

**In the High Court of Judicature at Madras**

**Dated : 27.02.2015**

**Coram :**

**The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice**

**O.P.No.370 of 2012**

India Growth Fund, through its  
Trustee Kotak Mahindra Trusteeship Services Limited,  
a unit scheme of Kota SEAF India Fund, a trust  
which is registered as a venture capital fund under  
the Securities and Exchange Board of India  
(Venture Capital Fund) Regulations, 1996 and  
having its registered office at 36-38A, Nariman Bhavan,  
227, Nariman Point, Mumbai-400 021.

.. Petitioner

-vs-

1.M.Thiagarajan

2.Lakshmi Murugesan

3.Paramount Mills Pvt. Ltd.,  
registered office at  
Rajapalayam Road,  
N.H. 208, T.Pudap-atti post,  
Thirumangalam-635 704.

4.Paramount Airways Private Limited,  
registered office at  
Alexander Square, C Wing,  
II Floor, No.34/35, Sardar Patel Road,  
Guindy, Chennai-600 0032,  
rep. by Official Liquidator, High Court,  
Madras (amended as per order  
dt. 13.2.2015 in A.No.4947/2013)

.. Respondents

Petition filed under Section 11 (6) of the Arbitration and

Conciliation Act, 1996, to appoint an Arbitrator to resolve the disputes which has arisen between the Petitioner and the Respondent.

|                 |                                                                                                          |
|-----------------|----------------------------------------------------------------------------------------------------------|
| For Petitioner  | : Mr.H.Karthik Seshadri                                                                                  |
| For Respondents | : Mr.C.S.K.Sathish for R1 & R3<br>No Appearance for R3<br>Mr.B.Dhanraj for Official<br>Liquidator for R4 |

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## **ORDER**

The petitioner seeks reference of dispute under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act').

2. The learned counsel for the petitioner states that the fourth respondent is a formal party and no claim is made against the fourth respondent. Petitioner has obtained leave to sue in terms of the orders passed on 25.9.2013 in Company Application No.910 of 2013 in Company Petition No.268 of 2009.

3. Insofar as the dispute is concerned, it is not in dispute before me that there is an arbitration clause *inter se* parties, which reads as under:-

**"15. ARBITRATION**

**15.1** If any dispute arises between the parties hereto during the subsistence of this Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this Agreement or regarding a question, including the question as to whether the termination of this Agreement by one Party hereto has been legitimate, the Parties hereto shall endeavour to settle such dispute amicably. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the Parties hereto, after reasonable attempts, which attempt shall continue for not less than 15 (fifteen) days, gives notice thereof to the other Party in writing.

**15.2** All disputes, controversies and differences of opinion arising out of or in connection with this Agreement or for the breach hereof which can not be settled amicably by the Parties hereto shall be settled by arbitration in accordance with the (Indian) Arbitration and Conciliation Act, 1996 by a panel of 3 (Three) arbitrators. The Parties shall, within 30 (Thirty) days of receiving a notice from the other Party in accordance with Clause 13.1 above, appoint one arbitrator each and shall intimate the same to the other Parties. For the purpose of clarity, the Parties agree that the Company and the Promoter Group shall jointly appoint one arbitrator, the Investor jointly on behalf of the Investor and its nominees shall appoint one arbitrator and the

arbitrators so appointed shall appoint the third arbitrator. The arbitrators so nominated shall choose amongst themselves, the chairman of the arbitral panel. In the event any Party fails to appoint an arbitrator within the time frames specified in this clause, any other Party shall be entitled to make an application to the relevant court in accordance with the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator (at the cost of the defaulting party) and the arbitrator so nominated shall be deemed to be the arbitrator nominated by the defaulting party. The decision of the arbitral panel shall be final and binding on the Parties. The venue of arbitration shall be at Mumbai, India. The Parties shall continue to fulfill their obligations under this Agreement pending the final resolution of the dispute and the Parties shall not have the right to suspend their obligation under this Agreement by virtue of any dispute being referred to arbitration.

**15.3** The proceedings of arbitration shall be in English language.

**15.4** The Parties hereto shall submit to the Arbitrator's award and the award shall be enforceable in the competent court of law."

4. The only plea, which was sought to be raised by the learned counsel for the first two respondents is that the arbitration clause

envisages process of endeavour to settle the disputes first before taking recourse to arbitration. In the rejoinder, the petitioner has stated that endeavours are made, but were not fruitful. The third respondent has not chosen to file any counter, nor has entered appearance.

5. During the course of arguments, it is agreed that one more endeavour to be made to settle the disputes and in that behalf, the matter be referred to the Madras High Court Mediation Centre. Thus, the parties shall appear before the Mediation and Conciliation Centre, High court Campus on **13.03.2015** at 2.15 P.M. The Mediator will endeavour to conclude the mediation proceedings, within thirty (30) days from the said date or any extended period, as may be granted by this Court. If the mediation is not successful, the matter would go to arbitration, there being no dispute about the existence of written arbitration agreement, existence of disputes and jurisdiction of the Court. It is also proposed that sole Arbitrator may be appointed as an Arbitrator and the place of arbitration specified is at Mumbai.

6. By consent, I appoint **Mr.Justice N.K.Sodhi**, former Chief Justice of Kerala and Karnataka High Court and former Chairman,

Securities Appellate Tribunal, as the sole Arbitrator. Arbitration would, however, be commenced on the expiry of the period of thirty (30) days from 13.03.2015 or any extended period thereof granted by this Court, in case, no settlement is arrived at during that time. It is made clear that the venue of arbitration will be at Mumbai. The learned Arbitrator shall enter upon the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of commencement of arbitration. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally.

7. The original petition is, accordingly, ordered, leaving the parties to bear their own costs.

(S.K.K., CJ.)  
27.02.2015

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The Hon'ble Chief Justice

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