

OCD-20

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP-COM/273/2024
[Old Case No.:AP/502/2022]
IA NO: GA/1/2023

SUMMIT DIGITEL INFRASTRUCTURE PVT LIMITED (FORMERLY KNOWN AS
RELIANCE JIO INFRATEL LTD.)
VS
DILIP KUMAR CHATTERJEE AND ANR.

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 24th April, 2024.

Appearance:
Mr. Rajarshi Dutta, Adv.
Mr. V.V.V. Sastry, Adv.
Mr. Rahul Poddar, Adv.
...for the petitioner.

Mr. Abdul Hadi, Adv.
...for the respondent no.1.

The Court: This is an application under Sections 14 and 15 of the Arbitration & Conciliation Act, 1996, inter alia, praying for an order for termination of the mandate of the learned Arbitrator *qua* the petitioner.

The underlying disputes by and between the parties arise out of a lease deed dated 14 June, 2006 between one Dilip Kumar Chatterjee (Chattopadhyay) and Reliance Telecom Limited, now Reliance Infratel Limited (being the respondent no.2 herein).

It is alleged that under the said agreement, the respondent no.1 in consideration of payment of rent agreed to permit the respondent no.2 to use and occupy an area of approximately 3,650 sq. ft. at the premises situated at Mouza-Khamarchandi, P.S.- Haripal, Dist.- Hooghly.

Disputes and differences having arisen between the respondent nos.1 and 2 arbitral proceedings were commenced in terms of Clause 13 of the said agreement.

For convenience, Clause 13 of the said agreement dated 14 June, 2006 provides as follows :

“13. In case any dispute or difference arising at any time between the parties hereto as to the construction, meaning or effect of this agreement or any clause or matter herein contained or the right or liabilities of the parties hereto or otherwise howsoever in relation to this agreement, the same shall be referred to the arbitration. In accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modifications or enactment thereof forth time being in force. The arbitration shall be carried out in English language and at Kolkata.”

It is submitted on behalf of the petitioner that in the ongoing arbitration by and between the respondent nos.1 and 2 in terms of the agreement dated 14 June, 2006, the petitioner had received a communication dated 12 April, 2022 informing them of the aforesaid arbitration proceedings. By a reply dated 2 May, 2022, the Advocates appearing on behalf of the petitioner duly informed the Arbitrator that there was no arbitration agreement *vis-à-vis* the petitioner and the Arbitrator had no jurisdiction to implead the petitioner. Thereafter, by a communication dated 5 May, 2022, the respondent no.1, inter alia, admitted that there was no arbitration agreement by and between the respondent no.1 and the petitioner.

In such circumstances, the present application has been filed primarily under Section 14(1)(a) of the Act, inter alia, contending that in law the Arbitral Tribunal has no jurisdiction insofar as the petitioner is concerned.

On behalf of the respondent, it is contended that the telecom business of the respondent no.2 had been transferred to the petitioner.

I find that there is no valid nor subsisting arbitration agreement insofar as the petitioner and the respondent no.1 is concerned. The petitioner is not a party to the lease agreement by and between the respondent nos. 1 and 2. The mandatory provisions under Section 7 of the Act have not been complied with as far as the petitioner is concerned. In such circumstances, the Arbitrator has no jurisdiction to implead the petitioner as a party to the arbitral proceedings. Arbitration being a matter of contract, there is no privity of contract by and between the petitioner and either of the respondents.

In such circumstances, the Arbitrator cannot proceed *qua* the petitioner in law. Accordingly, the Arbitrator has no jurisdiction whatsoever to implead the petitioner and all steps taken *vis-a-via* the petitioner are *non est* in the eye of law.

In view of the above, AP-COM/273/2024 stands allowed.

All connected applications including the application being IA No.GA/1/2023 also stand disposed of as infructuous.

It is made clear that this order will not stand in the way of the arbitral proceedings between the respondent nos.1 and 2 are concerned.

(RAVI KRISHAN KAPUR, J.)