

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 22.03.2012*
Judgment delivered on: 26.03.2012

+ CM(M) 670/2009 & CM No.9732/2009

RAJIV PURI Petitioner
Through: Mr.Rakesh Khanna and Ms.Arzu
Chimni, Advocates.

versus

WEBNEURON SERVICES Respondent
Through: Mr.A.S.Mathur and Ms.Shruti
Verma, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The impugned judgment is dated 11.05.2009 whereby the application filed by the defendant under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act') had been dismissed.

2 The plaintiff (Webneuron Services Limited) had filed a suit for recovery of ₹8,35,356/- against the defendant Rajiv Puri. The averments

made in the plaint are to the effect that the defendant who was an employee of the company had taken a membership of Jaypee Green Golf Resort at Noida for which he had availed of a loan of ₹4 lacs; he was getting the loan amount deducted from his salary in installments; the defendant resigned from the services of the company on 05.11.2004; at that time, an amount of ₹1,89,998/- out of the total loan of ₹4 lacs was yet payable by the defendant; further contention in the plaint is that under the terms of services of the defendant, the defendant was entitled to certain leave encashment which amounted to an amount of ₹2,86,364/-. However at the time of the relieving of the defendant from his services, no amount towards leave encashment was paid as the amount of ₹1,89,998/- still remained unpaid by the defendant; it was agreed and understood by the defendant that the amount towards his remaining loan amount would be adjusted against his leave encashment and after settlement of all the accounts, remaining balance, if any, would be paid to him. A second amount of ₹3,40,636/- in lieu of his not availing leaves for 31.5 days to which the defendant was entitled has also been claimed from the defendant; contention being that an amount of ₹6,27,000/- had been paid to the defendant as salary for the two

months i.e. for the month of December, 2004 & January, 2005 but he had willfully absented himself from office during that period and as such was not entitled to the said amount; after giving him the adjustment of his leave entitlement, a sum of ₹3,40,636/- was found due and payable from him. Both the figures work out to a sum of ₹5,70,209/- which is the principal amount; total amount of ₹8,35,356/- along with interest has been claimed from the defendant.

3 Written statement had filed. Learned counsel for the petitioner in the course of the arguments has conceded that the second amount of ₹3,40,636/- is an amount which is covered by the arbitration clause contained in the arbitration agreement entered into between the parties which is dated 01.07.2004.

4 This agreement dated 01.07.2004 is an agreement between the employer and employee where the contract of employment, terms and scope thereto as also the compensation payable to the employee have been detailed. Para 14 contained the arbitration clause which inter-alia reads as follows:-

“Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and

finally resolved by arbitration in India in accordance with the arbitration rules of India for the time being in force which rules are deemed to be incorporated by reference into this paragraph. The law of arbitration shall be the International Arbitration Act.”

5 Counsel for the plaintiff does not dispute that the second amount of ₹3,40,636/- would in fact be covered by the arbitration clause; his submission is that the first amount of ₹1,89,998/- was a loan which had been given to the defendant and not being covered by the arbitration clause, the present suit had to be filed; submission being that in view of judgment of the Sukanya Holdings Private Limited Vs. Jayesh H. Pandya (2003) 5 SCC 531, a bifurcation of the claim is not permissible and applying the ratio of the aforementioned judgment since the first figure of ₹1,89,998/- is not covered by the arbitration agreement being a loan, the suit had to be filed for the full amount.

6 Arguments have been refuted. Learned counsel for the respondent has placed reliance upon a judgment of the Apex Court reported in (2003) 6 SCC 503 Hindustan Petroleum Corporation Ltd. Vs. Pinkcity Midway Petroleums; submission being that objections which go to the root of the jurisdiction have to be dealt with by the arbitrator;

submission being that this claim of ₹1,89,998/- is in fact a claim admitted by the plaintiff himself in terms of the averments made in para 5 of the plaint wherein he had himself agreed to adjust this amount of ₹1,89,998/- against his leave entitlement and as such this amount even as per the plaintiff is an amount which is arbitrable before the Arbitrator.

7 Section 8 of the said Act contains a clear mandate that if the ingredients of the aforementioned provision of law are met with, there is little option left with the Court but to refer the disputes before the Arbitrator; wherever there is an arbitration clause in the agreement it is in fact obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an Arbitrator.

8 The essential ingredients for the applicability of the aforementioned Section (1) there is an arbitration agreement, (2) a party to the agreement brings an action in the Court against the other party, (3) subject matter of the action is same as the subject matter of the arbitration agreement and (4) the other party moves the Court for referring the parties to arbitration before it submits his first statement on

the substance of the dispute.

9 There is no dispute that ingredients No. 1, 2 & 4 have been met with; the question is whether the subject matter of action in the present suit is the same as the subject matter of the arbitration agreement. This question has to be answered.

10 A perusal of the arbitration agreement dated 01.07.2004 shows that what is contained therein are the terms and conditions of the employment of the employee i.e. the present petitioner; compensation which is to be given to him and the leave encashment to which he is entitled are all contained therein. However this agreement is silent on the loan, if any, which can or may be availed of by the employee from the employer. The amount of ₹1,89,998/- is the balance amount out of total loan of ₹4 lacs which has been taken by the employee from the employer for the purpose of taking a membership of Jaypee Green Golf Resort at Noida. There is no dispute to the factum that this is a loan transaction. It does not come within the ambit of the arbitration agreement and this is clear from the recitals contained in the said agreement. The submission of the petitioner is that the averments made in the plaint that this loan can be adjusted against the leave encashment

is an admission by the plaintiff and this becomes an arbitrable amount does not advance the case of the petitioner. What has to be referred to the Arbitrator is the subject matter of arbitration agreement which alone can be referred. Thus a claim in respect of a 'matter' which is not covered within the scope and ambit of the arbitration agreement can only be assailed by way of a suit.

11 In this view of the matter, the plaintiff had no option but to seek his remedy for the recovery of ₹1,89,998/- (which was part of a loan transaction) only by way of filing the present suit; the second claim of ₹3,40,636/- even if it is covered by the arbitration agreement in view of the judgment of Sukanya Holdings (Supra) could not have been split up or bifurcated; two causes of action could not be broken up or separated.

12 In this background, the impugned judgment dismissing the application under Section 8 of the said Act filed by the defendant suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 26, 2012

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