

Union Of India vs Khaitan Holdings (Mauritius) Limited & ... on 25 January, 2019

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (OS) 46/2019

UNION OF INDIA

..... Plaintiff

Through: Mr. Sanjay Jain, ASG with Mr.
Piyush Joshi, Ms. Anuradha, Ms.
Sumiti Yadava, Ms. Lalia Philip, Ms.
Saniya Scott & Mr. Yuvraj Singh,
Advocates

versus

KHAITAN HOLDINGS (MAURITIUS) LIMITED

& ORS

..... Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 25.01.2019

1. The matter has been taken up at 3:15 pm on urgent mentioning. The urgency expressed by Ld. Counsels appearing for the Union of India is that the arbitral tribunal is expected to hold its first hearing on Monday 28th January 2019 and despite the same the Defendants have sought a pro tem injunction against the Union of India, from approaching this Court. I.A.1236/2019 (exemption)

2. This is an application seeking exemption from filing certified copies/original documents. Recording the Plaintiff's undertaking that the inspection of original documents shall be given, if demanded, or that the original documents shall be filed prior to the stage of admission/denial, the exemption is allowed. I.A. is disposed of.

I.A.1237/2019 (u/S 149 read with Section 151 CPC)

3. Ld. Counsel for the Plaintiffs submit that the RTGS for Court fee is already been done. The Court Fee be deposited within two weeks. I.A. is disposed of.

I.A.1238/2019 (u/O XIII Rule 10 CPC)

4. This is an application for summoning of records. Issue notice. I.A.1235/2019 (u/O XXXIX Rule 1 and 2 CPC)

5. Issue summons and notices to the Defendants by e-mail as also dasti to Defendants No.2 to 4 at the New Delhi address. Notice also be issued in the I.A.

6. The prayer in the suit is for an injunction restraining the Defendants from proceeding with the arbitration proceedings in the case titled Khaitan Holdings (Mauritius) Limited v. Republic of India (PCA Case No.2018-

50).

7. The Arbitral Tribunal has been constituted under the India-Mauritius Bilateral Investment Treaty Agreement executed on 20th June, 2000. Disputes have arisen in respect of the investments purportedly made by Khaitan Holdings (Mauritius) Limited in Loop Telecom Pvt. Ltd. presently known as Loop Telecom & Trading Limited.

8. It is submitted that Loop Telecom Pvt. Ltd. was a licensee under the Unified Access Service License (UASL) agreement which is governed by Indian laws. It is further submitted that the Arbitral Tribunal, which is constituted, is to assemble and hold its first hearing on Monday i.e. 28th January, 2019. The counsels representing the Union of India in the arbitration proceedings addressed letter dated 24th January, 2019 informing the Arbitral Tribunal that the Union of India would be approaching this Court seeking an anti-arbitration injunction. The relevant portion of the said letter is set out herein below:

"Dear Members of the Tribunal:

We write in reference to the first session in the above-referenced arbitration scheduled for 28 January 2019. While the Government of India will be participating in the first session, we are bringing to the Tribunal's attention the fact that the Government has decided to exercise its rights under the laws of India to approach the Indian courts for an anti-arbitration injunction against, inter alia, the Claimant, Khaitan Holdings (Mauritius) Limited ("KHML"), a shareholder of an Indian company, Loop Telecom and Trading Limited ("Loop"), and persons who control KHML and Loop who are Indian citizens and subject to the jurisdiction of the Indian courts, including Mr. I.P. Khaitan, the individual who wholly-owns and controls KHML. The Government will seek an injunction against the identified persons to prevent the arbitration from proceeding pending the determination of the suit by the Indian courts. The matter is currently in the process of being finalized and will be filed shortly at the High Court of Delhi."

9. The said letter, as per counsel, has been delivered to the Arbitral Tribunal as also to counsel for the Defendants.

10. In response thereto, counsel representing the Defendants wrote letter dated 24th January, 2019, to the Arbitral Tribunal, seeking immediate issuance of a pro tem injunction protecting its own jurisdiction and restraining the Government of India from taking any action in Indian courts. The relevant portion of the said letter is set out herein below:

"Re: PCA Case No.2018-50: Khaitan Holdings (Mauritius) Limited v. Republic of India We refer to the letter from Counsel for the Respondent dated 24 January 2019, sent on behalf of the Government of the Republic of India, which advises the Tribunal that the Government of India intends "shortly" to seek an anti-arbitration injunction from the Indian Courts to "prevent the arbitration from proceeding".

Under Article 8 of the Mauritius/India BIT, India consented to arbitrate any dispute brought by an investor of Mauritius in relation to investments; the Claimant accepted that offer to arbitrate and the parties have agreed that The Hague is the seat of this arbitration. Given this, any such application to the Indian Courts is both an abuse and a breach of the arbitration agreement, and the Indian Courts have no jurisdiction in this matter.

The Claimant will make a formal application for relief from the Tribunal, in the form of an order preventing the Respondent from making or pursuing any such application in the Indian Courts. The Claimant asks that a briefing schedule for the Claimant's application be established at Monday's hearing.

In the interim, the Claimant respectfully requests that the Tribunal immediately issue a pro tem injunction to protect its own jurisdiction, restraining the Government of India from taking any action in the Indian Courts to restrain or prevent the this arbitration, until such time as the Claimant's application can be properly argued and adjudicated by the Tribunal.

India is, of course, entitled to challenge the jurisdiction of the Tribunal within this arbitration as it sees fit, and is similarly entitled to conduct such investigations as may be legitimate and proper in India. This is not, however, a licence to breach its agreement to arbitrate, and India is not entitled to override the power of the Tribunal to determine its own jurisdiction by suing its domestic courts to thwart this arbitration.

Indeed, India's actions are evidence of its willingness to ignore its treaty obligations. The Claimant urges the Tribunal to act urgently to avoid prejudice to the arbitral process.

11. The present suit was instituted before this Court today i.e. 25th January, 2019. Notice be issued to the Defendants returnable on Monday, i.e. 28th January, 2019. Counsel for the Union of India is permitted to inform the Arbitral Tribunal that this Court is presently seized of the matter and that the hearing in this matter would be held on 28th January, 2019.

12. List on 28th January, 2019 on top of the board.

13. A copy of this order be given dasti under signature of the Court Master.

PRATHIBA M. SINGH, J JANUARY 25, 2019 Rahul