

In the High Court of Judicature at Madras

Dated : 27.11.2015

Coram :

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

O.P.No.659 of 2015

Gemini Communication Ltd.,
having registered office at
No.1, Dr.Ranga Road,
Alwarpet, Chennai-18
rep. by its officer
K.Radhakrishnan GM Legal .. Petitioner

-vs-

1. Professional Impex Pvt. Ltd.,
having its registered office at
First Floor Harbans Bhawan-I,
DDA Business Complex, Nagai Raya,
New Delhi-110 046.

2. Shri Shiv K. Tyagi,
Advocate,
Sole Arbitrator,
1-22, Krishan Kunj Colony,
Laxmi Nagar,
Delhi-110 092. .. Respondents

Petition filed under Section 11 (6) of the
Arbitration and Conciliation Act, 1996, to appoint a sole
arbitrator to settle the dispute amicably.

For Petitioner : Mr.J.Sivanandaraaj

For Respondents : Mr.S.Shyamkumar for R1

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O R D E R

It is undoubted that the arbitration clause existing

inter se the parties provided for constituting an Arbitral Tribunal consisting of the sole arbitrator to be nominated by consent. The parties were not *ad idem* on who should be the arbitrator. However, the nominee arbitrator of the first respondent proceeded to act as the sole arbitrator, despite the absence of consent and the objection being raised in this behalf by the petitioner. This compelled the petitioner to approach this Court.

2. In terms of the order dated 21.8.2015, while issuing notice, further proceedings before the arbitrator were stayed, which order was made absolute on 09.10.2015.

3. The aforesaid interim order had been served on the arbitrator/second respondent on 29.08.2015 and 31.08.2015, but despite that, he proceeded to pronounce the Award on 07.09.2015.

4. In the aforesaid facts and circumstances, there is little doubt that the arbitrator/second respondent has acted contrary to the stay order of this Court.

5. The learned counsel for the first respondent in the given situation cannot dispute that the arbitration ought not to have been proceeded and thus the award made is nullity.

6. It is, thus, agreed as under:-

(1) The award allegedly rendered by the arbitrator/second respondent dated 07.09.2015 be declared as nullity and unenforceable.

(2) The learned counsel for parties state that an Advocate may be appointed as an arbitrator to enter upon the reference and adjudicate the disputes, and the arbitration be held under the aegis of Madras High Court Arbitration Centre.

7. I, thus, by consent appoint Mr.M.Sundar, Advocate (Phone No.044-25331271), 453, Law Chambers, Madras High Court as the sole arbitrator to enter upon the reference and adjudicate the disputes *inter se* the parties. 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 Madras High Court Arbitration Centre (MHCAC) (Arbitration Proceedings) & (Administrative Cost and Arbitrators' Fees) Rules, 2014.

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

Sd/. (S.K.K., C.J.)
27.11.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/01.02.2016

COURT OFFICER

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