

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 06th DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

O.P. No.745 of 2018

In the matter of Arbitration
and Conciliation Act, 1996

and

In the matter of Arbitration
Case No.Red 3 of 2018 dated
20.07.2018

Mr.P.Shanmughasundaram,
S/o.Mr.A.Palanisamy,
No.75/3, Tatabad,
Coimbatore-641 012.

.... Petitioner

-Versus-

M/s.Redington (India) Limited,
Redington House Centre Point,
Plot Nos.8 & 11, (S.P.),
Thiru.Vi.Ka Industrial Estate,
Guindy, Chennai-600 032.

... Respondent

Original Petition praying that this Hon'ble Court be
pleased to:-

a) appoint an independent and impartial Arbitrator to
hear and decide the disputes between the petitioner and the
respondent;

b) direct the respondents to pay the cost of this
petition.

This Original Petition coming on this day before this
court for hearing the court made the following order:-

The above Petition has been filed for appointment of an independent Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. The respondent has initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 against Netfusion Technologies before the IV Judicial Magistrate, Trichy, wherein the petitioner has been shown as a partner of Netfusion Technologies.

3. In the aforesaid proceedings, the petitioner herein has disputed his status as a partner of Net Fusion Technologies on the date of transaction.

4. The said Net Fusion Technologies of which, the petitioner is alleged to a partner allegedly owes for a sum of Rs.56,49,014/- to the respondent . A notice dated 29.05.2016 was issued calling upon M/s.Netfusion Technologies and its partners, to pay the aforesaid amount to the respondent.

The said notice has been addressed to the petitioner as well.

5. The respondent had proposed to appoint Mr. A.Thiyagarajan, (Retd.District Judge), a Sole Arbitrator to resolve the dispute between the petitioner M/s.Netfusion Technologies and the respondent

6. On 21.06.2018, the respondent has nominated Mr.A.Thiyagarajan as a sole arbitrator. On 22.06.2018, Mr.A.Thiyagarajan, Sole Arbitrator entered appearance and has passed an order for appearance of the claimant and the respondents therein and for the claimant (respondent herein) to file the claim statement by 20.07.2018 .

7. By a series of letters addressed to the respondent and arbitrator, the petitioner has stated that he is not a partner of Netfusion Technologies on the date of transactions. At the same time, the petitioner has agreed for appointment of neutral Arbitrator appointed through Court. The said notice has been sent to the Arbitrator as well.

8. On 05.07.2018, the applicant called upon the respondent to withdraw the notice regarding appointment of Mr.A.Thiyagarajan, as a sole Arbitrator. On the same day, by another notice addressed to the learned Arbitrator informed

the petitioner has requested the learned Arbitrator to keep the arbitration proceeding in abeyance until further orders are obtained from Judicial Forum.

9. Under these circumstances, the petitioner has filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1966. The applicant has also filed a copy of the invoices raised by the respondent which contains of Arbitration Clause in the agreement for arbitration reads as under:

"All or any dispute arising out of the terms of the contract between the parties herein shall be resolved through arbitration. Either of the party may notify the dispute to the other party, enabling them to find and amicable settlement of the dispute within 30 days of such notification. In the event of no amicable settlement is arrived within 30 days as stated supra, either of the party(s) shall refer the dispute to Arbitration M/s Reddington (India) Ltd., shall immediately appoint a sole arbitrator within one month of such reference of dispute to arbitration. Buyer explicitly agrees and waives off any right to question the appointment of arbitrator as above. Such proceedings shall be

conducted in English language only and in accordance with the provisions of the Arbitration Conciliation Act, 1996 as amended. The finding of the sole arbitrator shall be final and binding on all parties. The venue will be as fixed by the sole arbitrator and the same will be binding on the parties. The seat for the Arbitration shall be exclusively at Chennai. The governing laws shall be Indian laws and the parties explicitly agree that all or any legal proceedings in connection with the Arbitration proceedings shall be subject to the Jurisdiction of Court in Chennai alone. The seller shall also have the right to initiate appropriate civil or criminal proceedings including complaint u/s 138 of NI Act, as applicable."

10. Arbitration is a creature of agreement between the parties and therefore, the manner of appointment of an arbitrator cannot be questioned unless circumstances exist attracting section 12 (3) or 12(5) of the Act.

11. Section 12 (3) of the Arbitration and Conciliation Act, 1966 reads as under:- The appointment of Arbitrator may be challenged only if:-

" (a) circumstances exist that give rise to a justifiable doubts as to his independence or impartiality, or
(b) he does not possess the qualification aggrieved by the parties."

12. As per Section 12(5) of the Act, certain categories of relationship specified in the 7th schedule attract disqualification for a person to be appointed as a Sole Arbitrator.

13. The petitioner has stated that he is not a partner of the Netfusion Technologies and at the same time, he filed an application under Section 11(6) of the Arbitration and conciliation Act and seek for appointment of an independent Arbitrator merely because the respondent has acted in accordance with Clause 20 of the invoices has been filed along with the typed set of papers.

14. As doubts have been raised as to whether the petitioner was a partner or not in on the date of the relevant invoices, the learned Arbitrator can decide the existence of the valid agreement.

15. In the present case, there is nothing on record to

show that the Arbitrator is disqualified. The Arbitrator also has not withdrawn the arbitration proceeding for the court to exercise its power for appointment an alternate arbitrator.

16. The petitioner has also not made out any grounds to disqualify the arbitrator.

17. In the present case, whether the petitioner was the partner or not of Netfusion Technologies and whether he is bound by the arbitral proceedings can be decided by the Arbitration Clause under Section 16 of the Arbitration and Conciliation Act.

18. Accordingly, the original petition is dismissed. No cost.

सत्यमेव जयते

Sd/-C.S.N.J
06.09.2018

//Certified to be a true copy//

Dated this the day of 2018
JJ 23/10/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.