

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.170 OF 2022

Freebie Solutions Pvt Ltd.] .. Applicant
vs.
Intelligent Payment Solution Pvt. Ltd. & Ors.] .. Respondents

Ms.Mehak Kalra a/w Lalit Besoya and Siddhi Bhosale for the Applicant
Mr.Vikrant Shetty for the Respondents.

CORAM : BHARATI DANGRE, J

DATE : 20th JANUARY, 2023.

P.C.

1] The Prepaid (Gift) Card Agreement was entered between the Applicant, a Company incorporated under the Companies Act, referred to as “the Client” and the Respondent- another Company also incorporated under the Companies Act, referred to as “iPay” on 18.10.2020.

The recitals of the Agreement record that iPay is engaged in issuance and operation of Semi Closed Prepaid Payment Instruments and in providing Technology and Sales and Distribution support to the Banks for issuance of Reloadable/Non Reloadable prepaid cards variants such as Reward, Meal, Petro and Gift Cards. The Client is engaged in the business of reselling of prepaid/gift cards to the corporate/employees/clients at large.

The client has approached iPay to issue prepaid cards-gift cards

to the employees/clients/Associates of the Client for the purpose of reselling through the aforesaid prepaid cards-gift cards, to which iPay has agreed subject to the Client adhering specific terms and conditions.

2] The Agreement entered between the parties on 18.10.2020 categorically set out the rights and obligations of the respective parties alongwith Confidentiality and Indemnity clause. It also provide for intellectual property rights clause.

Apart from this, Clause 11 refer to Dispute Resolution, in case any disputes, differences or claims arise between the parties.

3] With this background, the Applicant invoked arbitration vide communication dated 15.07.2021, where they sought appointment of Sole Arbitrator, when it was alleged that there was failure of discharge of responsibility on behalf of Respondent. The names of the proposed Arbitrator were also forwarded.

The said notice was responded to by the Respondents on 25.07.2021, where on merits there is specific denial with a counter claim being raised of manipulation and malafide intention of cheating. There was, however, no objection noted about the name of the Arbitrator and in turn, the Respondent also forwarded name of two Advocates, one to be chosen as Sole Arbitrator.

4] Since there is no objection raised to the invocation of arbitration clause, and the discord appears only to be on the name of the Arbitrator to be nominated, the Applicant has approached this Court.

5] The arbitration clause not being disputed and even invocation is responded to by the Respondents, I deem this case fit one to exercise

powers under Sub-Section (6) of Section 11 of the Arbitration and Conciliation Act.

The learned counsel for the Respondent has raised a preliminary objection about maintainability of the application against Respondent Nos.2 and 3 as they are Directors of Respondent No.1 and he would submit that they would not be liable for the defaults of Respondent No.1.

The aforesaid objection is responded to by the learned counsel for the Applicant by stating that Respondent No.2 – Director is a signatory to the Agreement.

In any case, about liability of Respondent Nos.2 and 3, the Respondents are permitted to agitate the same before the learned Arbitrator and by keeping this contention open, I pass the following order :

ORDER

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Nausher Kohli, 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 the corrected 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 06/02/2023. 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 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 the rights and contentions of the parties are kept open.

Arbitration Application is disposed off in the aforesaid terms.

[BHARATI DANGRE, J]