TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 15th May, 2019

Cyber Appeal No. 11 of 2019

Mohit Rajpal … Appellant

Versus

My Taxi India Pvt. Ltd. … Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Appellant : Mr. Anshul Mittal, Advocate
Mr. Sushant Bali, Advocate

For Respondent : Mr. Dinesh Kumar Sabharwal, Advocate
Ms. Heena Ahluwalia, Advocate
Mr. Sameer Bhatnagar, Advocate

ORDER

By S.K. Singh, Chairperson – Counsel for both the parties have been heard in detail for the purpose of deciding the legal issue as to whether the Adjudicating Officer(AO) can decide to exercise its power of adjudication under

Section 46 of the Information Technology Act 2000 (IT Act) when a defence has been raised that the dispute requires a reference to arbitration and hence an order under Section 8 of the Arbitration & Conciliation Act 1996(the Arbitration Act) must be passed so as to refer the parties to arbitration.

2. By order under appeal dated 18.02.2019, the AO has disposed of the application filed by the appellant/respondent under Section 8 of the Arbitration Act by holding that since issues raised by the complainant fall within the jurisdiction of AO as provided in the IT Act and since no Service Agreement exists between the parties and the arbitration clause also does not survive, the prayer made in the application for referring the dispute to arbitration cannot be allowed.

3. The impugned order has been shown to suffer from an error so far survival of clause 18 (arbitration clause) of the agreement is concerned. It has been shown to us that the Service/Employment Agreement dated 10.07.2015 (**Annexure A**) was between the appellant, Mohit Rajpal and the respondent/complainant, the company. Clause 10 of that agreement relates to confidential information in respect of all sensitive matters of the company including computer programs, database etc. and as an employee, the appellant was required to ensure that the same is not used, misappropriated or disclosed. Clause 18 contains the arbitration provision with a clear stipulation that the arbitration provision shall survive even on expiration or termination of the agreement. There is no dispute that by

Resolution dated 30.09.2015, the said Employment Agreement was terminated by the Board of Directors along with similar agreement in respect of other Directors and co-founders. Clearly, the Employment Agreement governed the relationship between the appellant and the complainant company for less than three months but as noted, clause 18, the arbitration clause does not get affected by termination of the agreement so far as arbitrable disputes that had arisen or may arise under the said agreement when it was operative between 10.07.2015 and 30.09.2015. It was on the basis of this Service Agreement and clause 18 that the appellant pressed its application under section 8 of the Arbitration Act. No doubt, learned AO has misread clause 18 in as much as the said clause also contains a clear stipulation that it shall not be affected by expiry or termination of the agreement, however, the other finding of the AO that he has jurisdiction to decide the complaint, does not suffer from any error. It has also been correctly noted that Service Agreement ceased to exist between the parties from 30.09.2015.

4. The gist of the complaint lies in the allegation that the appellant committed theft of sensitive data and materials during his last few days in the company, particularly on 29.07.2015 and 31.07.2017 he dishonestly transferred confidential and vital data from the official Email ID to his personal Email ID. It is not necessary to note the entire allegations against the appellant because at the present stage the matter does not require consideration on merits. Sufficient to note that

the acts constituting violation of the provisions of the IT Act are of the year 2017 when the Employment/Service Agreement dated 10.07.2015 was no longer in existence. For such acts, the arbitration clause, clause 18 of the said agreement cannot be invoked and therefore, the application under section 8 has been rightly rejected by the learned AO because he is required to exercise his jurisdiction and decide the complaint filed by the company on merits.

5. Although in the pleadings as well as in the impugned order, reference is only to the Employment Agreement dated 10.07.2015, which was pressed before the AO, during the course of the arguments, learned counsel for the appellant submitted that even while the Employment Agreement was in existence, the appellant along with two other promoters signed a Shareholders Agreement in which he and two others were described as the "First Party", with other parties - GHVH Pte. Ltd., an investor, the respondent company and one Nihon Kotsu (another investor). It has been pointed out by producing a copy of the said agreement that there is a confidential clause (clause 35) which describes what would be the confidential information for the purpose of that agreement and how such information was to be treated and maintained. Its indemnity clause (clause 36) shows that the promoters and the company i.e., the appellant and the respondent herein are collectively described as indemnifying parties for various

acts including any non-compliance by the company and/or the promoters with any loss.

6. No doubt, clause 54 of the Shareholders Agreement provided for arbitration agreement in accordance with the laws of Singapore but clearly in the said agreement, no personal obligation/responsibility has been cast upon the appellant to keep sensitive confidential information safe. He has been bracketed with other promoters and in the indemnity clause, he and the respondent company have been bracketed together as indemnifying parties. The purpose of that agreement is evidently different and that explains why the appellant did not produce and rely upon the Shareholders Agreement for the purpose of application filed under section 8 of the Arbitration Act. In view of aforesaid factual situation, the ultimate decision of AO that the dispute or the complaint cannot be referred for arbitration cannot be faulted and hence, the appeal must fail, *albeit* for some different or additional reasons indicated above. As a fact, section 8(2) of the Arbitration Act requires that application under section 8 be accompanied by the original arbitration agreement or its certified copy and that has also not been complied in this case because only the Employment/Service Agreement was filed and not the Shareholders Agreement, which is being pressed before us for the first time.

7. It would be fair to record here that some larger issues of law were also raised by the parties. The main reliance of the respondent was upon some judgments of

this Tribunal holding that the Telecom Regulatory Authority of India Act 1997 (TRAI Act) is a special Act requiring adjudication by an expert body and therefore, matters lying within the jurisdiction of this Tribunal will not be sent for decision by an Arbitral Tribunal. According to learned counsel for the respondent, two such judgments of the Tribunal would also go against the appellant although the present matter arises out of IT Act and not TRAI Act. These are **Dishnet Wireless Ltd. & Ors. Vs. S.Tel Pvt. Ltd. & Ors.; MANU/TD/0013/2017** and **Aircell Digilink India Ltd. Vs. Union of India; MANU/TD/0001/2005**. This proposition was seriously contested by learned counsel for the appellant mainly on the ground that except criminal matters, all civil disputes are arbitrable and therefore, Tribunals even under the special Act, shall be bound by the provisions of the Arbitration Act such as section 8. He relied upon proviso to section 46 to point out that jurisdiction of AO under the IT Act to entertain claim for injury or damage is confined to Rs.5 crores only and for larger claims the jurisdiction is with the competent court, which may ordinarily mean civil court which would be bound to act as per section 8 of the Arbitration Act and therefore, AO should also be held bound to act as per that provision.

8. The larger issues such as: what are the matters which can be treated as criminal / non-arbitrable in nature though compensation is provided under the IT Act; whether such acts of alleged theft often requiring enquiry through experts and

/ or investigation by expert cells of police and calling for their reports in exercise of powers of AO, can be exercised by an Arbitral Tribunal or not, in our view should not be decided in the present case which has to fail on the facts already noted. Hence, the larger issue as to effect of provisions of Arbitration Act upon enquiry into complaints under the IT Act and grant of compensation on that basis is left open. This issue may also depend upon the peculiar facts of a case because sometimes the complaint of breach of security and theft of data may affect large number of persons and may not be arbitrable for the simple reason that all affected persons may not be bound by a common arbitration clause. Implicit limitations on the powers of an Arbitral Tribunal may also have significant effect on this larger issue.

9. With these observations, the appeal is dismissed as one without merits. The AO shall proceed to decide the complaint expeditiously in accordance with law.

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(S.K. Singh,J)
Chairperson

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(A.K. Bhargava)
Member

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