

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
ARBITRATION PETITION NO. 28 OF 2013

M/S VIBROPOWER PTE LTD. Petitioner(s)

VERSUS

XL TELECOM & ENERGY LTD. Respondent(s)

Date: 24/01/2014 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Petitioner(s) Ms. Indu Malhotra, Sr. Adv.
Mr. T.S. Sidhu, Adv.
Ms. Pallavi Mohan, Adv.
Mr. Ganesh Kamath, Adv.
Ms. S. Agarwal, Adv.
for M/s M.V. Kini & Associates

For Respondent(s) Mr. Mrinal Ojha, Adv.
Mr Arjun Narayan, Adv.
Mr. Umesh Kumar Khaitan, Adv.
Mr. Siddharth Sharma, Adv.

UPON hearing counsel the Court made the following
O R D E R

The arbitration petition is allowed in terms of the signed order. No costs.

The registry is directed to communicate the order to the learned Arbitrator so that the learned Arbitrator can enter upon the reference as expeditiously as possible.

|(VINOD LAKHINA)
|COURT MASTER

|(INDU BALA KAPUR)
|COURT MASTER

(SIGNED ORDER IS PLACED ON THE FILE)

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

ARBITRATION PETITION NO. 28 OF 2013

M/S VIBROPOWER PTE LTD. ...PETITIONER

VERSUS

XL TELECOM & ENERGY LTD. ...RESPONDENT

ORDER

I have heard learned counsel for the parties.

Ms. Indu Malhotra, learned Senior Counsel appearing for the petitioner, points out that there is an arbitration clause in the agreement, which reads as under:

"16. Arbitration.

In the event of any question, dispute or difference arising under the agreement or in connection therewith (except as to matter that the decision of which specially provided under this agreement), the same shall be referred to sole arbitration of the MD XL or his designated officials in his absence. The agreement to appoint an arbitrator will be in accordance with the arbitration and conciliation Act, 1996. There will be no objection to any such appointment that the arbitrator is XL servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as XL servant. He has expressed views on all or any of the matter under dispute. The award of the arbitrator shall be final binding of the parties. In the event of such arbitrator to whom the matter is originally referred being transferred or vacating his office being enable to act for any reason what so ever the MD XL or the said officer shall appoint another

...2/-

:2:

person to act as arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.

Where supplier has not agreed to arbitrator that the dispute/claims arising out of the contract/PO entered with him shall be subject to jurisdiction of the competent court at the place from where the contract/PO has been issued. This PO is subject to jurisdiction of court of Hyderabad only."

However, the learned counsel for the respondent submits that the aforesaid arbitration clause is vague and is unworkable. He submits that the last paragraph of the arbitration clause, in fact, effaces the earlier part of the provision. Therefore, the parties cannot be compelled to go to arbitration.

In my opinion, these very submissions, which are made before this Court, can well be taken before the learned Arbitrator and the learned Arbitrator shall look into the same.

All the disputes between the parties are referred to the sole arbitrator.

...3/-

:3:

I hereby appoint Mr. Justice B. Sudarshan Reddy, a former judge of this Court as the sole arbitrator. The learned Arbitrator shall be at liberty to fix his own remuneration in consultation with the parties.

The arbitration petition is allowed. No costs.

The registry is directed to communicate the aforesaid order to the learned Arbitrator so that the learned Arbitrator can enter upon the reference as expeditiously as possible.

.....,J.
(SURINDER SINGH NIJJAR)

NEW DELHI
JANUARY 24, 2014