

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.190 OF 2014

ORDER

M/s.Telenox Technologies Pvt. Ltd., Hyderabad, filed this application under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), seeking appointment of a sole Arbitrator to resolve its claim against M/s.Viom Networks Ltd., Gurgaon, Haryana (formerly known as M/s.Wireless-TT Info Services Ltd.). The value of the claim of the applicant company is quantified at Rs.1,05,93,652/-.

The applicant company entered into an Agreement for Services with the respondent company on 08.06.2009. Disputes having arisen between them, the applicant company addressed legal notice dated 18.10.2014 to the respondent company invoking the arbitration agreement in Clause 13 of the Agreement for Services dated 08.06.2009 and calling upon the respondent company to appoint a sole Arbitrator to resolve its claim for the final settlement amount of Rs.1,18,733/- and damages of Rs.1,05,93,652/-. The respondent company issued reply legal notice dated 29.11.2014, stating that it was unaware of the nature and basis of the claims made by the applicant company and requesting it to send all relevant documents and the statement of account with regard to its claim so that the issue could be resolved amicably, if the claim of the applicant company was genuine. Stating that the respondent company failed to resolve the issue amicably or appoint a sole Arbitrator, the applicant company now seeks such appointment.

Notice having been ordered, M/s. Indus Law Firm entered appearance for the respondent company and filed a counter-affidavit. Therein, the respondent company pointed out that it had asked for

clarifications under its reply legal notice dated 29.11.2014, but the applicant company wilfully did not co-operate. It further stated that as it had never denied or disputed the claims raised by the applicant company but only sought clarifications, there was no arbitrable or crystallised dispute between the parties. The respondent company further stated that if the applicant company approaches it with all material as called for under its reply notice dated 29.11.2014, it would examine the same and only if they are unable to resolve the issue, the dispute would be referred to an Arbitrator by it in accordance with the arbitration agreement.

Clause 13 of the Agreement for Services dated 08.06.2009 reads as under:

'13. ARBITRATION

All disputes or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this contract or the breach thereof shall be referred to the sole arbitrator appointed by the 'Customer' and the award made in pursuance thereof shall be binding on the parties. The provisions of the Arbitration and Conciliation Act, 1996 or any statutory modifications thereof shall apply to such Arbitration.'

Be it noted that as per the Agreement for Services, the respondent company is the 'Customer'.

Though the respondent company would assert that it never denied the claims of the applicant company and merely sought documents and the statement of account in support of such claims, it may be noted that the issue has been kept pending till now. This application was filed in the year 2014 and it is clear that no amicable settlement has emerged or was arrived at by and between the parties despite this long lapse of time. Clause 13 also does not require an amicable settlement being attempted as a condition precedent for invoking the arbitration agreement. Further, as per Section 11(6A) of the Act of 1996, which was inserted therein by

Act 3 of 2016 with effect from 23.10.2015, the High Court, while considering an application under Section 11(5) & (6) of the Act of 1996 shall confine itself to examination of the existence of an arbitration agreement and no more.

That being so, it is not for this Court to examine as to whether there is an arbitrable dispute between the parties or the merits thereof. Once it is an admitted fact that an arbitration agreement exists between the parties and given the further fact that they have not resolved their disputes despite passage of time, it would be fit and proper to relegate them to the dispute resolution mechanism of arbitration as agreed upon.

The Arbitration Application is accordingly ordered appointing Sri Justice G.V.Seethapathy, Retired Judge, erstwhile High Court of Andhra Pradesh, residing at House No.5-8-30/34, Govardhanpuri Gardens, Yapral, Secunderabad-500087, as the sole Arbitrator for resolution of the disputes between the applicant company and the respondent company, arising out of the Agreement for Services dated 08.06.2009, in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23.10.2015, which shall be borne by both parties in equal measure. No order as to costs.

SANJAY KUMAR, J

20th FEBRUARY, 2019

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