



2024:DHC:6158



\$~6

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

+ **ARB.P. 913/2023**

SUNIL KUMAR GUPTAPetitioner

Through: **Mr. Sanjay S. Chhabra, Adv.**

versus

BHARTI AIRTEL LTDRespondent

Through: **Mr. K.G. Gopalakrishnan, Adv.**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

12.08.2024

%

1. The respondent contracted with the petitioner for being provided with DG sets to be used in connection with the Mobile towers.

2. Various disputes between the parties arose, as, according to the petitioner, the respondent owed certain amounts to the petitioner.

3. Mr. K.G. Gopalakrishnan, learned Counsel for the respondent has drawn my attention to a communication dated 1 February 2021 from the petitioner to the respondent, which reads thus:

GST NO:-07AAGPG2467F1ZW

SAHIL POWER SYSTEMS
EQUIPMENTS RENTAL COMPANY
3682/55, SHABI MARKET, MORI GATE, DELHI-
110006

Ref. No.:.....

01st February 2021



2024:DHC:6158



To,
M/s. Bharti Airtel Ltd.
Through its Director/ Manager/ Principal Officer
224, Phase -III,
Okhla Industrial Estate,
New Delhi- 110020
Email – pushpendra1.chauhan@airtel.com,
pritam.kumar@airtel.com,

also at:-

D-184, Phase -1,
Okhla Industrial Estate,
New Delhi- 110020

Sub: Request for resolution of outstanding payment

Sir,

1. As per your orders for hiring of DG sets for various locations, we had installed D.G. Sets on hire basis at your instructed locations and raised the invoice(s) for hiring charges, etc. to you.
2. We have maintained your running account in regular course of business in our books of account, wherein there stands an outstanding due balance of Rs.12,40,823/- (Twelve Lac Forty Thousand Eight Hundred Twenty Three only) as on 31.01.2021, besides an outstanding due balance of Rs.63,32,053/- (Sixty Two Lac Thirty Two Thousand Fifty Three only) in respect of which there is no arbitration agreement. In respect of the order(s)/ invoice(s) giving rise to an outstanding of Rs.12,40,823/- in your said account, maintained by us, there is an arbitration agreement.
3. You are also liable to pay interest @18% p.a. for delayed period beyond 30 days from the date of invoice(s), which come to Rs.4,28,077/- (Four Lac Twenty Eight Thousand Seventy Seven only) up to 30.01.2021.

In view of arbitration agreement, you are requested to please clear all outstanding payment in your above said account and in case any doubt/issue in this regard please have a meeting and resolve the same by amicable means/negotiation. We are awaiting your early response in this regard.

For M/s. Sahil Power System

Sd/-



2024:DHC:6158



Proprietor
(Sunil Kumar Gupta)”

4. Mr. K.G. Gopalakrishnan points out that, as per the above letter, it is an admitted position that in the transactions relatable to the claim of ₹ 63,32,053/-, there is an arbitration clause subsisting between the parties and that the arbitration clause covers the claim of only ₹ 12,40,823/-.

5. He has no objection, however, to the claim of ₹ 12,40,823/- being referred to arbitration, keeping alive all the rights and contentions on merits. It may be noted that the amount of ₹ 12,40,823/- is covered by several purchase orders, all of which contains an arbitration clause, fixing the seat of arbitration as New Delhi.

6. On 26 May 2023, the petitioner issued a notice to the respondent under Section 21 of the 1996 Act, seeking to invoke arbitration. Though the notice claimed a total amount of ₹ 75,72,875/- as already noted, as of now, arbitration agreement exists between the parties only with respect to an amount of ₹ 12,40,823/-.

7. Though Mr. Chhabra, learned Counsel for the petitioner, sought to submit that all the transactions are integrated and that, therefore, the respondent cannot drive the petitioner to a civil suit in respect of some transactions and arbitration in respect of others, the submission is easier than accepted. Each purchase order constitutes a distinct contract, and, therefore, the arbitration as of now can cover only the



2024:DHC:6158



amounts attributed to purchase orders which contains an arbitration clause.

8. This amount, admittedly, is only of ₹ 12,40,823/-, apart from interest.

9. Accordingly, as the parties have not been able to arrive at any agreement regarding the arbitration, this Court deems it appropriate to dispose of this petition by appointing Mr. Sanjeev Yadav, Adv. (Mob: 9868099500) as arbitrator to arbitrate on the dispute between the parties.

10. The arbitration shall be restricted to the claim of ₹ 12,40,823/- apart from interest and costs if the petitioner so claims.

11. The respondent would also be at liberty to raise any counter claim, if any, in accordance with law.

12. The arbitrator would be entitled to charge fees as per the Fourth schedule to the 1996 Act.

13. The learned Arbitrator is requested to furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

14. This Court has not expressed any opinion on the merits of the dispute. All issues of fact and law remain open to be agitated in the



2024:DHC:6158



arbitral proceedings.

15. The Court has also not expressed any opinion regarding the remaining claim of ₹ 63,32,053/-.

16. Should the said claim become subject matter of any contractual agreement which contains an arbitration clause, it would be open to the petitioner to take appropriate steps at that stage.

17. Needless to say, for the said amount, the petitioner would also be at liberty to take other civil remedy in accordance with the law.

18. The petition stands disposed of.

C. HARI SHANKAR, J.

AUGUST 12, 2024

dsn

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