Tvs Net Technologies Ltd. Vs. Telecomunication Consultant India Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/957089

Court : Delhi

Decided On : Mar-20-2013

Judge : Manmohan Singh

Appellant : Tvs Net Technologies Ltd.

Respondent : Telecomunication Consultant India Ltd. and anr.

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on: March 20, 2013 + I.A. No.763/2013 in OMP.No.699/2009 TVS NET TECHNOLOGIES LTD. .....Petitioner Through Mr. Ruchin Midha Adv. versus TELECOMUNICATION CONSULTANT INDIA LTD. & ANR. .....Respondents Through Mr. P.K Bansal, Adv for R-1. Mr.Santanam Swaminadhan, Adv. with Mr. Kartika Sharma, Adv. for R-2. Mr.G.L.Rawal, Sr.Adv. with Mr.Kuljeet Rawal,Adv. for applicant in I.A. No.763/2013. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

(Oral) 1. The abovementioned application has been filed by Tulip Telecom Limited under Section 9 of the Arbitration & Conciliation Act, 1996 for grant of interim measures.

2. Brief facts of the application are that Bharat Sanchar Nigam Limited (BSNL) floated tenders for supply of certain IT and Networking Equipments, support

services etc. The said order was placed by BSNL on respondent No. 1 which is also a public sector undertaking under the department of Telecommunication, Government of India and is engaged in the business of telecommunication consultancy, engineering etc. Respondent No. 1 i.e. TCIL further placed the above referred order on to M/s TCS Limited (Tata Group) and ORG Informatics Limited.

3. The applicant submits that being a well established company in the field of telecommunication and data connectivity, ORG Informatics Limited placed an order on them valued at approximately Rs. 47.43 crore for supply of IBM hardware and software vide its purchase order dated 26/6/2008. The applicant submits that supplies were being made by them when ORG Informatics Limited called upon respondent No.1 vide letter dated 25/5/2009 ,to procure software directly from them and to make the payment against the said supply directly to them through the ESCROW account for the reasons of financial constraint at the end of ORG Informatics Limited.

4. The applicant further submits that in pursuance of the above said letter, respondent No.1 directly placed two purchase orders for supply of software as per details set out in the purchase order both dated 10/06/2009 for the respective amount as `176,17,154/-, `637,04,254/- were duly supplied and appropriated at the end of respondent no.1. The applicant submits that they have been following the respondent no. 1 for release of the payment running into more than `8 Crores and odd being that it is a Government department but to no effect as neither anything was being done nor being conveyed. The applicant submits that during recent visits of the representative of the applicant to the respondent no.1 company, the Incharge/officer Accounts conveyed that they should obtain an NOC from ORG Informatics Limited confirming release of the payment directly to them and to this effect ORG Informatics Limited was approached who issued NOC dated 26.11.2012.

5. The applicant submits that the said letter of ORG Informatics Limited was directly addressed to CMD of respondent No.1 while copy was served on Applicant though it was duly receipted at the end of respondent no.1. The applicant submits that in pursuance of the follow up by them, respondent No.1

again adopted delay tactics and issued letter dated 27/12/2012 on the premises that due to the stay order of this Court they are unable to release any payment, contrary to what was desired by them from ORG Informatics Limited. The applicant submits that on receipt of letter dated 27.12.2012 they informed respondent No.1that their approach is absolutely erroneous as even after NOC was provided as desired by them they still took the shield of the orders of this Court. The applicant submits that nothing prevailed upon respondent No.1 to clear the payment even when all the supplies stood supplied and instead they conveyed that applicant should approach this Court for necessary orders.

6. By way of present application the applicant seeks that the respondent No.1 be directed in view of NOC from ORG Informatics Limited to release the amounts directly to applicant while observing that there is no impediment or restrain on respondent no.1 to release said payments to applicants devour of the order dated 25.2.2011 of this Court.

7. Before passing the order in the application filed by the applicant, Tulip Telecom Ltd. under Section 9 of the Arbitration and Conciliation Act, 1996 for grant of interim measures, it is necessary to refer the other proceedings, the details of which are as under:(a) M/s TVSNET Technologies Limited has filed the petition under Section 9 of the Act being OMP No.699/2009, against two respondents, namely Telecommunication Consultant India Limited and M/s ORG Informatics Limited, seeking various prayers and interim orders against respondent No.1 restraining the said respondent from releasing the payments to respondent No.2 in respect of equipment/material supplied by respondent No.2 to respondent No.1 in implementation of BSNLs NIB-II Project. In the said petition, on 25th November, 2009 the following order was passed:.In the meantime, keeping in view the averments in the petition as well as respondent No.2s own E-mails and the cheques that have bounced, in my opinion, it is a fit case where an ex parte ad interim injunction needs to be granted against respondent no.2. Accordingly, respondent No.1 is restrained from releasing the payments to respondent No.2 in respect of the equipment/ material supplied by it to respondent No.1 in implementation of BSNLs NIB-II Project The said order was later on clarified by order dated 12 th April, 2010 to the following effect:Consequently, it is clarified that

if according to respondent No.1 a sum in excess of Rs.23,77,16,438/- is due and payable to respondent No.2, then the excess amount, if any, may be paid to respondent No.2. I have been informed by the parties that the present applicant is not a party in the said proceedings. They are settling their disputes. However, in the meanwhile, the present applicant has filed the abovementioned application as well as another application being I.A. No.3957/2013 which is yet to be heard by the Court. (b) The second petition was filed by TVSNET Technologies Ltd. against the respondent, M/s ORG Informatics Limited, being Arb.P.No.398/2010 under Section 11(4) of the Act. The said petition is also pending and I have been informed by the parties that they are settling their disputes. (c) The third petition being OMP No.166/2011 was filed by Sterlite Technologies Limited against the two respondents, namely, ORG Informatics Limited and Telecommunication Consultants India Limited, under Section 9 of the Act, in which the prayer is sought against respondent No.1 restraining the said respondent from receiving the debut due from respondent No.2 to the extent of Rs.9,19,29,277/- and direction was also sought by the petitioner that respondent No.2 be restrained from making payment thereof to respondent No.1 until the claim of the petitioner against respondent No.1 is decided by the Arbitral Tribunal. The said petition was listed on 25th February, 2011 when the respondent No.2 was restrained from releasing any payment to respondent No.1 in relation to the Purchase Order not TCIL/15/398/1/05-MM/ 107P dated 4th December, 2007 as amended vide order dated 1st September, 2008 and Add-on Purchase Order of Project-3 dated 2nd July, 2008 issued by respondent No.2 to respondent No.1. By order dated 18th December, 2012 the direction was issued by the Court dated the interim order dated 25th February, 2011 would continue till such time the Arbitrator or the arbitral Tribunal passes an order on an application that may be filed by either party under Section 17 of the Act. The said petition was disposed of.

8. As far as the present application filed by the applicant, Tulip Telecom Ltd. is concerned, admittedly the applicant is not the party in any of the proceedings. Mr.P.K.Bansal, learned counsel for respondent No.1 in OMP No.699/2009 has not admitted the entire claim of the applicant to the tune of more than Rs.8 crores as mentioned in the application. However, according to him, his client is admitting its liabilities to the tune of only sum of Rs.4,98,50,022/- which is due with regard to

two Purchase Orders for supply of software. According to him, his client i.e. respondent No.1 shall release the said amount of Rs.4,98,50,022/- to the applicant within one week from today. Mr.Rawal, learned Senior counsel for the applicant states that though more than Rs.8 crores are due, however, his client would be satisfied if the part payment as admitted by respondent No.1 be released in the meanwhile. With regard to the balance payment, his client i.e. applicant would do the needful in accordance with law. The non-applicants in the pleadings have no objection in releasing the above said payment to the applicant. The respondent No.2 is that the said amount be paid directly to the applicant only with regard to two Purchase Orders for supply of software as per the details set out in the Purchase Orders and averment made by the applicant in the application. Ordered accordingly. The application is disposed of. OMP.No.699/2009 List the matter for further consideration on 5th July, 2013. Copy of the order be given Dasti under the signature of the Court Master to both the parties. (MANMOHAN SINGH) JUDGE MARCH 20 2013