

M/S TRANS ASIAN SHIPPING SERVICES (PVT.) LTD. A

v.

M/S BEACON SHIPPING LINES LTD. REPRESENTED BY MR.
MOHAMMED S. ASLAM MANAGING DIRECTOR & OTHERS

(Arbitration Petition (Civil) No. 20 of 2012) B

SEPTEMBER 19, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D. Y. CHANDRACHUD, JJ.]**

*Arbitration and Conciliation Act, 1996 – s.11(9) – Appointment
of arbitrator under – Agency Agreement between the petitioner and
the respondent – Petitioner asserting breach of various terms and
conditions of the agreement by the respondent, sought appointment
of a sole arbitrator – Held: An arbitration clause exists in the
Agreement which stipulates that any dispute or difference arising
under and/or out of or in connection with and/or relating to the
Agreement unless amicably settled, shall be determined by arbitration
– Disputes have arisen and remain unsettled – Justice Gyan Sudha
Misra, former Judge of Supreme Court, appointed as the arbitrator
to determine the dispute between the parties.* C D

CIVIL ORIGINAL JURISDICTION: Arbitration Petition (Civil)
No. 20 of 2012 E

Under Section 11(6) of the Arbitration and Conciliation Act, 1996
for the purposes of appointment of Arbitrator under Cl.5(1) of the Agency
Agreement dated 31.03.2010.

C. N. Sree Kumar, Ms. Rasmita Chandarn, Amit Sharma, Advs. F
for the petitioner.

The Order of the Court was passed by

DIPAK MISRA, CJI 1. The petitioner, by this petition under
Section 11(9) of the Arbitration and Conciliation Act, 1996 (for brevity,
‘the Act’), has prayed for appointment of arbitrator as per Clause 5(1) G
of the Agency Agreement dated 31.03.2010 between M/s Trans Asian
Shipping Services (Pvt.) Ltd. and M/s Beacon Shipping Lines Ltd.

A 2. The petitioner is an Indian company and the respondent company is registered in Bangladesh. It is averred that the petitioner is a multinational company having operations in the Indian Sub-Continent, Middle East and South East Asia and is actively engaged in diversified activities with its core business being shipping especially transportation of containerized cargo. Its activities are related to various shipping operations all over the world and, therefore, it engages agents in various countries to undertake for and on behalf of it such functions. It involves their combined transport operations in the name of “Trans Asia Line”. It is urged that the valid subsisting agreement renewed from 31st March, 2010 was terminated only on 31st March, 2012 with respect to the combined transport operations. It is asserted that the respondent committed breach of various terms and conditions of the agency agreement leading to disputes between the parties. The petitioner is entitled to recover dues of USD 134875.8829. Various documents have been filed to show how the amount is due. It is asserted that though the petitioner company sent arbitration notice to the respondent requesting the latter to nominate the arbitrator within 15 days of the receipt of the same so that the arbitration board could deal with the disputes, yet there was no response from the respondent. Under these circumstances, the petitioner has prayed for appointment of a sole arbitrator.

E 3. Despite service of notice, there has been no appearance on behalf of the respondent no. 1 and other respondents who are the Managing Directors and Directors of the respondent no. 1 company.

F 4. We have heard Mr. C.N. Sree Kumar, learned counsel for the petitioner. Learned counsel has drawn our attention to Clauses 18 and 19 of the agreement. The said Clauses read as under:-

“18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the Indian Law.

19. DISPUTES AND ARBIRATION

G Any dispute or difference arising under and or out of or in connection with and/or relating to this Agreement, which cannot be settled amicably between the parties, shall be determined by arbitration and shall be governed by the law of India. Each party shall appoint one arbitrator with power to such arbitrators to

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appoint, if necessary, an umpire. The language for arbitration shall be English, and shall be governed by the Indian Law.” A

5. On a perusal of the aforesaid Clauses, there can be no trace of doubt that an arbitration clause exists and the same clearly stipulates that any dispute or difference arising under and/or out of or in connection with and/or relating to the Agreement unless amicably settled shall be determined by arbitration. The assertions in the petition clearly state that disputes have arisen and remain unsettled. In the obtaining factual matrix and keeping in view the existence of arbitration clause meant for determination of dispute by arbitration, we appoint Justice Gyan Sudha Misra, formerly a Judge of this Court, to act as the arbitrator to determine the dispute between the parties. B C

6. The Registry is directed to send a copy of this order to the sole arbitrator. Learned counsel for the petitioner is also at liberty to bring it to the notice of the arbitrator.

7. The arbitration petition is, accordingly, allowed. There shall be no order as to costs. D