

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO.253 OF 2016

Candle Advisors Private Limited	.. Petitioner
Vs.	
Timesaverz Dotcom Private Limited	.. Respondent

Mr. Rohaan Cama a/w. Ms. Neha Naik i/b Phoenix Legal for petitioner.

Mr. Aditya Pimple a/w. Ms. Neelkamal Chaudhary i/b Universal Legal for respondent.

Mr. Navroz Mahudawala, Director of petitioner present.

Ms. Debadutta Upadhyay-Managing Director of respondent present.

**CORAM : K.R.SHRIRAM, J.
DATE : 10TH APRIL 2018**

P.C.

1 After the petition was heard for some time, on 9th April 2018, on a suggestion made by the Court, both counsel requested the petition be stood over to enable them to take instructions as to whether the company is ready and willing to pay a sum of Rs.25,65,000/-, which according to the company, was the only amount payable to petitioner and for the balance claimed by petitioner, whether parties are ready and willing to refer their disputes to arbitration by a sole arbitrator. Today, both the parties tendered (a) Minutes of order dated 10th April 2018; (b) an affidavit dated 10th April 2018 of one Navroz Mahudawala, Director of petitioner; and (c) affidavit

dated 10th April 2018 of one Ms. Debadutta Upadhyay, Managing Director of respondent-company. In the affidavits, both the parties have indicated their agreement to refer to arbitration their disputes/all claims of petitioner as reflected in the Engagement letter dated 23rd March 2015 including counter-claim, if any.

2 Minutes of the order which is signed by the director of petitioner, director of respondent and their respective advocates is taken on record and marked 'X' for identification and the same reads as under :-

“MINUTES OF THE ORDER

The following order is passed by consent of the Parties:

- 1. The Petitioner has filed the above-captioned Company Petition claiming an amount of Rs. 25,65,000/- (Rupees Twenty Five Lakhs Sixty Five Thousand Only) as per the Particulars of Claim annexed to the Petition alleging the same to be due and payable by the Respondent company to the Petitioner against Invoice No. 201518 dated 19/8/2015 raised under the Engagement Letter dated March 23, 2015 executed between the parties, being an amount equivalent to 3% of the Tranche I investment amount received by the Respondent from Unilazer Ventures Private Limited.*
- 2. The Petitioner subsequently filed a Petition under the Insolvency & Bankruptcy Code, 2016, being C.P (IB)-224(MB)/2018, before the Hon'ble National Company Law Tribunal, Mumbai Bench (NCLT) claiming a total sum of Rs. 52,11,000/- (Rupees Fifty Two Lakhs Eleven Thousand Only), as set out below, alleging the same to be due and payable by the Respondent company to the Petitioner being an amount equivalent to 3% of the total investment amount of Rs. 14,99,99,985/- (Rupees Fourteen Crores Ninety Nine Lakhs Ninety Nine Thousand Nine Hundred and Eighty Five Only) received by Respondent from Unilazer Ventures Private Limited:*

S. No.	Invoice No.	Date	Amount
1.	201518	19/8/2015	25,65,000/-
2.	201622	31/8/2016	3,45,000/-
3.	201724	20/11/2017	23,01,000/-
Total			52,11,000/-

3. Without prejudice to its rights and contentions, the Respondent, through Debadutta Upadhyaya, i.e. the Managing Director of the Respondent company agrees and undertakes, to pay to the Petitioner an amount equivalent to 1.5% of the total investment received i.e. Rs. 26,05,500/- (Rupees Twenty Six Lakhs Five Thousand Five Hundred Only) against the 3% claim of Rs. 52,11,000/- (Fifty Two Lakhs Eleven Thousand Only) made by the Petitioner, and which forms the subject matter of the present Petition as well as C.P. (IB)-224(MB)/2018 before the Hon'ble National Company Law Tribunal, Mumbai Bench (NCLT) vide RTGS/ NEFT in the following two installments:

- (i) an amount of Rs. 13,02,750/- on or before April 30, 2018; and
- (ii) an amount of Rs. 13,02,750/- on or before May 30, 2018.

4. It is agreed by and between the Parties that the Petitioner's claim in respect of the balance claim, which forms the subject matter of the present Petition as well as C.P. (IB)-224(MB)/2018 before the Hon'ble NCLT and counter claim, if any, shall be referred to Arbitration before a Sole Arbitrator, Mr. Jehangir Jeejeebhoy. Both Parties have furnished affidavits to submit the above disputes to arbitration.

5. It is clarified that the disputes in arbitration shall pertain to all disputes arising out of or in relation to the Engagement Letter dated March 23, 2015 entered into between the Parties, but shall not include any claim/ refund/ adjustment of the sum of INR 26,05,500 (Indian Rupees Twenty Six Lakhs Five Thousand and Five Hundred) paid by the Respondent to the Petitioner pursuant to the orders passed by this Hon'ble Court in the present Petition. All rights and contentions of the parties are kept open.

6. The arbitration shall take place in Mumbai and shall be concluded within a period of six months, or such extended period as the parties mutually agree, not exceeding one year in total from the communication of the appointment to the Arbitrator by either

of the Parties. Costs of the arbitration of the arbitration at the first instance shall be shared equally between the Parties.

7. The Petitioner hereby undertakes through Mr. Navroz Mahudawala, its Managing Director, that upon receipt of the second installment of Rs. 13,02,750/- from the Respondent, the Petitioner shall, within seven working days, unconditionally withdraw the present Petition and C.P. (IB)-224(MB)/2018 pending before the NCLT. The Petitioner agrees and undertakes to not prosecute the present Petition or C.P. (IB) 224(MB)/2018 till that time, or in the event of default by the Respondent, if any, whichever comes first.

8. In the event of any default by the Respondent in making payment of the amounts in accordance with what is stated above, without prejudice to its rights to enforce the undertakings set out herein and to take appropriate steps in law in respect of the breach/ default, the Petitioner will be entitled to prosecute the present Petition and/ or C.P. (IB)-224(MB)/2018 before the Hon'ble NCLT in accordance with law."

3 Order in terms of the Minutes of the order. All undertakings accepted.

4 Shri Jehangir Jeejeebhoy, an advocate practicing in this Court is appointed as sole arbitrator to decide all disputes arising out of or in connection with or relating to the letter of engagement dated 23rd March 2015 including counter-claim, if any. The fees and administrative expenses of the arbitrator to be shared equally between the parties and the same will be costs in the arbitral proceedings. The venue of arbitration shall be Mumbai. Within two weeks of receiving a copy of this order, the Arbitrator to give disclosure in writing as required under Section 11(8) read with

Section 12(1) of the Arbitration and Conciliation Act, 1996 directly to the advocates for both petitioner as well as respondent.

5 Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)