



2024:DHC:8998



\$~18

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 21.11.2024

+

ARB.P. 1616/2024

BHARTI AIRTEL LIMITED

.....Petitioner

Through: Mr. Akash Kundu and Mr. Nitin
Tittal, Advs.

versus

HRD RELATIONSHIP MARKETING PVT. LTD.Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. The present petition has been filed under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeking appointment of a Sole Arbitrator for adjudicating the disputes between the parties. The disputes between the parties have arisen in context of an agreement dated 26.08.2023 for availing 'Airtel 4G Mifi Dongles' and other related services on a monthly basis.

2. Clause 22 of the agreement contains the arbitration clause as under:-

"22 ARBITRATION:

22.1 If any dispute, difference, controversies or claims of any kind whatsoever shall arise between the Parties in connection with or arising out of or in relation to this Agreement including any question regarding its existence, validity or termination of Services, whether before or after the Term, abandonment, suspension, frustration or breach of this Agreement, the Parties shall seek to resolve any such dispute or difference by amicable mutual consultation and deliberation in good faith within 21 days from the date of intimation of such dispute, difference controversies or claims by one Party to the other-

22.2 If the Parties fail to resolve such dispute or difference, controversy,



or claim by mutual consultation then either Party may give the other, a formal notice in writing that the dispute, difference, controversy or claim exist specifying its nature, the point(s) in issue and its intention to refer such disputes, differences, controversies, or claims to arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be held by a sole arbitrator mutually appointed by Parties.

22.3 Arbitration shall be held in New Delhi, India and the arbitration proceedings shall be conducted in the English language. The arbitrators will be requested to give then award in 60 days' time. The award shall be a reasoned award and the same shall be final and binding on the Parties and the provisions of the Indian Arbitration and Conciliation Act, 1996 shall apply. The award shall be entered in the courts at New Delhi and such courts may order enforcement of the award against the Parties and their respective successors and permitted assignees.

22.4 The costs and expenses of the arbitration (including, without limitation, the fees of the arbitration, and fees of the Arbitration Tribunal) shall be borne by the Parties in the manner as specified by the Arbitration Tribunal in its Final Award. In the course of arbitration, both Parties shall continue to execute this Agreement in so far as is reasonably practical. This clause shall survive termination or expiry of this Agreement.”

3. Disputes between the parties have arisen on account of the alleged outstanding monetary entitlement of the petitioner, for which the petitioner sent a demand notice on 07.05.2024. The disputes having remained unresolved, the petitioner finally issued a notice invoking arbitration on 15.07.2024. However, the arbitral tribunal could not be constituted by mutual consent of the parties. Hence, the present petition has been filed.

4. Notice was issued by this Court on 14.10.2024. Subsequently, the petitioner has taken the requisite steps to serve the respondents at its known address/es. The communications sent to the said address/es via speed post returned with the notations “*Item returned unclaimed*” and courier was returned with the notations, “*No such person in the given address*”. The respondents are stated to have been served via email on ravindraghoundwalia@gmail.com and hrd.caredelhinc@gmail.com.



2024:DHC:8998



5. 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 attempts to effect service on the respondents at the last known address/es of the respondents and has thereby discharged its onus to effect service on the respondents.

6. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondents.

7. In terms of *SBI General Insurance Co. Ltd. v. Krish Spinning* 2024 SCC OnLine 1754, the scope of examination in proceedings under section 11 A&C Act is confined to ascertaining the existence of the arbitration agreement.

8. Since the arbitration agreement is evident from a perusal of the Agreement, there is no impediment in appointing a Sole Arbitrator to adjudicate the disputes between the parties.

9. Accordingly, Mr. Jai Anant Dehadrai, Advocate (Mob No.: +91 9910379697) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

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

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

12. The learned Sole Arbitrator shall be entitled to fee in accordance with



2024:DHC:8998



IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

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

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

15. The present petition stands disposed of.

SACHIN DATTA, J

NOVEMBER 21, 2024/dn