

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 16.06.2017**

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.259 of 2017

Star Boxes India Private Limited
rep. by its authorized signatory
Mr.S.Sathyanarayanan .. Petitioner

-VS-

1. The Official Liquidator
attached to the Delhi High Court
Appointed as Provisional Liquidator of
AG Aerovision Electronics Private Limited,
8th Floor, LokNayakBhawan,
Khan Market,
New Delhi - 110003.

2. Mr.Amarjit Singh .. Respondents

Prayer: Petition filed under Section 11(5) of the Arbitration & Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate the disputes between the parties under the Leave and Licence Agreement dated 25.05.2013 and Agreement to Assign Lease Hold Rights and Sale of Factory and Machinery dated 25.05.2013 and to direct the respondents to pay costs of this petition.

For Petitioner : Mr.V.M.Kannan for
Mr. Srinath Sridevan

ORDER

This petition is filed seeking the appointment of a Sole Arbitrator to resolve disputes inter se the parties arising out of *Leave and Licence Agreement* and *Agreement to assign the leasehold rights and sale of factory and machinery* both dated 25.05.2013.

2. The clause for arbitration dispute resolution set out at Articles 12 and 15 thereof read as follows:

Clause 15 of the Leave and License Agreement:

'In the event of there being any dispute pertaining to this Agreement, or any terms hereto, or interpretation of any of the terms hereof, the same shall be referred to arbitration of a sole arbitrator. The sole arbitrator being any person being the retired High Court Judge or Supreme Court Judge. The arbitration shall be as per the provision of the Arbitration and Conciliation Act, 1996 and rules thereunder. The venue of such arbitration shall be at Chennai.'

Clause 12 of the Agreement to Assign the Lease Hold Rights and Sale of Factory and Machinery

'12.1 Disputes: The parties shall attempt to amicably settle any dispute arising out of this agreement and the obligations thereunder or any interpretation of any of the terms and conditions of this agreement (each a "Dispute"). Either party may give written notice of a Dispute to the other party within ten (10) days of the occurrence of the event which gives rise to such dispute or the day that such event came to the notice of the applicable party. Each party shall nominate one (1) person to attempt amicable settlement of the dispute within seven (7) days of notice under this Clause 12.1 Arbitration: If any dispute arising between the parties is not amicable settled within fifteen (15) days of commencement of amicable attempts to settle the same

as provided above, the dispute shall be referred to, and be finally settled by, binding arbitration of a sole arbitrator. The sole arbitrator being any person being the retired High Court Judge or Supreme Court Judge. The arbitration shall be as per the provision of the Arbitration and Conciliation Act, 1996 and rules thereunder. The venue of such arbitration shall be at Chennai.'

3. Heard Mr.V.M.Kannan, appearing on behalf of Mr.Srinath Sridevan, learned counsel appearing for the petitioner.

4. Notice was issued to the respondents by order of this Court dated 24.03.2017 returnable on 28.04.2017 also permitting the petitioner to serve notice privately.

5. Learned counsel appearing for the petitioner would submit that the first respondent company had been taken over by the Official Liquidator attached to the Delhi High Court and notice sent to the Official Liquidator has been duly received on 31.03.2017.

6. With respect to the second respondent, notices were sent to three addresses available as per the records of the petitioner, all of which have been returned un-served. He would further submit that this was not a case of non-service simpliciter and that the second respondent, being well aware of the proceedings pending before this

Court was actively avoiding/ignoring the notices sent.

7. Learned counsel would state that notice has also been served by him privately through whatsapp. The affidavit of service filed indicates screen shots of service by whatsapp. The colour print out, reveals that the notices have been received and seen by the recipient. In these circumstances, I accept the prayer of the learned counsel for the petitioner to the effect that service on the petitioner is complete and I hold the same to be sufficient.

8. I also draw support from a decision of the Bombay High Court in *Kross Television India Private Limited and another vs. Vikhyat Chitra Production and others*, rendered under similar circumstances. Para 6 thereof reads as follows:

'6.I do not see what more can be done for the purposes of this motion. It cannot be that our rules and procedure are either so ancient or so rigid (or both) that without some antiquated formal service mode through a bailiff or even by beat of drum or pattaki, a party cannot be said to have been 'properly' served. The purpose of service is put the other party to notice and to give him a copy of the papers. The mode is surely irrelevant. We have not formally approved of email and other modes as acceptable simply because there are inherent limitation to proving service. Where an alternative mode is used,

however, and service is shown to be effected, and is acknowledged, then surely it cannot be suggested that the defendants had 'no notice'. To say that is untrue; they may not have had service by registered post or through the bailiff, but they most certainly had notice. They had copies of the papers. They were told of the next date. A copy of the previous order was sent to them. Defendants who avoid and evade service by regular modes cannot be permitted to take advantage of that evasion.'

9. On merits and by way of background, the disputes between the parties arise from a Leave and Licence Agreement and an Agreement for assignment of leasehold rights and sale of factory and machinery, both dated 25.05.2013. The petitioner was permitted, upon payment of a sum of Rs.2,23,00,000/- as interest free security deposit and licence fee of Rs.1,25,000/- per month, the use of the property at K-3, Phase II, SIPCOT Industrial Park, Sriperumbudur, Kancheepuram for a period of 48 months. The deposit was repayable upon termination of the agreement or earlier determination of the same. The second agreement provided for the petitioner to take over the leasehold rights held by the second respondent in the property and to purchase the factory building and machinery for which a sum of Rs.5,00,000/- had been received as part consideration.

10. Both agreements were frustrated since, within a few weeks of their execution, the Small Industries Development Bank of India issued a possession notice dated 09.07.2103 in terms of Rule 8(1) of the Security Interest (Enforcement) Rules 2002 taking possession of the properties. The petitioner and the first respondent thus entered into a summary of discussion dated 12.12.2013 confirming the position that the agreements could not be given effect to. Consequently, refund of the security deposit was sought along with the refund of the amount of Rs.5,00,000/- paid under the assignment agreement. The cheques issued by the respondents as security for the aforesaid payments were duly deposited by the petitioner, but returned un-paid with the endorsement 'payment stopped by the drawer'. Proceedings in terms of Section 138 of Negotiable Instruments Act are stated to be pending in this regard.

11. Learned counsel for the petitioner would also point out that proceedings in terms of Section 9 of the Arbitration and Conciliation Act 1996 have been initiated in Application No.8003 of 2015 which is being actively contested by the second respondent and in the process of which the petitioner came to know about the proceedings for winding up of the first respondent before the Delhi High Court.

12. In the course of the section 9 Application, the second respondent has filed a statement of his assets and liabilities dated 23.12.2016 upon which this Court had made adverse comments noting that prima facie, the respondents were guilty of contempt in not furnishing the proper details as sought for by this Court.

13. It is against the aforesaid background of facts that this petition seeking appointment of an Arbitrator is to be considered by me. I note that the particulars for service upon the second respondent has remained the same throughout these as well as the connected section 9 proceedings and the non-receipt of the notices served privately by the petitioner certainly appears deliberate.

14. The petitioner and second respondent in this petition have been regularly contesting the Section 9 application which establishes the position that disputes exist between the parties. The existence of the clauses for arbitration in the Leave and Licence Agreement as well as the Agreement for assignment of leasehold rights and sale of factory and machinery, also appear clear and unequivocal.

Dr.ANITA SUMANTH,J.

15. I thus appoint Justice. Mr.S.Rajeswaran, Retired Judge of this Court, No.AA-67, I street, Near Rountana Nalli Silks, Annanagar East, Chennai- 600 040 (Mobile No. 9444390952) as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. He may, after issuing notice to the parties and upon hearing them, endeavour to 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 his remuneration and other incidental expenses.

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

16.06.2017

vga/sl

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