

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO.106 OF 2017

Ultra Media and Entertainment Pvt. Ltd.Applicant

Vs.

Airmedia Technologies Chennai Pvt. Ltd.Respondent

Mr. Shriniket Deshpande I/b. Naik Naik and Co. for applicant.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 17th SEPTEMBER 2018

P.C.:

1 Applicant has filed this application under Section 11 of the Arbitration and Conciliation Act 1996.

2 Applicant and respondent had entered into an Agreement dated 9th August 2012. Clause 25 of the said agreement reads as under :

25. This Agreement shall be governed and construed in accordance with the laws of India. In case of any dispute between the parties hereto regarding any of the clauses of this Agreement, the matter shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. Arbitration shall be conducted by one (1) of three (3) arbitrators of which one each shall be appointed by each Party and the third arbitrator shall be appointed by the two arbitrators so appointed by the Parties. The arbitration award shall be final and binding on the Parties. This Agreement is subject to the laws of India and jurisdiction of Courts in HYDERABAD/MUMBAI.

3 Disputes arose. In an attempt to settle disputes, parties entered into MOU dated 4th September 2014. As respondent failed to comply with the terms of the MOU, applicant filed an application under Section 11 being company application no.165 of 2016 in this Court. By an order dated

7th July 2016 applicant was allowed to withdraw the application with liberty to file fresh application, if advised. Accordingly this application has been filed. At Exhibit II is a copy of communication dated 8th November 2016 from applicant's advocates to respondent invoking arbitration. It is stated in the application that no reply has been received.

4 This Court has passed an order on 26th April 2018 directing respondent to remain present in Court either by themselves and/or through their advocate. Copy of that order has been served upon the company. Applicant has filed an affidavit of one Ravi Suryawanshi affirmed on 4th December 2017 in which it is stated that the packet that was sent to the Nungambakkam Chennai address came back undelivered with the endorsement “no such company at the said address”. Whereas the envelope sent to Theagarya Road, Chennai address has been delivered. The Associate of this Court has taken a print out of the Company Master Data in which the registered address given is the same address, i.e., 56/35, Josier Street, Nungambakkam Chennai, Chennai TN 600 034. Therefore, I would proceed on the basis that notice has been served on respondent. Despite service, respondent is unrepresented and no affidavit in reply has been filed. None of the averments in the application are controverted.

5 Therefore, Mr. Shyam Kapadia, an advocate practicing in this Court and having his office at 11C Examiner Press Building, Dalal Street,

Fort, Mumbai 400 001 (email ID : shyam.a.kapadia@gmail.com, mobile no.9820824262) is appointed as Sole Arbitrator to arbitrate on all disputes and differences, including counter claim, if any, arising out of or in connection with or relating to Agreement dated 9th August 2012. All rights and contentions of the parties are kept open, except the question of jurisdiction of the arbitrator.

6 The fees to be fixed by the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by applicant and 50% by respondent and the same shall be subject to cost in the arbitral proceedings.

7 The Arbitrator to communicate in writing to the Advocate for applicant with copy to respondent the disclosures as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 within two weeks of receiving a copy of this order from any of the party.

8 Liberty to apply.

9 Application accordingly stands disposed.

10 Since applicant had not come with Company Master Data and had to rely on Court Officer for the same, applicant to give a donation of Rs.5,000/- to Kerala Chief Minister's Distress Relief Fund and this amount to

be paid within one week from today. Arbitrator to satisfy himself that this amount has been paid before he enters into reference. Account details are as under :

Name of Donee : Chief Minister's Distress Relief Fund
Account Number : 67319948232
Bank : State Bank of India
Branch : City Branch, Thiruvananthapuram
IFSC : SBIN0070028
PAN : AAAGD0584M
Account Type : Savings
Swift Code : SBININBBT08

(K.R. SHRIRAM, J.)

Gauri
Amit
Gaekwad

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signed by
Gauri Amit
Gaekwad
Date:
2018.09.19
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