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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.164 OF 2023
WITH
COMMERCIAL ARBITRATION PETITION NO.140 OF 2023
WITH
COURT RECEIVER'S REPORT NO.416 OF 2023
IN
COMMERCIAL ARBITRATION PETITION NO.140 OF 2023
WITH
COURT RECEIVER'S REPORT NO.390 OF 2022
IN
COMMERCIAL ARBITRATION PETITION NO.140 OF 2023

John Cockerill India Limited] .. Petitioner

vs.

Sanjay Kamalakar Navare] .. Respondent

Mr.Rohan Kelkar a/w Ankoosh Mehta, Sarah Navodia and Pragya Chandak i/b Cyril Amarchand Mangaldas for the Petitioner.

Mr.Piyush Raheja a/w Subodh Kurdukar and Dharmesh Pandya i/b Kurdukar Associates for the Respondent.

Mr.Abhijit Belosay, ASO Representative of the Court Receiver present.

CORAM : BHARATI DANGRE, J

DATE : 3rd January, 2024.

P.C.

1] Commercial Arbitration Petition No.140 of 2023 deserve a disposal as various orders passed in the said proceedings have now

culminated into the report of the Court Receiver, High Court, Bombay, presented to this court on 06.11.2023.

The order passed on 28.11.2022 alongwith the order dated 19.12.2022 and 19.01.2023 has ultimately resulted in the data being retrieved by the Court Receiver in presence of the Technical Expert, from the distinct devices belonging to the Respondent and being compiled in the four hard disks.

As per the order, the data segregation was directed to be carried out by Technical Expert Mr. Mukesh Bhandarge and upon the task assigned to him, he has submitted report dated 30.08.2023 to the Court Receiver, indicating that the exercise was completed on 10.08.2023.

2] Pursuant to the exercise being carried out, the Court Receiver Report No.416/2023 seek necessary directions to the following effect :

“A) The Hon’ble Court may pass necessary directions as to whom four hard disk in which data was collected be handed over as the data segregation report is submitted by the Technical Expert.

B) The Hon’ble Court may pass necessary directions in respect of Respondent’s sealed electronic devices kept in his premises.”

The above directions are sought in the wake of three orders passed by this Court and on completion of exercise of segregation of data in the office of the Court Receiver and the files being retained in separate folder by the Technical Expert of the Excellent Cyber Forensics and Web Securities LLP. H.

The Court Receiver's Report placed before me, shall be made available to the counsel for the Applicant and Respondent.

3] While this report is placed before me for necessary orders, an Application is filed under Section 11 seeking appointment of an Arbitrator in the wake of Clause 3.7 in the 'Employee Non-Disclosure and Non-solicitation Agreement' dated 15.11.2021.

The learned counsel for the Respondent do not dispute existence of arbitration clause in the said Agreement and he also do not raise any dispute on the invocation of the arbitration.

The consensus is, therefore, accorded for referring the disputes that have arisen between the parties, to Mr. Sandeep Parikh, an Advocate of this Court, who shall act as an Arbitrator to arbitrate the disputes.

The appointment of Mr.Sandeep Parikh, as Arbitrator shall be subject to the following terms and conditions :

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Mr.Sandeep Parikh, 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 Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The 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 **cpy** 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 Arbitrator shall fix up a first date of hearing in the week commencing from 22.01.2024. 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 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 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.

4] Though the learned counsel for the Applicant make a request for treating the Section 9 Petition as an Application under Section 17, I do not deem it necessary, for the reason that in the wake of various orders passed in Section 9 Petition, the entire data in respect of which an apprehension was expressed, is now retrieved from the devices belonging to the Respondent and even the data stands segregated as on date no interim reliefs are warranted as on date.

What remains to be done, is the comparative analysis of the data obtained with the data which is available with the Applicant and in

any case this would be subject of the trial before the Sole Arbitrator so appointed.

It is not the case of the Petitioner that from the date of the first order i.e. 19.12.2022, the Respondent has put to use the data which is alleged to have been used by him in his capacity as an employee of the Applicant/company and since almost a year has lapsed, when the first grievance and apprehension was expressed.

In these circumstances, I deem it appropriate to leave it open for the Petitioner to move an appropriate application, before the Arbitrator as and when any contingency arises, if it comes to the notice of the Petitioner that the data is being put to use by the Respondent, which is adversarial or detrimental to its interest, to file appropriate application before the Arbitrator.

5] As far as Court Receiver's Report No.416/2023 is concerned, since the data is now stored in four hard disks, it shall be handed over by the court Receiver in a sealed envelope to the Arbitrator, who is appointed today.

The hard disks shall be retained by the court Receiver till the Arbitrator enters the reference and upon this contingency, the same being brought to his notice, it shall be transmitted to the Arbitrator, so appointed, forthwith.

6] The learned counsel for the Respondent undertake that he shall retain the hard disks in the two laptops which have been sealed in the process and he shall also retain the data, if any, in the other devices like the mobile phone and Apple I pad.

Subject to this exercise being undertaken the Respondent is at liberty to put these devices to use.

7] Pursuant to the aforesaid exercise being undertaken, the Respondent stands relieved of his undertaking submitted to the Court Receiver.

The cost payable towards the Court Receiver, is permitted to be deducted from the account.

Section 9 Petition as well as Section 11 Application stand disposed off in the aforesaid terms.

[BHARATI DANGRE, J]