
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.405 OF 2024

Rac Infra Rental LLP

....Applicant

Versus

Sify Technologies Limited & Ors.

....Respondents

Mr. Kapil P. Shah *i/b. MK Juris Associates, Advocate for the Applicant.*

Ms. Yasmeen Mohd. Sabir *i/b. Link Legal, Advocate for Respondents.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 24, 2025

ORDER :

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking appointment of an arbitrator in connection with disputes and differences arising out Tax Invoice dated August 20, 2021 (***“Agreement”***). The arbitration agreement is contained in Clause “U” (found at Page 78 of the Application) of the Agreement. In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

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2. The disputes and differences between the parties relate to two purchase orders and the connected documentation.

3. Learned Counsel for the Respondent takes an objection to the territorial jurisdiction of this Court. The Respondent submits that the purchase order is the only formal instrument executed between the parties, and therefore, the position contained in the purchase order is the one that needs to be borne in mind for purposes of determining the arbitration venue and thereby, whether this Court has territorial jurisdiction to consider the matter.

4. Towards this end, with the assistance of Counsel for both parties, the record has been examined. The supply of equipment is essentially a hiring of equipment by the Respondent from the Applicant.

First Delivery:

5. What is apparent from the record is that the Respondents sought an urgent delivery of certain computer equipment by July 5, 2018. A quotation was issued by the Applicant on that date. That quotation explicitly contains an arbitration clause with the jurisdiction of arbitration being in Mumbai. By an e-mail of the same date, the Respondents confirmed the quotation and directed that the delivery of the equipment be made on the same evening at the designated address. It is a matter of record that three deliveries were made, two of them on

the next day i.e. on July 6, 2018, and one on July 11, 2018. Each of the deliveries is backed by a delivery note, and the delivery note contains the very same clause, namely that the disputes relating to the present arrangement would be subject to arbitration in the Mumbai jurisdiction.

6. A purchase order came to be issued by the Respondent a few weeks later, on August 1, 2018. That purchase order does not contain any arbitration clause, but provides that disputes would be amenable to the Chennai jurisdiction.

7. Tax invoices raised by the Applicant in this round of transactions also provide for the same arbitration venue.

Second Delivery:

8. Another round of hiring documentation (of the same equipment) relevant for the disputes, is the extension effected in 2019. In that regard, the purchase order was executed on August 20, 2019. In that purchase order, the Respondents have explicitly provided that disputes and differences would be amenable to arbitration to be carried out in Chennai. This extension of hire of equipment also led to issuance of tax invoices, which too reiterate an arbitration clause, with the jurisdiction being Mumbai.

9. It is in the context of the aforesaid factual matrix that one would need to examine whether or not this Court has territorial jurisdiction.

10. As regards the 2018 transactions, evidently the parties were exchanging correspondence, and the Respondent expressed an urgent need for delivery of the equipment. This led to the quotation issued on July 5, 2018. The Respondents confirmed that quotation by e-mail dated July 5, 2018, and directed that the delivery be made the very same evening at the designated address. It appears that the delivery was made on the next morning on July 6, 2018. The exchange of correspondence, namely, the quotations and its confirmation by e-mail, in my opinion constitutes contract-forming documentation, which by exchange of correspondence, evidences the existence of an arbitration agreement in terms of Section 7 of the Act.

11. The tax invoices raised thereafter containing an arbitration clause in Mumbai does not pose any conflict at all since the contract forming documentation for purposes of the arbitration agreement is the arbitration clause in the quotation, which was accepted, resulting in a direction to deliver the equipment referred to under quotation and that led to the arbitration agreement being formed with the jurisdiction of the arbitration being set by the parties as Mumbai.

12. Learned Counsel for the Applicant would submit that the transactions of 2019 are nothing but renewals of the continued hire of

the very same equipment delivered in 2018. Since the purchase order issued in 2019 for the first time inserted in arbitration clause, the question that would arise is whether that would change the intention of the parties.

13. The purchase order issued in 2019 is indeed signed by both parties having been executed at a later point in time. This would suggest that the arbitration clause got amended and the parties agreed to change the venue of arbitration to Chennai. The tax invoices raised thereafter once again referred to arbitration in Mumbai and pursuant to these tax invoices, certain payments were also be made by the Respondents. On the face of it, the Applicant claims that some of those tax invoices have been partly paid, thereby constituting acceptance of yet another change to the arbitration clause.

14. Taking a holistic view of the matter, it is apparent that the transactions between the parties entail hire of equipment, which commenced in 2018. That hire got initiated with the existence of an arbitration agreement, with the venue being Mumbai. The acceptance of the quotation and the delivery of the same concluded the contract insofar as they related to the arbitration agreement. The same hire is continued thereafter. The parties can keep trading instruments with varying venues for arbitration and therefore, whether or not they intended to amend the venue from Mumbai to Chennai would involve

examination of evidence and a mixed question of fact and law. If the Respondent is advised to challenge the coverage of the instruments of 2019 by arbitration on the ground of absence of jurisdiction, liberty is granted to file an application under Section 16 of the Act.

15. It is made clear that in my opinion, since it is the hire of the very same equipment that commenced in the first instance in 2018 with a clearly agreed position on arbitration with the venue being in Mumbai, the reference of disputes relating to the hire of such equipment to arbitration is hereby made. Having examined the transaction between the parties, the sequence of events in the commencement of relationship between the parties and the admitted absence of an arbitration clause in the first purchase order of 2018, I am of the view that the arbitration agreement between the parties would certainly have to be with reference to the Mumbai jurisdiction.

16. A Learned Single Judge of this Court by an Order dated October 4, 2023, was faced with a similar situation arising out of the instruments issued by this very Applicant in the case of of ***RAC India Rental LLP V/s. Karvy Digikonnnect Limited & Others (Commercial Arbitration Application No.22 of 2023)***. In that decision, the Learned Single Judge took note of a reference to Hyderabad in the terms and conditions annexed to the purchase order and compared that with the arbitration clause in the quotation pursuant to which the rental was

given and reconciled the same in favour of arbitration in Mumbai, which was evidently contained not only in the quotation, but also in the delivery challans. The fact pattern being identical to the facts of this case, I would adopt the reasoning adopted by the Learned Single Judge of this Court in the said decision. This is also something that has weighed with me in the aforesaid decision.

17. Consequently, this Application is *finally disposed of* by referring all disputes and differences covered by these proceedings to arbitration by the Learned Sole Arbitrator hereby appointed in the following terms:-

A] Ms. Yogita Deshmukh(yogitadeshmukhoffice@gmail.com), a Learned Advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above.

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration and;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

18. It shall be open to the Respondent to choose whether to raise an issue about the arbitration agreement having been amended in 2019 by taking out an appropriate application under Section 16 before the arbitral tribunal. On the face of it, in view of transactions of 2018, no useful purpose would be served holding up reference of the disputes relating to 2018 to the arbitral tribunal, which is being done pursuant to this order. Should the parties be desirous of bringing back further evidence on facts, they may do so before the arbitral tribunal.

19. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the

parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

20. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]