

In the High Court of Judicature at Madras

Dated : 25.09.2015

Coram :

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

O.P.No.409 of 2014

Vikas Enterprises

.. Petitioner

-vs-

Bharti Airtel Ltd.
Oceanic Towers, 101, Santhome
High Road, Santhome, Chennai.

.. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator and refer all the disputes arising out of the Agreement dated 10.05.2012 to Arbitration.

For Petitioner : Mr.A.Sheik Peer

For Respondent : Mr.Shivakumar
for M/s.Shivakumar & Suresh

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सत्यमेव जयते
ORDER

A Distribution Agreement dated 10.05.2012 was entered into by the respondent with the petitioner. The said agreement contains a Dispute Resolution Clause No.19 and a Jurisdictional Clause No.18, which read as under:

18. JURISDICTION

The courts of Chennai shall have the exclusive jurisdiction in respect of any dispute or differences arising out of or in connection with or touching upon the subject matter of this Agreement.

19. ARBITRATION

Any dispute or difference arising between the Parties hereto in respect of, or out of, or in connection with, or touching upon the subject matter of this Agreement which the Parties are not able to resolve by mutual consultation shall be settled by Arbitration in accordance with the provision of the Arbitration and Conciliation Act, 1996, or re-enactment thereof. Director Legal of Airtel shall have the right to appoint a sole arbitrator. The venue of Arbitrator shall be Chennai and the arbitral proceedings shall be conducted in English language.'

2.The rival claims of the two parties is that the respondent alleges that the petitioner had not submitted the required documents, while the petitioner claims that the distributorship agreement was unilaterally cancelled. It is accepted that the distributorship agreement now stands assigned to another third party.

3.The petitioner issued a letter dated 01.01.2013 with the subject heading ''Refund of Security Deposit - Regarding.'' In the notice, the allegation is that the respondent decided to unilaterally terminate the distributorship agreement by not recharging of LAPU account and had further not refunded the security deposit. This was followed up with the statement in the same notice that the petitioner did not wish to rake up the above issues,

but that the refund of security deposit of Rs.1 lakh should be made and in case of failure to do so, the petitioner reserved the right to raise a dispute for the reasons stated therein and for violation of terms of the agreement to claim compensation for the loss suffered by the petitioner and also claimed damages. The respondent vide e-mail dated 17.01.2013 immediately accepted to refund the security deposit and called upon the petitioner to sign in the four attached documents for terminating the arrangements inter se the parties. The petitioner, thereafter, replied vide an e-mail dated 23.01.2013 disputing the requirement of signing certain formats / documents and further stating that 'as far as the no claim certificate is concerned, we have no claim in respect of dues payable to us except the security deposit, we hope this satisfies the requirement'.

4.The matter did not resolve and the petitioner sent a letter dated 15.04.2013 claiming refund of security deposit and compensation for loss of business for termination of contract in violation of contractual obligation and seeking appointment of an Arbitrator, followed by reminders dated 16.06.2013 and 17.10.2013.

5.No reply has been filed despite opportunity granted and it is the case of the respondent, as per the submissions in Court, that instead of taking recourse to arbitration, the whole issue could have been resolved by

the petitioner executing the documents and taking the refund back, which the respondent had offered more than two years back. Learned counsel also emphasized on the wordings of the e-mail, which stated that the respondent had no claim other than for refund of security deposit.

6.This Court did make an endeavour to see if the matter could be amicably resolved instead of the petitioner incurring further expenses unnecessarily, but the learned counsel for the petitioner is not persuaded to execute the documents and accept the amount of Rs.1 lakh as offered by the respondent. The jurisdiction of this Court being a limited one, the natural sequitur is that an Arbitrator has to be appointed despite the clear wordings of the e-mail sent by the petitioner dated 23.01.2013. However, in the given circumstances of the case, I am of the view that at the initial stage, the petitioner must bear the cost of the arbitration proceedings to form a part of the main cause.

7.Thus, as proposed and agreed by the learned counsel for the parties, I appoint **Mr.T.S.Baskaran, Advocate present in Court**, having office at No.302, Additional Law Chambers, High Court Buildings, Chennai 600 104, Ph: 94442 06622, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. As requested by the learned counsel, the arbitration proceedings will be conducted under the aegis

of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

8.The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

sd/ (S.K.K., CJ.)
25.09.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/12.10.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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