

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2019

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.359 of 2019

Karix Mobile Private Limited
(Formerly known as Mgage India Private Limited and Velti India Private Limited)
rep. by its Associate Director – Legal
Mr.Arup Kumar Gupta,
registered office at Unit Nos.1 & 2,
First Floor, Pinnacle Building,
Ascendas International Tech Park,
CSIR Road, Taramani, Chennai-600 113. ... Petitioner

Vs.

M/s.Canny Infotech
rep. by its sole proprietor,
Mr.Guru Ananth, No.3,
1st Cross Srinivasa Colony,
Bangalore-560 027.

also at
M/s.Canny Infotech
rep. by its sole proprietor,
45/1, New No.8, I Cross Road, I Main
Lakkasandra, Adugodi Post,
Bengaluru-560 030.

also at :
M/s.Canny Infotech
rep. by its sole proprietor,
Mr.Guru Ananth, No.3,
GEM Plaza, S11, Second Floor,
Plot No.66, Infantry Road,
Bengaluru-560 001.

Also at:
M/s.Canny Infotech
rep. by its sole proprietor,
3rd Floor, V.V.R. Complex,
Karur Bye-Pass Road,
Trichy-620 018.

.. Respondent

* * *

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the dispute between the petitioner and respondent arising out of the Master Service Agreement dated 26.06.2014.

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For Petitioner : Mr.V.V.Sivakumar

For Respondent : Served – No Appearance

ORDER

The petitioner has filed this Original Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking for appointment of a Sole Arbitrator to adjudicate the dispute with the respondent arising out of the Master Service Agreement dated 26.06.2014.

2. The petitioner and the respondent entered into a Master Service Agreement dated 26.06.2014 (in short, "the Agreement"), as per which, the petitioner agreed to perform and provide alter service for the internal use as well as for the customers of the respondent in certain terms. The fee terms also mentioned in the said Agreement. The petitioner raised various invoices to the tune of Rs.29,78,986/-, which were duly served on the respondent. However, the respondent

only made part payments amounting to Rs.9,21,062/- leaving an outstanding amount of Rs.20,57,924/-, which is not in dispute. Though there were follow-ups by the petitioner, the same went in vain. Hence, the petitioner issued a notice dated 02.07.2015 through their Advocate calling upon the respondent to make payment, which was replied to by the respondent on 20.07.2015 for the first time disputing the liability. Thus, the petitioner was forced to invoke the arbitration clause contained in the agreement by nominating a sole arbitrator to adjudicate the disputes between them vide notice dated 27.08.2015. The respondent sent a reply dated 01.10.2015 thereby seeking for an amicable resolution, which also proved futile. While so, the named arbitrator recused himself vide letter dated 31.05.2017. Thus, the petitioner nominated another arbitrator vide notice dated 07.08.2017. However, the said notice could not be served on the respondent for the reason that the respondent left the address given earlier. Despite several attempts, the petitioner could not locate the respondent's address earlier and now only they are able to secure the same. Since there is no consensus between the parties with respect to the appointment of the Arbitrator, the petitioner is before this Court seeking the appointment of a Sole Arbitrator, as stated above.

3. Despite service, the respondent has chosen not to appear either in person or through any Advocate.

PUSHPA SATHYANARAYANA, J.

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4. Heard the learned counsel for the petitioner.

5. Considering the submissions of the learned counsel for the petitioner, Hon'ble Mrs.Justice R.P.Sondurbaldota, a retired Judge of Bombay High Court, is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, 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 her remuneration and other incidental expenses. The appointment of the Arbitrators will be subject to the disclosure and declaration made, as per the Sixth Schedule to the Arbitration and Conciliation Act, 1996 coupled with the amendments made therein.

6. The Original Petition is ordered accordingly. The parties shall bear their own costs.

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