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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 30.05.2019

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ARB.P. 124/2019 & IA 7363/2019

M/S TIGMANSHU DHULIA FILMS PVT LTD.

..... Petitioner

Through: Mr.Arvind Varma, Sr. Adv. with
Mr.Uday Singh, Mr.Vinay Garg, Ms.Saloni
Tangri Jawa, Ms.Aditi Mohan, Mr.Saurabh
Ajay Gupta, Advs.

versus

M/S RAJYA SABHA TELEVISION (RSTV) Respondent

Through: Ms.Tatini Basu, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

IA 7363/2019(delay of 2 days in filing reply)

For the reasons stated in the application, the delay in
filing the reply is condoned and the reply is taken on record.

Arb.P. 124/2019

1. This petition has been filed by the petitioner under
Section 11 of the Arbitration and Conciliation Act, 1996
(hereinafter referred to as the 'Act') seeking appointment of an
Arbitrator for adjudicating the disputes that have arisen between
the parties in relation to the Agreement dated 21.04.2015.

2. The Arbitration Agreement is contained in Clause 17.1 of the said Agreement and is reproduced hereinbelow:

“17.1 All the disputes and difference arising out or in any way touching or concerning the Services shall be referred to the sole arbitrator appointed by the Secretary General, Rajya Sabha. The award of such arbitration shall be final and binding on the parties to this contract. The Arbitration proceeding shall be held at Delhi only. There will be no objection that the person so appointed is or was in the employment of the Rajya Sabha and as an employee of the Rajya Sabha had during the course of his duties expressed views on all or any of the matter of difference or dispute.”

3. The petitioner by a legal notice dated 03.10.2018 called upon the respondent to pay Rs.8,48,59,806/- and Rs. 1,62,61,200/- plus taxes within a period of 15 days from the receipt of notice.

4. The respondent by its reply dated 24.10.2018 stated that detailed examination of files/records was being conducted and the reply would be sent in three to four weeks.

5. The petitioner again by a notice dated 28.11.2018 reiterated its demand. As far as arbitration is concerned, the petitioner stated as under:

“5. Since the dispute has arisen between you, the Rajya Sabha Television (RSTV) and my clients due to non-payment of claims of my clients arising out of the agreement dated 21.04.2015 including those mentioned in the demand notice dated 03.10.2018, we hereby invoke the arbitration clause under the agreement dated

21.04.2015 for award of the claims in favour of my clients and for other appropriate orders.

6. The Arbitration clause contained in clause 17.1. provides for that all the disputes and differences arising out or in any way touching or concerning the Services under the agreement shall be referred to the sole arbitrator to be appointed by the Secretary General of the Rajya Sabha. Further, that the person appointed may be an employee (past or present) of the Rajya Sabha.

In this regard you may note that in view of provisions contained in the Arbitration & Conciliation Act, 1996, in particular Section 12 & 13 read with relevant Schedules, neither the Secretary General of the Rajya Sabha is competent to appoint the arbitrator nor the person so appointed to act as an arbitrator can be an employee (past or present) of the Rajya Sabha.

7. In these circumstances, my clients have instructed me to approach the Hon'ble Court under the Arbitration & Conciliation Act, 1996 for appointment of the arbitrator for a decree/award against you, the Rajya Sabha Television (RSTV), for the claims made by my clients under the demand Notice dated 03.10.2018 and other appropriate orders.”

6. The respondent, however, by its reply dated 28.12.2018 refuted the demand of the petitioner and stated that the respondent has appointed a one Member Enquiry Committee to look into its own affairs.

7. In the above reply, the respondent further stated as under:

“7. In this view of the matter, it is requested that your client may be advised to await the outcome of the enquiry. This issue without prejudice to any Counter-Claim that may be or is likely to be raised by the RSTV

and the Rajya Sabha Secretariat. Your good-self may please advise your client that as an when your client raises a dispute and seeks appointment of an Arbitrator under the Clause 17 of the Contract dated 21-04-2015, the Secretary-General, Rajya Sabha will have the power to appoint an independent arbitrator and that the amended Act (The Arbitration and Conciliation Act, 1996 as amended) has not denuded the Secretary-General of his power in appointing an independent arbitrator under Section 12 of the Act; and, this aspect is wrongly understood by your client. The amended Act has made only the last sentence of the Clause 17 ineffective (i.e. "There will be no objection that the person so appointed is or was in the employment of the Rajya Sabha and as an employee of the Rajya Sabha had during the course of his duties expressed views on all or any of the matter of difference or dispute.").”

8. The petitioner, thereafter, filed the present petition, without calling upon the Secretary General of Rajya Sabha to appoint an Arbitrator.

9. Counsel for the respondent submits that apart from the other objections, as the petitioner has not approached the Appointing Authority, that is, the Secretary General, Rajya Sabha, the present petition is not maintainable.

10. On the other hand, learned senior counsel for the petitioner submits that as Clause 17.1 of the Agreement provides that a person, who is in the employment of the Rajya Sabha and as an employee of the Rajya Sabha had during the course of his duties expressed views on all or any of the matter

of dispute, could also have been appointed by the Secretary General, the petitioner did not have to approach the Secretary General as such appointment could not have been made in view of the judgment of the Supreme Court in ***TRF Ltd. vs. Energo Engineering Projects Ltd.*** (2017) 8 SCC 377.

11. I am unable to agree with the submissions made by the learned senior counsel for the petitioner. Clause 17.1 of the Agreement can be bifurcated into two parts. While the first part provides that the appointing Authority of an Arbitrator shall be the Secretary General, Rajya Sabha, another part of the said Clause provides that the Arbitrator so appointed can be an employee of the Rajya Sabha itself. Even if the second part of the Arbitration Agreement can no longer be enforced in view of Section 12(5) of the Act read with the Seventh Schedule to the Act and as held by the Supreme Court in its judgment in ***TRF Ltd.*** (supra), however, that would have no effect on the first part of the Arbitration Agreement as there is no ineligibility attached to the Appointing Authority.

12. Section 11(6) of the Act confers jurisdiction on this Court to appoint an Arbitrator only when the person entrusted with the function of appointing an Arbitrator in accordance with the procedure agreed between the parties, fails to act.

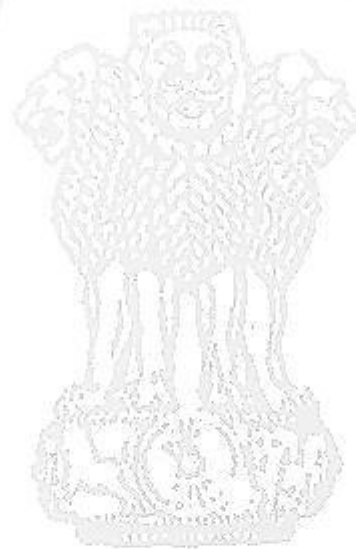
13. In the present case, admittedly, the petitioner has not even approached the Appointing Authority. Therefore, no cause of

action for filing of the present petition can be said to have accrued in favour of the petitioner.

14. The petition is therefore dismissed as being premature, granting liberty to the petitioner to invoke the Arbitration Agreement in accordance with the provisions thereof. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 30, 2019
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