

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

15

+

ARB.P. 128/2016

SAM BUSINESS CONTINUITY SERVICES Petitioner
Through: Mr. Vijay Nair, Advocate.

versus

EMC LIMITED Respondent
Through: Mr. Manavendra Mishra, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

03.10.2016

%

1. This is a petition under Section 11 (5) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act 2015 seeking the appointment of an Arbitrator for adjudication of disputes between the parties.

2. Admittedly there is an arbitration clause in the agreement dated 17th May 2014 entered into between the parties. The Petitioner is also stated to have rendered services which enabled the Respondent to obtain a contract from South Bihar Power Distribution Co. Ltd. & North Bihar Power Distribution Co. Limited. Clause 5.2 of the agreement is regarding the transfer of all the commissions payable to the Petitioner on 'success-fee basis'. The Petitioner raised invoices which the Respondent failed to pay. By a legal notice dated 17th September 2015, the Petitioner called upon the Respondent to pay Rs. 24,15,24,197.48 along with interest at 18% per annum. The Respondent by its reply dated 7th October 2015 denied any

dues owing to Petitioner. The Petitioner sent a further letter dated 14th November 2015 to the Respondent invoking arbitration clause and proposing the name of the arbitrator.

3. In the reply dated 7th October 2015 to the notice for the appointment of an arbitrator, the Respondent did not dispute the arbitration clause. In fact without prejudice to its other submissions that there was no arbitrable dispute, the Respondent proposed the name of another Arbitrator.

4. Today the submission of learned counsel for the Respondent is that the dispute as projected arises out of a 'wagering' contract and on the happening of an uncertain event and is therefore unenforceable and void. He relies upon the decision of the Supreme Court in *Swiss Timing Limited v. Commonwealth Games 2010 Organising Committee (2014) 6 SCC 677*.

5. Learned counsel for the Petitioner on the other hand points out that the Petitioner did render services which resulted in the Respondent being awarded the contract and therefore, it is entitled to its commission.

6. The above submissions have been considered. The Court finds that there is no dispute between the parties as to the existence of an arbitration clause in the contract. Whether in fact the Petitioner is entitled to succeed in its claim is for the Arbitrator to decide. At this stage it is not possible for the Court to come to a definite conclusion that the claim is not arbitrable.

7. The Court accordingly appoints Mr. Justice A.K. Patnaik, a former Judge of the Supreme Court as an Arbitrator for adjudicating the disputes

between the parties, including claims and counter claims. The learned Arbitrator shall fix his own terms and proceed with the Act as amended by the Arbitration and Conciliation (Amendment) Act 2015.

8. The parties are directed to appear before the learned Arbitrator on 5th December 2016 at 11 am or such other time as the learned Arbitrator considers appropriate.

9. The petition is disposed of in the above terms. A certified copy of this order be communicated to the learned Arbitrator forthwith.

S.MURALIDHAR, J

OCTOBER 03, 2016

Rm