



2024:DHC:8500



\$~5

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

%

Date of Decision: 04.11.2024+ **ARB.P. 1502/2024**

SONY INDIA PRIVATE LIMITED

.....Petitioner

Through: Ms. Astha Sehgal, Ms. Ishi Singh,
Advs.

versus

IT CARE

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition filed under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The parties executed a Service Agreement (hereinafter '*the Principal Agreement*') dated 01.04.2021, in terms of which respondent was authorized by the petitioner to operate as an Authorised Service Centre (hereinafter "*ASC*") at Jagdalpur and Bhilai, Chhattisgarh. The Principal Agreement was renewed twice for a period between 01.04.2022 to 31.03.2023 and 01.04.2023 to 31.03.2024.
3. Dispute/s have arisen between the parties on account of alleged violations of the Standard Operating Procedure (hereinafter '*SOP*') on the part of the respondent while operating the ASC. The petitioner alleged that the improper conduct of respondent amounts to fraud upon both the



2024:DHC:8500



petitioner and its consumers and consequently imposed a penalty of Rs. 90,769/- upon the respondent.

4. It is submitted by the petitioner that the Service Agreement for ASC at Jagdalpur was terminated pursuant to the request of the respondent *vide* email dated 29.03.2023. Further, the petitioner terminated the Service Agreement for ASC Bhillai on 12.10.2023.

5. The arbitration clause in the Agreement between the parties, is in the following terms: -

"14.1 Any disputes arising out of or relating to this Agreement shall, in the first instance, be attempted to be resolved amicably between the Parties. In the event of failure to mutually resolve the dispute, the matter shall be referred for arbitration by a Sole Arbitrator to be nominated by Sony India. The proceedings shall be conducted in accordance with the procedure set out under the provisions of the Arbitration and Conciliation Act, 1996 as amended or modified from time to time. The proceedings shall be in English. The Seat of Arbitration shall be at New Delhi. "

6. Disputes having arisen between the parties, a legal notice dated 28.03.2024 was issued by the petitioner followed by a demand notice cum notice for invoking arbitration on 15.07.2024. However, the respondent failed to respond to the same. The petitioner has placed on record the relevant postal receipt to show that the said communication was delivered to the respondent.

7. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

8. In the present proceedings, notice was issued by the Court on 26.09.2024 with a liberty to the respondent to file reply, if any within two



2024:DHC:8500



weeks from the date of service. The petitioner has taken the requisite steps to serve the respondent at its known addresses. However, the communications sent to the said addresses *via* speed post were returned with the notations, “Item returned, addressee left without instructions” and “item returned refused” whereas the communications sent *via* Courier were returned with the notations “consignee shifted from the given address” and “consignee’s address incomplete/incorrect”.

9. The respondent is stated to have been served *via* email at itcare33@gmail.com and mithlesh.prasad@myitcare.in.

10. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee’s last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made numerous attempts to effect service on the respondent not only at the last known address/es but also at the other addresses of the respondent and has thereby discharged its onus to effect service on the respondent.

11. Since the existence of the arbitration clause is evident from a perusal of the Service Agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd* (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd*, (2017) 8 SCC 377, *Bharat Broadband Network Limited v. United Telecoms Limited.*, 2019 SCC OnLine SC 547 and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666.



2024:DHC:8500



12. Accordingly, Mr. Dhruv Pande, Advocate (Mob. No.: +91.9910165010) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

13. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

14. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

15. The learned Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

16. Parties shall share the arbitrator's fee and arbitral cost, equally.

17. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

18. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

19. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 4, 2024/sl