2025:BHC-OS:8130

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMM. ARBITRATION PETITION (L) NO. 2534 OF 2025
ALONGWITH
CONTEMPT PETITION (L) NO. 6613 OF 2025
IN
COMM. ARBITRATION PETITION (L) NO. 2534 OF 2025

Advantage SB Communications Pvt. Ltd. ...Petitioner

Versus

SRIT India Pvt. Ltd. ...Respondent

Mr. Yash Momaya *a/w Mr. Parag Khandhar and Ms. Pratyusha Dhodda i/b DSK Legal for the Petitioner.*
Mr. Shailesh Rai *for the Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 9, 2025

PC :

1. This Petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***"the Act"***).

2. By an order dated February 4, 2025, without prejudice to the rights and contentions of the parties, as an ad-interim measure it was directed that no further steps would be taken by the Respondent in furtherance of the termination notice dated January 8, 2025. Liberty was also granted to the Respondent to file an affidavit to demonstrate that the aforesaid ad-interim relief ought not to have been granted or ought to be vacated.

3. Thereafter, the Respondent mentioned the matter to state that the order ought to be vacated because the Respondent was entitled to terminate the agreement, and therefore, no specific relief of the nature granted even on an ad-interim basis was tenable.

4. It is seen from the Purchase Order dated February 26, 2024 (Exhibit “A” to the Petition), based on which services have been provided by the Petitioner to the Respondent, that termination is provided for in Clause 10. Termination may be effected under Clause 10(II) by giving three months prior written notice “for convenience” and that too only for the portion of works not already completed or performed, as required by the end customer, namely, State Bank of India. In such event, for the works already completed, the consideration due must be paid.

5. Under Clause 10(III), termination for cause i.e. breach is provided for. Evidently, it entails a three-month notice prior to the termination. Evidently, the termination notice dated January 8, 2025 (Exhibit “B” to the Petition) sets out a long list of breaches and causes for which the termination would be warranted. Put differently, the termination notice is evidently a termination for cause and not a termination at will for convenience. The termination clause entails a three-month notice period which has obviously has not been provided.

6. Learned Counsel for the Respondent, however draws my attention to the general instructions set out in Paragraph No.9 of the Purchase Order and in particular, Clause 9 of the said general instructions

(Page No.76 of the Petition). Under Clause 9 in the general instructions, the Respondent was entitled to serve a written notice within 10 calendar days to the Petitioner to fulfill any failed deliverable or to rectify any breach and demonstrate the rectified breach. It is the case of the Respondent that such e-mail was sent on September 7, 2024, calling upon the Petitioner to rectify the breaches and to conform to the request made by the Respondent to demonstrate the source of the equipment and to enable certification to ensure that the limited sources for procurement of equipment had not been breached by the Petitioner. He would submit that under this Clause 9 of the general instructions, the Respondent was entitled to rectify the breaches on its own upon the failure of the Petitioner, and all costs for such rectification would be to the account of the Petitioner.

7. Having seen the e-mail (Page No.925 of the Reply affidavit) it would appear that the e-mail asked for furnishing of certain documents and requested various information to ascertain the TEC certification so that the Respondent could ascertain compliance by the Petitioner with conditions of permissible sources of supply, to ensure that the Respondent is not in breach of any obligation owed in turn to the State Bank of India whose ATMs are the subject matter of the dispute.

8. According to the Learned Counsel for the Respondent, since no co-operation was forthcoming, all the routers servicing the State Bank of India ATMs have already been replaced before this Court's order dated

February 4, 2025 was passed. That apart, he would submit that owing to the disputes between the parties, the payments due to the Petitioner have been withheld since the Petitioner stopped servicing the routers in question and that would have led to the breakdown of the ATM network of the State Bank of India. Consequently, he would seek to justify the replacement that had been made. On specific instructions he would re-confirm that no replacement of any equipment has taken place after this Court passed its restraint order on February 4, 2025.

9. In these circumstances, it was put to the parties, if they would be willing to proceed to arbitration forthwith without expending further time and energy on interlocutory measures at the hands of this Court. Pursuant to such suggestion, Learned Counsel for the both the parties submit that they are willing to proceed to arbitration forthwith.

10. If the factual position submitted by the Respondent on instructions, namely, that no further replacement of any equipment was necessary because well before this Court's order dated February 4, 2025, all equipment had been replaced, the continuance of the order would cause no injury whatsoever to the Respondent. Therefore, there is no case to make about the ad interim relief having caused any injury to the Respondent.

11. Taking this submission as the basis, there is no need to vacate the said order since the submission essentially is that the ad interim order is infructuous and has no impact whatsoever on the Respondent. Quite apart

from such a contention made today, considering the urgency expressed when the matter was mentioned for vacating the order, the same was taken on board. However, to ensure that the submission is indeed correct the Chief Executive Officer of the Respondent shall file an affidavit setting out specific details of date-wise and equipment-wise replacement effected prior to the order dated February 4, 2025 and reconfirm on oath that no replacements were made after such date.

12. Such affidavit shall be filed in the Registry of this Court and shall be transmitted to the Learned Arbitrator appointed hereby to ascertain whether there has been any non-compliance with the orders of this Court. Needless to say, the Learned Arbitral Tribunal would enable inspection and examination of such evidence by the Petitioner so that the Learned Arbitral Tribunal could take a view on the conduct of the parties and it could take necessary steps.

13. In these circumstances, this Petition filed under Section 9 of the Act is ***finally disposed of*** appointing an Arbitral Tribunal taking on record consent of the parties to proceed to arbitration and in view of the submission that the ad interim order could in any case not hurt the Respondent since anything that needed to be replaced had already been replaced.

14. As regards termination at the sweet will for the residual part of the work, since that too entails a notice period of three months under Clause 10(II) it would be for the Learned Arbitral Tribunal to issue

appropriate directions. The parties shall approach the Arbitral Tribunal ***no later than April 15, 2025*** to take appropriate instructions on the next steps including further interlocutory relief to secure the interests of the parties.

15. With the aforesaid directions this Petition is finally disposed of with no variation being made to the order dated February 4, 2025. Since the subject matter of the arbitration would be determination of whether the Petitioner had not complied with the conditions of contract as alleged in the termination notice, if the Petitioner had indeed complied with all conditions of contract the Petitioner's interests would have been seriously jeopardized, it is necessary to secure the Petitioner for the consideration due on the work already completed. The dispute involves an amount of Rs.8 Crores, which is said to have not been paid. On the other hand, should the Arbitral Tribunal find that the Petitioner had indeed not completed the work required meeting the stipulations set for compliance, the Respondent stands secured by the provisions of the bank guarantee which is available with the Respondent.

16. Consequently, it would be appropriate to adjust equities and to balance interests of the parties by directing the Respondent to deposit a sum equivalent to the value of the invoices raised by the Petitioner for work done so far with the Registry of this Court within a period of two weeks of the uploading of this order on the website of this Court. The amount so deposited shall be kept in fixed deposit and shall abide by the outcome in the arbitral proceedings.

17. The parties will be at the liberty to address the Learned Arbitral Tribunal to release the amount deposited to either party. The aforesaid directions are purely a *pro tem* measure to enable the Arbitral Tribunal to deal with the facts presented today in a manner that does not place either party in a position to take undue advantage of the case.

18. Nothing contained in this order is an expression of opinion on the merits of the matter one way or the other. The sole objective of this order is to protect the subject matter of the arbitration.

19. The Petition is ***finally disposed of*** in the following terms:-

A] Mr. Simil Purohit, Learned Senior 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 Petitioner within a period of one week from the date on which this order is uploaded on the website of this Court. The Petitioner 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

Advocates for the Petitioner so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Petition and a copy of the same shall be furnished by the Advocates for the Petitioner to the Respondent;

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;

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.

20. 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.

21. 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.]