

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

Reserved on: 20.09.2023

Pronounced on: 13.10.2023

EXA No.01/2016

**CRP FOOD IMPORT- EXPORT
GMBH & CO KG**

...PETITIONER(S)

*Through: - Mr. Syed Faisal Qadiri, Sr. Advocate with
M/S: Salih Pirzada & Sharaf Wani, Advocates.*

Vs.

KASHMIR KESAR MART

...RESPONDENT(S)

*Through: - Mr. M. I. Dar, Advocate, with
Mr. Ruaani & Ms. Sana Imam, Advocate.*

CORAM:HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The instant petition has been filed by the petitioner under Sections 47 and 49 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996"), for enforcement of a foreign award dated 11.02.2015.

2) The respondent has filed the objections, supplementary objections and additional affidavit to object the petition filed by the petitioner.

3) Learned counsel for the respondent has raised a preliminary objection in respect of the maintainability of the present petition on the ground that Part-II the Act of 1996 was never made applicable in the erstwhile State of Jammu and Kashmir, as only Parts I, III and IV of the Act of 1996 were extended to the erstwhile State of Jammu and Kashmir so far as relating to International Commercial Arbitration and

Commercial Conciliation. He has further submitted that even if for the sake of arguments it is accepted that Part-II of the Act of 1996 was applicable in the erstwhile State of Jammu and Kashmir, still the petitioner has not complied with the provisions contained in Section 47 of the Act of 1996, as the award is in German language though translated into English but the same has not been certified by the Diplomatic or Consular agent and further has also not been certified as correct in accordance to the law prevailing in India. He has placed reliance on a judgment of the High Court of Calcutta in the case of **KTC Korea Co. Ltd. Vs. Hobb International Private Ltd.** 2004 SCC OnLine Cal 179.

4) *Per contra*, Mr. Faisal Qadiri, the learned senior counsel appearing for the petitioner, has submitted that the Act of 1996 applied in its entirety to the erstwhile State of Jammu and Kashmir in respect of the International Commercial Arbitration or Conciliation. He has further submitted that the petitioner has complied with the provisions contained in Section 47 the Act of 1996 and, as such, the contentions raised by the learned counsel for the respondent are misconceived. He has further adverted that the provisions contained in section 47 the Act of 1996 are not mandatory in nature but directory and the enforcement and execution of a foreign award cannot be refused on the ground that the provisions of Section 47 are not complied. He has placed reliance upon the judgments of the Hon'ble Supreme Court of India in **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552** and **PEC Ltd. v. Austbulk Shipping Sdn. Bhd., (2019) 11 SCC 620.**

5) Heard and perused the record.

6) The perusal of the record reveals that the petitioner has filed the present petition for enforcement and execution of the award dated 11.02.2015 passed by the Arbitral Tribunal in Hamburg, Germany. The perusal of the record further reveals that the said award is in German language and a translated version of the award from German to English language has also been placed on record.

7) The following questions arise for the consideration of this Court:

(I) *Whether Part-II of the Arbitration and Conciliation Act, 1996, was applicable in the erstwhile State of Jammu and Kashmir?*

(II) *If the answer to question No.(I) is in affirmative, whether petitioner has complied with the provisions contained in Section 47 the Act of 1996?*

8) Now this Court would examine the questions as framed above.

Question No.(I): *Whether Part-II of the Arbitration and Conciliation Act, 1996, was applicable in the erstwhile State of Jammu and Kashmir?*

9) In order to determine Question No.(I), this Court deems it proper to extract the provisions contained in Section 1(2) of the Act of 1996, as was applicable at the time of filing of the present petition, as under:

(1)-----

(2) *It extends to the whole of India:*

Provided that Parts I, III and IV shall 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.

Explanation.-In this sub-section, the expression "international commercial conciliation" shall have the same meaning as the expression "international commercial arbitration" in clause (f) of sub-section (1) of section 2, subject to the modification that for the word "arbitration" Occurring therein, the word "conciliation" shall be substituted.

10) The Act of 1996 comprises of four parts. Part I deals with general provisions of arbitration, Part II deals with enforcement of certain foreign awards, Part III deals with conciliation and Part IV deals with supplementary provisions.

11) Section 1(2) of the Act of 1996 has extended the operation of the Act of 1996 to the whole of India. The proviso appended to Section 1(2), as quoted above, provides that Parts I, III and IV shall 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. Parts I, III and IV of the Act of 1996 have not been made applicable to the erstwhile State of Jammu and Kashmir in respect of domestic arbitrations as same were getting covered under the J&K Arbitration and Conciliation Act 1997.

12) Part-II of the Act of 1996 specifically deals with certain foreign awards and the other parts of the Act of 1996 have been made applicable to the erstwhile State of Jammu and Kashmir in respect of international arbitration or conciliation only. So, the Part II of the Act of 1996 dealing with certain foreign arbitration awards *ipso facto* was equally applicable to the erstwhile State of Jammu and Kashmir as was

in rest of India. The perusal of the J&K Arbitration and Conciliation Act, 1997 would reveal that there are only three parts unlike the Arbitration and Conciliation Act, 1996, which carries four parts. There is no provision in respect of international commercial arbitration or conciliation in J&K Arbitration & Conciliation Act, 1997. It is for this reason that in respect of the international commercial arbitration or conciliation that the Act of 1996 has been made applicable to the erstwhile State of Jammu and Kashmir.

13) In this context, it is apt to take note of the observations made by the Hon'ble Apex Court in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552, which are reproduced as under:

59. In our opinion, the conclusion recorded at para 14(b) of *Bhatia International case* [(2002) 4 SCC 105] cannot be supported by either the text or context of the provisions in Section 1(2) and the proviso thereto. Let us consider the provision step-by-step, to avoid any confusion. A plain reading of Section 1 shows that the Arbitration Act, 1996 extends to whole of India, but the provisions relating to domestic arbitrations, contained in Part I, are not extended to the State of Jammu and Kashmir. This is not a new addition. Even the 1940 Act states:

"1.Short title, extent and commencement.—

(1)***

(2) It extends to the whole of India except the State of Jammu and Kashmir."

60. Thus, the Arbitration Act, 1996 maintains the earlier position so far as the domestic arbitrations are concerned. Thereafter, comes the new addition in the proviso to Section 1(2), which reads as under:

"Provided that Parts I, III and IV shall extend to the State of Jammu and Kashmir only insofar as they relate to international commercial arbitration or, as the case may be, international commercial conciliation."

61. The proviso to Section 1(2) is necessary firstly due to the special status of the State of Jammu and Kashmir; secondly, to update the Jammu and Kashmir Act, 1945. In our opinion, the proviso does not create an anomaly. The aforesaid Act is almost a carbon copy of the 1940 Act. Both the Acts do not make any provision relating to the international commercial arbitration. Such a provision was made under the Arbitration Act, 1996 by repealing the existing three Acts i.e. the 1937 Protocol Act, the 1940 Act and the Foreign Awards Act, 1961. Therefore, the proviso has been added to incorporate the provisions relating to international commercial arbitration. The Arbitration Act, 1996 would not apply to purely domestic arbitrations which were earlier covered by the Jammu and Kashmir Act, 1945 and now by the Jammu and Kashmir Arbitration and Conciliation Act, 1997. We are also unable to agree with the conclusion that in Jammu and Kashmir, Part I would apply even to arbitration which are held outside India as the proviso does not state that Part I would apply to Jammu and Kashmir *only if the place of arbitration is in Jammu and Kashmir*. Since Section 2(2) of Part I applies to all arbitrations, the declaration of territoriality contained therein would be equally applicable in Jammu and Kashmir. The provision contained in Section 2(2) is not affected by the proviso which is restricted to Section 1(2). By the process of interpretation, it cannot be read as a proviso to Section 2(2) also. **It can further be seen that the provisions relating to "Enforcement of Certain Foreign Awards" in Part II would apply without any restriction, as Part II has no relation to the enforcement of any purely domestic awards or domestically rendered international commercial awards. These would be covered by the Jammu and Kashmir Act, 1997.**

(emphasis added)

14) In view of above, this Court is of a considered view that Part II of the Arbitration and Conciliation Act, 1996 was applicable to the erstwhile State of Jammu and Kashmir, when the present petition was filed by the petitioner for enforcement and execution of the award in reference.

Question No.(II): *If the answer to question No.(I) is in affirmative, whether petitioner has complied the provisions contained in Section 47 the Act of 1996?*

15) In order to answer this question, this Court deems it proper to extract Section 47 of the Act of 1996, which is as under:

47. Evidence.—*(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court—*

(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(b) the original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.—In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.

16) Learned counsel for the respondent laid much stress on sub-section (2) of Section 47 by submitting that though the petitioner has placed on record the original award texted in German language

accompanied with a translated version of the award in English but the same has not been certified as correct by a diplomatic or consular agent of the country to which the petitioner belongs and also that it has not been certified as correct in such other manner as may be sufficient according to the law applicable in India.

17) A perusal of the above quoted section makes it clear that if the award is in foreign language, then the party seeking its enforcement and execution has to produce a translated version in English of the award given in foreign language duly certified by the Diplomatic or Consular agent of the country to which that party belongs and if the same has not been certified as correct by a diplomatic or consular agent, then it be certified in a manner as may be sufficient in accordance with law applicable in India.

18) It needs to be noted that Chapter-1 of Part-II of the Act of 1996 deals with New York Convention Awards whereas the Chapter-II of Part-II of the Act of 1996 deals with Geneva Convention Awards. The provisions incorporated in Chapter-I and Chapter-II are in fact the statutory recognitions of the relevant provisions of the New York and Geneva Conventions as the case may be, as referred in First and Second Schedule of the Act of 1996 respectively. Section 47 of the Act of 1996 has been incorporated to provide statutory recognition to Article IV(2) of the CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS as mentioned in THE FIRST SCHEDULE of the Act of 1996. Article

IV(2) is reproduced as under:

Article IV

1.-----

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce the translation of these documents in to such language. *The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.*

19) A conjoint reading of section 47(2) of the Act of 1996 with Article (supra) would mean that the translation can be certified by an official or sworn translator or by a diplomatic or consular agent. The purpose intended for certifying the English translation of a foreign language is to negate any possibility and scope of tempering and/or fiddling with a given award while translating the said award passed in a foreign language to the official language of the country where it is sought to be relied upon or enforced.

20) The perusal of the present award translated in English depicts that translator Dr. Ralph A. Fellows has sworn an affidavit, thereby certifying the accuracy and sufficiency of the translation. The affidavit with respect to certified translation is extracted as under:

IN WITNESS WHEREOF, I Ralph A. Fellows, Esq, have received an original copy of an arbitration award in favour of CRP FOOD Import-Export GmbH executed by the Arbitrators of the Arbitral Tribunal of the Waren-Verein der Hamburger Börse e.V. on 11 February 2015 composed in German for translation into English. Furthermore, I do hereby attest that I am a duly certified court interpreter and translator publicly appointed by the Free and Hanseatic City of Hamburg in the country of Germany and that pursuant to the statutory order from the German Federal Ministry of Education and Research dated 18 May 2004 that I am certified and competent to translate between the German and English languages and have translated the aforementioned accordingly onto yellow-coloured paper and with my signature and stamp affixed hereto and based upon the form of the document delivered to me

certify the accuracy and sufficiency of the translation on the reverse-side hereof.

21) It is evident that Dr. Ralph A Fellows is duly certified court interpreter and translator publicly appointed by the Free and Hanseatic City of Hamburg in the country of Germany and that pursuant to the statutory order from the General Federal Ministry of Education and Research dated 18.05.2004, he is certified and competent to translate between the German and English languages. It is quite interesting to note that the respondent has not at all disputed the correctness of translation of the award in English but is taking refuge only under the technicalities only to frustrate and delay the disposal of the petition. The respondent has also not disputed the status and competence of Dr. Ralph A Fellows as publicly appointed interpreter and translator. Thus, the translation of the Award by Ralph A Fellows from German to English language, placed on record by the petitioner is sufficient compliance of section 47(2) of the Act of 1996.

22) In view of above, the preliminary objections raised by the respondent are hereby rejected.

23) List for final consideration on **08.11.2023**.

(Rajnish Oswal)
Judge

SRINAGAR
13.10.2023
"Bhat Altaf, PS"

Whether the order is speaking: Yes
Whether the order is reportable: Yes