue raised by the respondents, let me now proceed to decide the other issues arising for my consideration. The learned counsel appearing for the petitioner submitted before me that the respondent was not a party to the said agreements dated 18th and 25th July, 1986 forming subject matter of the arbitration petition. The counsel submitted that the said agreements were entered into between the petitioner and Zvs, a department of the erstwhile communist state of Czechoslovakia and not with the respondents. The counsel referred to the provisions of the definition of a 'party', as appearing in Section 2(h) of the Act, meaning a party to an arbitration agreement and also to the provisions of Section 7 as 'an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between', the learned counsel submitted that the only arbitration agreement contemplated in the present Act is of the parties to the agreement exclusively and therefore, the expression 'party' does not include a successor or assignee and cannot be extended to such successor or assignee of a party. The learned counsel submitted that the respondent derives its name from the town Adamov and was formed in 1992 and is an independently registered company. He submitted that since the erstwhile Communist State of Czechoslovakia was dismantled in 1990 and split into three independent states, one of them being the Czech Republic, the successor of the erstwhile state of Czechoslovakia was, if at all, the Czech Republic. According to him, the respondent is an independent company incorporated in 1992 and has taken over only some part of the assets of the erstwhile communist State of Czechoslovakia and is best an assignee of the erstwhile communist Government of Czechoslovakia with respect of the said assets and can, under no circumstances, be held responsible for contractual obligations of the said communist Government merely by being an assignee of some of its assets. In support of his statement, the learned counsel relied upon the decisions of the Supreme Court in *Union of India Vs . M/s. Chaman Lal Loona & Co. : [1957]1SCR1039* .

(16) The learned counsel also drew my attention to the various averments made in the petition in support of his submissions that the petitioner has nowhere said in the petition that the respondent is successor in interest of the erstwhile Czech Republic or even of ZVS. Countering the aforesaid submissions of the learned counsel for the respondents, Mr. Jaitley submitted that after the split which took place in the erstwhile Czechoslovakia, Zvs was split up into three corporate entities and that Adamovske Strojirny, the respondent became the successor in interest/assignee of ZVS. He drew my attention to the provisions of clause 5.03 of the two agreements which stipulate that the agreement would bind successors and assignees of the respective parties. He submitted that the successor/assignee of Zvs, that is, erstwhile state entity of the Czechoslovakia Republic has to be determined in relation to the successor and assign of the business/machines covered by the two agreements and in that process it would be found that the machines in question being models Adast Dominant 514 and Adast Dominant 725, the rights in relation to the said machines as also the improvements in the said machines vested in Adamovske Strojirny, the present respondents. He further submitted that the fact that the respondent is an assignee/successor of Zvs also proved by further evidence on record and in this connection, he drew my attention to the evidence adduced by the parties in the form of affidavit, particularly, the affidavit filed by the petitioner. Clause 5.03 of the agreement is extracted below for ready reference:- @SUBPARA = 'This agreement and each every covenant, term and condition herein is binding upon and enures to the benefit of the parties hereto and their respective successors but neither this Agreement nor any rights hereunder may be assigned or sublicensed, directly or indirectly, voluntarily or by operation of law except with the prior written approval of Licensor and Licensee on terms which are acceptable to both parties and the Governments of India and Czechoslovakia.'

THE aforesaid stipulation entered into between the parties clearly provides that the agreement as also each of the terms and the conditions is binding upon and enures to the benefit of the parties and their respective successors. thereforee, each and every terms and conditions of the aforesaid agreement was intended to be binding not only on the parties but also on their successors as well. thereforee, the issue that arises for my consideration its whether the respondents could be

considered as the successor of the ZVS.

(17) My attention was drawn to the decision dated 24.3.1992 which is a translated copy of the order from the file of the Government of F the Czech Republic. The said document incorporates the decision of the Government of Czech Republic of 4.3.1992 and lays down that the Government approves privatisation projects including privatisation of the state enterprise Adast Adamov. In this connection, reference may also be made to the protocol which is also on record as Ex. P-8 filed by the petitioner. The said protocol was signed between Adast Joint Stock Company and the petitioner. The said protocol records the agreement between Adast/KOVO to deliver quantities of components in 1992 with regard to the various machines including the one relating to 516 which is stated to be an improved variety of 514 as also Adast Dominant 725. The said protocol further records the agreement that Adast would positively supply to the petitioner the complete documentation of technology and know how for the models Adast 716, Adast 516, Adast 726 which are stated to be improved varieties. The said protocol indicating the agreement between the respondent and the petitioner to positively supply to the petitioner the complete documentation of technology and know how records specifically that the said documentation forming part of the agreement relates to part of existing collaboration agreement. The said existing collaboration referred thereto cannot be anything else but the two agreements dated 18.7.1986 and 25.7.1986. There are other corroboration evidence on record to show that the respondent is the successor in interest of Zvs and in this connection reference may be made to the vouchers annexed by the petitioner to the affidavit dated 10.8.1996. I may also appropriately refer here to the letter dated 11.4.1995 written by the respondent to J. Mahabeer Company wherein it has been recorded 'the company Adamovske Strojirny state enterprise Adamov and its legal successors, Adamovske Strojirny a.s. (respondent in the present case).' The respondent therefore, has admitted therein that it is the successor in interest of ZVS.

(18) My attention was also drawn to the decision of Anakapalle Cooperative Agricultural and Industrial Society Ltd. Vs . Workned & Others : (1962)IILLJ621SC . In the said decision, the Supreme Court has laid down the relevant factors to be taken into consideration in deciding whether an entity in successor of another

entity or not. I have carefully gone through the factors mentioned therein and considered the same weighing the facts of the present case and having done so and having regard to all the relevant facts, I cannot but arrive at the conclusive opinion that the respondent is a successor in interest of ZVS. Since the respondent is held to be the successor of Zvs, the entity which entered into the two agreements with the petitioner consequently in terms of clause 5.03 of the agreements, all the terms and conditions and obligations thereof are assigned to the respondents and they are held to be bound by the same. thereforee, this issue is also answered in favor of the petitioner and against the respondent holding that the respondent is the successor in interest and assignee of ZVS.

(19) This leaves me with the task of considering the last objection raised by the respondents, contending inter alia, that the two agreements are not subsisting and have lapsed by efflux of time. For adjudicating the aforesaid issue, it would be necessary to refer to definitions incorporated in the agreement, particularly, the definition of 'effective date' and 'expiration date'. The expression 'effective date' has been defined in the agreement as meaning the date of the last approval required by law of the respective country of the parties for the agreement to become valid after signing the agreement by the parties concerned and having been taken on record by Indian authorities whereas 'expiration date' has been defined as to mean the 8th anniversary of the effective date. thereforee, the agreements were intended by the parties to become effective from the date on which the last approval required by law of the respective countries is received to make the agreement valid.

(20) My attention was drawn to an admission made by the petitioner in the plaint filed by suit No. 1448/94. In paragraph 13 of the said plaint, the petitioner stated that the aforesaid two agreements, namely, agreements dated 18.7.1986 and 25.7.1986 with the respondents expired in July, 1994. The counsel appearing for the petitioner, however, submitted before me that they have inadvertently made the aforesaid admission through bona fide mistake and in order to rectify the said mistake they have filed an application praying for amendment of the plaint. The said amendment application has been dismissed by me by a separate order passed today in the said suit. Considering the facts and circumstances of the case

and having regard to the submissions of the learned counsel for the parties and taking note of the decisions of the Supreme Court on the issue, I have dismissed the said application.

(21) Be that as it may, apart from the aforesaid admission in the pleadings, let me independently consider the submission of the learned counsel of the parties on this issue and thereafter come to a definite finding on the said issue. As disclosed by the agreements itself, the tenure and duration of both the agreements was eight years from the date of obtaining the last approval/permission of the respective Governments necessary to make the agreements valid. My attention has been drawn to a document filed by the petitioner which is a letter dated 22.5.1987 containing the approval of the Government of India. The said letter conveyed the approval of the Government of India to the import of designs and drawings by the petitioner further indicating that the said approval is valid for a period of six months from the date of issue of the said letter. The learned counsel appearing for the petitioner submitted that although the said letter dated 22.5.1987 could be said to be the letter granting approval, but the same is only the first approval in that regard obtained from the Indian authorities. According to the learned counsel, the said approval was valid only for a specified period and subsequently the said approval lapsed with efflux of time and the petitioner had to obtain subsequent approvals. The further submission is that since the first set of drawings which were sent by the Zvs in August, 1988 were not the latest drawings and were only a part of the drawings, the petitioner was forced to obtain approval from the Reserve Bank of India which approval, if was not obtained, the agreement would not have been valid under the Indian law as they would be contrary to the provisions of the Foreign Exchange Regulation Act. According to the petitioner since the Reserve Bank of India's approval was obtained on 8.4.1992, that was the last approval required by the law of India for the agreements to be considered valid and, therefore, the effective date would depend only on this approval as per clause 1(a) of the agreement and computing there from, the agreement should be interpreted to be valid till the year 2000.

(22) On the other hand, the learned counsel appearing for the respondents drew my attention to the subsequent approvals granted by the Government of India

which invariably referred to the earlier approval letter dated 22.5.1987. According to the learned counsel, the subsequent letters relied upon by the counsel for the petitioner are letters indicating extension of the earlier and final approval granted by the Government of India on 22.5.1987 and that the said subsequent letters relate to operational matters under the said agreements after they have become valid. The counsel for the respondent also drew my attention to the letters dated 9.9.1989 and 6.10.1990 indicating that the petitioner had received the drawings under the agreements in 1988 and submitted that as per the definition of the 'delivery time', drawings were to be supplied within 12 months after the effective date. The said drawings having been supplied to the petitioner in 1988, necessarily therefore, the drawings were supplied within 12 months from the effective date which is admittedly the year 1987. I find considerable force in the submissions of the learned counsel for the respondents.

(23) My attention has also been drawn to Exb. R-3 annexed with the affidavit filed by the respondent which is a hand note on foreign collaborations. The said hand note contains the list of approved collaborations for the year 1987 by the Government of India which includes the present two agreements with the petitioner. Considering the aforesaid evidence on record and having regard to the submissions of the learned counsel for the parties, I hold that apart from the admission of the petitioner in paragraph 13 of the plaint in suit No. 1448/94, contending inter alias that the two agreements with the respondent expired in July, 1994, there are other evidence on record to prove and show that the two agreements became effective and operational from 1987. Under the terms and conditions of the agreement, the tenure and term of the agreements was to be 8 years from the date of obtaining permission of the Government of India necessary to make the agreements valid. The petitioner having obtained the approval from the Government of India under the letter dated 22.5.1987 in pursuance whereof the drawings were also supplied to the petitioner in 1988 which is within 12 months period from the effective date as envisaged under the delivery time, the said approval was the first approval and, therefore, the effective date could be held to be computed from the date 22.5.1987. The said agreement therefore were valid for eight years from the said date and therefore valid till May, 1995, after which the said agreements are held to have lapsed by efflux of time. The approval stated

to have been given by the Reserve Bank of India in 1992 is a consequential permission and is not relevant for the purpose of determining the commencement of the effective date. The disputes that are stated to have been arisen in the present petition are set out by the petitioner in paragraph 20 of the petition. All the disputes mentioned therein revolve around the action of the respondents in appointing M/s. Amit International as their agents which is stated to be in gross violation of the terms of the agreements. It is stated in paragraph 14 of the petition that the respondent recently appointed the said M/s. Amit International as its sole selling agent in India and the petitioner came to know through an advertisement in the magazine 'Student Technologist' published in May, 1996. thereforee the said appointment was subsequent to the date of expiry of the agreements and consequently the contention of the petitioner that the agreements are valid till the year 2000 is not sustainable and is accordingly rejected. The agreements have, at any rate, expired with efflux of time latest at least by May 1995 and the appointment of M/s. Amit International by the respondent as their sole selling agents being subsequent thereto, in my considered opinion, no referable question as set out in paragraph 20 is made out by the petitioner.

(24) Accordingly, the issues as framed on 18.10.1996 are answered in the following manner:- Issue No.1

IT is held that although there were agreements valid and subsisting between the parties, the same expired by efflux of time at least in the month of May, 1995 and subsequent thereto there was no valid and subsisting agreement between the parties. This issue is decided against the petitioner and in favor of the respondents.

Issue No.2

ISSUENo.2 is decided in favor of the petitioner and against the respondent holding that this Court has jurisdiction to try and decide the present petition.

Issue No.3

ISSUENo.3 is decided against the petitioner and in favor of the respondents holding that the disputes raised in the petition cannot be referred for arbitration.

IN view of my findings against issues No.1 and 3, the petition stands dismissed as having no merit, but without any cost.

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