

M/S Digikore Studios Ltd Vs. M/S Escosoft Technologies Ltd

M/S Digikore Studios Ltd Vs. M/S Escosoft Technologies Ltd

SooperKanoon Citation : sooperkanoon.com/1124072

Court : Delhi

Decided On : Jan-31-2014

Judge : Badar Durrez Ahmed

Appellant : M/S Digikore Studios Ltd

Respondent : M/S Escosoft Technologies Ltd

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

31. 01.2014 FAO(OS) 67/2014 M/S DIGIKORE STUDIOS LTD Appellant versus M/S ESCOSOFT TECHNOLOGIES LTD Respondent Advocates who appeared in this case: For the Appellant : Mr Himanshu Gupta. For the Respondents : Ms Deepika V. Marwaha. CORAM: HON'BLE MR. JUSTICE BADAR DURREZ AHMED HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL) CM19212014 & CM19222014 (Exemption) The exemptions are allowed subject to all just exceptions. CM19232014 (Delay in Re-filing) & CM19182014 (Condonation of Delay) There is no objection to the delay being condoned on the part of the learned counsel who appears on behalf of the respondent. The applications for condonation of delay are allowed. FAO (OS) 67/2014 & CM19192014 (Stay) & CM19202014 (Impleadment) 1. We have heard counsel for the parties. The learned counsel for the respondent was present in

Court after noticing the matter in the cause list.

2. This appeal is directed against the judgment dated 02.08.2013 delivered by the learned Single Judge of this Court in OMP No.901/2012, which in turn was a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act) challenging the Award dated 26.05.2012 passed by the Arbitral Tribunal, in dispute that arisen between the appellant and the respondent.

3. Briefly stated, the dispute between the appellant and the respondent was based on an agreement dated 27.11.2003 entered into between them. The said agreement has been styled as Novation Agreement and the same is in turn based on an earlier agreement between the appellant (DSL) and a company located at Wellington, New Zealand, Gtoyz Management Company Ltd. (GTOYZ). The earlier agreement was dated 31.05.2003 and was subsequently amended on 08.08.2003. We are, therefore, concerned with two agreements, one between GTOYZ and DSL and the other (Novation Agreement) between DSL and the respondent herein (ETL). The agreement between GTOYZ and DSL requires the appellant (DSL) to commission a 2D animated TV series and feature movie Kung Fu Millionaire and PIPSQKS. By virtue of the Novation Agreement between DSL and ETL, the work of preparing the 2D animated TV series and the feature movie was transferred to ETL. For doing so, DSL charged a Finders Fee of `1.07 crores. The said Finders Fee was to be paid in installments. The first installment of `42.5 lakhs of which was paid by ETL to DSL at the stage of signing the Novation Agreement.

4. Subsequently, the arrangement between GTOYZ and ETL did not work out. As a result of which, ETL raised a dispute claiming refund of the part payment of the Finders Fee from DSL. It is that dispute which went before the Arbitral Tribunal.

5. On the side of the appellant (DSL), it was claimed that the contract between GTOYZ and ETL failed on account of bad workmanship on the part of ETL. Therefore, it was contended that DSL was not liable to refund the Finders Fee in terms of Clause 1(e) of the Novation Agreement dated 27.11.2003. On the other hand, it was contended on behalf of ETL that the contract between ETL and GTOYZ had failed because GTOYZ did not provide the mobilization fund.

Therefore, they were entitled to claim refund of the Finders Fee from DSL. On the basis of the dispute between the parties the Arbitral Tribunal framed the following issues:- FAO(OS) 67/2014 (i) Whether GMCL i.e. GTOYZ is a necessary party?. If so the effect of its non-joinder and also whether the claim is not arbitrable?. (ii) Whether the Claimant was justified in cancelling the Novated Agreement dated 27.11.2003. If so, to what effect?. (iii) Whether the Agreement dated 27.11.2003 could not be executed due to faults attributed to Claimant?. If so, to what effect?. (iv) Whether the Agreement dated 27.11.2003 could not be executed due to non-availability of the (v) Whether Claimant is entitled to refund Rs.42.50 lacs along with interest @ 24% p.a. as claimed?. (vi) Whether the Respondent stood discharged of its obligations under the contract dated 31.05.2003 by virtue of the novated agreement dated 27.11.2003?. (vii) Whether the Respondent is entitled to a sum of Rs.75,14,250 claimed by way of counter claim i.e. Rs.64.50 lac towards the balance payment of Finders Fee and interest of Rs.10,64,250 @ 18% p.a. for the period 02.08.2004 to 30.06.2005 with future interest @ 18% p.a.?. (viii) Whether Claimant/Respondent is entitled to the cost of arbitration?.

6. It will be seen from the above that the very first issue was whether GTOYZ was a necessary party to the proceeding or not. The Arbitral Tribunal came to the conclusion that GTOYZ was not a necessary party. The learned Single Judge has also agreed with the conclusion arrived at by the Arbitral Tribunal. We may point out that the crux of the dispute between the parties is set out in Issue Nos.3 and 4 and, consequently, in Issue No.2. Issue No.3, as can be seen from the above extract, specifically required the Tribunal to return a finding as to whether the Novation Agreement dated 27.11.2003 could not be executed on account of faults attributable to ETL. Issue No.4 which was connected with Issue No.3 required the Tribunal to return a finding as to whether the agreement dated 27.11.2003 could not be executed due to non-availability of necessary funds with GTOYZ. It is evident that if Issue No.3 was to be decided in favour of DSL and against ETL, then DSL would not be liable to refund the Finders Fee and vice versa.

7. The Arbitral Tribunal examined both the issues together and returned a clear finding of fact that the agreement dated 27.11.2003 could not be executed because of non-availability of necessary funds with GTOYZ and not on account of

any fault which could be attributed to ETL.

8. It is, therefore, clear that the conclusion of the Arbitral Tribunal that DSL was liable to refund the Finders Fee, cannot be faulted, once these findings of fact have come on record. It is also made clear that the decision on Issue No.2 follows the decision on Issue Nos.3 and 4 and, therefore, the Tribunal was also right and cannot be faulted for concluding that ETL was justified in cancelling the Novation Agreement dated 27.11.2003.

9. The learned Single Judge has also examined the matter in detail and, inter alia, on Issue Nos.3 and 4 has observed as under:

19. As regards Issues 3 and 4, the AT has, on a thorough analysis of the evidence, held that the Agreement and the amendment dated 8th August 2003 could not be confirmed by Gtoyz on account of nonavailability of necessary funds with Gtoyz and not on account of any fault of ETL within the meaning of Clause 1(e) of the NA. This Court finds no perversity in the above finding that warrants interference.

20. The conclusion of the AT on Issue Nos.2 and 5 in favour of the ETL had to logically follow. The AT has granted ETL interest at 9% per annum from the date of the Award till the date of payment. The CC of the DSL for payment of the balance Finders Fee has rightly been rejected in view of the above conclusions.

10. As regards, the first issue, that is, as to whether GTOYZ was a necessary party or not, the Arbitral Tribunal, after examining the terms of the two agreements and the relationship of the parties came to the conclusion that GTOYZ was not a necessary party. While the Arbitral Tribunal agreed that GTOYZ may have been a proper party to the arbitration proceedings, but it was definitely not a necessary party. The learned Single Judge has also examined this aspect of the matter and has concluded as under:

16. This Court is unable to accept the above submission. In the first place, given the scope of interference under Section 34 of the Act, the interpretation placed by the AT on the clauses of the Agreement, the amendment and the NA would not be

interfered with unless it is shown to be perverse or shocking to the judicial conscience. The interpretation placed by the AT was a plausible one. Indeed, Gtoyz was served in the proceedings in the application seeking its impleadment, but it chose not to participate. In any event, the issue before the AT was whether ETL was liable to be refunded by DSL the Finders Fee of Rs.42,50,000 together with interest. That issue did not require the participation of Gtoyz as such.

11. We are in agreement with the view expressed by the learned Single Judge that the conclusion arrived at by the Arbitral Tribunal was a plausible interpretation of the relevant clauses and, therefore, the same could not be interfered with. In any event, we have noted above that Issues No.2,3 and 4 were the core issues before the Arbitral Tribunal and they have clearly been adjudicated upon without the necessity of GTOYZ being a party in the proceedings.

12. In view of the foregoing, we do not find any reason to interfere with the impugned judgment. The appeal is dismissed but there shall be no order as to costs. The pending applications also stand disposed of. BADAR DURREZ AHMED, J.

SIDDHARTH MRIDUL, J.

JANUARY31 2014 dn

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com