

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.378 of 2013
M/s Emcon Engineering
Versus
M/s Exterran & others

Date	Order with signature of Judge
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For hearing of CMA 6850/2015

Date of hearing: 19.01.2016

Kazi Abdul Hameed Siddiqui for plaintiff.
Mr. Taha Alizai for defendant No.1.
Mr. Aminullah Siddiqui for defendant No.2.

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Muhammad Shafi Siddiqui, J. - This is an application under section 3/4 of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act, 2011 (hereinafter referred to as Act 2011) whereby defendant No.1 is seeking stay of the present proceedings.

Brief facts of the case are that the plaintiff has filed this suit for recovery of outstanding amount against the defendants on the strength of an agreement dated 20.12.2005. After service was effected, aforesaid application for staying the proceedings by operation of the arbitration clause of the subject agreement relied upon by the plaintiff has been filed.

It is urged by learned counsel for defendant No.1 that the Sales Representation Agreement between Universal Compression Inc. i.e. the predecessor of defendant No.1 and the plaintiff was executed on 20.12.2005, which contains the arbitration clause. He submitted that the suit is misconceived and not maintainable against defendant No.1 being in violation of the aforesaid clause of the agreement.

Learned counsel further submitted that in terms of the pleadings the plaintiff has conceded that he was engaged for supply of four units of 5500 HP Electric Motors/ DR 7 HOS 6 type reciprocating compressors for usage at Korangi Thermal Power Plant and the agreement and commission structure contract dated 20.12.2005 was also applied in the letter and spirit on this supply. The subject agreement in terms of clause 10 provides arbitration in case of any dispute between them and hence on their own admission this suit is to be referred to the arbitrator to be chosen by the parties who may appoint third arbitrator jointly which arbitration is to be held in Houston Texas, U.S.A.

Counsel further submitted that whatever amount, that is being claimed, is in fact a supply of compression equipment and the plaintiff is only their dealers and hence after the promulgation of Act 2011 the discretion, as available to the Court earlier, could not be exercised under the present Act of 2011.

Counsel further submitted that the plaintiff has to present a case treating the agreement as null and void to save him from application of the aforesaid law. However, since plaintiff himself relied upon the aforesaid agreement of 20.12.2005 such exception within the law is not available with him.

Counsel for defendant No.1 in support of his arguments has relied upon the cases of Far Eastern Impex (Pvt.) Ltd. v. Quest International Nederland BV (2009 CLD 153) and Cummins Sales & Service (Pakistan) Limited v. Cummins Middle East FZE (2013 CLD 291) wherein the applicability of the aforesaid law relating to the arbitration clause was highlighted.

On the other hand learned counsel for the plaintiff submitted that the plaintiff has filed this suit for recovery based on the provisions of

Contract Act and hence the applicability of the provisions of arbitration clause could not be enforced. He submitted that the reliance of the plaintiff on agreement dated 20.12.2005 containing an arbitration clause was only to the extent of relationship between the plaintiff and defendant No.1 and the terms incorporated therein. He however submitted that the arbitration clause alone could not be used as a tool to oust the plaintiff from exhausting the jurisdiction of this Court.

When inquired as to on what basis subject supply was made, the counsel again insisted and relied upon the aforesaid agreement of 20.12.2005 as there is no other agreement in relation to the supply of equipment regarding which this suit for recovery has been filed.

Heard the learned counsel and perused the material available on record.

The subject agreement available on record as Annexure 'B' at page 31 executed between plaintiff and defendants relates to a specific opportunity to submit a bid for the manufacturing of compression equipment for Lincas Electro VG/Siemens Pakistan Engineering Company's project known as DHA Cogen. This agreement further provides in the fourth recital that the company desired to use the services of Representative to assist company in making the contact with the customer for the purpose of submitting of bid with respect to the project. Clause 10 of the aforesaid agreement also provides an arbitration clause in case any dispute between the parties arises. Although this agreement is for a specific project but on account of own admission of the plaintiff, the subject agreement and the commission structure contract dated 20.12.2005 were to be applied in the letter and spirit on the subject supply. The plaintiff has not been able to convincingly explain as to what this admission in Para 27 is about when he refuses to refer the matter to the arbitration in terms of clause 10 of

the agreement. Such admission alone is sufficient to consider the subject agreement as binding at least to the extent of the plaintiff.

It may also be noted that the plaintiff has not sought any correction or amendment in the pleadings. So also he cannot argue his case beyond the pleadings. The nature and scope of Act XVII of 2011 is such that the discretion, as available in Section 34 of the Arbitration Act, 1940, is not available. A party to an arbitration agreement against whom legal proceedings have been brought and in respect of a matter which is covered by the arbitration agreement, may upon notice to the either party to the proceedings, apply to the Court in which the proceedings have been brought, to stay the proceedings insofar as the subject matter is concerned unless the arbitration agreement is claimed to be null and void or any part is incapable of being performed, which is not the case here as in terms of Para 27 of plaint the plaintiff himself seeks application of the subject agreement in letter and spirit, which includes the arbitration clause.

No doubt the goods that have been supplied were other than the project mentioned in the agreement but then it is the sole agreement which is claimed by plaintiff itself to determine the relationship between the parties.

Accordingly, the application in hand is allowed and the proceedings of this suit are stayed. Parties are directed to refer the matter to the arbitrations in terms of clause 10 of the subject agreement.

Dated:

Judge