

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 124 OF 2022**

Tata Teleservices Limited ... Applicant

vs.

Laurica Media and Communications Private Limited ... Respondent

Mr. Amit Khairwar a/w. Diyea Patel, i/b. Link Legal for applicant.

CORAM : MANISH PITALE, J.

DATE : 11th SEPTEMBER, 2023

P.C. :

. By this application, the applicant is seeking appointment of arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

2. In this application, the respondent was served more than once and yet the respondent has failed to appear before this Court. In fact, the order dated 28.08.2023 reads as follows:

- “ This Application was earlier served on the Respondent. By Order dated 11th April, 2023 passed by this Court, the Applicant was directed to serve a copy of the said Order on the Respondent, intimate the next date of hearing to the Respondent by any permissible mode of service and file Affidavit of Service of having intimated the Respondent about the next date of hearing.
- 2 The Applicant has filed Affidavit of Service dated 28th August, 2023 showing compliance of the said Order passed by this Court.
 - 3 The Applicant requests that this Application be heard in the absence of the Respondent who has chosen not to appear even today.
 - 4 To give one last chance to the Respondent, stand over to 11th September, 2023.”

3. In view of the above, this Court is inclined to hear the present application, due to the fact that the respondent has chosen not to appear before this Court. The respondent has been served more than once and it has chosen not to appear before this Court to oppose the prayer made in the present application.

4. In that light, the applicant has to make out a case for this Court to exercise jurisdiction under Section 11 of the said Act.

5. In that context, the learned counsel for the applicant invited attention of this Court to the service agreement dated 31.03.2011 executed between the applicant and a company named AMBC Private Limited. Clause 20 of the agreement pertains dispute resolution and sub-clause thereof provided for resolution of disputes through arbitration before an arbitral tribunal.

6. According to the applicant, it was entitled to a specific sum of money from the respondent and in that light, a notice invoking arbitration clause was issued on 12.04.2021, even proposing the name of a sole arbitrator.

7. On 05.07.2021, the respondent sent a reply, not only denying the amount claimed by the applicant, but also denying the arbitration agreement between the parties.

8. In this backdrop, the applicant filed the present application, seeking appointment of arbitrator.

9. The learned counsel for the applicant referred to the service

agreement dated 31.03.2011 and he submitted that although the agreement was executed between the applicant and AMBC Private Limited, the said agreement is binding on the respondent before this Court i.e. Laurica Media and Communications Private Limited. In order to support the aforesaid contention, the applicant referred to Exhibit B i.e. a letter dated 28.09.2018 sent by the respondent herein, specifically stating that the name of the company i.e. AMBC Private Limited was changed to Laurica Media and Communications Private Limited. Copy of certificate of incorporation of the respondent is also on record.

10. The learned counsel for the applicant specifically referred to a further letter dated 20.01.2020 sent by the respondent herein i.e. Laurica Media and Communications Private Limited, clarifying that the amount due to the applicant would be paid by the respondent and that the service agreement dated 31.03.2011 would be administered by the respondent, specifically stating that all the terms and conditions of the said agreement shall remain the same and continue to be effective till the expiry of the term of the agreement. It is relevant to note that the term of the agreement was 15 years from the date of the agreement. A further letter dated 28.01.2020 is filed at Exhibit E sent by the respondent, wherein it was specifically stated and confirmed that the service agreement shall be deemed to have been novated in favour of Laurica Media and Communications Private Limited, by virtue of which, the said respondent shall settle and pay the entire outstanding amount payable to the applicant. It was specifically communicated that both the respondents i.e. Laurica Media and Communication Private Limited and AMBC Private Limited indemnify the applicant. It was also specifically stated that the respondent herein assumes all the rights and obligations under the said service agreement.

11. This Court is satisfied that the aforementioned letters in writing sent by the respondent herein, clearly show that the said respondent is bound by the arbitration clause contained in the service agreement dated 31.03.2011 and the respondent cannot turn around to contend that it is not a party to the said service agreement.

12. Insofar as the denial of the claim of the applicant is concerned, it clearly gives rise to an arbitrable dispute between the parties and in the light of the arbitration clause in the service agreement, the disputes will have to be resolved through arbitration.

13. As the agreed procedure for appointment of arbitrator has failed to appoint such tribunal, this Court can certainly exercise power under Section 11(6) of the said Act for appointment of arbitrator.

14. At this stage, the learned counsel for the applicant submitted that considering the nature and extent of claim of the applicant, an advocate practising in this Court, can be appointed as the sole arbitrator.

15. On the suggestion of the learned counsel for the applicant, Advocate Sameer Manohar Tendulkar is appointed as the sole arbitrator for resolution of disputes between the parties. The details of the learned arbitrator are as follows:

Off.: 1st floor, Raja Bahaddur Mansion,
8, Ambalal Doshi Marg, Behind BSE,
Fort, Mumbai 400001

Res.: Flat No.9, 5th floor, Om Siddhivinayak CHSL,
Dilip Gupte Marg, Cross Shivaji Park Road No.5,

Mahim, Mumbai 400016
Mob: 9820190019 / 9869260269
Phone: 22670689/0990/24450951
E-mail: advocatetendulkar@gmail.com

16. The applicant undertakes to inform the learned arbitrator at the earliest about the order passed today.

17. The learned arbitrator is requested to submit his consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Prothonotary and Senior Master of this Court. The fees of the learned arbitrator shall be as per the Fourth Schedule to the said Act.

18. All questions are left open for determination by the learned arbitrator.

19. The application stands disposed of.

(MANISH PITALE, J.)

Priya Kambli