

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION NO. 407 OF 2024

Dentsu Network Advertising Private Limited

a company incorporated under the
Companies Act, 1956, having its registered
office at 8e Floor, Devchand House, C Block
Shivsagar Fstate, Dr. Annie Besant Road,
Worli, Mumbai - 400018

... Applicant

Versus

1. Conceptual Pictures Worldwide Pvt. Ltd.

3rd Floor, 10-3-89/A/B,
R-5 Chambers, Mehdiapatnam
Hyderabad – 500028.

2. Pumpkin Productions Pvt. Ltd.

10-3-14/105, Grace Residency
Opp. Humayunagar P.S., Mehdiapatnam,
Hyderabad – 500028.

... Respondents

Mr. Yuvraj K. Singh i/b. M/s. Desai & Diwanji for the Applicant.

Mr. Karthik Somasundram i/b. Spice Route Legal for the Respondent No.1.

Mr. Rushabh Parekh a/w Mr. Munaf Virjee i/b. AMR Law for Respondent No.2.

CORAM: ADVAIT M. SETHNA, J.

DATE : 28 JANUARY 2025

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ORAL JUDGMENT :-

1. This is an application filed by the applicant under Section 11 of the Arbitration and Conciliation Act, 1996 (“**ACA**” for short) for appointment

of an Arbitrator to adjudicate the disputes and differences arising between the parties viz. the Applicant, Respondent No.1 and Respondent No.2.

2. The substantive prayer in the said application reads thus :-

“(a) this Hon'ble Court be pleased to appoint a sole arbitrator to adjudicate upon the disputes between the Applicant and the Respondents.”

3. The disputes and differences between the parties have arisen in the context of a purchase order dated 8 June 2022 (“**said purchase order**” for short). The Applicant has invoked arbitration against the respondents on the ground that the respondents have allegedly breached the terms and conditions of the said purchase order claiming an amount of Rs.5,23,93,216 pertaining to maintaining of confidentiality and protection of data privacy by the respondents, under the said purchase order.

4. The fulcrum of the dispute and differences arising between the parties is alleged breach of the said purchase order which categorically contemplates a dispute resolution clause in the form of an arbitration clause no.9 which reads thus:-

“9. Dispute/s (if any) will be referred to Arbitration under the Arbitration and Reconciliation, 1996 and will be subject to jurisdiction of Courts in Mumbai.”

5. A perusal of the arbitration clause would clearly specifies the parameters under Section 7 of the ACA. Thus, it partakes the nature and character of the arbitration agreement.

6. For the present purposes, it may be pertinent to note that in the backdrop of the disputes and differences arising under the purchase order dated 8 June 2022, the applicant invoked the arbitration clause/agreement by issuing a notice invoking arbitration dated 24 January 2023, addressed to respondent nos.1 and 2.

7. To the said notice invoking arbitration, respondent no.2 firstly filed an interim reply dated 8 February 2023, inter alia, disputing and denying the contents of the notice invoking arbitration dated 24 January 2023 issued by the applicant.

8. On 23 February 2023 respondent no.1 issued its response to the notice invoking arbitration of the applicant inter alia, refusing to appoint the names of the arbitrators as suggested by the applicant in its notice dated 24 January 2023.

9. Pursuant to the above, on 7 March 2023 the applicant filed the present application before this Court for the appointment of an Arbitrator under the arbitration clause/agreement (supra).

10. On 23 August 2023 the respondent no.1 filed its reply to the application under Section 11 and primarily objected on the ground that the purchase order was not stamped and therefore, the same could not be acted upon as it was not legally enforceable.

11. Respondent No.1 on 30 August 2023 filed an additional affidavit on merits of Section 11 application categorically disputing such application for the reasons set out in such reply.

12. The orders were passed on Section 11 application of the applicant by this Court from time to time. Pertinent it is to note that by an order dated 28 March 2024 this Court directed the counsel of respondent nos.1 and 2 to file an additional affidavit on the issue with regard to respondent no.2 being joined as a party to the arbitration proceedings despite not being a signatory to purchase order. On this ground, the applicant raised a dispute that respondent no.2 was not an appropriate and/or necessary party to the arbitration proceedings. The order of this Court dated 28 March 2024 reads thus :-

- “1. At the outset the 2nd Respondent sought time for filing a reply. Since they were served considerable time ago, I refused to grant and heard the matter.
2. Both Applicant’s and Respondents’ counsel were heard at some length. There is no dispute that the 1st Respondent and Petitioner are ready for being referred for Arbitration. There is also an Arbitration clause. The issue is with regard to 2nd Respondent being joined as a party to the Arbitration although not a signatory. That the 2nd Respondent is the sister concern of the 1st Respondent and that there are common directors is not disputed. However, to determine whether the 2nd

Respondent is a necessary party to the arbitration, I believe it is necessary for the Respondent No.2023 SCCOnLine SC 1634 2 to file a reply.

3. At this stage, 1st Respondent's counsel also seeks to file an Additional Affidavit. Both the Affidavits to be filed and served on or before 5th April 2024 as a final opportunity.
4. List the matter before the regular Court."

13. It was on 5 April 2024 that respondent no.1 and respondent no.2 filed an additional affidavit and an affidavit-in-reply to the application under 11, respectively putting forth their stand, by contesting the Section 11 application filed by the applicant.

14. I have heard the learned counsel for the parties and perused the record. Perusal of the purchase order which constitutes contract between the parties contains arbitration clause/ agreement. It is pertinent to note that the existence of the said clause is not disputed nor controverted by the respondents. The only objection from the respondent no.1 is with regard to the name of the person to be appointed as an arbitrator to adjudicate the differences and disputes arising under the purchase order.

15. As noted by this Court in its order dated 28 March 2024 the objection of respondent no.2 that it was not a party to the purchase order under which the arbitration agreement/clause is invoked. Respondent No.2 is stated to be the sister concern of respondent no.1 having common directors, which is not disputed.

16. Considering the above, it becomes clear that the existence of the arbitration clause in the purchase order is absolutely clear on which there is no dispute. As far as the objection of respondent no.2 is concerned, the issue came up for adjudication before the Supreme Court in **Cox and Kings Ltd. vs. SAP India Pvt. Ltd. and Anr.**¹, where the Supreme Court has *inter alia*, concluded that at the referral stage, the Referral Court should leave it for Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement.

17. In my view, as also submitted by learned counsel for the respondent no.1, the Arbitrator can be appointed *qua* respondent no.1 leaving open all rights and contentions as available in law to invoke arbitration against respondent no.2.

18. In light of the factual conspectus as narrated above and more particularly, noting existence of the arbitration clause, I proceed to appoint Shri R.D. Dhanuka, the Former Chief Justice of this Court as the learned Sole Arbitrator.

ORDER

- i. Shri. **R.D. Dhanuka**, Former Chief Justice of this Court is appointed as the learned Sole Arbitrator.
- ii. A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within ten (10) days

1. 2023 SCCOnLine SC 1634

from the date this order is uploaded.

- iii. The Advocates for the Applicant will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email address : -

Arbitrator/s : Shri. Ramesh D. Dhanuka,
Former Chief Justice Bombay High Court
Sr. Advocate, Supreme Court of India.
Mo. No. 9821134074
Tel.: 022-44503283
Address : 131, Mittal Tower, C-Wing,
Barrister Rajni Patel Marg,
Nariman Point, Mumbai – 400 021.
Email id : rameshddhanuka5@gmail.com/
rdhanuka5@yahoo.com

- iv. **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy, soft copy, the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 to Advocates for the parties as soon as possible. The Advocates for the applicant will arrange to file the original statement in the Registry, within three (03) days of it being made available by the learned sole arbitrator.
- v. **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator decides to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- vi. **Interim Application/s:** Interim Application, if any, filed under Section 17 of the Arbitration and Conciliation Act, 1996 shall be decided by the arbitrator, if and so when referred.
- vii. **Fees:** The arbitral tribunal's fees shall be governed by the Fourth Schedule to the Arbitration and Conciliation Act, 1996.

- viii. **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal proportion.

19. Arbitration Application is disposed of in terms of above.

(ADVAIT M. SETHNA, J.)