

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 10th April, 2023**

+ **ARB.P. 420/2022**

INTERGLOBE TECHNOLOGY QUOTIENT PVT. LTD.

..... Petitioner

Through: Ms. Avnika Mishra and Ms.
Divyanshi Singh, Advocates

versus

RUBY TOUR SERVICES PVT. LTD.

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter "Arbitration Act") has been filed on behalf of petitioner seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. The matter was first listed on 4th April 2022 before the Predecessor Bench whereby the Notice of the petition was issued to the respondent. Thereafter, on several dates of hearing, attempts were made to serve the respondent, however, the Notice remain unserved. Subsequently, on 10th October 2022, the learned counsel for the petitioner prayed that respondent be served by way of publication and accordingly, the

ARB.P. 420/2022

Page 1 of 8

Predecessor Bench directed service to the respondent by of the publication in the newspaper ‘Times of India’, English Edition, and ‘Pune Mirror’, Marathi Edition. Even thereafter, none entered appearance on behalf of the respondent either before the Court or by way of filing any pleading and ultimately, the right of the respondent to file a reply was also closed.

3. None has ever appeared in the matter on behalf of the respondent. Today also there is no appearance on behalf of the respondent.

4. Since for the past year, multiple attempts have been made to serve the respondent, yet the respondent has not appeared, this Court is left with no option but to proceed with the matter with the assistance of the petitioner and the pleadings on record.

5. A perusal of the record reveals that the petitioner is engaged in the business of distribution of Computerized Reservation System and provides necessary support, equipment and upfront advances required for operating business activated through ‘Galileo System’ in India. The respondent approached the petitioner to use the Galileo System at their sole Computerized Reservation System and expressed its intent to enter into a Subscriber Agreement with the petitioner for the said purpose.

6. Accordingly, the parties entered into a Standard Subscriber Agreement on 1st January 2010. However, subsequently, disputes arose between the parties arising out of the said Agreement, whereupon, the petitioner, seeking dispute resolution, invoked the Arbitration Clause 8(i) of the Agreement and furnished a Notice under Section 21 of the

Arbitration Act upon the respondent on 23rd March 2021. Since, no sufficient reply was received on behalf of the respondent to the said Notice and the name of an arbitrator was also not suggested by it, the petitioner moved this Court seeking appointment of an Arbitrator by this Court for the adjudication of disputes between the parties.

7. The learned counsel for the petitioner submitted that when the respondent approached the petitioner for entering into a Subscriber Agreement, the respondent assured and committed that minimum target segments as per the Agreement will be achieved. It is submitted that achieving the minimum target segments is the essence of the Subscriber Agreement as well as of the three addendums subsequently entered into. To facilitate the achievement of the minimum target segments, the petitioner remitted the amount of upfront advance of Rs. 30 Lakhs on 1st January 2010, Rs. 30 Lakhs on 1st January 2012, Rs. 45 Lakhs on 1st January 2013 and Rs. 32 Lakhs on 1st January 2016. However, the respondent failed to meet their commitment of achieving the minimum target segments. It is submitted that a total payment of Rs. 1,29,86,809/- had been paid by the petitioner to the respondent.

8. It is submitted that due to the failure on part of the respondent to meet the targets, there was a shortfall of 52,981 segments for the period from January 2010 to December 2020. Moreover, the respondent also breached the Subscriber Agreement since it was using GDSs other than the Galileo System for conducting their business.

9. It is submitted that ultimately, the petitioner issued a Demand

Notice dated 4th September 2020 calling upon the respondent to refund a sum of Rs. 3,18,07,096/- paid as upfront by the petitioner along with the interest. The respondent issued a response on 17th September 2020 and admitted their liability with respect to the shortfall on their part. In the said response, the respondent also acknowledged that the unexhausted amount of Rs. 12,60,272/- shall be exhausted by them in near future. However, again the respondent failed to comply with the same.

10. The learned counsel submitted that despite admission of its liability, the respondent has not refunded the unutilized amount along with the interest. It is submitted that the petitioner attempted to settle the disputes so arisen between the parties amicably however, all attempts failed. Therefore, the petitioner, being aggrieved of the conduct of the respondent, invoked arbitration under Clause 8(i) of the Subscriber Agreement *vide* its Notice dated 23rd March 2021 under Section 21 of the Arbitration Act.

11. It is submitted that after expiry of the statutory period of thirty days, the respondent sent an email dated 24th June 2021 seeking time to agree upon an Arbitrator for adjudicating the disputes between the parties. The respondent again sought time till end of the month of August in the year 2021 *vide* its email dated 2nd August 2021. However, no name was suggested even thereafter. Therefore, the petitioner before this Court prays that an arbitrator may be appointed to adjudicate the disputes between the parties.

12. Heard the learned counsel for the petitioner and perused the record.

13. The parties before this Court entered into the Standard Subscriber Agreement dated 1st January 2010, wherein a provision has been made for adjudication of any dispute amongst the parties, which may arise out of the Agreement, by way of arbitration. The said provision, i.e., Clause 8(i) of the Agreement is reproduced hereunder:-

“Dispute Resolution - Any dispute, controversy, claim or breach arising out of this Agreement shall be referred to arbitration to be conducted by a sole arbitrator in accordance with the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be New Delhi and the language of arbitration shall be English. The decision of the arbitrator shall be binding on the parties and the parties undertake not to dispute the same. Notwithstanding the foregoing, the Parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, and without abridging any of the powers of the arbitration panel and such an action shall not constitute abrogation of the agreement contained herein.”

14. The bare language of the Clause shows that the parties were in consensus that they shall refer any dispute arising from the Agreement to a Sole Arbitrator in accordance with the Arbitration Act. Therefore, it is evident that the Agreement between the parties makes provision for adjudication of disputes through arbitration.

15. The petition discloses that there are disputes between the parties that pertain to the refund of amount paid by the petitioner to the respondent, which the respondent admitted, in pursuance of the Agreement signed by them. Therefore, the said claim, controversy, dispute admittedly stems from the Agreement dated 1st January 2010.

16. Despite issuance of Notice to the respondent, along with service through publication, none has ever earlier and even today appeared for the respondent before this Court in the instant matter. Hence, at this juncture, this Court finds it relevant to reiterate the spirit of the Arbitration Act.

17. The Arbitration Act and the provisions therein encourage that the parties to a dispute may be referred to arbitration where there exists an arbitration clause/agreement, the disputes between the parties are arbitral in nature and a prior notice is served upon the other party to the dispute by the party seeking resolution.

18. In the instant matter as well, there is an Arbitration Clause in existence, that is, Clause 8(i) of the Agreement, disputes have arisen between the parties which are arising from the said Agreement and are arbitrable in nature and the petitioner has also served a Notice under Section 21 of the Arbitration Act on 23rd March 2021.

19. The intent behind Arbitration Act is not to prolong the dispute between parties but is to make the resolution process accessible, easier and more efficient. This Court, therefore, does not find any reason to delay the adjudication of a petition under Section 11(6) of the Arbitration Act due to non-appearance of a party, when all necessary requisites are being met for granting the relief sought on behalf of the petitioner. Therefore, considering the spirit of the Arbitration Act and the fulfilment of all necessary ingredients for appointment of an arbitrator under Section 11(6) of the Arbitration Act, this Court is inclined to refer the parties to arbitration for resolution of their disputes.

20. Accordingly, keeping in view the above facts and circumstances, this Court finds it appropriate to refer the disputes between the parties to a Sole Arbitrator. Hence the following order:

ORDER

- (i) Justice Kailash Gambhir, Former Judge, Delhi High Court is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Agreement dated 1st January 2010;
- (ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;
- (iii) The learned sole arbitrator shall be paid fees as prescribed under The Delhi International Arbitration Centre (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;
- (iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;
- (v) All contentions of the parties are expressly kept open.

21. A copy of the order be forwarded to the learned Sole Arbitrator on the following address:

Justice Kailash Gambhir, Former Judge, Delhi High Court

Address- W-67, III Floor, Greater Kailash-I,

New Delhi-110048

Mobile No.- +91-9871300033

Email ID- kailashgambhir1953@gmail.com

22. Accordingly, the instant petition is disposed of alongwith pending applications, if any.

23. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 10, 2023

dy/ms

[Click here to check corrigendum, if any](#)

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