

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
(Original Side)

A.P. No. 787 of 2022

Reserved on: 02.02.2023
Pronounced on: 09.02.2023

Rashmi Metaliks Limited

...Applicant

-Vs-

Meghdoot Sur

...Respondents

Present:-

Ms. Sutapa Sanyal,
Mr. Satadeep Bhattacharyya,
Mr. Suvankar Chakraborty,
Mr. Saptarshi Bhattacharjee,
Mr. Subhadip Banerjee, Advocates
... for the applicant

Mr. Arnab Das, Advocate
... for the respondent

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

Prakash Shrivastava, CJ:

1. This AP has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the sole Arbitrator for the purpose of adjudication of dispute between the parties.

2. The plea of the applicant is that the respondent is engaged in the business of operating tours and travels in India and abroad. For the purpose of promotion of the applicant's business in Thailand, its employees/dealers were required to travel to Thailand in the month of February, 2020 and after completion of the said assignment, few of those employees were also to travel further to Phuket. Applicant,

sometime in November, 20, 2019, had requested the respondent to give offer for the above tour. The offer was given by the respondent on 27th of November, 2019 but that was only in respect of land tour package whereas the applicant was desirous of including VISA, Air Freight and other charges. Hence, it had given the counter offer by sending the service/work order dated 29th of November, 2019. According to the applicant, the terms of service/work order dated 29th of November, 2019 were accepted by the respondent and on accepting the said terms, the service order no. R119353573 dated 30th of November, 2019 was issued which contained the arbitration clause. Thereafter, the dispute had arisen, therefore, applicant had sent initially demand notice dated 11th of July, 2022 which was replied on 15th of July, 2022 denying the claim. Thereafter, notice dated 12th of September, 2022 was sent by the applicant invoking the arbitration clause and proposing the name of the Arbitrator which was replied by the respondent on 20th of September, 2022 denying the arbitration agreement.

3. The plea of the learned counsel for the applicant is that since the arbitration agreement is contained in the invoice dated 30th of November, 2019 and the dispute exists, therefore, the sole Arbitrator is required to be appointed to resolve the same.

4. The objection of learned counsel for the respondent is that no such invoice dated 30th of November, 2019 was served upon the respondent, therefore, no arbitration agreement exists.

5. Having heard the learned counsel for both the parties and on perusal of the record, it is noticed that though the issuance of service/work order dated 29th of November, 2019 by the applicant is

not in dispute but the said work order does not contain any arbitration clause. Reliance of the learned counsel for the applicant is upon subsequent service order no. R119353573 dated 30th of November, 2019 which contains the arbitration clause but no material has been pointed out to show that the said service order was ever served upon the respondent. The service order does not contain signature of the respondent. The demand notice dated 11th of July, 2022 sent by the applicant refers to the said service order but in reply dated 15th of July, 2022, the respondents had stated that the notice was issued under wrong notion. In the said reply, there is no admission of receipt of the invoice dated 30th of November, 2019. Subsequently, notice dated 12th of September, 2022 invoking the arbitration clause was served upon the respondent and the respondent in response thereto had sent the reply dated 20th of September, 2022 denying the arbitration agreement. Hence, from the above material, it cannot be concluded that arbitration agreement exists between the parties.

6. Learned counsel for the applicant has relied upon the judgment of this Court in the matter of **Spml Infra Limited vs. East India Udyog Limited** reported in **2022 SCC OnLine Cal 145**, wherein referring to the judgment of the Hon'ble Supreme Court on the point, it has been held that the arbitration agreement, even though in writing, need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication. The benefit of the said judgment cannot be extended to the applicant because in the present case, the arbitration agreement has not been proved by any of the modes referred to in the above judgment.

7. Hence, I am of the opinion that the applicant has failed to prove that the arbitration agreement exists between the parties, therefore, no case is made out to allow the prayer for appointment of the Arbitrator under Section 11 of the Act.

8. Hence, the AP is dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

Kolkata
09.02.2023

PA(RB)