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

Shri Hari Telecom Vs. Micromax Informatics

Shri Hari Telecom Vs. Micromax Informatics

SooperKanoon Citation : sooperkanoon.com/1136721

Court : Delhi

Decided On : Apr-04-2014

Judge : Manmohan Singh

Appellant : Shri Hari Telecom

Respondent : Micromax Informatics

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Order Pronounced on: April 04, 2014 O.M.P. No.1178/2012 & I.A. No.22615/2012 SHRI HARI TELECOM Through .....Petitioner Mr.Praveen Nagar, Adv. versus MICROMAX INFORMATICS .....Respondent Through Mr.Sunil Dalal, Adv. CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. By way of present petition under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), the petitioner has assailed award dated 16th July, 2012 passed by the learned sole Arbitrator, with a prayer to set-aside the same.0 2. Brief facts which led to the filing of present petition were as under:- (i) The petitioner was chosen to function as the Authorised Service Center (hereinafter referred to as the ASC) for the respondent-Company by their authorized representative in August, 2009. However, the formal agreement (hereinafter referred to as the agreement) was executed between the parties on 31st December, 2009 for a period of 1 year from the date of signing thereof. (ii) The petitioner commenced work of the ASC on 15 th August, 2009 and was

working without agreement for over 4 months i.e. from 15 th August, 2009 to 31st December, 2009. (iii) The petitioner made heavy investments stretching his budget to start the said ASC for the respondent-Company by taking a shop on rental of Rs.6,000/- per month and employed three persons i.e. 2 Engineers and 1 Helper/Computer Operator and himself to perform his duties under the agreement for the ASC. Moreover, the petitioner also deposited an amount of Rs.40,000/- with the respondent as an initial deposit to be refunded at the end of the agreement. (iv) The Authorised Representative of the respondent-Company, namely, Mr.Kedar regularly tried to influence the petitioner to buy company parts stolen from the company at half the rate. (v) Vide email dated 3rd May, 2010 the Agreement of ASC was terminated by the respondent-Company.

3. It is the case of the petitioner that he has taken the premises i.e. Shop No.6, Chand Bagh, Bhajanpura, Opposite Petrol Pump, Delhi-110094 on rent @ Rs.6,000/- per month for the purposes of running the ASC of the respondent-Company after employing three persons in the center. The petitioner was asked by one official of the respondent-company, namely, Mr.Kedar to commence the working of the ASC. It was submitted by the petitioner that more than 6 months were taken by the respondent to execute the Agreement of ASC. It was further submitted by the petitioner that on 31st December 2009, the Agreement of ASC was executed and after the execution of the Agreement, the petitioner has started working under the surveillance and supervision of the respondent-Company. It is submitted that vide email dated 3rd May 2010, the Agreement of ASC was terminated by the respondent-Company and on account of termination of the Agreement, the petitioner has suffered a loss of reputation besides suffering huge monetary loss. It was further submitted that under the terms of the Agreement, there is no provision for termination of the ASC and the termination of the ASC was illegal. It is submitted that the petitioner has claimed an amount of Rs.7 lac on account of present and future monetary loss, mental agony and harassment, exemplary fine due to the illegal act of the respondent-Company i.e. the termination of the ASC.

4. It is the case of the respondent that in August 2009, the services of the petitioner were engaged on trial basis and on satisfactory performance of the

petitioner a formal agreement for ASC was to be executed. The Agreement dated 31st December, 2009 was executed after commencing the work trial in the month of August, 2009. It was denied that the monthly rent of the premises was Rs.6,000/-. It was also denied that the petitioner has taken the premises on rent. The allegation with respect to Mr.Kedar was also refuted by the respondent. It was submitted that the engagement with the petitioner was only on trial basis and only on satisfactory performance of the petitioner, the Agreement would continue to work. It was also denied that three employees were engaged by the petitioner to perform the duties of the ASC. It was submitted that there is no document on record to substantiate that three employees were engaged by the petitioner.

5. It was submitted by the respondent that the termination notice was issued in accordance with the Agreement and it was further submitted that from February 2010, the respondent started receiving complaints from customers, retailers and authorized dealers that the petitioner is using spurious parts for repairing the mobile handsets of the customers of the respondent and further the behavior of the staff towards the customers of the respondent was not proper and was rude. Besides, the petitioner was not accounting and also not submitting periodical reports for number of mobile handsets repaired by the petitioner.

6. It is submitted that the respondent repeatedly warned the petitioner to change his style of functioning; use genuine spare parts for repairing the mobile handsets of customers of the respondent and also be polite towards them. However, the petitioner deliberately and intentionally ignored the cautions extended by the representatives of the respondent. It is also submitted that petitioner was not complying with the obligations of ASC as contained in paras 6.2 to 6.5 of the said agreement and thus, breached the terms of the agreement. It was further submitted that the petitioner has not provided the compliant details and it was submitted that after the termination of the aforesaid agreement, the respondent has repeatedly called upon the petitioner to hand over the complete details of the mobile phones repaired by the petitioner since 31st December 2009, the customers details, spare parts used in repairing the mobile handsets and the service charges charged by the petitioner. However, the petitioner so far has not provided the periodical reports of the aforesaid details.

7. It is further submitted that in terms of Clause 12 of the said agreement dated 31st December 2009, the petitioner is required to hand over to respondent all business material and other goods belonging to the respondent, including service manuals, record of calls, spares (given on delivery note/FOC basis), software, cables etc. as also the records stored in the computer of the petitioner.

8. The petitioner filed an application for appointment of arbitrator and while passing the order dated 10th January 2011 this Court directed the respondent to appoint the arbitrator as per the terms of the agreement. In furtherance to the said order, the respondents Director appointed the sole arbitrator for adjudication of claims and disputes amongst the parties. The Arbitrator gave the award dated 16th July 2012.

9. Aggrieved by the aforesaid award dated 16th July 2012, the petitioner filed the petition. Along with the petition, an application being I.A. No.22615/2012 is also filed by the petitioner for condonation of delay of 27 days in re-filing the petition which is opposed by the respondents. Learned counsel who argued and pointed out various discrepancies in filing of the objections under Section 34 of the Act at the first instance itself and addressed his submissions that the objections are hence not filed within the prescribed period of time.

10. Having heard learned counsel for both parties and having considered the award rendered by the sole Arbitrator, this Court is not inclined to interfere with the Award on merit itself, on the following reasons:(a) The petitioner has claimed a monetary loss allegedly suffered by him for a sum of Rs.7 lac from the respondent in view of termination of contract on account of lease, rental and employment of three employees. However, the petitioner failed to prove the same before the learned sole Arbitrator. (b) He filed his affidavit but none of the documents was exhibited by him. He did not attend for the purpose of cross-examination to be conducted on behalf of the respondent. (c) He has not proved on record that the rent and lease was for Rs.6,000/- nor he has proved any document to show about the salaries of the persons employed by him, if any. It is not proved that three employees worked for him during the continuation of the agreement. (d) In fact, there is no evidence on behalf of the petitioner in the eye of law. Therefore, the

award passed cannot be faulted with.

11. Thus, the objections along with the pending application are dismissed.

12. No costs. (MANMOHAN SINGH) JUDGE APRIL04 2014

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