

Dispute Resolution Hotline

February 06, 2018

DELHI HIGH COURT REMOVES RED TAPE IN REFERRING DISPUTES TO ARBITRATION

The Delhi High Court has held that:

- Formal application under Section 8 is not required if defendant raises an objection on maintainability of suit due to existence of arbitration clause in written statement;
- Mere existence of an objection is sufficient and need not be coupled with a specific prayer for reference to arbitration.

INTRODUCTION

Recently, the Delhi High Court in *Parasramka Holding Pvt. Ltd. (“Parasramka”) and Ors. vs. Ambience Pvt. Ltd and Anr. (“Ambience”)*¹ referred the parties to arbitration without a formal application under Section 8 of the Arbitration and Conciliation Act² (“A&C Act”). In a pro-arbitration judgment, the court upheld the plea of the defendants that mere reference to the arbitration agreement in the written statement was sufficient to require the court to refer the parties to arbitration.

FACTS

On October 27, 2009 Ambience executed an Apartment Buyer’s Agreement (“Agreement”) with Parasramka. The parties agreed that all disputes and/or differences between any two or more of the Purchaser/s, Allottees, Apartment Owners, Association of Apartment Owners and/or the Company shall be referred to arbitration.

When disputes arose between the parties, Parasramka filed a suit in the Delhi High Court on March 15, 2017. Ambience first chose to file an application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, which application came to be dismissed. This application did not contain any reference as regards existence of the arbitration clause.

On May 20, 2017, Ambience filed a written statement in which they objected to maintainability of the suit in light of the arbitration agreement. Thereafter, the Defendants filed a formal application under Section 8 of the A&C Act.

ISSUE

The questions posed to the Delhi High Court were:

- Whether or not the application under Section 8 was maintainable since it was filed after submission of the written statement?
- Whether or not a mere averment as to the existence of an arbitration agreement without a specific prayer for reference would satisfy the requirements of an application under Section 8?

CONTENTIONS OF PLAINTIFFS:

The Plaintiff *inter alia* argued that an application under Section 8 cannot be filed subsequent to the submission of first statement on the substance of the dispute i.e. the written statement. By filing the written statement prior to filing of the present applications have submitted themselves to the jurisdiction of this Court and are now estopped from relying on the arbitration clause. Merely raising a plea in the written statement that there exists an arbitration agreement between the parties without any specific prayer for referring the dispute to arbitration is inconsequential.

CONTENTIONS OF DEFENDANTS:

The Defendants *inter alia* argued that they had already pleaded as to existence of arbitration agreement in the written statement and had objected to jurisdiction of the court to adjudicate upon the suit. The Defendants had not submitted to the jurisdiction of the court. As long as a party draws the court’s attention to the arbitration agreement no later than the first statement on the substance of the dispute, the jurisdiction of the court ceases and there is no requirement to seek specific reference to arbitration.

JUDGMENT

After hearing the parties, the Court ruled that the objection as to maintainability of the suit and averment of existence of an arbitration clause – in the written statement – could be treated as an application under Section 8 of the A&C Act.

The Court held³ that even when the written statement was filed, strings are attached by challenging the maintainability of the suit in view of the arbitration clause. In such circumstances, the preliminary objection of Ambience contained in the written statement can be treated as an application under Section 8 of the A&C Act.

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Discussing the amendments to Section 8 of the A&C Act, the Court considered that Section 8(1) prior to amendment⁴ required a party to only intimate to the Court that the action before the Court is the subject matter of an arbitration agreement. Thereafter, it was the duty of the judicial authority to refer the parties to arbitration. The Court assessed the amended Section 8(1) and found that there was no discussion by the Law Commission on this issue and the substitution of S. 8(1). Therefore, the Court ruled that there was no requirement of filing a formal application seeking specific prayer for reference, as long as the party raised an objection on maintainability of the suit in light of the arbitration clause.

The Court also alluded to the change in the language of Section 8 after the amendment to the A&C Act and held that the expression, "*so applies not later than the date of submitting*" means the outer limit for filing the written statement in a particular case. The amended Section 8 therefore sets out a limit to the period within which such application must be presented. In this case, the written statement was filed within the limitation period of 120 days after dismissal of the application under Order VII Rule 11. This written statement was therefore within the limitation period.

ANALYSIS

This judgment is another step forward by the judiciary in facilitating ease of reference to arbitration in cases where the plaintiff files a suit in breach of an arbitration agreement. The Court has effectively relaxed the requirement for filing of a separate application under Section 8 as well as a specific prayer and specifically permitted that the objection to jurisdiction of the court on the ground of the arbitration agreement contained in the written statement is sufficient.

In filing any application/ statement prior to an application under Section 8, a party must ensure that the pleadings cannot be construed to constitute an intention to submit to jurisdiction of court and a waiver of their right to refer disputes to arbitration.

This judgment may also help reduce the anomalies created due to strategy adopted by litigants when faced with a civil suit and the time lag between filing of applications under Order 7 Rule 11 of the Code of Civil Procedure and the objection to maintainability of a civil suit under Section 8 of the A&C Act.

– **Kshama A. Loya & Sahil Kanuga**

You can direct your queries or comments to the authors

¹ CS(OS) 125/2017, dated January 15, 2018

² Section 8: Power to refer parties to arbitration where there is an arbitration agreement - "(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists."

³ Relying on Eastern Medikt vs. R.S. Sales Corporation & Anr. (2007) 137 DLT 626, High Court of Delhi

⁴ Relying on Sharad P. Jagtiani vs. Edelweiss Securities Limited FAO (OS) 188/2014, High Court of Delhi (DB)

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