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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA Nos.1558 and 1559 of 2017
and CMP No.8239 of 2017

Josh Telecom

...Appellant in both the appeals/
Applicant/ 1st respondent

vs

1. M/s Aircel Ltd.,
Rep by Authorised Signatory
Mr.Kalyanasundaram,
5th Floor, Spencer Plaza,
No.769, Anna Salai,
Chennai - 600 002.

2. Mrs.R.Jaya Saraswathi ...1st&2nd Respondents in both the
appeals/1st&2nd respondent/claimants

Civil Miscellaneous Appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 against the order passed in Interim Application Nos.1 and 2/III/ACLC/2016-2017 in ARB Case No.III/ACLC/2016 passed by the Arbitral Tribunal, Chennai dated 18.04.2017.

For Appellant : Ms.Simran Srinivasan

For 1st respondent : Mr.R.Parthasarathy

COMMON JUDGMENT

(Heard through Video Conference)

These Civil Miscellaneous Appeals have been filed challenging the dismissal of the interim applications Nos.1 and 2/III/ACLC/2016-2017 in ARB Case No.III/ACLC/2016 filed by the appellant before the Arbitral Tribunal.

2. The appellant is the respondent and the first respondent is the claimant before the Arbitrator. The appellant and the first respondent had entered into a contract, under which, the appellant was appointed as an Agent for the first respondent.



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first respondent/claimant and the area of operation of the appellant was a small region, which would comprise only a minuscule part of a fraction of the business of the first respondent/claimant who has business across the country.

b) The purpose behind such a peculiar demand and the impact it is likely to create. Further, the filing of the application seeking these documents when the trial has already begun can only be construed as delaying tactics employed by the appellant.

c) No merit in the demand made by the appellant and hereby dismisses in part the application in respect of the demand for the audited balance sheet and income tax returns for the three financial years 2012-13, 2013-14 and 2014-15 and allows the application in part with respect to the demand for the books of accounts maintained by the first respondent/claimant. The first respondent/claimant is directed to produce the books of accounts maintained in respect of the appellant within three days from the date of receipt of the order.

11. The appellant has challenged the impugned orders on the ground that non-supplying of documents sought for by the appellant under the applications before the Tribunal will amount to gross violation of principles of natural justice. The appellant also challenges the procedure followed by the Arbitral Tribunal for conduct of the trial.

12. As seen from the applications filed by the appellant in Application Nos.1 and 2/III/ACLC/2016-2017 in ARB Case No.III/ACLC/2016, no provision of law has been mentioned, as rightly pointed out by the Arbitral Tribunal.

13. The Arbitration and Conciliation Act, 1996 is a special enactment, wherein, in-built mechanism is provided under the said enactment for filing interim applications. Only if the special enactment permits any applicant to file interim applications, the application is maintainable. Whether the present applications can be treated as applications filed under Section 17 of the Arbitration and Conciliation Act, 1996 is debatable.

14. This Court is not going into the maintainability of the applications filed by the appellant before the Tribunal. The Tribunal has given reasons for rejecting the applications filed by the appellant. Insofar as the application filed by the



appellant seeking permission to file the additional written statement is concerned, after giving the dates of hearing, the Tribunal has held that the appellant has adopted delaying tactics.

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15. Insofar as the application filed by the appellant seeking for production of certain documents, the Tribunal has held that all the documents sought for by the appellant are unnecessary excepting for books of accounts pertaining to the appellant for the years 2012-13, 2013-14 and 2014-15. The reliefs that have been sought for by the appellant are discretionary in nature. The only thing is that in these appeals this Court has to look into whether the discretion has been exercised judiciously or not.

16. The reasons given by the Arbitral Tribunal cannot be construed to be injudicious. If at all, the appellant is aggrieved by the interim orders passed by the Arbitral Tribunal, which is the subject matter of challenge in these appeals, the only remedy is to challenge the Arbitral Award, in case, it is passed against them under Section 34 of the Arbitration and Conciliation Act, 1996.

17. The very purpose of the Arbitration for expeditious disposal of the disputes between the parties will be defeated if appeals are entertained when there is no material evidence to show that the Arbitral Tribunal has not exercised the discretion judiciously. The primary ground raised in these appeals is that principles of natural justice has been violated by the Arbitral Tribunal. The same ground can also be raised under Section 34 of the Arbitration and Conciliation Act, 1996 also.

18. For the foregoing reasons, there is no merit in these appeals. Accordingly, both the civil miscellaneous appeals are dismissed. No costs. Consequently, C.M.P.No.8239 of 2017 is also dismissed.

19. However, it is made clear that the appellant is always having the legal right to raise all the grounds that have been raised in these appeals in an application filed under Section 34 of the Arbitration and Conciliation Act, 1996, in case, the appellant is aggrieved by an arbitral award passed against them by the Arbitral Tribunal in the near future.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



sr/rgi

To

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The Registrar,
The Arbitral Tribunal,
Chennai.

+1cc to Mr.N.Umapathi, Advocate, S.R.No.49848
+2ccs to Mr.R.Parthasarathy, Advocate, S.R.No.49668

CMA Nos.1558 and 1559 of 2017

PVS[co]
NSK 01/11/2021