

RECORD
Of
Dispute arising out of Contract dated
01.10.2018 between: Artis Transit
Corporation Limited v. Revartis Limited

1. Artis Transit Corporation Limited (“**Artis**”) is a company engaged in the business of providing public utility services i.e., mass rapid transit system in the city of Indraprastha. To provide the said service, Artis constructed a 100 kilometers long underground metro rail network (“**Metro**”), which connects 20 underground metro stations across the city of Indraprastha. Metro is considered as a lifeline of Indraprastha and attracts a daily ridership of one million people.
2. Artis charges a small fee from the public who commute in the Metro. The fee collected by Artis in a given day is sufficient to meet the operational expenses of the Metro for two days. While this is so, with an aim to part finance the construction and development cost of Metro, the management of Artis decided to let out certain areas in the metro stations for commercial advertisements. Accordingly, Artis began to erect backlit panels on the platform, concourse and entry/exit areas of the underground metro stations so that the prospective advertisers can place their hoardings on such panels.
3. Initially, Artis used to deal with each prospective advertiser on its own. However, with the increase in number of advertisers who wish to place advertisements in Metro, the management of Artis decided to license the panels to an advertising agency upon payment of certain license fee. Accordingly, Artis published a tender inviting bids from advertising agencies for licensing of advertisement panels in the Metro.
4. Several advertising agencies applied to Artis and, after detailed scrutiny and discussions, the management of Artis decided to grant the license of panels to Revartis Limited (“**Revartis**”) by executing a Contract dated October 1, 2018 (“**Contract**”) which reads as follows:

“LICENSE AGREEMENT

This Agreement is entered at Indraprastha on 01.10.2018 between
Artis Transit Corporation Limited (Artis) and Revartis Limited
(Revartis).

WHEREAS

Artis with a view to part finance its project through commercial

advertisements has invited tender for licensing out advertisement rights on backlit panels of 20 underground metro stations in Indraprastha city.

Revartis has participated in the above tender and was declared successful by Artis.

NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

- a) Artis agrees to provide and Revartis agrees to accept, on license basis, the advertisements space in the form of backlit panels in 20 underground metro stations constructed and developed by Artis in the city of Indraprastha. The total number of backlit panels in the 20 underground metro stations is 550.
- b) Revartis shall pay to Artis a sum of INR 5 Crores for each quarter (3 months) of license period starting from October 2018. The license fee should be paid in advance. The license fee shall increase by 5% after each cycle of 4 quarters.
- c) The total tenure of the license period is 5 years commencing from 01.10.2018 and ending on 31.10.2023.
- d) Revartis shall also deposit within one week from the date of this contract a sum of INR 5 Crores to Artis towards interest free security deposit. This deposit shall be refunded only after successful completion of full term of the license.
- e) Once the panels are handed over to Revartis, Revartis agrees to pay and will continue to pay the license fee and all dues, even if any or all the panels are not functional or has/have been dismantled for repair or upkeep etc. Revartis agrees that in the event of such dysfunction of the panels including due to failure of electricity, Artis will not be liable to pay any compensation to Revartis.
- f) Revartis has seen all the panels and is satisfied with them.
- g) In the unlikely event that certain number of panels had to be removed by Artis, Revartis agrees to take up the remainder of the panels without claiming any compensation from Artis. However, the license fee shall be charged on a pro rata basis i.e., the license fee shall be charged only on the panels that are available and usable by Revartis.
- h) The license fee shall be charged by Artis in the form of an invoice raised in the name of Revartis. In the event of failure on part of Revartis in making payment of license fee due to Artis within 10 days from the receipt of invoice, the management of Artis shall have the right to terminate the contract forthwith and forfeit the security deposit.
- i) The jurisdiction to decide any dispute that arises out of this Contract vests in the courts of Indraprastha. This Contract shall be governed by the laws of Indraprastha.

Sd/-
Revartis

Sd/-
Artis

This license agreement is duly stamped in accordance with the laws of Indraprastha.”

5. In terms of the Contract, Revartis submitted security deposit of INR 5 Crores to Artis. Revartis had also paid the first quarterly advance license fee of INR 5 Crores to Artis for the period October to December 2018.
6. Revartis began to utilize some of the panels from 01.10.2018 by placing advertisements. Three days thereafter, a short circuit occurred in one of the panel and that panel got burnt. Artis investigated and found that the cause of the short circuit was the PVC wires inside the panels, whose purpose was to supply electricity to the panel for lighting purpose. After having found the cause for short circuit, Artis instructed Revartis that use of the panels in the present condition is unsafe. Revartis replied by saying that if given an opportunity and paid a particular sum, it would replace the PVC wires in the panels with LSZH wires. Artis agreed to the proposal of Revartis and has given a go ahead to Revartis to replace the wires.
7. Revartis took three months to replace the wiring in all the panels in all the underground stations for which it was awarded the license. Thereafter, Artis paid the amount claimed by Revartis for replacing the wires.
8. From 05.01.2019 Revartis began to post the advertisements of its clients on the panels.
9. On 06.01.2019 Artis issued an invoice to Revartis for payment of the advance license fee for the quarter of January 2019 to March 2019. In response, Revartis issued a letter dated 08.01.2019 to Artis stating the below:

“...As you are aware, Revartis lost an entire quarter due to Artis’ instructions to replace the wires in the panels. Since this loss of period is not attributable to Revartis, we would request you to kindly adjust the payment made by Revartis for the quarter of October to December towards the present invoice dated 06.01.2019...”
10. In response to above, Artis issued letter dated 10.01.2019 to Revartis, stating the below:

“...We are shocked to note the contents of your letter dated

08.01.2019. In this regard, we would like to inform you of the actual sequence of events that had occurred:

- i) Artis had only instructed Revartis to not use the panels until replacement of wires. Artis never instructed Revartis to replace the wires until Revartis had itself proposed to do the task;
- ii) During the first quarter, Revartis was engaged in publicity and marketing process in order to pool clients for advertising on the panels. Never has Revartis written to Artis that it was losing business due to replacement of wires. In this regard, you may refer to the letter dated 11.09.2018 issued by Revartis to Artis during the tender stage, the relevant portion of which is extracted below:

“...Should Revartis be the successful bidder, Revartis requests Artis to kindly delete the requirement of paying the license fee for the first quarter of the license period since the said period is usually wasted due to publicity and marketing efforts...”

- iii) Hence, the request to adjust the license fee paid by Revartis for the first quarter towards the invoice dated 06.01.2019 is not acceptable to Artis. You are requested to adhere to the Contract and clear the invoice within the stipulated time failing which Artis shall enforce its rights under the Contract.”

11. Revartis replied to above letter by its letter dated 12.01.2019, in which it had stated the following:

“...The fact of the matter is that the request of Revartis in its letter dated 11.09.2018 was not accepted by Artis and the Contract stipulates payment of license fee for the first quarter of the Contract also. However, due to Artis’ instructions that the panels cannot be used, Revartis had to take up the task of replacing the wires in the interest of time. Despite best efforts, the replacement task took three months to complete. During the said time, none of the panels could have been used. Further, those panels that were rectified before three months could not be utilized since electricity was not released to them and no advertiser would want to place advertisement on a panel in an underground station that has no back lighting. Hence, Revartis lost business in the first quarter due to Artis’ instructions. Further, since the panels are now ready, Revartis has to now begin its publicity and inform its clients that the panels which were not functioning earlier are now ready. This would further lead to a loss of business to Revartis, for which Artis is liable to compensate under the Contract and law...”

12. Following the above discussion, Artis terminated the Contract on 19.01.2019 by way of a letter, which stated as follows:

“...Clause 8 of the Contract requires Revartis to pay license fee within 10 days of receipt of invoice. The invoice dated 06.01.2019 was received by Revartis on the same day. As such, the 10 days period for making payment of the invoice lapsed on 16.01.2019. However, Revartis defaulted on making payment of the undisputed invoice despite several reminders from Artis. In view of these circumstances, and pursuant to breach of Contract by Revartis, Artis hereby invokes its rights under Clause 8 of the Contract and terminates the Contract with immediate effect.

Further, as you are aware, the Contract allows Artis to forfeit the security deposit of INR 5 Crores in case of illegal breach of Contract by Revartis. Hence, Artis is hereby forfeiting the security deposit of INR 5 Crores in terms of the Contract.”

13. Pursuant to above, the management of Revartis decided to file a civil suit in the High Court of Indraprastha. In this connection, Revartis issued a legal notice to Artis dated 25.03.2019 wherein it is stated that:

“...Artis is liable to return the first quarterly license fee of INR 5 Crores to Revartis. This is because Revartis was never in a position to use the panels for the first three months. Further, Artis is liable to return the security deposit of INR 5 Crores to Revartis, since Artis did not suffer any loss but instead gained from Revartis’ conduct of replacing the wires, which in turn significantly reduced the requirement of maintaining the panels. In any event, Artis completed the new bidding process and issued fresh license of panels to an advertising agency called ATS Limited on 18.02.2019 i.e., within a period of one month from the date of termination of Contract with Revartis.”

14. Artis replied to the above legal notice on 01.05.2019 wherein it stated the following:

“...Revartis would recollect that after a four months long bidding procedure, Artis had awarded the license of advertising on the panels to Revartis. Hence, the Contract dated 01.10.2018 provides for liquidated damages covering three months license fee to protect the interest of Artis in case of illegal breach of Contract by Revartis. As to the question of returning the first quarter license fee, Artis denies Revartis’ claim in its entirety in view of the provisions of Contract and our previous communications...”

15. In view of the foregoing, and pursuant to some unfruitful negotiations, the management of Revartis decided to file a civil suit before the High Court of Indraprastha (Original Side).

16. The High Court of Indraprastha follows and applies laws which are in *pari materia* with the laws of India.
17. Draft a Memorandum in favour of Revartis and a Memorandum in favour of Artis.