

SUPREME COURT OF INDIA

Nirmal Software Services Pvt.Ltd.

Vs.

Dr. Babasaheb Ambedkar Marathwada University

SLP(Civil)No.30863 of 2018

(Abhay Manohar Sapre and Indu Malhotra,JJ.,)

09.07.2019

ORDER

Indu Malhotra,J.,

1. The present Special Leave Petition has been filed challenging Final Judgment & Order dated 18.09.2018 in Writ Petition No. 1413 of 2017 passed by the Hon'ble High Court of Judicature at Bombay, Reason Bench at Aurangabad. On 20.10.2012 the Petitioner entered into a MoU with the Respondent - University whereby the Respondent - University entrusted the work of 'Web Enabling' and providing necessary web- services to the Petitioner. The MoU was Amended on 07.04.2016 whereby Clause 3.5 was inserted, which reads as under :

“3.5 Dr. Bamu & NSSPL shall mutually decide, finalize and agree upon the Terms & Conditions including financial terms to handover the Intellectual Property Rights, Ownership Transfer to DR. BAMU as and when required and decided upon.”

The said MoU contained an arbitration clause which reads as under:

“12. ARBITRATION

12.1 All and any disputes and claims arising out of or relating in any manner to this MoU or a breach, termination, non-performance, interpretation or validly thereof, shall first be discussed in good faith by officers duly nominated for the purpose by each party, with a view to resolving the same.

12.2 All and any disputes and claims as aforesaid, which cannot be fully and satisfactorily resolved or settled by the parties as aforesaid, shall at the request of either party, be submitted at Aurangabad to arbitration. In such a case, a joint request by NSSPL and BAMU will be made to an eligible and competent person to act as an Arbitrator. The appointment and the proceedings of arbitration will be subject to the provisions of Indian Arbitration & Conciliation Act, 1996 as amended from time to time. The cost of appointing the arbitrator shall be equally shared by

the parties herein.”

2. Disputes arose between the parties with respect to certain communication issued by the Respondent - University, whereby the purchase order in favour of the Petitioner, executed in furtherance of the MoU, was kept in abeyance.

3. The Petitioner filed Writ Petition No. 1413 of 2017 before the High Court of Judicature at Bombay, Aurangabad bench praying for a Writ of Mandamus directing the Respondent - University to forthwith make payment of the entire consideration under the purchase Order dated 13.05.2019 and declare the action of the Respondent - University in keeping the purchase order in abeyance is illegal and void.

4. The High Court on 18.09.2018 dismissed the Writ Petition filed by the Petitioner on the ground that the MoU entered into between the parties clearly contains an arbitration clause, which must be given effect to.

5. Aggrieved, the Petitioner has filed the present SLP. During the course of hearing, this Court vide Order dated 08.04.2019 recorded the submission of the Counsel for the Petitioner to refer the issue to arbitration in terms of the MoU. On the basis of this statement, notice was issued to the Respondent.

6. On 08.07.2019, the parties jointly requested for the appointment of Mr. Justice Pratap Hardas (Retd.) Judge of the Bombay High Court, as the Sole Arbitrator.

7. On the joint request of the parties, we appoint Mr. Justice Pratap Hardas (Retd.) as the Sole Arbitrator, subject to the declarations being made under Section 12 of the Arbitration and Conciliation Act, 1996 with respect to independence and impartiality, and the ability to devote sufficient time to complete the arbitration within the period of 12 months. The parties have agreed to pay fees to the Arbitrator in accordance with the Fourth Schedule to the Arbitration and Conciliation Act, 1996 as amended. As per the MoU, the seat/place of arbitration shall be Aurangabad.

8. A copy of this Order be dispatched to Mr. Justice Pratap Hardas (Retd.). The matter is disposed of accordingly. Pending applications, if any, stand disposed of.