

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 156 OF 2021**

M/s. Musafir Film Company

Through its signatory

Ravinder Bhatia

... Petitioner

vs.

The Directors,

MX Media & Entertainment Pte. Ltd.

... Respondent

Mr. Hitesh P. Shah for the petitioner.

Mr. Rishi Murarika for the respondent.

CORAM : MANISH PITALE, J

DATE : 12th OCTOBER, 2022

P.C. :

By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner has sought appointment of a sole arbitrator to adjudicate the dispute between the petitioner and the respondent. Reliance was placed on the arbitration clause in the Content Distribution Agreement dated 23rd April, 2021 executed between the parties. It is submitted that when the disputes between the parties could not be resolved, by a notice dated 14th September, 2021, the petitioner had invoked the arbitration clause and called upon the respondent to appoint the sole arbitrator for resolution of the disputes. Since no steps were taken by the respondent in that regard, the petitioner was constrained to file the present petition.

2. Mr. Hitesh P. Shah, learned counsel appearing for the petitioner invited attention of this Court to the arbitration clause in the said agreement as also, to the notice dated 14th September, 2021 sent by the petitioner to the

respondent and submitted that in view of the arbitration clause, this Court may be pleased to allow the present petition.

3. On the other hand, Mr. Rishi Murarika, learned counsel appearing for the respondent raised a preliminary objection to the very maintainability of the present petition before this Court and submitted that in the peculiar facts and circumstances of the present case, this Court does not have jurisdiction to entertain the present petition filed under Section 11 of the said Act. In order to press the preliminary objection raised on behalf of the respondent, learned counsel invited attention of this Court to the Content Distribution Agreement in question, stating that it was evident from the very agreement itself that the respondent is a body corporate, incorporated in Singapore and not in India. It was submitted that even the cause title of the petition correctly records the address of the respondent as Singapore.

4. In this backdrop, attention of this Court is invited to Section 11(12)(a) of the present Act to contend that such matters concerning appointment of the arbitrator under Section 11 of the Act, involving an international commercial arbitration, necessarily require an appropriate petition to be moved before the Hon'ble Supreme Court. Reference was also made to Section 2(f)(ii) of the said Act to contend that since the respondent is a body corporate, incorporated in Singapore and not in India, any petition seeking appointment of the arbitrator would necessarily lie before the Hon'ble Supreme Court and not before this Court.

5. In support of the said contention, reliance was placed on the judgement of the Hon'ble Supreme Court in the case of *Amway India Enterprises Private Limited v/s. Ravindranath Rao Sindhia and another*, 2021 (8) SCC 465.

6. Additionally, it was submitted that proper appreciation of the arbitration clause would show that the venue and seat of the arbitration shall be New Delhi. In this context, reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Brahmani River Pellets Limited v/s. Kamachi Industries Limited*, (2020) Volume 5 SCC 462 to contend that any proceeding seeking such relief ought to have been moved before the competent Court in New Delhi.

7. This Court has considered the preliminary objection raised on behalf of the respondent. Section 2(f)(ii) of the aforesaid Act clearly states that when one of the parties is a body corporate which is incorporated in any country other than India and the dispute involves such body corporate, it would be an international commercial arbitration. Section 11(12)(a) of the said Act clearly stipulates that when the disputes concern resolution through an international commercial arbitration, all the references made to the Court in the relevant sub-sections of Section 11 would necessarily be construed as references to the Hon'ble Supreme Court.

8. In the case of **Amway India Enterprises Private Limited v/s. Ravindranath Rao Sindhia and another** (*supra*), the Hon'ble Supreme Court, in paragraph 16, held as follows:

“16. In this view of the matter, the argument that there is no international flavour to the transaction between the parties has no legs to stand on. Indeed, an analysis of Section 2(1)(f) would show that whatever be the transaction between the parties, if it happens to be entered into between persons, at least one of whom is either a foreign national, or habitually resident in, any country other than India; or by a body corporate which is incorporated in any country other than India; or by the Government of a foreign country, the arbitration becomes an international commercial arbitration notwithstanding

the fact that the individual, body corporate, or government of a foreign country referred to in Section 2(1)(f) carry on business in India through a business office in India. This being the case, it is clear that the Delhi High Court had no jurisdiction to appoint an arbitrator in the facts of this case.”

9. Thus, it becomes amply clear that where one of the parties to the dispute, wherein appointment of the arbitrator is sought, is a body corporate incorporated in a country other than India, the proceeding would lie before the Hon’ble Supreme Court. In the present case, it is undisputed that the respondent is a body corporate incorporated under the laws of Singapore and that therefore, Section 11(12)(a) read with Section 2(f)(ii) of the said Act clearly apply. Therefore, learned counsel for the respondent is justified in contending that in these circumstances, this Court cannot exercise jurisdiction under Section 11 of the said Act for appointment of arbitrator.

10. In view of the first preliminary objection raised on behalf of the respondent, with which this Court is inclined to agree, the other aspect of the matter concerning the agreed venue and seat being at New Delhi, requires no consideration. This Court has no jurisdiction under Section 11 of the said act.

11. Accordingly, the petition is dismissed.

12. Needless to say that the petitioner would be at liberty to seek relief for appointment of the arbitrator in terms of arbitration clause in the said agreement dated 23rd April, 2021, in accordance with law.

(MANISH PITALE, J)