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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ O.M.P. (COMM) 208/2018

Date of Decision : 24th July, 2019

M/S SATYADHARA COMMUNICATIONS PVT. LTD
..... Petitioner
Through: Mr.Abid Ali Beeran, Mr.P.M. Haneef and Mr.Sarath Janardhanan, Advs.

versus

M/S INDIASIGN PVT. LTD. ..... Respondent
Through: Mr.Gaurav Kejriwal and Mr.Sujit Keshri, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘Act’) has been filed by the petitioner challenging the Arbitral Award dated 08.04.2016 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Agreement dated NIL executed between the parties whereby the respondent had granted the use of its Teleport services on "INTELSAT, IS-17 Satellite" to the petitioner.

2. The disputes between the parties arose out of alleged non-payment of the charges for the use of such facility by the petitioner primarily on account of the variations in the foreign exchange. The respondent, claiming that an amount of Rs. 63,25,958/- remained outstanding from the petitioner, suspended the services being provided to the petitioner on 15.10.2014. The petitioner in return by an e-mail dated 22.10.2014, terminated the Agreement, which led to the disputes between the parties.

3. The learned counsel for the petitioner submits that in terms of Clause 5.1 of the Agreement only the respondent has a right to terminate the Agreement, that too, after giving one month's notice in advance to the petitioner. The petitioner has no right to terminate the Agreement. He further submits that in terms of Clause 10 of the Agreement, which is the Arbitration Agreement between the parties, only the disputes with regard to obligations of the parties upon termination of the Agreement can be referred to arbitration. In the present case, as the termination of the Agreement itself is invalid, the Arbitrator has no jurisdiction to entertain the disputes.

4. I have considered the submissions made by the learned counsel for the petitioner, however, I find no merit in the same. The petitioner by its e-mail dated 22.10.2014 had clearly stated that it would no longer be availing the services of the respondent and the e-mail be treated as a termination of the Agreement. The respondent accepted this termination of the Agreement and lodged its claim accordingly.

5. Even otherwise, Clause 10 of the Agreement, which is the Arbitration Agreement between the parties, is reproduced hereinunder:-

> ***"10 ARBITRATION***
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> *In the event of any dispute or differences arising between the parties hereto either touching upon the subject matter of this agreement or the interpretation thereof or in relation to the obligations of the parties upon termination of this agreement in respect of rights and liabilities of the parties thereafter or in any way connected therewith or in respect thereof it shall be referred to the arbitration of sole arbitrator, the Managing Director of Indiasign Pvt. Ltd, Hindi Bhawan New Delhi, or any other office nominated by Managing Director and it shall be deemed to be a reference under the Indian Arbitrator & conciliation acts, 1996. All the arbitration proceedings shall be held at New Delhi."*

6. The above Arbitration Agreement is extremely wide and clearly states that any disputes or differences arising between the parties and touching upon the subject matter of the Agreement or in any way connected therewith or in respect thereof shall be referred to arbitration. Therefore, all disputes, including the validity of termination or the demand raised by the respondent, for foreign exchange fluctuation charges would clearly fall within the scope of the

Arbitration Agreement and the Arbitrator would have jurisdiction to adjudicate thereon.

7. It is further contended by the learned counsel for the petitioner that as the claim of the respondent was based on the variation in the foreign currency value, the respondent was to produce the requisite documents before the petitioner and later, before the Arbitrator in proof of such variation and in support of its claim. Having failed to do so, the Arbitrator has erred in awarding the amount claimed by the respondent.

8. On the other hand, the learned counsel for the respondent submits that the respondent had been regularly raising its invoices based on the foreign exchange fluctuation. These invoices were not disputed by the petitioner at any point of time. Before the Arbitrator the only dispute raised was to the statement of account filed by the respondent. The Arbitrator went into this issue and found that the statement of account filed by the respondent was supported by the documents, that is, invoices and the payments. The counsel for the petitioner was unable to show any discrepancy therein before the Arbitrator or even to this Court. He submits that even in the petition filed before this Court, the petitioner had not raised any such grievance against the Statement of Account.

9. I have considered the submissions made by the learned counsels for the parties. A reading of the Award clearly shows that before the Arbitrator the plea raised by the petitioner was that the statement of

account filed by the respondent is incorrect. The Arbitrator considered this issue at length and observed as under:-

> *"17. That after examining in detail all the documents, bills and the statement of account filed by the claimant, I made specific queries from the respondent, to point out as to how the statement of account or the bills of the claimant were incorrect, as alleged by the respondent. The counsel for the respondent failed to point out any error or discrepancy in the statement of account. He had no answers or explanation, when his attention was drawn to the fact that regular and timely payments were not made against each bill and in fact the payments were made on account and after taking into account all the payments made by the respondent and all the bills raised by the claimant, a sum of Rs. 63,25,958/- was outstanding against the respondent. The respondent also admitted that from 01.08.2013, in the bills raised by the claimant, the amount of the differential amount, of foreign exchange fluctuation on bandwidth charges was also claimed in every bill as per the agreement between the parties. The respondent has also admitted this position by paying the monthly bill of amount Rs. 7,70,000/- (including the differential amount of foreign exchange variation), in para 5 of the written statement and also in its E-mail dated 10.10.2014 to the respondent."*

10. The counsel for the petitioner has relied upon paragraph 9, 18 and 19 to contend that the plea of lack of proof of foreign currency

fluctuation has been taken in the petition. These paragraphs are reproduced hereinbelow:-

9. It is not true that as per clause the respondent was liable to pay charges to the tune of Rs. 7,70,000/- (Rupees Seven Lakh Seventy Thousand only) per months for the proper service of uplinking by the claimant company. In other words if proper service is not rendered the claimant is not entitled to receive the amount and the respondent is not liable to pay the same. At the same time it is humbly submitted that the respondent company has paid the monthly charge without any fail, if a true and correct account of the transaction is produced it can be seen that the respondent was regular in making monthly payments.

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18 The interest calculated, the amount awarded etc. is arbitrary, unsustainable, unfounded and unjust in every respect.

19. The award is not a speaking award at all. It does not discuss about the admissibility of the documents produced and the maintainability of the claim at all. The award amount is unsustainable and against the rules of equity and Justice."

11. I do not find the above paragraphs to be urging the plea which is now being taken by the counsel for the petitioner. I, therefore, find no merit in the objection raised by the petitioner.

12. Learned counsel for the petitioner lastly submitted that in terms of Clause 5.2.4 of the Agreement, the petitioner is liable to pay for the remaining period of the Contract only when there is a valid termination of the Contract by the respondent. In the present case, as the termination of the Contract was not valid, the petitioner was not liable to pay such amount and the Arbitrator has erred in awarding this amount in favour of the respondent.

13. As already observed earlier, it was the petitioner who had terminated the Agreement by an e-mail dated 22.10.2014. The Arbitrator has also considered this issue and has observed as under:-

> *"19. **Claim of Rs. 30,80,000/-:** That the respondent has admitted the terms and conditions of the agreement and is bound by the same. The claimant has claimed monthly charges suspended the services w. e. f. 15.10.2015. As per admitted terms and conditions of the agreement, the claimant is entitled for monthly charges even during the suspension period. Also as per the admitted clause 5.2.4 the respondent is liable to pay for the entire period of the contract in case of termination. The respondent has claimed that the claimant is not entitled for the sum of Rs. 30,80,000/- for the period 01.11.2014 to 28.02.2015 as the contract was not validly terminated by the claimant. However, the case of the claimant in the claim petition and also during*

the arguments is that the contract has been terminated by the respondent vide its letter/Email dated 22.10.2015 and hence the respondents are liable to pay the monthly charges till 28.022015. It is on record that the agreement was terminated by the respondent on 22.10.2015 with immediate effect. I hold that the claimants are entitled to the claim of Rs. 30,80,000/- for the monthly charges for the period 1.11.2014 to 28.02.2015."

14. I see no reason to disagree with the finding of the Arbitrator.

15. In view of the above I find no merit in the present petition and the same is dismissed with cost quantified at Rs.25,000/-.

NAVIN CHAWLA, J

JULY 24, 2019/rv