

In the High Court of Judicature at Madras

Dated : 26.03.2015

Coram :

The Hon'ble Mr.Justice M.M.Sundresh

O.P.Nos.247 and 248 of 2013

Writer Safeguard (P) Limited,
a Company incorporated under
the provisions of the Companies
Act, 1956 and having its registered
Office at D-506, TTC Industrial Estate,
Nerul, Navi Mumbai - 400 706,
by Director.

.. Petitioner in both O.Ps

-vs-

FIS Payment Solutions & Services India Pvt.Ltd.,
a Company incorporated under the provisions of the
Companies Act, 1956 and having its Registered
Office at S-405 (LGF), Greater Kailash - II,
New Delhi - 110 048 by Director.

.. Respondents in both O.Ps

Prayer: Petition in O.P.No.247 of 2013 is filed under Section 11 of the Arbitration and Conciliation Act, 1996 praying to appoint a suitable person unconnected with either party as sole arbitrator to decide the disputes which have arisen between the petitioner and the respondents under the Contract Agreement dated 19.1.2005.

Petition in O.P.No.247 of 2013 is filed under Section 11 of the Arbitration and Conciliation Act, 1996 praying to appoint a suitable person unconnected with either party as sole arbitrator to decide the disputes which have arisen between the petitioner and the respondents under the Contract Agreement dated 19.4.2004.

For Petitioner : Mr.R.Sankara Narayanan
in both O.Ps

For Respondent : Mr.R.Sunilkumar
in both O.Ps

ORDER

As the issue involved in these petitions is between the very same parties governing the similar facts, they have been taken up together and disposed of by a common order. Two agreements have been entered into between the parties on 19.4.2004 and 19.1.2005. These agreements have been made for the purpose of servicing Automatic Teller Machines (ATMs). The agreement dated 19.4.2004 is the subject matter of O.P.No.248 of 2013 and agreement dated 19.1.2005 is the subject matter of O.P.No.247 of 2013. The agreements also show that they have been executed at Chennai, contained an arbitration clause and the venue of arbitration has also has been fixed at Chennai. At the time of execution of the said agreements, the respondents was represented by India Switch Company Private Limited situated at Chennai. The name of the said Company was changed into that of the respondent subsequently. Accordingly, the rights and liabilities of the India Switch Company Private Limited have been taken over by the respondent.

2. There was series of correspondence between the parties

pertaining to the claim made by the petitioner. It appears that the claim of the petitioner was also not considered on the ground that the respondent was responsible for the conduct of its employees. The correspondence between the parties also show that the respondent, without prejudice to his contentions agreed for arbitration vide letter dated 13.6.2011. The further e-mail correspondence also would show that the parties initially agreed to have the arbitration at Mumbai and it did not fructify since there was some dispute regarding the convenience of the named arbitrator.

3. Learned counsel for the respondent has primarily raised two objections, the first is qua the jurisdiction of this Court and the second is the limitation in making the claims. Insofar as the first contention is concerned, admittedly, at the time of execution of the agreements, the erstwhile company Switch Company Private Limited was situated at Chennai and the agreements were also executed at Chennai and the place of arbitration was also at Chennai. Therefore, by a subsequent change in the constitution of the Company, resulting in the name of erstwhile Company being substituted with the respondent, it cannot be stated that the territorial jurisdiction is ousted. The observation of this Court is *prima facie* in nature only for the purpose of entertaining this petition. This Court also would like to state that the subsequent discussion between the parties regarding the agreements towards the arbitration being conducted at Mumbai will not act as an estoppel. Thus, the first objection is rejected. Coming to the second objection raised, the

law is well settled that the question of limitation is a mixed question of fact and law and the respondent itself in its communication has agreed for the arbitration. Therefore, the said contentions can very well be raised before the learned arbitrator. The existence of the agreements is also not in dispute. Admittedly, the agreements do contain an arbitration clause. Therefore, the considering the same, this Court is inclined to appoint an arbitrator.

4. Accordingly, this Court appoints Hon'ble Mr. Justice K.P. Sivasubramaniam (Retd.) residing at No.47, Pulla Avenue, Shenoy Nagar, Chennai - 600 030 as the sole arbitrator to go into the claims made by the petitioner as against the respondent to resolve the disputes between the parties, after issuing notice to the parties and upon hearing them. It is made clear that the discussion made on the submissions made by the learned counsel on either side are only *prima facie* in nature for the purpose of deciding these petitions alone. Thus, it is made clear that all the issues are left open to be decided by the learned arbitrator including the question of jurisdiction as well as the limitation. The arbitrator shall pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally.

The original petitions are, accordingly allowed, leaving each party to bear their own costs.

26.03.2015

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M.M.SUNDRESH,J.

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26.3.2015