

(2001) 05 DEL CK 0011

In the Delhi High Court

Case No : OMP 17 of 2001

Quantum Information Systems Ltd.

APPELLANT

Vs

Electronics Trade and Technology Development Corporation
Ltd.

RESPONDENT

Date of Decision : 24-05-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2001) 5 AD 185 : (2001) 29 DLT 433 : (2002) 1 RAJ 487

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh. A.S. Chandhiok, Sh. D.K. Thakur, Sh. Amar Gupta and Mr. Ms. Manmeet Arora, for the Appellant; Sh. Rajiv Nayar and Sh. Manoj Arora, for the Respondent

Judgement

K.S. Gupta J.

1. Petitioner filed this petition u/s 9 of the Arbitration and Conciliation Act, 1996, inter alia, alleging that it is pioneer in the field of Distance Education. Respondent is a Public Section undertaking and was set up in the year 1974 by the Department of Electronics, Government of India. Respondent is engaged in the business of electronic components, equipments, information technology products, telecommunications, security systems, education and training etc. Both the parties entered into a "Quantum-ET&T Alliance Agreement" on 18th December 1997. Under clause (1) of this agreement, petitioner was to set up education centre to be known as "Quantum ET&T Centre". Under clause (5) respondent undertook to provide 3500 sq. of built up space at 16/48, Malcha Marg, Chanakyapuri after renovating, air-conditioning and installing furniture, fixtures, fittings and other utilities at a cost not exceeding Rs. 1,000/- per sq.ft according to the design approved by petitioner within 45 days of signing of agreement. It further undertook to provide additional 1500 sq.ft space in said premises by 1st January, 1999 and further space of 1500 sq.ft by 1st January

2001 after renovation and installation of furniture, fixtures, fittings and other utilities at a cost not exceeding Rs. 1,000/- per sq.ft according to the design approved by petitioner by January 31, 1999 and January 31, 2001 respectively. While renovation work was being undertaken the respondent undertook to provide temporary facilities for camp office at the centre to the petitioner. Clause 6 of the agreement stipulated that respondent would at its own cost provide 128 Kbps leased lines at the said premises for Internet links with VSNL or any other Internet Service Provider (ISP) within 45 days of the signing of agreement. Additional 128 Kbps leased lines was to be provided by January 1999-2001 respectively. Under clause 9 of agreement the petitioner is required to pay to the respondent 15% of the Indian Rupee amount realised by petitioner from its students enrolled in the courses from University of Illinois at Urbana-Champaign, USA for the year 1998. Petitioner is further required to pay to the respondent @ 12% of the Indian Rupee amount realised by the petitioner from its students enrolled in the courses from said University for the year 1999 till expiry of the term of agreement. However, the Indian Rupee was pegged at Rs. 2.10 Lacs per student at the time of agreement subject to any change as agreed by the parties. Under clause 10 of agreement the petitioner is to make payments to the respondent as per clause 9 within 30 days of the receipt of fees each semester except for first spring semester of January/February 1998. For this particular semester payments were to be made in two Installments which were to include initial payment of Rs. 4 lakhs to be paid within 30 days of its collection and balance Along with payment of the fall semester. Under clause 11 of agreement the petitioner ensured minimum guarantee payment each year irrespective of its fee revenues to the respondent to cover the heads- (a) 128 Kbps lease lines rental as provided in said clause 6; (b) Proportionate rental outflow incurred by the respondent for the Centre at the said premises; and (c) 1/3rd of the total renovation cost incurred by the respondent to be adjusted over a period of three years beginning with the year in which it is actually incurred by the respondent. It is alleged that minimum guarantee payment was payable in 30 days after the start of fall semester in September of each year after adjusting other sums that petitioner might have paid to the respondent earlier at the spring semester in January/February of that year. Under clause 13 of agreement the term of agreement was initially fixed for a period of 5 years subject to renewal thereafter for such further period and on such terms as may be mutually agreed to between the parties. Clause 15 of agreement provides for termination thereof while Clause 17 contains arbitration clause. It is pleaded that agreement was entered into on the assurance given by respondent specially in regard to timely availability of space in the said premise duly renovated. however, respondent failed to make available space ad-measuring 3500 sq.ft duly renovated to the petitioner by 1st February 1998 as stipulated in clause 5 agreement. It also failed to provide leased lines of 128 Kbps as stipulated in clause 6. Thus, the representative of petitioner approached the Chairman and Managing Director of respondent both of whom had signed the agreement to ascertain as to when renovated space would be made available. Series of discussions between the

parties were held. As the respondent was facing liquidity crisis the petitioner proposed to arrange funds to undertake the renovation of space and installation of leased lines from VSNL. Since funds were to be borrowed from market, the petitioner through the letter dated 3rd April 1998 intimated the respondent that interest payable on the amount to be borrowed will be 17.5% p.a. and interest adjusted against the payments to be made by the petitioner under the agreement. Subsequent to the meeting dated 13th April 1998, the respondent sent a letter dated 18th April 1998 to the petitioner agreeing to petitioner's proposal as contained in the said letter. In this letter respondent also mentioned that sum of Rs. 4 lakhs which had already become due under the agreement, will be adjusted against the first advance to be received for renovation and balance would carry simple interest @ 17.5% p.a. which will be calculated from the date of realisation of amount till the date on which amounts become due and payable to the respondent on reducing balance basis. Respondent further reiterated to bear the renovation cost to the extent of Rs. 1,000/- per sq.ft. Petitioner also decided to meet the entire expenditure on air-conditioning. It is further alleged that petitioner wrote a letter dated 20th May 1998 to the respondent with regard to installation of leased lines in the said premises. As discussed between the parties the respondent had to apply for 64 Kbps leased lines for which application form had already been given to it. Petitioner enclosed a cheque for Rs. 20,000/- Along with the said letter towards registration money for installation of 64 Kbps leased lines. Centre was inaugurated on 5th June 1998 and it began to function from this date from the said premises. In April 1998 the respondent had made available 5008.61 sq.ft space to the petitioner and out of which petitioner had renovated 4021.48 sq.ft. In the meeting dated 13th April 1998 between the Director, Marketing of respondent and the representative of petitioner, the respondent agreed to pay bills at the agreed rate of 1000 sq.ft for 4021 sq.ft of renovated space in addition to bearing the cost of VSNL leased lines. It is pleaded that subsequently the petitioner received a letter dated 31st May 1999 from the respondent stating, inter alia, for the first time that its share of renovation was subject to ceiling of RS. 35 lakhs and it claimed payment of Rs. 4,48,488/-. This claim was repudiated by the petitioner by the letter dated 19 March 1999. Vide letter dated 14th June 1999 the respondent informed the petitioner that it would not accept the liability for cost of renovation over and above Rs. 35 lakhs. According to petitioner's calculation it was the respondent which owed Rs. 5,82,687/- to the petitioner and by the letter dated 28th May 2000 the respondent was intimated accordingly by the petitioner. It is alleged that petitioner was shocked to receive a notice dated 23rd January 2001 from the counsel of respondent informing that it has terminated the agreement with effect from 1st February 2001 from the counsel of respondent informing that it has terminated the agreement with effect from 1st February 2001. Petitioner sent an interim reply to this notice through its counsel on 25th January 2001. On 27th January 2001 the advocate of respondent replied to the petitioner's advocate's said interim reply wherein it was stated that in case the petitioner pays a sum of Rs. 24,77,263/-, the respondent would withdraw the termination

and not take the proposed action. In sub para (z) of Para 6 of the petitioner alleged disputes which have arisen between the parties, have been enumerated. It is alleged that petitioner is in process for invocation of arbitration clause contained in clause 17 of the agreement and nominate its arbitrator in terms thereof. It is pleaded that purported termination of the agreement dated 18th December 1997 is unjustified. The period of notice provided in clause 15 of agreement is atleast 12 months. this clause further provides that agreement shall be deemed to have been rescinded till the conclusion of course/ programmes. Petitioner has admitted students for a period of another 2 years in December 2000 and, Therefore, under said clause 15, the agreement is deemed to be extended for a period of another two year upto 31st January 2003. Termination of said agreement would result in grave and drastic consequences to the students already admitted. Prayer made in the petition which is material, is reproduced as under:-

"a) restrain the respondent and/or its officers, employees and staff from preventing and/or interfering and /or in any manner obstructing the petitioner from running and operating Quantum ET&T Centre at 16/48, Malcha Marg, Chanakyapuri, New Delhi-110021 and from issuing any public notice as threatened by it though its notice dated 23rd January 2001 (Ann. P-23 hereto) till the disposal of the present petition.

b) pass any other or further order(s) as this court may deem fit and proper in the facts and circumstances of this case."

2. Respondent contested the petition by filing reply. Execution of the agreement dated 18th December 1997 between the parties is admitted. It is stated that as per this agreement the petitioner was to start programme leading to Degree of Master in Computer Science from the University of Illinois (USA) and various other Degree, Diploma and Certificate course. under clause 5 of the agreement answering respondent was to provide 3500 sq.ft of built up area on first and second floors of the premise at 16/48, Malcha Marg Chanakyapuri on rent with it for setting up Centre. Answering respondent was also to provide additional 1600 sq.ft by January 1999 and further 1500 sq.ft by 1st January 2001. It was also to arrange for renovation, air-conditioning, furniture and fixtures and other facilities at a cost of Rs. 1,000/- per sq.ft and renovation of 3500 sq.ft was to be completed within 45 days of the entering of agreement. In consideration thereof, under clause 9 of agreement the petitioner was to pay to the answering respondent 15% of the total amount realised from its students enrolled for the programmes for the year 1998 and 12% thereafter. In addition, the petitioner was to bear proportionate actual expenses towards telephone, electricity and water. Clause 11 of the agreement provides for minimum guaranteed payments. Entire renovation cost was to be reimbursed by the petitioner in 3 Installments. It is alleged that 3500 sq.ft plus additional 1500 sq.ft which was to be made available in 1999 had been duly handed over to the petitioner. In the meeting held on 2nd April 1998 answering respondent had agreed to the work of

renovation being carried out by the petitioner directly. It was further agreed that the share of answering respondent towards renovation expenses which was to be paid by the petitioner, would carry interest @ 17% p.a. Further, cost of renovation was limited to Rs. 35 lakhs. It is alleged that petitioner had also undertaken to arrange the leased lines from VSNL. It was felt that expenditure on air-conditioning should also be borne by the petitioner. It is alleged that design and drawings for renovation were to be provided by the petitioner. Petitioner delayed the submission of drawings and designs and for that reason it was only in April 1998 that contract for renovation could be awarded. It was the petitioner who was negotiating with the contractors for renovation work and, Therefore, no part of delay could be attributed to answering respondent. It is alleged that petitioner had assured the answering respondent that it would be able to enroll about 60 students for the first semester. However, it could enroll only 8. Issue raised by the respondent that it is liable to pay rent only from April 1998 as against January 1998 was against the terms and conditions of said agreement entered into between them. Claim of the petitioner for renovation up to 5008 sq.ft of area involving an amount of Rs. 5,08,000/- at the agreed rate of Rs. 1000/- per sq.ft, was again in violation of the terms agreed to as answering respondent was to pay only for renovation of 35000 sq.ft. It is claimed that the petitioner neither sent reply nor forwarded any account despite repeated reminders by answering respondent. It is admitted that the letter dated 27th January 2001 terminating the agreement was sent by the counsel of answering respondent to which petitioner got a reply dated 25th January 2001 sent. It is stated that petitioner has not taken effective steps to invoke the arbitration clause or nominate its arbitrator and has merely filed this petition which is not maintainable. It is asserted that clause 15 of the agreement would not cover the situation as there is blatant breach of the term thereof by the petitioner. It is alleged that answering respondent on 27th January 2001 wrote to the petitioner that it is willing to withdraw the said letter of termination in case the amount due was paid to it. However, instead of trying to resolve the matter the petitioner has rushed to the court. It is denied that the petitioner is entitled to the relief prayed for.

3. I have heard Sh. A.S. Chandhok for petitioner and Sh. Rajiv Nayar for respondent.

4. It is not in dispute that works of renovation, air-conditioning and providing leased lines which were to be done by the respondent at its cost under clauses 5 and 6 of the agreement dated 18th December 1997, were got carried out by the petitioner and on the amount spent the respondent had agreed to pay interest @ 17.5% p.a. to the petitioner. Main thrust of the argument advanced on behalf of petitioner was that the termination of said agreement by the respondent in terms of notice dated 23rd January 2001 with effect from 1st February 2001 was in breach of clause 15 of the agreement. Further, clause 17 thereof provides for arbitration and disputes between the parties as detailed in sub para (z) of Para 6 of the petition can be gone into only by the arbitrators and pending adjudication

of disputes the respondent cannot obstruct the petitioner from running the course/programmes in the space provided nor can it issue any public notice as threatened in the said notice. Reliance was placed on the decision in *Munshi Ram and others vs. Delhi Administration* AIR 1968 SC 702 ; *East India Hotels Ltd. Vs. Syndicate Bank*, ; *Anamallai Club vs. Government of T.N. and others* and *Dinesh Mathur Vs. O.P. Arora and Others*, .

5. To appreciate the said submission, clauses 11 and 15 of the aforesaid agreement (copy at pages 39 to 42) need to be reproduced:-

"11. Quantum will ensure to ET&T a minimum guaranteed payment every year irrespective of its students' fee revenues, an amount to cover (i) 128 Kbps leased lines rental, (ii) proportionate premises rental outflow incurred by ET&T for the Quantum-ET&T Center area and (iii) one-third of the total renovation cost incurred by ET&T to be adjusted over a period of three years starting from the year in which it is incurred. This amount will be payable 30 days after the start of the Fall semester in September every year after adjusting any other sums that may have been paid earlier that year at the Spring semester (January/February).

15. Either part may terminate this agreement by giving to the other party a notice of at least twelve months. However, notwithstanding expiry of this agreement or the termination hereof courses and programmes commenced at Quantum-ET&T Center before the expiry of this agreement or the notice period shall continue till conclusion of all such course or programmes and this agreement shall be deemed to have been extended till the conclusion of course and programmes as aforesaid."

6. On behalf of respondent it was stated that respondent does not press the objection taken by it that the petitioner is entitled to claim only Rs. 35 lakhs towards cost of renovation. Along with rejoinder, the petitioner by way of Annexure P-2 has filed a statement showing the amount payable by each of the parties to petition. In response thereto, a statement was also filed on behalf of respondent indicating the amount payable by each party. Arguments at length were addressed by the parties' counsel in support of and against the correctness of these statements. Contents of both these statements which are material, are extracted below:-

(By the petitioner)

AMOUNT PAYABLE TO ET&T AGAINST RENT PAID TO LANDLORD

From Jan. 1998 to Sep. 1998

Jan to Mar 1998 3666 sq.ft 247,455 @ Rs. 22.50

Apr 1998 to Sep 1998 4981 672,435 9,19,890 sq.ft @ Rs. 22.50

From Oct. 1998 to Sep. 1999

Oct 1998 to Sep 1999 4981 13,44,870 13,44,870 sq.ft @ 22.50

From Oct 1999 to Sep 2000

Oct 1999 to Jan 2000 4981 4,48,290 sq.ft @ Rs. 22.50

Feb 2000 to Sep 2000 4981 13,94,680 18,42,970 sq.ft @ Rs. 35/-

From Oct 2000 to Jan 2001

Oct 2000 to Jan 2001 4981 6,97,340 6,97,340 sq.ft @ Rs. 35/- _____

48,05,070 _____ Amount recoverable from ET&T

Renovation Cost 49,81,000

Initial Amount paid to VSNL against 1,30,000

Interest receivable from ET&T 11,62,061 _____

62,73,061 _____

Net Amount recoverable from ET&T 14,67,991 (By the respondent)

CHART OF AMOUNT DUE TO ET&T BASED ON QUANTUMS"

CALCULATIONS

1. AMOUNT PAYABLE TO ET&T

a) Rent payable to ET&T as per chart (Pg. 28 of Rejoinder) Rs. 48,05,070/-

II. AMOUNT RECOVERABLE FROM ET&T

a) Renovation Cost (As per Pg.28) Rs. 49,81,000/-

Less: to be paid by Quantum 1/3rd 98-99 16,60,333 1/3rd 99-2000 16,60,333
1/3rd 2000-2001 16,60,333 Rs. 49,81,000 _____

Nil

b) Leased Line Rental Rs. 1,30,000

Less to be reimbursed by Quantum Rs. 1,30,000 _____

Nil

c) Interest Receivable from ET&T Rs. 11,62,061

Amount due from Quantum to ET&T Rs. 36,43,009/-

6. Under aforesaid minimum guarantee payment clause No. 11 in addition to rent, the respondent is also entitled to 1/3rd of total renovation cost to be adjusted over a period of 3 years starting from the year in which it is incurred and this amount is payable within 30 days after the start of fall semester in September every year as also leased lines rental. Obviously, by now two Installments of Rs. 16,60,333/- each towards renovation cost and leased lines rental of Rs. 1,30,000/- as shown in the said statement filed by respondent have

prima facie become payable by the petitioner which have not been reflected in the said statement filed by it besides the amount of rent of Rs. 48,05,070/- paid to landlord up to January 2001 as mentioned in said statement (Annexure P-2). The power of court to make order u/s 9 of the Arbitration and Conciliation Act, 1996 under which present petition has been filed is discretionary and equitable in nature. Though the termination of aforesaid agreement by the notice dated 23rd January 2001 appears to be not in consonance with clause 15, the relief claimed in petition cannot be granted to the petitioner till payment of two Installments towards renovation costs and leased lines rental is made and the petitioner continues to pay to the respondent further amount falling due in future as per the said agreement. Decisions referred to above as also the decisions in Marriott International Inc. and Others Vs. Ansal Hotels Ltd. and Another, ; Shubh mangal Merchantile (P.) Ltd. Vs. Trion Restaurants (India) Pvt. Ltd., ; OMP No. 210 of 1999 Apteach Id. vs. Indira Gandhi National Open University decided by a single Judge of this court on 16th November 1999; Sumer Arora Vs. Domino's Pizza India Ltd., ; Connoisseur Catering Services (P) Ltd. vs. Sports Authority of India 88 (2000) D.L.T. 385 ; Classic Motors Ltd. Vs. Maruti Udyog Ltd., ; Patel Nagar General Stores Vs. Hindustan Petroleum, and Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others, , relied on behalf of respondent which sought to be distinguished on behalf of petitioner, have little bearing on the issue at hand.

7. Resultantly, the respondent and / or its officers / employees are restrained from obstructing and / or interfering in any manner to the petitioner's running the courses and programmes at Quantum ET&T Centre at 16/48, Malcha marg as also from issuing any public notice as threatened in aforesaid notice dated 23rd January 2001 provided the petitioner pays amount of Rs. 19,82,675/- (Rs. 16,60,333 x 2+Rs.1,30,000-Rs.14,67,991) towards two Installments of renovation costs and leased lines rental within two weeks from today and it continues to pay minimum guarantee amount as per said clause 11 minus amount of interest, if any, for the remainder period of the aforesaid agreement treating it to be subsisting, However, it is made that such payment (s) will be subject to the award which may ultimately be made by the arbitrators on disputes being referred to them under clause 17 of the agreement.

Petition stands disposed of.