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Arb.O.P(Com.Div.)No.195 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.10.2023
Pronounced on	10.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.195 of 2023

M/s.Redington Limited
(formerly known as Redington (India) Limited)
Represented by its Deputy General Manager
– Legal Mr.S.Hariprasad
“Block 3, Plathin, Redington Tower,
4th Street, Puzhuthivakkam,
Chennai – 600 091.

... Petitioner

Vs.

M/s.Primatel Fibcom Limited
(Previously known as Prima Telecom Limited – PRIMATEL)
Represented by its Director,
G-71, World Trade Centre,
Barakhamba Lane,
New Delhi – 110 001.

... Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to constitute an Arbitral Tribunal by appointing an Arbitrator as per Clause 20 of Invoice Nos.F190085197 & F190085199 dated 08.10.2020 wherein parties had agreed to refer the dispute to Arbitration.



Arb.O.P(Com.Div.)No.195 of 2023

For Petitioner : Mr.S.S.Rajesh
For Respondent : Mr.Rohit Gandhi
for M/s.S.Balasubramaniam

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

2. The case of the petitioner is that a Tender was floated by Bharat Sanchar Nigam Limited (hereinafter referred to as BSNL) on 24.01.2017. Tender was awarded to Indian Telephone Industries Limited (hereinafter referred to as ITI).

3. By an agreement dated 28.08.2017, the successful bidder namely ITI had entered into a Consortium Agreement with M/s.Juniper Networks International B.V, the parent company of M/s.Juniper Networks Solution India Private Limited.



4. With respect to the Phase 1 of the BSNL Project, M/s.Juniper Networks Solution India Private Limited was to provide two solutions viz., (i) Broadway Network Gateway Solution and (ii) Junos Space Solution. Sterlite Technologies Limited (“In short Sterlite”), was appointed as BSNL's systems integrator for the project. The Sterlite was also a sub-contractor of ITI for supply of IT hardware and Software products.

5. It is submitted that the Principal Contractor ITI, M/s.Juniper Networks Solution India Private Limited and the respondent herein who was also a sub-contractor had entered into a Teaming Agreement dated 05.10.2017 to jointly execute the said work.

6. It is submitted that as per the Teaming Agreement dated 05.10.2017, the ITI and the respondent had to obtain the products for the project only from the Authorized Distributor and Support Specialist in India of M/s.Juniper Networks Solution India Private Limited. It is submitted that the petitioner was the Authorized Distributor and Support Specialist in India of M/s.Juniper Networks Solution India Private Limited. Relevant clause from the Agreement dated 05.10.2017 reads as under:-



WEB COPY “**Clause 1**

Bidder and Prima Telecom jointly agree to obtain Juniper Networks products it needs to fulfill customer's needs from an authorized Juniper's Networks distributor of their choice.

Clause 2

It is agreed by the Bidder and Prima Telecom that upon awarding of the contract by the customer, the Bidder and Prima Telecom shall purchase Juniper Network's products only through Juniper Network's support services specialist in India.”

7. It is submitted that as per the Teaming Agreement dated 05.10.2017, M/s.Juniper Networks Solution India Private Limited was required to supply the support services through its Authorized Distributor and Support Specialist in India namely the petitioner, who is an Authorized Distributor of Juniper Products and Services had entered into the project awarded by BSNL.

8. It is submitted that the petitioner was the only Authorized Supplier of the Juniper's Products and Services and was not a party to the Teaming Agreement dated 05.10.2017.



9. The respondent herein had placed three purchase orders dated 16.07.2018 on the petitioner. In respect of the three purchase orders, the work was apparently executed by M/s.Juniper Networks Solution India Private Limited and that the petitioner has also paid the amounts to M/s.Juniper Networks Solution India Private Limited on the invoices raised on the petitioner by M/s.Juniper Networks Solution India Private Limited for the work carried out by the M/s.Juniper Networks Solution India Private Limited for the respondent under the agreement.

10. Therefore, the petitioner had raised the following three invoices Nos.F190085199, F190085198 and F190085197, all dated 18.10.2020 for a total value of Rs.13,27,10,403/-.

11. The further case of the petitioner is that the respondent has settled the payment as far as invoice No.F190085198. However, in respect of other two invoices Nos. F190085199 and F190085197, the respondent has failed to settle the payment. The petitioner has relied upon the clause 20 of the terms and conditions of sale in the above mentioned invoices, to invoke the jurisdiction of this court. It reads as under:-



WEB COPY



Arb.O.P(Com.Div.)No.195 of 2023

20.All or any Dispute arising out of all or any terms of the contract between the parties herein shall be resolved through Arbitration. Either of the party may notify the dispute to the other party, enabling them to find an amicable settlement of the dispute within 30 days of such notification. In the event of no amicable settlement is arrived within 30 days as stated supra, either of the party(s) shall refer the dispute to Arbitration M/s.Redington (India) Ltd., shall immediately appoint a sole arbitrator within one month of such reference of dispute to Arbitration. Buyer explicitly agrees and waives off any right to question the appointment of arbitrator as above. Such proceedings shall be conducted in English language only and in accordance with the provisions of The Arbitration and Conciliation Act, 1996 as amended. The finding of the sole arbitrator shall be final and be binding on all parties. The venue will be as fixed by the sole arbitrator and the same will be binding on the parties. The seat for the arbitration shall be exclusively at Chennai. The governing laws shall be Indian laws and the parties explicitly agree that all or any legal proceedings in connection with the arbitration proceedings shall be subject to the jurisdiction of Courts in Chennai alone. The seller shall also have the right to initiate the appropriate civil/criminal proceedings includings complaint under Section 138 of the NI Act, as applicable.

12. It is submitted that the petitioner had issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 14.02.2023 asking the respondent to consent for Arbitration for the outstanding payment for rest of the two invoices both dated 18.01.2020 as mentioned above.



Arb.O.P(Com.Div.)No.195 of 2023

WEB COPY

13. The learned counsel for the petitioner has drawn attention to an arbitral Award dated 10.05.2022 secured by M/s.Juniper Networks Solution India Private Limited in ICDR Arbitration Case No.01-20-0010-1055 before the Arbitral Tribunal under ICDR International Arbitration Rules against the petitioner, wherein, it stands confirmed that the M/s.Juniper Networks Solution India Private Limited had indeed completed the work and therefore the petitioner was liable to pay/settle the amounts to M/s.Juniper Networks Solution India Private Limited in terms of the aforesaid award.

14. It is therefore submitted that the respondent is liable to settle the amount specified in invoice Nos.F190085199 and F190085197 both dated 18.01.2020.

15. It is submitted that the respondent on the other hand merely replied that the amounts were not payable on the ground that there was no consensus *ad idem* between the parties. It is further submitted that the invoices raised by the petitioner were returned by the respondent by their communication dated 19.11.2020 and by another letter dated 17.12.2020.



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16. The respondent by its communication dated 17.12.2020 has stated that it did not acknowledge the receipt of invoices Nos.F190085199 and F190085197 sent along with letter dated 19.11.2020 as the mile stones for the work against the invoices raised by the petitioner were not achieved as no corresponding work order was placed by BSNL/ITI on the respondent and therefore both the invoices were being returned without acknowledging the same.

17. The learned counsel for the petitioner submits that the rejection of the invoices was unjustified. In any event, it is submitted that the respondent is bound by the terms of the invoices raised by the petitioner for the work was completed in so far as mechanism provided for resolution of dispute.

18. In this connection, a reference is made to the decision of the Hon'ble Supreme Court in ***Caravel Shipping Services Private Limited Vs. Premier Sea Foods Exim Private Limited*** [(2019) 11 SCC 461. It is submitted that it is not mandatory that there should be a separate agreement. It is submitted that Court categorically concluded that an arbitration clause in the Bill of Lading was sufficient to bind the parties to arbitration. It is submitted that under Section 7



of the Arbitration and Conciliation Act, 1996, an arbitration agreement only needs to be in writing for it to be binding on the parties and is not required to be signed by both the parties.

19. The learned counsel for the petitioner has referred to the decision of the Hon'ble Supreme Court in ***Govind Rubber Limited Vs. Louis Dreyfus Commodities Asia Private Limited*** [(2015) 13 SCC 477], wherein, a similar view was taken to the effect *prima facie* it can be shown that parties were *ad idem* and merely because one of the party did not sign the instrument cannot absolve the party from liability under the agreement.

20. It is therefore submitted that this is a fit case for referring the parties to arbitration.

21. The learned counsel for the petitioner further submits that although the purchase orders were placed by the respondent from their Delhi office on the petitioner's Delhi office, parties have agreed for arbitration under the Clause 20 of the invoices raised on the respondent and therefore this Court has jurisdiction to entertain the petition in the light of the Clause 20 of the respective invoices dated 08.10.2020 referred to *supra*.



WEB COPY



Arb.O.P(Com.Div.)No.195 of 2023

22. In this connection, a reference was made to the decision of the Division Bench of this Court in ***M/s.Karan Ores and Specials, Represented by Mr.Karnan Sehgal, Proprietor Vs. M/s.Endeka Ceramic India Private Limited and another*** [(2019) 1 CTC 148]. A reference is made to para 9 (g) and 9 (h) which reads as under:-

“9(g)....

....

However, the ratiocination by the learned Arbitrator with respect to the invoices raised by the first respondent being a contract governing the parties and containing valid Arbitration clause and therefore, the arbitration proceedings have been conducted in Hosur, especially when the cause of action having arisen at Hosur and on each issue there being no cross-examination, the award rendered by the learned Arbitrator does not warrant interference.

9(h) The Arbitral Tribunal as well as the learned Single Judge have rightly held that :-

9(h)(i) The provisions of the Civil Procedure Code would not apply to the Arbitration proceedings.

9(h)(ii) Even in the proceedings governed by the Civil Procedure Code, it is always possible for a Company to ratify the action of a person who is admittedly the 1 of the Code. The Arbitration Award is not in conflict with public policy of India or against the basic notions of morality and justice. It does not warrant interference of the Court



under Section 34 of the Arbitration and Conciliation Act, 1996 and therefore, the learned Single Judge has rightly dismissed the said application.”

23. The learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in ***Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited*** [(2017) 7 SCC 678].

24. Finally, the learned counsel for the petitioner has drawn attention to the decision of the Bombay High Court in ***Bennett Coleman and Co.Ltd., Vs. MAD (India) Private Limited*** [(2022) SCC Online Bom 7807].

25. The learned counsel for the respondent on the other hand would submit that there is no consensus *ad idem* between the parties. The learned counsel for the respondent has relied on the following five cases:-

- i. ***Taipack Limited Vs. Ram Kishore Nagar Mal*** [(2007) SCC Online Del 804];
- ii. ***NSK India Sales Company Private Limited Vs. Proactive Universal Trading Company Private Limited*** [AIR 2016 Mad 19];
- iii. ***Concrete Additives and Chemicals Private Limited Vs S.N.Engineering Services Private Limited*** [2022 SCC Online Bom 8034];
- iv. ***Alpuro Building Systems Private Limited Vs. Ozone Overseas Private Limited*** [(2017) SCC



Online Del 7228] and
v. ***Vijay Mittal Vs. Bajaj Products [(2015) SCC***
Online Del 12210.

26. It is submitted that the invoices raised were unilateral and were returned by the respondent on 19.11.2020. Therefore, there was no consensus *ad idem* between the petitioner and the respondent and therefore question of invoking the jurisdiction of this Court under the provisions of the Arbitration and Conciliation Act, 1996 on the strength of such invoices cannot be countenanced.

27. The learned counsel further submits that the purchase orders were placed by the respondent from the respondent's Delhi office on the petitioner's Delhi office. Therefore, there was no casual connection with the jurisdiction of this Court and therefore on this count also there was no scope for invoking the jurisdiction of this Court under provisions of the Arbitration and conciliation Act, 1996 as no part of the cause of action has arisen within the jurisdiction of this Court.

28. That apart, it is submitted that the invoices were raised by the petitioner from their Branch office in the State of Haryana on the respondents



Arb.O.P(Com.Div.)No.195 of 2023

office at Noida-201 304 in the State of Uttar Pradesh. Therefore, on this count

also no cause of action can be said to have arisen within the jurisdiction of this Court for the petitioner to invoke the jurisdiction of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996. That apart, it is submitted that even as per the Terms and Conditions of the Sale Invoice 'Buyer' means the person/entity, who signs to Terms with the petitioner viz., Redington (India) Limited, the Seller.

29. It is submitted that in this case admittedly, the respective invoices although were raised on the respondent, they were also not signed by the respondent and therefore there was no contract to refer the dispute arbitration. A reference is made to the Clause 1 of the Terms and Conditions of the respective invoices dated 18.10.2020 which reads as under:-

“1.Buyer shall mean the person/entity, who signs these Terms with Redington (India) Limited, the Seller.”

30. It is submitted that there are also no documents to substantiate that the respondent had indeed signed to the Terms and Conditions in the respective invoices for resolution of dispute through arbitration. Therefore, on this count also the present application is liable to be dismissed.



WEB COPY



Arb.O.P(Com.Div.)No.195 of 2023

31. That apart, learned counsel for the respondent would submit that the invoices are also not stamped and therefore in terms of the decision of the Hon'ble Supreme Court in ***N.N.Global Mercantile Private Limited Vs. Indo Unique Flame Limited and ors*** [(2023) SCC Online 495].

32. It is submitted that since no arbitration clause is in existence between the petitioner and the respondent within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996, the petition filed for appointment of an arbitrator is liable to be dismissed Hence, it is prayed that this Court the application for the arbitration shall be dismissed with exemplary costs.

33. The learned counsel for the respondent also drew attention to the award passed by the Arbitral Tribunal on 10.05.2022 in the arbitral proceedings initiated by M/s.Juniper Networks Solution India Private Limited against the respondent wherein it was the stand of the petitioner that work was not completed by M/s.Juniper Networks Solution India Private Limited and therefore question of making payment did not arise.



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34. It is therefore submitted that even on merits the petitioner was not entitled to raise these invoices as this was the stand taken before the Arbitral Tribunal in the aforesaid proceedings initiated by M/s.Juniper Networks Solution India Private Limited and the stand before this Court is contrary to the stand taken before the Arbitral Tribunal.

35. By way of rejoinder, the learned counsel for the petitioner submits that the decision of the Hon'ble Supreme Court in ***N.N.Global Mercantile Private Limited Vs. Indo Unique Flame Limited and ors*** [(2023) SCC Online 495] is not applicable to the facts of the case and in the light of exemption in Article 5 of the Indian Stamp Act, 1899.

36. I have considered the arguments advanced by the learned counsel for the petitioner and respondent.

37. A reading of the document that have been filed before this Court indicate that the respondent had raised the following three purchase orders on the petitioner for which the petitioner has raised corresponding invoices for a sum of Rs.11,24,66,443/- :-



Arb.O.P(Com.Div.)No.195 of 2023

WEB COPY

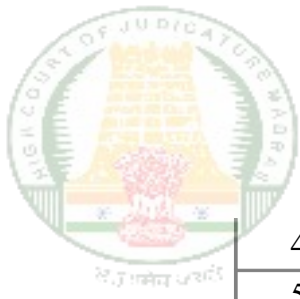
Sl.No	Date	Purchase Order	Date	Invoice No.
1.	16.07.2018	PTL/NOS/18-19/0041	08.10.2020	Invoice No.F190085197
2.	16.07.2018	PTL/NOS/18-19/0042	08.10.2020	Invoice No.F190085198
3.	16.07.2018	PTL/NOS/18-19/0043	08.10.2020	Invoice No.F190085199

38. As a consequence of the purchase order placed by the respondent on the petitioner on 16.07.2018, the petitioner in turn had placed the following three purchase orders on M/s.Juniper Networks Solution India Private Limited as detailed below:-

Sl.No.	Date	Purchase Order	Value in Rs.
1.	27.07.2018	No.A601991	Rs.4,50,11,972.66
2.	27.07.2018	No.A601989	Rs.4,17,66,485.16
3.	27.07.2018	No.A601993	Rs.71,97,940.00

39. As a consequence of the same, M/s.Juniper Networks Solution India Private Limited has raised following invoices on the petitioner for the work:-

Sl.No.	Date	Invoice No.	Value in Rs.
1.	31.10.2018	No.192382001000	Rs.1,603,917.36
2.	26.12.2018	No.192382001377	Rs.27,481,939.58
3.	26.12.2018	No.192382001378	Rs.37,221,589.19



4.	23.01.2019	No.192382001562	Rs.8,493,569.20
5.	12.02.2019	No.192382001677	Rs.20,953,203.60
6.	06.03.2019	No.192382001832	Rs.3,075,067.20
7.	11.03.2019	No.192382001865	Rs.7,432,350.77
8.	17.09.2019	No.192382003176	Rs.4,630,512.53

40. It is in this background the petitioner has raised three invoices namely Invoice No.F190085197, F190085198 & F190085199, all dated 08.10.2020.

41. The respondent has by its letter dated 09.11.2020 admitted to Invoice No.F190085198 for a value of Rs.1,34,96,000/-.

42. By the said communication dated 19.11.2020, the respondent has informed the petitioner, that three purchase orders were issued for the entire project as against which the respondent has completed only Phase-I and that Bharat Sanchar Nigam Limited (BSNL) has released only 35% of the payment as on 19.11.2020 against Phase-I and there is no confirmation from Bharat Sanchar Nigam Limited (BSNL) for the balance payment against completed work.

43. By a same letter, it was further informed to the petitioner that the respondent has not received any purchase order from Indian Telephone



Arb.O.P(Com.Div.)No.195 of 2023

Industries Limited (ITI) or Bharat Sanchar Nigam Limited (BSNL) for the Phase-II and hence the invoice cannot be raised for the entire network and therefore, Invoice No.F190085199 dated 08.10.2020 and and Invoice No.F190085197 dated 08.10.2020 were being returned.

44. By a further communication dated 17.12.2020, the respondent has further informed the petitioner that it has not accepted the above mentioned two invoices by their letter dated 19.11.2020 and that these invoices were raised for the work which had not commenced and since the respondent had not received any corresponding purchase order from Indian Telephone Industries Limited (ITI) or Bharat Sanchar Nigam Limited (BSNL) for the work.

45. At the same time, it cannot be ruled out that the work was not completed by M/s.Juniper Networks Solution India Private Limited as an award has been passed by the Arbitral Tribunal on 10.05.2022 in an arbitration proceeding against the petitioner by M/s.Juniper Networks Solution India Private Limited under the aegies of International Arbitration Rules in ICDR Arbitration Case No.01-20-0010-1055.



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46. If indeed the work was completed by M/s.Juniper Networks Solution India Private Limited, the petitioner would be entitled to receive the payment for the invoices raised on the respondent.

47. Thus, there is a *inter-se* dispute between them. The arbitration clause in the invoice is intertwined with the nature of the work.

48. Whether the work was completed or not is a question of fact. Whether indeed the work was completed by M/s.Juniper Networks Solution India Private Limited or not is a question of fact is to be determined after the said is recognized and made enforceable against the petitioner.

49. An Arbitration clause to resolve between the parties cannot be inferred on the strength of invoices at the instance of one of the party to dispute merely because of presence of an Arbitration Clause in the such invoice. If there is an admission of completion of work, it may be open to resort to the arbitration clause. However, since there is a dispute regarding the same Arbitration Clause cannot be inferred.



WEB COPY



Arb.O.P(Com.Div.)No.195 of 2023

50. It cannot be readily inferred that there was consensus *ad idem* between them to refer the dispute for arbitration on the strength of the Arbitration clause in the invoices raised by the petitioner on the respondent. Further the invoices has neither been acknowledged nor signed by the respondent.

51. Therefore, this is a fit case for not exercising the discretion in favour of the petitioner for appointing an Arbitrator. This petition has to therefore fail.

52. In view of the above, this Original Petition stands dismissed. No Cost.

10.11.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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Arb.O.P(Com.Div.)No.195 of 2023

C.SARAVANAN, J.

rgm

Arb.O.P.(Com.Div.)No.195 of 2023

10.11.2023