
(2020) 11 UK CK 0035

In the Uttarakhand High Court

Case No : Arbitration Application No. 15 Of 2016

M/s M.S. Baisoya Media Private Limited

APPELLANT

Vs

Northern India Holding Private Ltd. And Others

RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11, 11(8)

Citation : (2020) 11 UK CK 0035

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : Piyush Garg, Dharmendra Barthwal

Final Decision : Disposed Of

Judgement

Ravi Malimath, J

1. The petitioner is before this Court, in this petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Act"), seeking appointment of a sole Arbitrator to resolve the disputes that have arisen between the parties.

2. Learned counsel for the petitioner contends that an agreement was executed between the petitioner and the respondents on 02.04.2014. In respect of the said agreement, certain disputes have arisen between the parties and as such the petitioner claims that the sole arbitrator be appointed to resolve the disputes that have arisen between the parties. In that regard, Clause 15 of the agreement dated 02.04.2014, which relates to arbitration, is referred to by the learned counsel for the petitioner. The said clause provides for settlement of disputes through Arbitrator. Clause 15 of the agreement dated 02.04.2014 reads as under :-

15. That the Parties shall endeavor to settle any dispute arising in connection with the interpretation, performance, termination of this Agreement, or other wise in connection with this Agreement, through friendly consultation and negotiations.

If no settlement can be reached through consultations between the Parties within fifteen business days of one Party delivering a written notice of the dispute to the other Party, then such matter shall be finally settled by arbitration.

The dispute shall be settled in accordance with the (Indian) Arbitration and Conciliation Act, 1996 ("Arbitration Act").

The Parties agree with respect to such arbitration that:

(a) That arbitration proceedings shall be conducted in English.

(b) The place of arbitration shall be Dehradun.

(c) There shall be a sole arbitrator.

(d) The arbitration award shall be final and binding on the Parties, and enforceable in accordance with its terms. The arbitrator shall state the specific reasons for his findings in writing. The Parties agree to be bound thereby and to act accordingly.

(e) The costs of arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award. If a Party is required to enforce an arbitral award by legal action of any kind, the Party against whom such legal action is taken shall pay all reasonable costs and expenses and attorneys fees, including any cost of additional litigation or arbitration taken by the Party seeking to enforce the award.

(f) When any dispute occurs which is submitted to arbitration, except for the matter under dispute, the Parties shall continue to exercise their remaining respective rights and fulfil their remaining obligations under this Agreement.

3. It is further submitted that the earlier petition filed by the petitioner herein was objected to by the respondents on the ground that it was premature. Hence, by the order dated 16.12.2015 Arbitration Petition No. 04 of 2015 was dismissed as withdrawn with a liberty to file a fresh petition, if need so arises. Thereafter, this petition has been filed.

4. A counter affidavit has been filed by the respondents disputing the same. They have relied on the letter written by the petitioner herein dated 15.12.2015 stating that he will withdraw the earlier petition and will not file the same again. Therefore, it is submitted that the present petition is not maintainable.

5. On hearing learned counsels, I am of the considered view that appropriate interference is called for. The question, that the petitioner has stated in his letter dated 15.12.2015 that he will not file a second petition, is outside the scope of this petition. The respondents are always entitled in law to proceed against the petitioner in accordance with law. So far as the contention of the respondent that the petitioner has given a statement that he will not file a second petition is concerned, the same cannot be accepted in view of the fact that the earlier writ petition as well as the present writ petition has been filed by the same petitioner.

Hence, for the aforesaid reasons, the objections raised in the counter affidavit cannot be accepted.

6. On hearing learned counsels and having considered the availability of the arbitrators, I am of the considered view that an arbitrator is required to be appointed in terms of Clause 15 of the agreement dated 02.04.2014 to resolve the disputes between the parties. Hence, Shri K.D. Bhatt, retired District Judge, R/o House No. 297, Lane No. 5, Madhur Vihar, Ajabpur Khurd, Dehradun, is appointed to act as the sole arbitrator to resolve the dispute between the parties, after his disclosure in writing is obtained in terms of Section 11(8) of the Act; and only after receipt thereof shall his appointment, as an Arbitrator, come into force.

7. On his giving consent to arbitrate the disputes between the parties, Shri K.D. Bhatt, retired District Judge, R/o House No. 297, Lane No. 5, Madhur Vihar, Ajabpur Khurd, Dehradun, shall enter reference, and shall pass an award in accordance with law. The learned Arbitrator shall fix his fees in consultation with both the parties.

8. The arbitration application is disposed off accordingly.