

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.90 of 2019

M/s.Ayan Tech Solutions Pvt. Ltd.
9th Floor, Block 'C', Temple Steps,
184-187 Little Mount, Anna Salai,
Chennai-600 015
rep. by its Director
S.Chandrasekaran

.. Petitioner

Vs.

Mr.Ravi Balaji

.. Respondent

* * *

Prayer : Petition filed under Section 11(6)(c) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator in terms of Clause 14 of the Employment Offer and Agreement dated 17.01.2018 to arbitrate the dispute that has been arisen between the parties.

* * *

For Petitioner : Mr.V.V.N.Sivanthy
for M/s.Fox Mandal & Associates

For Respondent : Mr.Swarnam J.Rajagopalan

ORDER

This Original Petition is filed seeking for appointment of an Arbitrator in terms of Clause 14 of the Employment Offer and Agreement dated 17.01.2018 to arbitrate the dispute that arose between the parties.

2. The petitioner claimed that it is engaged in the business of Information Technology Services and Solutions exclusively in SAP. The respondent was offered the position of Regional Sales Head in the petitioner's company vide Employment Offer and Agreement dated 17.01.2018 (in short "the Agreement"), which was accepted by the respondent and he joined the petitioner company on 19.01.2018. The respondent resigned the post on 27.02.2018 on the premise of better prospects. Subsequently, the petitioner learnt that the respondent joined M/s.Infrabeat Technologies Pvt. Ltd. at Pune. The petitioner also claimed that Clause 10 of the Agreement imposed a condition on the respondent not to solicit or accept employment with the petitioner's competitors or customers for a period of one year after termination of employment and thus, his act is in clear violation of the Agreement.

3. The petitioner stated that they had entered into a Master Service Agreement dated 01.12.2017 with the said M/s.Infrabeat and also a Mutual Non-disclosure Agreement of even date. Clause 14 of the Master Service Agreement imposed a condition that the said company should not compete, solicit or circumvent the agreement during the pendency of the agreement and for a period of 36 months following the termination agreement. Thus, the said company also breached the Agreements.

4. The petitioner also claimed that Clause 12 of the Agreement is termed as Non-Disclosure Agreement, which prohibits the respondent from disclosing any information. However, the respondent, in view of his access to the sensitive market information on potential customers, approached some important customers causing huge revenue loss of about Rs.95 lakhs to the petitioner. The petitioner further claimed that the recruitment process of the petitioner and his successor, who also later resigned from the post, costs about Rs.4 lakhs. In such circumstances, since Clause 14 of the Agreement provides for resolution of disputes through arbitration, claiming a sum of Rs.30 lakhs, the petitioner issued a notice dated 06.12.2018 for appointment of Arbitrator, which was opposed by the respondent on 24.12.2018. Hence, the petitioner is before this Court with this petition.

5. The respondent filed a counter-affidavit dated 30.06.2019 resisting the prayer. The respondent claimed that as per the Agreement, he ought to be a probationer for first six months, during which period, his service could be terminated without notice. He stated that he served the petitioner company for around 45 days and he was not given any important assignment and in fact, his service was terminated with effect from 27.02.2018 by the petitioner. It is also

stated that since there is no dispute with respect to the existence, validity or termination of the Agreement, there is no arbitrable dispute as contemplated under Clause 14 of the Agreement. The respondent further stated that the petitioner also filed a suit in O.S.No.3366 of 2019 on the file of the XVII Assistant City Civil Court, Chennai, seeking damages to the tune of Rs.30 lakhs, as sought in the present dispute, which it deliberately suppressed before this Court and the action of the petitioner is hit by Section 27 of the Contract Act, 1872.

6. Heard the learned counsels on either side. Though the learned counsel for the respondent initially vehemently opposed the appointment of an Arbitrator, after some arguments, he is agreeable for appointment of an Advocate of this Court as the Arbitrator.

7. Considering the submissions of the learned counsels for the parties, Mr.Ravi Kumar Paul, Senior Advocate, having office at 2nd Floor, Hussaina Manzil, 123, Angappa Naicken Street, Chennai-600 001, (Phone No.044-25342266/044-52161515) as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, 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 receipt of the

order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

8. The Original Petition is ordered accordingly, leaving the parties to bear their own costs.

19.08.2019

Index : Yes / No
Internet : Yes
Speaking Order/Non-Speaking Order
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