

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.03.2018

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

O.P. No.284 of 2017

M/s.PL Worldways Limited,
Rep. By its Director Mr.R.N.Prakash
37, Dr.P.V.Churian Crescent,
Egmore, Chennai – 600 008.

.. Petitioner

Versus

INOX Leisure Limited,
Paville House,
Near Twin Towers,
Off Veer Savarkar Marg,
Prabhadevi, GD Somani Road,
Cuffe Parade,
Mumbai, MH- 400 025.

..Respondent

Prayer: Original Petition filed under Section 11 (6) (a) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator in terms set out in Section 11 (6) (a) of the Arbitration and Conciliation Act, 1996, to decide the dispute between the petitioner and the respondent arising out the Agreement dated 01.04.2014.

For Petitioner : Mr.Jose John

For Respondent : Ms.Shubharanjani

ORDER

This Petition seeks the appointment of a Sole Arbitrator in terms of section 11(6) of the Arbitration and Conciliation Act (in short 'Act') to resolve disputes between the petitioner and respondent arising out of agreement dated 01.04.2014.

2.The petitioner and the respondent have entered into an agreement dated 01.04.2014 for the provision of ticketing and travel related services by the petitioner to the respondent. The agreement provided that only such transactions as were initiated by the authorised representatives of the respondent would be honoured by the petitioner and a list of personnel authorised to sign the travel requisition form along with specimen signatures was circulated by the respondent for the said purpose.

3.While this is so, the respondent had come to know that its authorised person, one, Mr.Dhilip Srivatsav, had been booking tickets for domestic as well as international sectors for third parties who were unconnected with its organization. Legal action is said to have been initiated by the respondent against the aforesaid individual.

4.In the meanwhile the petitioner had, at the behest of the said Mr.Srivatsav, been booking tickets as per his requests and raising invoices on a fortnightly basis. Upon realising the fraudulent actions of the said individual, invoices of an amount of Rs.64,07,164/- were not cleared by the respondent.

5.A legal notice was issued by the petitioner on 11.08.15 that was, interalia, also styled as a notice for winding up in terms of section 433 and 434 of the Companies Act 1956. Though an interim reply was received from the respondent, pending final response, no further or final reply was forthcoming. The contents of legal notice dated 11.08.15 were reiterated on 09.09.15 by the petitioner.

6.By letters dated 15.09.15 and 05.10.15, the respondent denied liability, instead accusing the petitioner of colluding with Mr.Srivatsav and raising a counter claim as against the petitioner. The petitioner, for its part, cancelled the tickets in respect of the ticket bookings for future dates thus bringing the amount outstanding to it down to Rs.34,36,099/-. Demands for the payments remained unheeded and a request for appointment of Arbitrator was issued on 06.09.2016 that was rejected on 06.10.2016. The request, reiterated on 23.12.2016, was also rejected by the respondent on 31.01.17.

7.The existence of an arbitration agreement is clear and unambiguous at clause (X) of the agreement. However, two defences have been raised by Ms.Shubharanjani, learned counsel on behalf of the respondent:

(i)That agreement dated 01.04.14 containing the arbitration clause was not stamped in accordance with the provisions of the Indian Stamp Act thus invalidating the entire agreement and

(ii)That the tenure of the applicant had expired and thus no demand

8. Adverting to the first defence, the respondent places in this regard, reliance upon the provisions of section 35 of the Stamp Act which operate as a bar to the admission of an instrument that bears no/inadequate stamp, in any proceeding before the Court. The arbitration agreement contained therein is also consequently of no utility as between the parties. Reliance is placed upon a judgement of the Supreme Court in the case of *SMS Tea Estates Pvt. Ltd. Vs. M/s.Chandmari Tea Co. Pvt Ltd* (2011-4-L.W.357).

9.The petitioner, for its part, relies upon the provisions of section 42 of the Stamp Act that provides for certification that the originally defective instrument has been rectified and thereafter adequately stamped. Section 42 (2) provides that upon payment of duty and penalty and an endorsement being made in that regard, the instrument shall be admissible in evidence thereafter. Reliance is placed upon the judgements of the Supreme Court in the cases of *Hindustan Steel Ltd. Vs. Messrs Dilip Construction Company* (Manu/SC0474/1969) and *Javer Chand and others Vs.Pukhraj Surana* (AIR 1961 SC 1655).

10.The provisions of Section 42 read as follows:

42(1)When the duty and penalty (if any), leviable in respect of any instrument have been paid under section 35, section 40 or the person admitting such instrument in evidence or the collector, as the case may be, shall certify by endorsement thereon that the proper duty or as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof

(2) Every instrument so endorsed shall thereupon be admissible in evidence and may be registered and acted upon and authenticated as if it had been duly stamped and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it or as the person may direct:

11. In the present case Mr. Jose John, learned counsel for the petitioner confirms that duty has been paid, though only in the course of the present proceedings and further undertakes to have the penalty deposited within a period of one week from date of receipt of this order. In my view, this amounts to substantial compliance with the provisions of Section 42(1), subject to confirmation of the endorsement of payment. In the aforesaid circumstances, there is no embargo on the admissibility of the instrument, including the arbitration agreement, as evidence, subject to the remittance of the penalty as aforesaid. The first objection is rejected.

12. I now advert to the objection regarding the validity of the Agreement. Clause (V) of the agreement deals with the validity of the agreement and reads as follows:

'V) Validity and Termination of Agreement: This agreement shall be valid for a period of 12 months from the date as mentioned in the Effective date of Agreement. The agreement may be cancelled earlier than the expiry date by either party by giving 30 days advance notice in writing to the other party without assigning any reasons therefore and subject to settlement of a outstanding dues/rendering of services from the respective side, upto the date of termination of the agreement.'

13. The differences between the parties arise on account of the conflicting opinions regarding 'Effective date of Agreement'. While according to the respondent, the effective date is 01.04.2014, according to the petitioner, the effective date is the date of execution of agreement being 11.06.2014.

14. This would impact the validity of the demand itself in so far as the invoices raised by the petitioner are of various dates ranging from 20.05.14 to 24.08.15. If the date is held to be 11.06.2014, the invoices raised would be almost fully covered by the tenure of the agreement, barring the last one dated 24.08.15, whereas if the effective date is held to be 01.04.2014 only the first three invoices, dated 20.05.2014 and 07.10.2014 (2 invoices) would stand covered. In support, learned counsel for the petitioner has filed email correspondences dated 09.05.2015 and 23.05.2015 enclosing statements of invoices carrying the date 23.05.2015 which, though received, have not been objected to by the respondent.

15. Be that as it may, one thing is clear. There is a dispute that exists. Thus, and in the light of the clear and unambiguous agreement for arbitration, I allow this petition and appoint a sole arbitrator to adjudicate upon the disputes inter se the parties. The issue relating to the tenure of the agreement alone is reserved as a preliminary issue for the decision of the learned Arbitrator in terms of section 16 of the Act.

16. The learned counsel for the respondent, upon instructions,

<http://www.judis.pie.in> concurs upon the appointment of Mr.T.Poornam, Advocate as Sole

Arbitrator without prejudice to her defences relating to the tenure of the agreement.

17.I thus appoint Mr.T.Poornam, Advocate as Sole Arbitrator in this matter. He may enter upon reference, issue notice to the parties and adjudicate upon the disputes that have arisen as between the parties, after and subject to recording of satisfaction that the petitioner has complied with the remittance of penalty in terms of section 42(1) of the Stamp Act. The learned arbitrator is at liberty to fix his remuneration and schedule of expenses that will be borne equally by both parties. He is requested to complete the proceedings as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

18. This Original Petition is ordered accordingly.

Index:Yes/No
Speaking Order/Non-speaking order
Rkp/sl

01.03.2018

Mr.T.Poornam,
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Chennai – 01.

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Dr.ANITA SUMANTH,J.

Rkp/sl



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