

In the High Court of Judicature at Madras

Dated : 18.09.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.381 of 2014

Real Image Media Technologies Pvt. Ltd.,
rep. by Chief Legal Officer &
Company Secretary P.Murali Krishna,
7B, III Street, Balaji Nagar,
Royapettah,
Chennai-600 014.

.. Petitioner

-vs-

D.R.Jairaj,
Proprietor – Sri Channabasavehwara Talkies,
N.H.206, Gubbi,
Tumkur District,
Karnataka-572 216.

.. Respondent

Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator to resolve the disputes between the petitioner and the respondent as per the Letter of Understanding (LoU) dated 08.11.2010.

For Petitioner : Mr.P.R.Raman

For Respondent : Mr.S.Sathyanarayanan

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ORDER

The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to “the said Act”) has been filed by the petitioner before this Court arising from the Letter of Understanding (LOU) dated 08.11.2010 duly signed by both the parties.

2. The mode of settlement of dispute is contained in Clause 32 of the said LOU, which reads as under:-

“32. This Letter of Understanding will be governed by the Courts in Chennai, and will be governed by the laws of India. In the event of dispute, difference, claims and questions arising out of or relating to this Agreement, the parties shall make all endeavour to settle the dispute by amicable means, failing which the dispute shall be referred to an Arbitrator and the arbitration proceeding shall be conducted in accordance with the Indian Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The arbitration shall be held at a mutually agreed place and

all the proceedings shall be conducted in English.”

3. The learned counsel for the respondent does not dispute the agreement or the existence of the arbitration Clause or the dispute. The only defence sought to be raised is that no cause of action has arisen within the jurisdiction of this Court. On the Court's query based on the first sentence of LOU, which reads as

*“This Letter of Understanding (LOU) has been
executed on this 8th of November 2010 at Chennai”,*

it is stated that this is a formatted document and the respondent was compelled to sign the same.

4. This is a strange plea as firstly it is not a formatted document, secondly this plea is now sought to be raised and no supporting document has been filed that ever before such plea was raised and thirdly the jurisdiction of the Courts in Chennai are specified in Clause 32 itself.

5. The learned counsel for the respondent has relied upon the judgment of this Court by the then The Hon'ble Chief Justice in ***India Cements Capital Limited v. Auto Pins (India) Limited (2013 (2) CTC***

705) in the context of Clause 11 of Letters Patent, 1865 to contend where no cause of action arises in Chennai, appointment of an Arbitrator cannot take place by this Court.

6. As already indicated aforesaid, the very execution of the agreement is at Chennai and the specious plea now seeking to contend that the agreement was signed under some force, is rejected. The learned counsel also refers to the same LOU at the bottom to say that the authorised signatory of the respondent has signed at Bangalore because of the seal affixed there in support of his contention. This, in my view, does not take away the first sentence of the agreement itself, which clearly specifies place of execution of the LOU.

7. In view of the aforesaid, there is no impediment to refer the dispute to the arbitration.

8. It may be noted that as per the learned counsel for the petitioner, the arbitration is to be held at the mutually agreed place, but there is no mutual agreement inter se the parties and that is the reason, I am of the view that keeping in mind the place of execution of the agreement and the jurisdiction of the Court, the arbitration should be held

at Chennai.

9. I, thus, appoint **Mr.B.Gokuldass**, a retired Judicial Officer, residing at No.11, Kuppusamy Pillai street, Jesupadam Nagar, Guduvancherry-603 202, Kancheepuram District (Mobile No.9443491924) as the Sole Arbitrator to enter upon the reference and adjudicate the dispute *inter se* the parties. The arbitration proceedings will be conducted under the aegis of Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Madras High Court Arbitration Centre (MHCAC) (Arbitration Proceedings) & (Administrative Cost and Arbitrators' Fees) Rules, 2014.

10. The Original Petition is accordingly allowed, leaving the parties to bear their own costs.

(S.K.K., C.J.)
18.09.2015

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The Hon'ble Chief Justice

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