
(2013) 04 DEL CK 0269

In the Delhi High Court

Case No : Arbitration Petition 312 of 2012

Centre for Development of Telematics (C-DOT)

APPELLANT

Vs

Instrumentation Ltd.

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2013) 04 DEL CK 0269

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : J.C. Seth, for the Appellant; Surendra Kumar Gupta and Mr. B.M. Aggarwal, for the Respondent

Judgement

Manmohan Singh, J.—The petitioner has filed the present petition u/s 11 of the Arbitration and Conciliation Act, 1996 for appointment of a sole independent arbitrator. Brief facts as culled out from the petition are that the petitioner entered into an agreement dated 23rd December, 2002 with respondent for transfer of C-DOT Technology for AN-RAX to respondent.

2. As per the agreement the respondent paid Rs. 7 lac as fee for know-how but did not pay royalty regularly @4% of the value of its net annual sales, since 2002 onwards. The duration of the agreement is for a period of 16 years from the date of signing or 15 years from commencement of the commercial production, which date was in 1992. As per General Clause of the agreement dated 23rd December, 2002, all other terms and conditions of the agreement including "arbitration clause" shall be the same as contained in 256 P-RAX Technology Transfer Agreement dated 20th August, 1992 between the parties which was made part of the agreement.

3. The Arbitration Clause contained in the said agreement for 256 P RAX Technology reads as under:

13.1 Any/all disputes or difference arising under this Agreement shall be settled

by arbitration under the provisions of the Indian Arbitration Act, 1940 at New Delhi.

4. The respondent failed to honour its commitment to make payments of royalty regularly since 2003 onwards. After making adjustment of petty payments received by the petitioner from the respondent, an amount of Rs. 17,93,000/-, exclusive of interest, had become due as on 31st March, 2011. By letter dated 27th January, 2007 the respondent agreed to make the payment in monthly installments of Rs. 10 lac each over a period of 18 months. The respondent paid a sum of Rs. 10 lac through DD No. 218930 on 12th July, 2008 out of which an amount of Rs. 3 lac was appropriated towards this agreement.

5. The respondent stopped payments of royalty and therefore the petitioner sent registered notice dated 8th June, 2011 making a demand of Rs. 17,93,000/- as on 31st March, 2011 along with interest @18% per annum failing which legal action will be taken. Despite notice, no amount on account of royalty was received. Executive Director decided to invoke arbitration and appointed Sh. A.K. Nagar, retired Sr. DDG (Civil), Department of Telecommunication Govt. of India, as sole Arbitrator and wrote to the respondent on 7th July, 2011 to give its concurrence to the appointment of Sh. A.K. Nagar as Arbitrator. It was also stated that if the respondent did not object to the appointment of Sh. A.K. Nagar, he shall be asked to proceed with arbitration in accordance with the Arbitration and Conciliation Act, 1996.

6. The respondent did not pay nor denied its liability to pay the due amount. By its letter dated 20th July, 2011, it expressed its inability to pay the royalty because of financial constraints etc. and requested for withdrawal of the arbitration proceedings and wanted more time to settle the issue. By letter dated 3rd August, 2011, the petitioner informed the respondent that the arbitration proceedings could be withdrawn if the respondent made immediate payment of 1/3rd of the outstanding due to the petitioner and further state as to how it would pay the balance amount.

7. The respondent did not remit even a part of the amount and did not given concurrence to the appointment of Sh. A.K. Nagar, as sole Arbitrator. Thereafter, repeated efforts were made by the petitioner to settle the matter with respondent amicably but all in vain. Since the respondent is a Government of India Enterprise, the Arbitrator appointed by the petitioner did not proceed with the arbitration in the absence of concurrence of the respondent. Hence, the present petition. Learned counsel for the petitioner agrees for appointment of an independent sole Arbitrator by the Court.

8. No reply has been filed. The prayer is not seriously opposed by the learned counsel for the respondent for appointment of an Arbitrator.

9. From the aforesaid, it is clear that a binding arbitration agreement is in existence between the parties and the claims appear to be live from the correspondence placed on record. The respondent has failed to appoint an

arbitrator within stipulated time. There is hardly any opposition to the prayer sought by the petitioner. The present petition is liable to be allowed. Accordingly, Mr. Vikram Nandrajog, Advocate (Mobile No. 9810097083), is appointed as a sole Arbitrator to adjudicate the disputes between the parties including claims and counter claims. Total fee of the learned Arbitrator shall be payable to the tune of Rs. 50,000/- which shall be borne by both the parties in equal proportion. The petition is accordingly disposed of. Copies of this order be given dasti to the learned counsel for the parties. A copy of the order be also sent to the learned sole Arbitrator.