Madras High Court
Subway Systems India Private ... vs Mr.Vasanth Venkateshawaran on 11 July, 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.P.No.16 of 2018

Subway Systems India Private Limited
Level 2, Elegance Mathura Road,
Jalsola, New Delhi-110025.
Represented by its Authorised Signatory
Mr.Jaganath Rao. ...
Vs

Mr.Vasanth Venkateshawaran
...

Petition filed under Sections 47 and 49 of the Arbitration and Conciliation Act, 1996, praying

For Petitioner : Mr.Anirudh Krishnan

For Respondents : No Appearance

O R D E R

The instant petition has been filed under Sections 47 r/w 49 of the Arbitration and Conciliation Act, 1996, by the petitioner seeking enforcement of foreign Arbitral award dated 24.02.2016, which was corrected by the Arbitrator by his order dated 27.07.2016.

2. The facts leading to the filing of the instant petition are as follows:

The respondent was appointed by the petitioner as a Franchisee under an agreement dated 04.06.2013. There arose disputes between the parties and the said dispute was referred to Arbitration in accordance with clause10 of the Agreement and the arbitration was held at New York, USA.

3. In accordance with the Arbitration clause, the International Centre for Dispute Resolution appointed Mr.John A.Pappaladro, as the Arbitrator, to decide the dispute between the parties. The said Arbitrator acted upon the Arbitration reference and after issuing notice to the parties to the dispute passed the Award dated 24.02.2016 in favour of the petitioner against the respondent. The details of the award passed by the Arbitrator are as follows.

" III THE ARBITRAL AWARDS A. The First Final Award

20.on 24 February 2016, the Arbitrator issued the First Final Award in favour of the petitioner/SSIPl and held the following:-

""14. As of the date of this Arbitration Award, the Respondent must dis-identify with the Subway . Franchise for store # 59933 and the Respondent must cease and desist use of all trade names, trademarks, service marks, signs, colours structures, printed goods and forms of advertising indicative of the Claimant's sandwich business and immediately return the Operations Manual to the Claimant as required by paragraph 8.e of the Franchise Agreement # 59933";

"15. As of the date of this Arbitration Award, the Respondent must pay to the Claimant Sixteen Thousand Five Hundred Rupees (Rs.16,500) per day, for the continued use of the Subway . trade names, trademarks service marks, signs, colors structures, printed goods and forms of advertising indicative of the Company's sandwich business and/or use of the operations Manual as required by Paragraph 8.e of the Superseding Franchise Agreement # 59933";

"16. As of the date of this Arbitration Award, the Respondent must abide by the following conditions as contained in paragraph 8.g of the Franchise Agreement # 59933:

For three (3) years after the termination, expiration or transfer of this agreement, you will not directly or indirectly engage in, or assist another to engage in, any sandwich business within three (3) miles or five (5) kilometres of any location where a SUBWAY . restaurant operates or operated in the prior year, if permitted by local law. You agree to pay us Rs.5,50,000 for each sandwich business location you are associated within the restricted area in violation of this Subparagraph, plus eight percent (8%) of the gross sales of such location during the three (3) year period, as being a reasonable pre-estimate of the damages we will suffer.

17. '"The administrative fees, costs and expenses of the International Centre for Dispute Resolution ("ICDR) totaling $750.00 U.S. Dollars and the compensation of the Arbitrator totaling $1,587.50 U.S. Dollars shall be borne entirely by the Respondent. Therefore, the Respondent shall reimburse the Claimant in the sum of $2,337.50 U.S. Dollars, representing said fees, costs, expenses and compensation previously incurred by the Claimant , upon demonstration by Claimant that these incurred costs have been paid in full";

18. "This Award is the Final Award. It is effective immediately, without the necessity of further hearing and can be confirmed in any court having jurisdiction.

21. The first Final Award was thereafter amended on 27 July 2016 for correction of certain typographical errors.

22. The time limit for filing of any challenge or appeal aginst the First Final Award before the Court having jurisdiction to entertain such challenge has expired with no challenge or appeal being brought by the Respondent. The First Final Award is therefore final and binding on the parties.

B. The Second Final Award On 30 August 2016, following the submission of the petitioner/Claimant and the evidence submitted, the Arbitrator issued the Second Final Award . The relevant portion of the Second Final Award read as under:

(a) "I find the Respondent breached paragraphs 2 and 5. i of the Franchise Agreement # 59933 for the failure to pay royalties and advertising fees. I further find that the Claimant is entitled to terminate the Franchise Agreement # 59933 in accordance with the termination provisions outlined in paragraph 8.a. Therefore, the Franchise Agreement referenced as #59933 for SUBWAY. restaurant #59933, is validly terminated, effective February 4, 2016'";

(b) As of the date of this Arbitration Award, the Respondent must pay the total amount of Rs.1,624,729.06 Indian Rupees to the Claimant, representing unpaid royalties in the amount of Rs.1,096,356.06 Indian Rupees and advertising fees in the amount of Rs.528.373.00 Indian Rupees in connection with SUBWAY . restaurant # 59933";

C. The administrative fees, Costs and expenses of the International Centre for Dispute Resolution ("ICDR") totaling $900 U.S. Dollars and the compensation of the Arbitrator totaling $1,562.50 U.S. Dollars shall be borne by the parties pursuant to paragraph 10. Therefore, the Respondent is liable to reimburse the Claimant in the sum of $1,231.25 U.S. Dollars, representing said fees, costs, expenses and compensation previously incurred by the claimant, upon demonstration by claimant that these incurred costs have been paid in full";

(d) "This Award is the Final Award. It is effective immediately, without the necessity of further hearing and can be confirmed in any court having jurisdiction".

4. The Foreign Award is a New York convention Arbitral Award. As seen from the Foreign Arbitral award, several opportunities were given by the Arbitral Tribunal to the respondent to defend the claim made by the petitioner. Despite several opportunities, the respondent failed to enter appearance and defend the claim made by the petitioner against him. Exhibits were also marked by the petitioner before the Arbitral Tribunal, in support of their claim.

5. As seen from the Arbitral Award, the Arbitral Tribunal has considered all the exhibits filed by the petitioner in accordance with law and only thereafter has passed the award in favour of the petitioner.

6. This Court ordered notice to the respondent in the instant Original Petition and the notice has also been duly served on the respondent. Despite service of notice, till date, there is no appearance on the side of the respondent.

7. Earlier this Court by its final order dated 04.04.2018, allowed Application Nos.1669 and 1670 of 2018 in O.P.No.16 & 17 of 2018, filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, by directing the respondent to furnish security to the tune of Rs.34,88,851/- and Rs.17,54,203.25 respectively.

8. Under Section 47 of the Arbitration and Conciliation Act 1996, the party applying for the enforcement of a foreign award shall, at the time of the application, produce before the Court are as follows:

"(a) The original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(b) The original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award."

9. As seen from the records, the petitioner has satisfied the requirements of Section 47 of the Act

10. Under Section 48 of the Arbitration and Conciliation Act, the enforcement of the Foreign Award may be refused at the request of the party against whom, it is invoked only if that party is able to satisfy any of the conditions imposed under Section 48 of the Act. Till date, no application has been filed by the respondent under Section 48 of the Arbitration and Conciliation Act. Prima facie, this Court after examining the Foreign Arbitral Award does not find any ground falling within the scope of section 48 of the Arbitration and Conciliation Act.

11. Under Section 49 of the Arbitration and Conciliation Act, where the court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be decree of the Court. In the instant case, the petitioner has satisfied the requirements of Section 47 of the Act and no application has been filed by the respondent under Section 48 of the Act. The Arbitrator has also passed a reasoned and well considered award. Despite several opportunities given to the respondent, the respondent has also failed to enter appearance and defend the claim made by the petitioner before the Arbitral Tribunal. The respondent has also not furnished security as directed by this Court by its final order dated 04.04.2018 in Application Nos.1669 and 1670 of 2018.

12. This Court is therefore satisfied with the reasons given by the petitioner for enforcement of foreign award under Section 49 of the Arbitration and Conciliation Act.

13. In the result, the petition is ordered as prayed for and the award dated 24.02.2016, passed in favour of the petitioner, shall be deemed to be a decree of this Court as per Section 49 of the Arbitration and Conciliation Act, 1996.

11.07.2018 ub Speaking Order/non-speaking order Index:yes/No ABDUL QUDDHOSE,J.

ub O.P.No.16 of 2018 11.07.2018