

(2013) 07 BOM CK 0076

In the Bombay High Court

Case No : Misc. Civil Application (Arbitration) No. 794 of 2012

Heera Laxmi Amusements Pvt. Ltd.

APPELLANT

Vs

Shree Asthvinayak Cine Vision Ltd. and Another

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 5 ALLMR 621 : (2014) 2 BomCR 846 : (2013) 5 MhLj 208

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : H.D. Dangre, for the Appellant;

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—The applicant has invoked section 11 of Arbitration and Conciliation Act, 1996 (for short "Arbitration Act") and submitted to appoint a sole Arbitrator as per the agreement between the parties. Though served, none appeared for the respondents. In Misc. Civil Application (Arbitration) No. 371/12 where applicant had invoked section 9 of the Arbitration Act for grant of interim relief, the District Court, Nagpur, after hearing both the parties, though entertained the petition, yet refused to grant ad interim relief; however, noted the correspondences between the parties referring to the earlier negotiation dated 20-10-2011 and 16-4-2012, where there is no dispute with regard to the receipt of Rs. 1,01,000,00/- by the respondents pursuant to the alleged agreement. There is observation with regard to the clause of arbitration in the draft agreement exchanged between the parties.

2. Though issue was raised about nonexistence of arbitration clause, however, on merit by holding that there exists arbitration clause, the Court has observed as under:

31. So, it is obvious that in the event of differences and dispute between the parties, even with regard to agreement of distribution of film, it was to be arbitrated by the arbitrator. There, thus, does not appear to be substance in the

submission made on behalf of non-applicants that there was no arbitration agreement furnishing right to this applicant to move this application to ask for interim reliefs. In this view of the matter, it is to be held that application u/s 9 of the A and C Act ex facie is maintainable.

32. Before parting with this aspect, it is required to mention here that admittedly notice u/s 11 of the A and C Act was issued by applicant to non-applicants, copy of which is placed as document No. 14. Admittedly, non-applicants replied it by reply dated 11-6-2012, copy of which is placed as document No. 15. In it, though non-applicants have disputed all the adverse allegations and disputed about the consent to the appointment of arbitrator, it has, however, said that let alone be the sole arbitrator. It would, thus, suggest that non-applicants were aware that arbitration clause or for that matter arbitration agreement is there, though agreements were not signed and finalized.

3. Even considering the correspondence between the parties, as well as, the draft agreement placed on record, apart from the undisputed position on record, in view of the acknowledgment by the respondents that they have received this amount as referred above, I am inclined to observe that there exists the arbitration agreement between the parties and there is an arbitrable dispute which need to be resolved through the sole Arbitrator as agreed by and between the parties.

4. The Supreme Court in Trimex International FZE Ltd. Dubai Vs. Vedanta Aluminium Ltd., India, had even gone to the extent of considering the offer and acceptance by email though there was no signed formal document to be the valid arbitration agreement as contemplated under sections 4 and 7 of the Contract Act, 1872 and section 7 of the Arbitration Act. Even the Arbitration Act itself permits, provides and recognizes the exchange of e-mails, letters, telex, telegrams and other means of telecommunication the basis for the arbitration agreement. The requirement of written communication in view of above is complied with and above all there is no denial to the averments made by the applicant to the agreements and the documents filed in support of the petition also.

5. The respondents, though requested and demanded by the applicant, failed to appoint sole Arbitrator. Therefore, case is made out to grant the relief. The applicant has even suggested the name of Arbitrator in writing to which also there is no denial and/or dispute. Therefore, the Arbitrator named is appointed to decide and resolve the dispute so referred and raised by the applicant in notice dated 7th June, 2012. However, the liberty is granted to parties to add and/or amend the point of reference, if any. As the respondents though served failed to appear, therefore, it is necessary for the office to send the intimation of appointment of Arbitrator to respondents. Therefore, the following order:

(a) Mr. P.A. Markandewar, Ex Civil Judge, Senior Division is appointed as sole Arbitrator to adjudicate and decide all the disputes between the parties.

- (b) The parties are at liberty to amend and/or add the point of reference, if any.
- (c) The parties to take steps.
- (d) The Application is allowed with regard to the appointment of Arbitrator only. So far as the other prayers are concerned, the applicant is at liberty to claim the same in accordance with law before the Arbitrator.
- (e) The office to communicate the Arbitrator.
- (f) No costs.