



**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

Arbitration Petition No. 15/2018

LIFEFORCE CRYOBANK SCIENCES INC ...Petitioner

VERSUS

CRYOVIVA BIOTECH PVT. LTD. & ORS. ...Respondent(s)

J U D G M E N T

MANOJ MISRA, J.

1. The petitioner which is a company duly incorporated under the laws of the United States of America¹ has invoked the jurisdiction of this Court under sub-sections (6) and (12) of Section 11 of the Arbitration and Conciliation Act, 1996² for appointment of a sole arbitrator in terms of arbitration clause stipulated in the agreements dated 27 December 2009 and 11 February 2010 to adjudicate upon the disputes between the petitioner and the respondents.

¹ USA

² 1996 Act

2. The petitioner's case *inter alia* is that it has purchased the assets of Cryobank International, Inc³ on 8 June 2010 at a public auction in pursuance of a decree dated 5 May 2010 passed by the Circuit Court of Florida, USA. Following which, a certificate of title was issued in its favor certifying purchase of all assets, tangible and intangible, of Cryobank USA by it. On basis thereof, the petitioner claims to have stepped into the shoes of Cryobank USA.
3. According to the petitioner, the dispute between the petitioner and the respondents stems from Exclusive and Perpetual License Agreement⁴ and Share Subscription and Shareholders Agreement.⁵ License agreement is between Cryobanks USA and Cryobanks India International Pvt. Ltd (now known as Cryoviva Biotech Pvt. Ltd. – Respondent No.1 herein). The same contains an arbitration clause in Section 7. Whereas Share Subscription Agreement is between RJ Corp (respondent no.2 herein) acting on behalf of itself and its shareholders, namely, Devyani Enterprises Pvt. Ltd.-respondent no.3, Devyani Overseas Private Ltd. – respondent no.4, RK Jaipuria & Sons (HUF) – respondent no.5, Dhara Jaipuria – respondent no.6; Cryobank USA; and Cryobanks India International Pvt Ltd (now Cryoviva Biotech Pvt. Ltd. – Respondent No.1). The same has an arbitration clause in clause XVII. Under both the arbitration agreements the

³ Cryobank USA

⁴ License Agreement

⁵ Share Subscription Agreement

disputes are referable to a sole arbitrator subject to the jurisdiction of courts at Delhi.

4. It is the case of the petitioner that under the license agreement, the respondents were entitled to use Cryobank's intellectual property rights in lieu of consideration which included issue of shares in the respondent company. It is stated that the petitioner stepped into the shoes of Cryobank USA, and this fact was acknowledged by the respondent company in various correspondences. However, since petitioner's demand was not met, arbitration clause had to be invoked *vide* notice dated 29.09.2017.
5. In response to the notice of these proceedings, the respondents' case *inter alia* is that the license agreement was non-assignable, and the respondents have not accepted the petitioner as the assignee. There is, therefore, no privity of contract. Hence, the petition is liable to be dismissed.
6. We have heard learned counsel for the parties.
7. At the stage of considering an application for appointment of an arbitrator the Court is required to examine whether there exists an arbitration agreement between the parties. The existence of an arbitration agreement is not an issue. The issue is that it is not between the petitioner and the respondent company but between Cryobank USA and the respondents. According to the respondents the petitioner has only bought assets of Cryobank USA but, in absence of respondents' consent, has not stepped into the shoes of Cryobank USA.

8. On the other hand, the petitioner has referred to several documents/correspondences to canvass that the respondent has accepted the petitioner as having stepped into the shoes of Cryobank USA. Petitioner has also annexed certificate to indicate that rights under all existing contracts including intellectual property rights of Cryobank USA were purchased by the petitioner in auction sale.
9. In **Khardah Company Ltd. v. Raymon & Co (India) Pvt. Ltd., AIR 1962 SC 1810** it was held that an assignment of a contract might result by transfer either of the rights or of the obligations thereunder. But there is a well-recognized distinction between these two classes of assignments. As a rule, obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities. On the other hand, the rights under a contract are assignable unless the contract is personal in its nature, or the rights are incapable of assignment either under the law or under an agreement between the parties.
10. Following the decision in **Khardah Company (supra)** in **DLF Power Ltd. v. Mangalore Refinery & Petrochemicals Ltd., 2016 SCC OnLine Bom 5069** a single judge of the Bombay High Court held that the arbitration agreement in a contract is a benefit which can be assigned along with the main contract or even otherwise.
11. Be that as it may, since at the stage of consideration of a prayer under Section 11(6) of the 1996 Act the Court has to

confine itself to the examination of the existence of an arbitration agreement (*vide* sub-section (6-A) of Section 11), it would not be appropriate for us to delve deep into the issue as it could well be considered by the arbitrator on the basis of evidence led by the parties. More so, when existence of arbitration agreement in the license agreement and share subscription agreement is not in dispute.

12. We, therefore, deem it appropriate to refer the matter to the Delhi International Arbitration Centre for appointment of a sole arbitrator to adjudicate upon the dispute between the parties.
13. It is made clear that we have not expressed any opinion on the merits of the claim of either party including with regard to the arbitrability of the dispute. All contentions and pleas are kept open for the parties to raise before the arbitral tribunal.
14. Subject to above, the petition including all pending applications, if any, stand disposed of.

.....**CJI.**
(Dr. D.Y. Chandrachud)

.....**J.**
(Manoj Misra)

New Delhi;
November 8, 2024