

OMNIA TECHNOLOGIES P. LTD.

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v.

W.M.A. VAN LOOSBROEK
(Arbitration Petition No.10 of 2010)

MARCH 3, 2011

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[T.S. THAKUR, J.]

ARBITRATION AND CONCILIATION ACT, 1996:

ss.11(6) and (9) – Petition for appointment of arbitrator – HELD: In view of consent of respondent, all disputes including existence of arbitrable disputes, referred to the sole arbitrator, nominated.

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An agreement was entered into between the parties on 14.1.2008 whereby the petitioner, an Indian company, appointed the respondent, a Dutch citizen, as its marketing representative to promote sale of its products in European market. The agreement was terminated by the parties in terms of another agreement dated 29.2.2008. The Indian company filed the instant petition u/ss 11(6) and (9) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator contending that the respondent committed violation of original agreement as the obligation cast upon him under clause 13 thereof was not discharged by him which gave rise to arbitrable disputes. The respondent filed counter affidavit. Ultimately, the respondent consented to the appointment of an arbitrator for adjudication of all issues including the existence of arbitrable disputes by the arbitrator so appointed.

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Allowing the petition, the Court

HELD: All disputes between the parties relating to

A and arising out of agreement dated 14-1-2008 and termination agreement dated 29-2-2008 including Clause 4 thereof are referred to the sole Arbitrator nominated. The parties are directed to appear before the Arbitrator on 2-4-2011. [para 7] [716-G-H]

B CIVIL APPELLATE JURISDICTION : Arbitration Petition No.10 of 2010.

Under Section 11 (6) and (9) of the Arbitration & Conciliation Act, 1996.

C Deepak Dhingra, (for Animesh K. Sinha), Nikhil Jain for the Petitioner.

D U.U. Lalit, Ugen Tashi Bhuita, T. Sunder Ramanathan (for M. P. Devanath for the Respondent.

The Judgment of the Court was delivered by

E T.S. THAKUR, J. 1. The respondent is a Dutch citizen. He entered into an agreement dated 14th January, 2008 with the petitioner-company whereby the latter appointed him as its marketing representative to promote sale of RFID Tags and Components manufactured by the petitioner-company in European market. Clause (1) of the agreement executed between the parties stipulated the terms on which the respondent was to work as the petitioner's representative. It reads:

F "1. OMNIA does hereby appoint PIM as its Representative for Europe, and PIM hereby accepts the aforesaid appointment, upon the following terms:

G (a) PIM would market the Products manufactured by OMNIA, on an exclusive basis, to his clients in Europe, and would be responsible for obtaining the

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business in the nature of contracts, for supply by A
OMNIA.

(b) PIM would be the front-end, dealing with the clients B
in Europe, and OMNIA would be introduced as the
Indian Parent Company.

(c) In all situations, PIM would be required to introduce C
the two parties to this Agreement, as a single entity,
responsible for managing clients/prospective
clients in the whole of Europe.

(d) All proposals, documentation submitted, would be D
in the name of OMNIA as the Indian Parent
Company, with PIM being reflected as Sole
Representative in Europe.”

2. The agreement in Clauses 2 and 3 thereof set out the D
obligations which the respondent was to discharge and those
to be discharged by the petitioner. Other conditions like
remuneration etc. were also stipulated by the agreement
including obligations cast upon the parties after termination of E
the agreement. Clause 13 of the agreement relevant in this
regard, reads:

“13. Obligations Upon Termination

(a) The termination of this agreement shall not affect F
any liability of either party to the other, accruing prior
to the date of termination, or arising out of this
agreement.

(b) Upon termination, PIM agrees to immediately G
discontinue the use of any trademarks or trade
names in whole or in part belonging to OMNIA.

(c) After termination PIM shall not represent, and shall H
not continue any practices, which might take it,
appear, that he is still an authorized OMNIA agent

- A and shall permanently discontinue any use of the
word "OMNIA" therefrom, all without any expenses
to OMNIA.
- (d) PIM shall return all manuals, informational materials,
B instruction booklets, and all data and information in
printed form or stored in floppies, CD-ROMS,
computer diskettes, or in any other version or
C medium that was given by OMNIA pursuant to this
agreement, immediately on termination of this
agreement. Electronic mail messages are
excluded. PIM shall destroy or render unusable all
D other proprietary material and copies thereof, which
for any reason cannot be delivered to OMNIA. In
such event, PIM shall certify in writing to OMNIA that
all proprietary material has been delivered to
OMNIA or destroyed and that PIM has discontinued
use of the same.
- (e) Both the parties agree to fulfill all obligations to
E each other under all the work orders in force at the
time of termination of this agreement until the
completion of the services specified in the work
orders."

F 3. It is common ground that the agreement in question was
terminated by the parties in terms of another agreement dated
29th February, 2008 executed between the parties. This
termination purported to be in conformity with the provisions of
Clause 11 of the Original Agreement. The Petitioner-company's
G case in the present petition under Section 11(6) and (9) of the
Arbitration and Conciliation Act, 1996 is that the respondent
has committed a violation of the Original Agreement inasmuch
as obligations cast upon the respondent under clause 13 of the
agreement (*supra*) have not been discharged by the
respondent thereby giving rise to disputes that are in terms of
H Clause 15 of the original agreement arbitrable. The petitioner-
company appears to have invoked the arbitration clause and

asked for appointment of an Arbitrator but since the respondent refused to do the needful, the petitioner has filed the present petition and prayed for the appointment of an independent Arbitrator to adjudicate upon the said disputes.

4. Respondent has appeared and filed a counter-affidavit in which it was, inter alia, asserted that there is no subsisting 'arbitrable' disputes to call for the appointment of an Arbitrator. The respondent has in this regard relied upon Clause 4 of the termination agreement which reads as under:

"4. Subject to the signing of this termination agreement by the parties, the parties hereby grant each other full and final discharge from all claims, rights and obligations arising out of or relating to the termination of the Representative Agreement. The parties acknowledge that thereafter no claims, rights or obligations will remain existing on whatever ground or whatever relation between the parties in respect of the issue at hand.

This termination agreement constitutes the entire agreement and understanding between the parties."

5. When this petition came up for hearing before me on 15th November, 2010, it was pointed out to learned counsel for the respondent that in case this Court was to pronounce upon the effect of Clause 4 of the termination agreement finally and further in case this Court were to hold that Clause 4 did not prevent the petitioner from raising the disputes regarding post-termination obligations of the parties, the Arbitrator appointed by this Court shall have no option but to fall in line and accept that determination as final and binding on the parties. Learned counsel for the respondent was, therefore, asked to take instructions whether interpretation of Clause 4 which was by itself a disputed matter and requires to be adjudicated upon, could be left to be determined by the Arbitrator. Learned counsel for the respondent has, in response

A filed a letter consenting to the appointment of an Arbitrator for adjudication of all issues including the existence of arbitrable disputes by the Arbitrator so appointed. The relevant portion of the letter filed on behalf of the respondent is as under:

B "In this connection, learned Senior Advocate Mr. U.U. Lalit had mentioned the subject arbitration petition on Friday February 4, 2011 before Hon'ble Justice T.S. Thakur in Court No.8 and informed the Hon'ble Court that the Respondent has consented to the appointment of the arbitrator by the Hon'ble Supreme Court of India and further
C consented to raising all issues including the existence of the arbitral dispute before the appointed arbitrator.

D As the power of attorney holder of the respondent is not in the country, I, the Advocate on Record of the Respondent after having taken instructions would like to place on record through this letter that

- (a) The Respondent has consented to the appointment of arbitrator
- E (b) the Respondent has consented to raising all the issues including the existence of the arbitral dispute before the said arbitrator."

F 6. In the light of the above I see no reason why the present petition cannot be allowed and all disputes including the dispute regarding interpretation and effect of Clause 4 of the termination agreement referred for adjudication by arbitration.

G 7. I accordingly allow this petition and refer all disputes between the parties relating to and arising out of agreement dated 14th January, 2008 and termination agreement dated 29th February, 2008 including Clause 4 thereof to the sole Arbitration Mr. Justice Anil Dev Singh, former Chief Justice of Rajasthan High Court. The parties are directed to appear before the nominated Arbitrator on 2nd April, 2011. The

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Arbitrator shall be free to fix his fee and charges and the ratio in which the same shall be paid by the parties. Registry shall forthwith forward a copy of this order along with a copy of the petition to the worthy Arbitrator for information and necessary action. A

R.P. Arbitration Petition allowed. B