

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO.7 OF 2023

Tata Sky Limited	]	..	Petitioner
vs.			
Kishore Subash Agre	]	..	Respondent

WITH

ARBITRATION APPLICATION (L) NO.16218 OF 2022

Tata Play Limited	]	..	Applicant
(Formerly known as Tata Sky Ltd.	]		
vs.			
Kishore Subash Agre	]	..	Respondent

Mr.Ranjeev Carvalho a/w Sanjeel Kadam and Nitisha Lad i/b Kadam & Company for the Petitioner.

Mr.Amol Patil a/w Prashant Arandale for the Respondent.

Mr.Kishore Agre, Respondent, present in Court.

CORAM : BHARATI DANGRE, J

DATE : 28th February, 2023.

P.C.

1] The Installation Service Provider Agreement dated 23.03.2018, entered between the Petitioner- a Company and the Respondent, a partnership concern, referred to as Installation Service Provider, gave rise to certain disputes.

The said Agreement comprise of a clause in the form of Clause No. 20 titled as "Arbitration, Jurisdiction and Governing Law", under which any dispute, difference or questions, which would arise at any

time between the Company and ISP, touching the true construction of the Agreement or performance of the obligations or enforcing any rights and/or liabilities of the parties, which are to be raised by the party and communicated to the other party in writing, failing which the dispute is liable to be referred to a 'Sole Arbitrator' to be appointed by the Company. The Award passed by the Arbitrator is agreed to be final and binding upon the parties.

2] This Agreement is the cause for two proceedings instituted and listed before me, an Arbitration Petition being filed under Section 9 by the Petitioner Company seeking interim measures, as well as an Arbitration Application filed seeking appointment of Sole Arbitrator, since the arbitration has been invoked by notice dated 21.10.2020.

There is no response to the said notice, which has constrained the Petitioner to approach this court seeking appointment of Sole Arbitrator.

3] After hearing the learned counsel for the Petitioner and the learned counsel for the Respondent, there being no dispute about existence of a valid arbitration clause in the Agreement, liberty being conferred upon the Petitioner to convert the Petition filed under Section 9 as Application under Section 17 before the learned Arbitrator, and also to effect necessary changes which would enable them to seek interim measures, I deem it appropriate to make over the parties to the Sole Arbitrator, appointed, subject to the following terms and conditions :

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Mr.Aditya Bapat, Advocate, is hereby appointed as a Sole

Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The learned Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 19/03/2023. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(f) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The learned Arbitrator shall be entitled for the fees

as per the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All contentions of both sides are left open to be raised by the respective parties before the Arbitral Tribunal, in accordance with law.

CARBP No.7/2023 and ARBAP(L) No.16218/2022 are disposed off in the aforesaid terms.

[BHARATI DANGRE, J]