

Dispute Resolution Hotline

January 10, 2011

THE CURIOUS CASE OF THE 'UNAUTHORIZED' EMPLOYEE

The Supreme Court of India ("**Court**") has, in the case of *Alva Aluminium Ltd., Bangkok ("Petitioner") Vs. Gabriel India ("**Respondent**") Ltd.*, by its order dated November 16, 2010 in Arbitration Petition 2 of 2010, *inter alia*, reinforced the principle of "indoor management" and held that a party seeking to avoid a contract (containing an arbitration agreement) on grounds of the signatory (its own officer) having no authority to execute the same, needs to prove its case beyond doubt with valid material. Further, a heavy burden of proof lies upon the party who seeks to challenge validity of a contract on the allegation of misrepresentation, fraud or coercion. The Court proceeded to appoint an arbitrator under the said Agreement (defined hereunder).

BRIEF FACTS:

The parties had ongoing commercial relations and had executed a contract for sale of Aluminum Alloy Ingots, being Contract No. 073/2008 dated July 30, 2008 ("**Agreement**"). The said Agreement had undergone several rounds of negotiation before execution including with two officers of the Respondent.

Disputes arose between the parties under the said Agreement and the Petitioner thereafter invoked arbitration ("**Notice**"). At the late stage during the exchange of ongoing correspondence and legal notices, the Respondent replied ("**Reply**") and contended that (i) the Agreement was not signed by an authorised person (on its behalf); and (ii) the signature of the (allegedly) unauthorized person had been obtained by misguiding, enticing and misdirecting him and the Agreement was therefore not enforceable as being void and unenforceable.

The Petitioner sent a rejoinder to the said Reply and thereafter, the Respondent continued to contend that there was no valid contract (and therefore no valid arbitration agreement) between the parties. In these circumstances, the Petitioner filed a petition before the Court seeking appointment of an arbitrator.

ORDER:

The Court, after hearing the parties, recorded that the two questions which arose were:

1. Whether the Court was required to determine the existence of an arbitration agreement between the parties? And
2. Whether any such agreement had indeed been executed between the parties to the proceedings, to call for the appointment of an arbitrator for adjudication of the disputes and differences that had arisen between the parties?

The Court relied upon its various earlier decisions including *SBP & Co. V/s Patel Engineering Ltd.* (2005 (8) SCC 618) and held that it was required to determine the existence of an arbitration agreement before appointing an arbitrator. Thereafter, upon a perusal of the correspondence exchanged between the parties during the negotiations, the Court held that the documents executed were suggestive of the parties having finalized and signed a contract.

The Court noted that, therefore, the question to be decided was whether such agreement between the parties is valid and enforceable. The Court considered the following to come to a conclusion that a legally valid contract had indeed come into existence between the parties which contained an arbitration clause for adjudication of disputes that may arise between them.

a. That it was the Respondent's own case that the said officer had been authorised to negotiate the terms of the Agreement. Having been empowered to negotiate the terms of the Agreement, it could not be said that the said officer was induced or defrauded into signing the same.

b. That the document, information and correspondence, when taken in their totality (especially in light of the Agreement), did not show that the parties were merely negotiating a contract;

c. That the Respondent had failed to place on record any charter of duties and powers of the said officer, nor any material to show that any action was taken against the said officer for the alleged transgression of the limits of his authority and the consequent disciplinary action taken against the officer. That the Petitioner had no reason to believe or suspect that the concerned officer with whom they were dealing did not have the authority to execute the Agreement. Failure of the Respondent to place such evidence which was in its special knowledge on record must give rise to an adverse inference against the Respondent.

d. That the Respondent's contention (that their officer had been misguided, enticed and misdirected) was not backed with any particulars when, in law, a heavy duty lay upon the Respondent to prove such an allegation.

The Court therefore upheld the validity of the Agreement and proceeded to appoint a Sole Arbitrator to adjudicate the dispute between the parties.

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The instant case brings to the fore significant questions that arise in numerous day-to-day transactions entered into by companies today. Ensuring that the person entering into such agreements for and on behalf of a company is duly authorised and empowered by necessary corporate actions has now assumed paramount importance and it is recommended that prior to the execution of any agreement, the authority of such person duly verified.

A charter of duties for employees or a board resolution empowering a person to perform certain actions for and on behalf of a company is becoming essential. Such documents will show the extent of authority of an officer of the company. Further, in the event an officer of a company transgresses his permitted authority, it is important that the company adopt disciplinary proceedings within reasonable time against such a person and take necessary steps to safeguard the interest and liabilities of the company under the agreement signed without authority

- Sahil Kanuga & Vyapak Desai

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