

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 304 OF 2014

Mahanagar Gas Limited	...	Applicant
Versus		
Tulip Telecom Limited	...	Respondent

Ms. Shruti K. i/b. M/s. Crawford Bayley & Company for the Applicant.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 9TH JANUARY, 2015

P.C.

1. The Applicant – Mahanagar Gas Limited has filed the above Arbitration Application against the Respondent - Tulip Telecom Limited under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act) for appointment of sole Arbitrator to resolve the disputes arisen between the parties under the Memorandum of Understanding dated 16th July, 2009 (Exhibit-A to the Application).
2. The Applicant is *inter alia* engaged in the business of marketing, distribution and supply of natural gas in the city of Mumbai and adjacent areas. The Respondent is *inter alia* engaged in the business of providing network services and ISP across India.
3. On 16th July, 2009 the Applicant entered into a Memorandum of Understanding (MOU) with the Respondent for the purpose of using

approximately 100 Kms of HDPE Ducts for laying and using optical Fiber Cables. According to the Applicant, it has performed all its obligations under the said MOU. Clause 16 of said MOU provides for reference of disputes between the parties to arbitration. The same is reproduced hereunder :

“16. Any claim, dispute, difference or question arising out of, or in respect of or in relation to this MOU shall be settled amicably between the Parties within a period of thirty (30) days from date of raising a claim, dispute, difference or question, failing which the same shall be referred to arbitration of a sole arbitrator under the Arbitration and Conciliation Act, 1996, and the place of arbitration shall be Mumbai. The language of arbitration shall be in English”.

4. Since disputes arose between the parties, the Applicant by its letter dated 26th June, 2014 (Exhibit-H to the Application) invoked the Arbitration Clause. The Respondent by its reply letter dated 28th July, 2014 (Exhibit-I to the Application) alleged that there was no MOU dated 16th July, 2009 executed between the parties and therefore the question of referring any dispute to arbitration under Clause 16 of the said MOU does not arise. The Applicant by its letter dated 7th August, 2014 (Exhibit-J to the Application) addressed to the Respondent inter alia recorded that the said MOU has been signed and executed on 16th July, 2009 by and

between the Applicant and Respondent. In fact, the said MOU dated 16th July, 2009 is signed by Mr. Vishwajeet Sinha, Sr. Vice President (Alliances) of the Respondent in the presence of Mr. Maudar Amber and the officers of the Applicant. It is further recorded in the said letter that the said MOU was executed in two counterparts, of which one original copy has been handed over to Respondent on the day the MOU was executed. It was further pointed out that in fact extensive correspondence has been exchanged between the Applicant and the Respondent, wherein the Applicant has called upon Respondent to pay the outstanding amount due under the said MOU dated 16th July, 2009 to the Applicant and the Respondent has also accepted its liability to pay the said amount to the Applicant. It is therefore submitted that the contention of the Respondent that the MOU does not exist is false and baseless.

5. Since the Respondent failed and neglected to agree to the appointment of sole Arbitrator pursuant to Clause 16 of the said MOU dated 16th July, 2009, the Applicant has filed the above Arbitration Application seeking appointment of sole Arbitrator to refer the dispute between the parties arising out of the MOU dated 16th July, 2009.

6. From the aforestated facts, I am satisfied that the MOU dated 16th July, 2009 executed between the Applicant and the Respondent, contained an Agreement between the parties that in the event of any

dispute arising out of the said MOU, the same shall be amicably settled between the parties, failing which the same shall be referred to arbitration of a sole arbitrator under the Act and the place of arbitration shall be at Mumbai. The language of arbitration shall be in English. The Respondent has in its reply to the letter of invocation dated 26th June, 2014 (Exhibit-H to the Application) alleged that there was no MOU executed by and between the parties. The said allegation is refuted by the Applicant by its detailed letter dated 7th August, 2014, which goes to show that the stand taken by the Respondent in its letter dated 28th July, 2014 is baseless and untenable and the Respondent is incorrect in not agreeing to the appointment of Arbitrator under Clause 16 of the MOU dated 16th July, 2009. The Applicant has also stated in the above Application that despite several reminders by the Applicant and attempts to resolve the dispute, the matter stood unresolved and the parties could not arrive at a mutually acceptable settlement of the dispute arising on account of unpaid invoices.

7. The Applicant has served the above Arbitration Application on the Respondent as far back as on 26th August, 2014 and the Affidavit proving service dated 9th January, 2015 is on record. However, the Respondent has failed to file its Affidavit in reply to the above Arbitration Application and has also not come forward to oppose the above Arbitration Application. All that is stated in the Arbitration Application has

therefore remained uncontroverted. Hence, I pass the following order :

- a. Mr. Cyrus Bharucha, Advocate is appointed as the sole Arbitrator to decide the claim of the Applicant arising out of the Memorandum of Understanding dated 16th July, 2009.
- b. The Respondent shall pay costs of this Application.
- c. The above Arbitration Application is accordingly disposed of.

(S.J. KATHAWALLA, J.)