

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. 19 OF 2009

SAMIN TEKMINDEZ INDIA P.LTD.

Petitioner(s)

VERSUS

GOGOYOKO EHF

Respondent(s)

Date: 13/08/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA

For Petitioner(s)

- Mr. Vikas Mahajan, Adv.
- Mr. Bhaskar Y. Kulkarni, Adv.
- Mr. Vinod Sharma, Adv.
- Mr. A.N. Singh, Adv.

For Respondent(s)

O R D E R

By this application under Section 11(5) of the Arbitration and Conciliation Act, 1996 (for short, the 'Act'), the applicant has prayed for appointment of a sole arbitrator for adjudicating the disputes that have arisen between the applicant and the respondent under the Master Services Agreement dated February 14, 2008 and addendum thereto.

2. By the Master Services Agreement between the parties, it was agreed that the applicant shall develop a music

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portal for the respondent and for the said purpose shall provide services in accordance with the terms of that agreement. It appears that sequel to the execution of the Master Services Agreement, Statement of Work No. GY-1 was executed on March 07, 2008 between the parties that defined the scope of work to be executed by the applicant and the resources to be deployed for the same.

The estimated cost for the said work was 190,000 payable in 10 (ten) equal monthly instalments. The duration of the project was approximately 10 months starting from March 07, 2008. The applicant claims to have started working on the assigned project with effect from March 07, 2008 and started raising monthly invoices of 19,000 each commencing from the month of April 2008.

3. The applicant has averred that the respondent initially made regular payments for five months commencing from April 2008 to August 2008 against invoices raised by it and thereafter defaulted. On March 25, 2009, the applicant claims to have sent communication to the respondent demanding a sum of 115,357.84 towards outstanding amount and reiterated the said demand

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thereafter. The applicant also raised three more invoices making total due amount payable by the respondent to the applicant in the sum of 128,138.39 till April 30, 2009. On April 20, 2009, the applicant, through its Advocate, sent notice invoking the arbitration clause and called upon the respondent to resolve the disputes under the Master Services Agreement in accordance with the said provision. It transpires that the respondent, vide its notice dated April 29, 2009, terminated the Master Services Agreement dated February 14, 2008 citing non-compliance and dissatisfactory services of applicant as reason of such termination.

4. Clause 12.9 of the Master Services Agreement provides as follows:

"12.9 Arbitration. - The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between executives of the parties. Any dispute that is not thus resolved, including any question regarding its existence, shall be submitted to binding arbitration under the arbitration provisions of Indian Arbitration and Conciliation Act, 1996 and the rules framed there under and to be conducted by a sole Arbitrator appointed in accordance with the said rules. Venue of Arbitration shall be Delhi, India. Arbitrator so appointed shall not award any damages in excess of the limits

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or limitations contained in this Agreement. The prevailing party in the arbitration shall be entitled to recover from the other party all costs of such arbitration including, without limitation, reasonable attorneys' fees, court costs, and related expenses. Notwithstanding the foregoing, the parties shall have the right to bring judicial proceedings to obtain injunctive relief at any time before or during the pendency of arbitration proceedings. Judgment upon the award rendered may be entered in any Court of competent jurisdiction and shall be binding on both the parties."

5. The notice of the arbitration application has been served upon the respondent as per the office report, but despite service, nobody has chosen to appear on behalf of the respondent. In the circumstances, I have been left with no option but to proceed with the hearing of this arbitration application ex-parte.

6. After having heard the learned counsel for the applicant and upon perusal of the averments made in the arbitration application and the available material, I am satisfied that the requirements as per Rules 2(a) to 2(h) of the Appointment of Arbitrators by the Chief Justice of India Scheme, 1996 are satisfied and the disputes that have arisen between the applicant and the respondent under the Master Services Agreement dated February 14, 2008 deserve to be referred for adjudication to a sole arbitrator.

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7. Accordingly, I appoint Mr. Justice D.P. Wadhwa (former Judge of this Court) as the Sole Arbitrator for adjudicating the disputes between the parties under the Master Services Agreement dated February 14, 2008 and addendum thereto. The Sole Arbitrator shall fix his remuneration with the consultation of the parties and in case the respondent does not appear before the Sole Arbitrator, then in that event, in consultation with the applicant. The Registry is directed to send a copy of this order to Mr. Justice D.P. Wadhwa (Retd.)

8. The arbitration application is disposed of in terms aforestated.

.....J.
(R.M. LODHA)

NEW DELHI,
AUGUST 13, 2010