

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION APPLICATION NO. 291 OF 2014**

Axis Software Private Limited .. Applicant

Versus

State Bank of India ... Respondent

Mr. Mayur Khandeparkar with Mr. Z.A. Jariwala i/b. M/s. Thakore Jariwala and Associates for the Applicant.

None for the Respondent

CORAM: S.J. KATHAWALLA, J.

DATE: 27TH JANUARY, 2015

P.C.:

1. The above Arbitration Application is filed by the Applicant under Section 11 of the Arbitration and Conciliation Act, 1996 ("the Act") inter alia for the following relief:

"(a) that this Hon'ble Court in exercise of its power under Section 11 (5) of the Arbitration and Conciliation Act, 1996 be pleased to appoint a common Sole Arbitrator for reference of the disputes between the parties hereto under the ATM Agreement dated 29.01.2010, the MFK Agreement dated 22.02.2010, the MS-MFK Agreement dated 30.10.2010 and the MS-ATM Agreement dated 30.10.2010."

2. The Applicant is a Private Limited Company carrying on business inter alia of manufacture of Biometric as well as PIN based ATMS and

Kiosks for various banking transactions. The Respondent Bank had awarded to the Applicant the following Agreements:-

- i) ATM Agreement dated 29th January, 2010;
- ii) Multi Function Kiosks Agreement (“MKF”) dated 22nd February, 2010;
- iii) Agreement for Managed Services of Rural ATMS dated 30th October, 2010; and
- iv) Managed Services for MFK Agreement dated 30th October, 2010.

The above Agreements are annexed as Exhibits ‘A’, ‘B’, ‘C’ and ‘D’ to the Application.

3. Under the above Agreements, the Applicant was to supply ATMS and Kiosks to the Respondent and to also maintain the same as per the terms of the Agreements.

4. All the Agreements contain Clauses pertaining to Arbitration between the parties. The said Clauses are similar in all Agreements. The Arbitration Clause, being Clause No. 7 of the ATM Agreement is reproduced hereunder:-

“7. DISPUTE RESOLUTION

Any controversy or claim between the parties will be settled by arbitration in accordance with the (Indian) Arbitration and Conciliation Act, 1996 by a sole arbitrator to be jointly appointed

by both the parties. If both the parties do not agree upon the name of the sole arbitrator, then by three arbitrators, one to be appointed by each party and the two arbitrators so appointed in turn will appoint an umpire. The decision and award of the arbitrators will be final and binding. The arbitrators are directed to hear and decide dispositive motions in advance of the hearing on the merits by applying the applicable law. The arbitration will be held in Mumbai. Notwithstanding the foregoing, either party may seek an injunction in court to prevent misuse of its intellectual property pending the appointment of the arbitrators. Indian law shall govern the interpretation and enforcement of this Agreement. The arbitrators shall have no authority to award punitive damages or other non-compensatory damages or award damages in excess of the limitations and exclusions set forth in this Agreement or grant relief inconsistent with the terms of an Order. In case of any legal dispute, only the courts in Mumbai shall have jurisdiction. In case of any legal dispute, only the courts in Mumbai shall have jurisdiction.” (sic)

5. On account of non-receipt of advances as well as failure to make timely payment and various other issues, disputes and differences arose between the parties, as a result of which, the Applicant addressed a letter dated 29th August, 2013 invoking the Arbitration Agreement and requesting the Respondent to appoint an Arbitrator and further stated that if the Arbitrator appointed by the Respondent was suitable, the Applicant

would accept the same. As there was no response to the said invocation for arbitration, the Applicant by further letters dated 15th September, 2013 and 21st October, 2013 once again requested the Respondent to appoint an Arbitrator to adjudicate upon the disputes in the matter.

6. As the Respondent failed and neglected to respond to any of the 3 letters requesting for appointment of an Arbitrator, the Applicant has filed the present Application under Section 11 for appointment of an Arbitrator.

7. In view thereof, it is established that there exists valid agreements between the parties to have their disputes, arising out of the 4 Agreements, referred to above, arbitrated. The parties have also agreed that they submit to the jurisdiction of the Court in Bombay in connection with the said arbitration proceedings and all applications connected therewith. Respondent has refused to appoint any Arbitrator despite being repeatedly called upon to do so.

8. The above Application was served on the Respondent on or around 7th October, 2014. The above Application had appeared for hearing on 20th December, 2014, at which time, no one appeared on behalf of the Respondent in spite of being served. The Application was adjourned to 20 January, 2015 for hearing. As per the oral directions of this Court, a fresh notice was issued to the Respondent intimating the next date of hearing

i.e. 24th December, 2014. Affidavit of Service has been duly filed. The Respondent has not filed its Affidavit in Reply. The Respondent has also failed to appear before the Court at the time of hearing of the Application.

9. In view thereof, Dr. A.D. Chandrachud, Advocate, is appointed as the Sole Arbitrator to adjudicate the disputes between the Applicant and the Respondent arising out of 4 agreements, referred to above and which are annexed as Exhibits A, B, C and D respectively to the Application.

10. The Arbitrator shall endeavor to complete the arbitration proceedings and make and publish his Award within six months from the date of entering upon the Reference.

11. The Application is accordingly disposed of.

(S.J. KATHAWALLA, J.)