

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: February 21, 2013*
Judgment Pronounced on: March 04, 2013

+ Arb.P.No.45/2012

M/S SPORTS LEISURE WORLDWIDE Petitioner
Through Ms. Anjana Prabhakar Adv.

versus

WOMENS GOLF ASSOCIATION OF INDIA Respondent
Through Mr. Girdhar Govind Adv. with
Ms.Noor Alam, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The abovementioned petition has been filed by the petitioner under Section 11(6) (a) of the Arbitration & Conciliation Act, 1996 for appointment of a sole Arbitrator to adjudicate the disputes between the parties for the payment of the amount of ₹20,01,118/- along with interest @ 18% per annum to the petitioner.
2. Brief facts of the petition are that the petitioner is a registered partnership firm under the Indian Partnership Act, 1932 engaged in golf promotion activities.
3. The respondent and petitioner entered into a contract dated 19th August, 2006 for event management of Women's Professional Golf Tour. It was jointly agreed between the parties to contract that both will jointly solicit sponsorship, cooperate with organizations engaged in golf promotion whose objectives are compatible with those of the Women's Professional Golf Tour, appoint official sponsor to fill in the standard requirements and sponsorship slots.

4. In the year 2007, five events were conducted by the petitioner. As per the agreed fees, the petitioner is entitled to receive a sum of ₹1,25,000/- and reimbursement of expenses incurred for the conduct of the said tour from the respondent. However, the petitioner received payment for only two events and nothing towards the other four events and agreed expenses. The petitioner had sent a communication dated 15th May, 2007 demanding the amount in question which was followed by various reminders to the respondent-Company. However, the respondent did not respond.

5. A legal notice dated 30th May, 2007 was served upon the respondent followed by another letter dated 13th June, 2007. The respondent sent a reply dated 3rd July, 2007 denying the petitioners' claim and terminating the contract in an arbitrary manner. Finding no alternative, the petitioner sent a communication dated 27th August, 2007 for appointment of an Arbitrator in terms of clause 11 of the contract. The respondent replied on 28th September, 2007 and thereby expressed its desire to appoint the President of the company as Arbitrator. The petitioner disputed the appointment of such Arbitrator by its letter dated 7th November, 2007. Various communications were exchanged between the parties.

6. It is further stated that the petitioner filed a suit for recovery of dues of ₹16,91,118/- against the respondent. The said suit was dismissed by the learned Addl. District Judge vide order dated 16th December, 2009 with direction to the petitioner to refer their disputes to an arbitration.

7. The petitioner had sent another legal notice dated 28th January, 2011 to the respondent for appointment of Arbitrator to resolve the disputes in terms of abovementioned order, to which respondent replied by declining any payment to the petitioner vide reply dated 6th April, 2011. Hence, this petition has been filed.

8. The respondent in its reply has opposed the prayer made in the petition, mainly, on the ground that the petition is time barred and the same has been filed in order to harass the respondent. Mr.Girdhar Govind, learned counsel for the respondent, however, admitted that the petitioner filed the suit in the Court of Addl. District Judge which was dismissed by the Court by giving the reason that the Court has no jurisdiction to try the matter. He also stated that in the para of cause of action, the petitioner has admitted that the cause of action arose on 15th May, 2007, so it was the duty of the petitioner to file the petition for invocation of the arbitration clause within time. He submits that the petitioner had full knowledge about the cause of action but the present petition for appointment of an Arbitrator has been filed only on 23rd January, 2012. Thus, the petitioner is guilty of delay, laches and is not entitled to invoke the arbitration clause.

9. After having considered the rival submissions of the parties, this Court is of the view that the prayer sought by the petitioner is liable to be allowed, for the following reasons:-

- (i) The respondent has not denied the factum of contract dated 19th August, 2006 between the parties, which contains the arbitration clause.
- (ii) The respondent has not denied the fact of having received the legal notice dated 30th May, 2007 from the petitioner demanding the balance unpaid fee to the petitioner, though in the reply dated 28th September, 2007 to the said notice, the respondent stated that it did not owe anything towards the petitioner. Admittedly, thereafter the petitioner in the year 2008 filed the suit for recovery of ₹16,91,118/- against the respondent in the Court of District Judge, Delhi. In para 20 of

the said plaint, various dates of cause of action were given by the petitioner and it was mentioned that the cause of action is continuing and subsisting.

- (iii) The respondent itself filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 by alleging that the suit for recovery filed by the petitioner is not maintainable in view of the existing agreement between the parties which contains the arbitration clause. The said application of the respondent was allowed by Ms.Ina Malhotra, Addl. District Judge South-II, PHC, New Delhi by order dated 16th December, 2009 by holding that the arbitration clause in the agreement remains in force and any dispute pertaining to the agreement ought to be resolved in accordance with the condition of the arbitration clause. Admittedly, thereafter, the petitioner issued a notice for arbitration dated 6th May, 2010 asking the respondent to appoint the Arbitrator, coupled with the reminder dated 28th January, 2011. The reply to the said notice was given by the respondent on 6th April, 2011 by alleging that the allegations made in the notice are incorrect; the claim is time barred and no cause of action survives.
- (iv) No doubt, it appears that there is some delay from time to time on the part of the petitioner. However, it appears that the petitioner has been taking the appropriate steps against the respondent for recovery of the amount in question by filing of the suit as well as issuance of notices from time to time. The petitioner is, therefore, rightly taking the benefit of the period spent in the District Court. It is settled law that the petitioner

may be having a week case on merits and there is also some delay on the part of the petitioner for bringing the present petition, however, if the benefit of pendency of proceedings in the District Court is taken into account, I am of the view that the petitioner cannot be thrown out at this stage. The respondent would be entitled to take the issue of limitation before the Arbitrator who will decide the said issue as per its own merits. Hence, the submission of the respondent cannot be allowed.

10. Under these circumstances, the present petition is allowed. Mr. Anup J. Bhambhani, Advocate (Mobile No. 9811013554) is appointed as the sole Arbitrator to adjudicate the disputes between the parties. Both the parties would be entitled to raise their claims and counter-claims in accordance with law. The fee of the Arbitrator is fixed at ₹60,000/- which shall be paid by both the parties in equal proportion.

11. A copy of this order be communicated to the learned Arbitrator.

(MANMOHAN SINGH)
JUDGE

MARCH 04, 2013/ka