

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.01.2020

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THE HON'BLE MR.JUSTICE M.SUNDAR

O.P.No.577 of 2019

Subway Systems India Private Limited
Level 2, Elegance Mathura Road
Jasola, New Delhi - 110 025
Represented by its Authorized Signatory
Mr.Jaganath Rao .. Petitioner

Vs.

Mr.Paul Nandagopal .. Respondent

This Original Petition filed under Sections 47 and 49 of the Arbitration and Conciliation Act, 1996 praying to declare that the Award dated 06.09.2018 be deemed to be a Decree of this Hon'ble Court and direct the respondent to deposit an amount of Rs.35,553.72/- from 06.09.2018 being the date of the Award towards the unpaid royalties and advertising fees till the date of actual payment and further direct the respondent to pay Rs.15,000/- per day which as of 04 June 2019 amounts to Rs.39,60,000/- from 13.09.2018 being after 7 days from the date of the award towards unauthorized use of the Subway®, trade mark, trade names, service marks and in any form of advertising and to return the Subway® Operations Manual, till the date of actual payment and further direct the Respondent to pay a sum of 2,425/- U.S.D being the costs incurred by the petitioner in the arbitration proceedings in accordance with the Award dated 06.09.2019 along with an interest of 18% per annum from the date of Award till the date of actual payment and pass such other or further orders as this Hon'ble Court deems fit including costs of these proceedings and in the facts and circumstances of this case and thus render justice.

For Petitioner : Mr.Advaidh Nelakanttan
for Mr.Anirudh Krishnan
For Respondent : Mr.T.Gowthaman

ORDER

Mr.Anirudh Krishnan, learned counsel on record assisted by Mr.Advaidh Nelakanttan, for petitioner and Mr.T.Gowthaman, learned counsel on record for respondent are before this Court.

2. Both the learned counsel make a common submission in unison that the parties have arrived at a settlement and have reduced the same to writing under an agreement captioned 'Settlement Agreement dated 17.12.2019' (hereinafter 'said settlement' for the sake of convenience and clarity).

3. Both the learned counsel, drawing the attention of this Court to said settlement, submit that both parties have signed said settlement in the presence of one another and their respective counsel. On this basis, both learned counsel make a request that presence of the parties may please be dispensed with for the purpose of recording this settlement and a compromise memo dated 22.01.2020 between the parties.

4. Further common submission of both learned counsel is that instant main original petition may please be disposed of in terms of said settlement/accompanying compromise memo dated 22.01.2020.

5. Request for dispensing with the presence of parties acceded to owing

to the facts and circumstances of this case which have been alluded to supra.

6. Instant original petition is disposed of in terms of said settlement,

which is as follows:



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- Agreement. The Company reserves the right to collect the full amount from the Restaurant due under this Agreement if the Franchise Owner does not cure any breach within ten (10) days of receiving written notice of the breach.
5. If the Franchise Owner is given ten (10) days written notice of any default of the following conditions: abandonment of the restaurant, failure to pay any money owed to the Company, our affiliates, the landlord of the premises, or any amounts the Company may become liable to pay because of the Franchise Owner's actions or omissions, or if the Franchise Owner is evicted from the restaurant location for non-payment of rent or related charges, the Franchise Owner may be considered in breach of this Agreement if the Franchise Owner does not cure the default within the ten (10) days from the date of delivery of the notice.
 6. Each party understands that this Settlement Agreement is considered confidential. The Parties further represent and agree that this Agreement, the terms and conditions of settlement, the particular facts giving rise to the subject Agreement, and all discussions concerning the terms and conditions of settlement are and shall be treated as strictly confidential. The Parties agree that they nor their attorneys, agents, servants, employees, representatives, heirs, executors, administrators, successors or assigns will disclose, publish, publicize or disseminate or cause to be disclosed, published, publicized or disseminated, in any manner, this Settlement Agreement, the terms and conditions of settlement, and/or the discussions concerning the terms and conditions of settlement, to any third party except (i) as may be required by law or upon request of a government agency, and (ii) as the parties may make to their attorneys, accountants, other professional advisors and/or immediate family, all of whom will also be bound by the same obligation of confidentiality. This Agreement represents the sole, entire and complete agreement and understanding of the Parties and supersedes any prior discussions, representations, agreements and understandings on the subject matter hereof. Each party represents to the other that it has read and understands this Agreement and that this Agreement is entered into freely and with consent to be bound by all of its terms and conditions. This Agreement can only be amended in writing signed by both Parties.
 7. Except where expressly provided, this Agreement does not waive any of the rights or remedies of either party against the other for any defaults or claims not specifically set out herein.
 8. This Agreement may be executed in one or more counterparts, each of which shall be deemed its original, and all of which taken together shall constitute the same instrument.
 9. If this agreement is not signed and returned by December 23, 2019 this Agreement is void.

In witness whereof, the Parties have signed this Agreement as of the date set forth above.

SUBWAY SYSTEMS INDIA PRIVATE LTD. <i>Jaganath Rao</i> Jaganath Rao – Director Subway Systems India Private Limited In the Presence of: <i>Sonam Triukha</i> Witness Signature <i>Sonam Triukha</i> Witness Name	 FRANCHISE OWNER <i>Raj N. Madhgal</i> Raj N. Madhgal Franchise Owner In the Presence of: <i>DEEPAK</i> Witness Signature <i>DEEPAK</i> Witness Name
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7. As mentioned above, said settlement is accompanied by a compromise memo dated 22.01.2020, which reads as follows:

COMPROMISE MEMO

'The Parties above named beg to submit as under:-

1.The petitioner has filed the above petition under Sections 47 and 49

of the Arbitration and Conciliation Act, 1996 (**"the Act"**), seeking enforcement and execution of foreign arbitral award made in New York, USA. A Foreign arbitral award dated 6 September 2018 (the **"Arbitral Award"**) was passed in favour of SSIPL/Petitioner herein. The Arbitral award was made in New York, USA by an arbitral tribunal consisting of a sole arbitrator Mr. William Henri Crosby (the **"Arbitrator"**). The contentions and submissions made in the said petition may kindly be read as part and parcel of the present Compromise Memo and are not repeated herein for the sake of brevity.

2. Whereas during the course of these proceedings before this Hon'ble Court, the parties had negotiations and decided to settle all their disputes amicably to bring permanent and irrevocable quietus to the pending disputes and all matters arising there from and connected therewith and/or incidental thereto.

3. Whereas the parties have had discussions and negotiations, pursuant to which, the parties have settled their disputes by executing a settlement agreement dated 17th December 2019 (**"Settlement Agreement"**) setting forth the terms and conditions of settlement of disputes agreed upon by the parties. Copy of the said Settlement Agreement is annexed herewith as **Annexure-A** for the kind perusal of this Hon'ble Court.

4. Whereas the terms of the compromise/settlement are acceptable to all the parties concerned viz., the Petitioner and the Respondent, which they propose to file the same as a Joint Compromise Memo before this Hon'ble Court for purposes of enforcing the terms of settlement and implementation thereof. Accordingly, the parties agree and confirm that:-

(i) The parties have amicably resolved their disputes and difference as per the terms set out in the Settlement Agreement dated 17th December 2019. The said Settlement Agreement may be treated as part of this Compromise Memo;

(ii) The petitioner undertakes to withdraw the Suit O.S.No.6520/2019 for eviction instituted against the Respondent pending before the Hon'ble II

Assistant City Civil Court, Chennai.

(iii) The aforesaid Petition may be disposed of in terms of this compromise with liberty to the parties to approach this Hon'ble Court in the event of any breach of the terms of the Settlement Agreement or impediment in implementing the terms of the compromise/settlement.

(iv) The Petitioner prays that this Hon'ble Court may be pleased to refund the entire Court-fee paid on the above Petition and in the interests of justice and equity;

(v) This compromise memo has been entered into out of the free will of the parties and without any coercion or undue influence;

(vi) The parties herein agree that upon signing of this Compromise Memo, the parties shall represent before the Hon'ble Court and pray to close the O.P.No.577 of 2019 by recording this Compromise Memo in the interests of justice and equity.

Dated at Chennai on this the 22nd day of January 2020.

(Sd/-)
PETITIONER

(Sd/-)
RESPONDENT

(Sd/-)
COUNSEL FOR PETITIONER

(Sd/-)
COUNSEL FOR RESPONDENT

8. Instant original petition is disposed of in terms of said settlement dated 17.12.2019 and compromise memo dated 22.01.2020., both of which will form part of this order. There shall be no order as to costs.

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23.01.2020

Speaking Order/Non-Speaking Order

Index : Yes/No

Internet : Yes/No

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M.SUNDAR, J.

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