



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 31st DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

O.P. No.331 of 2021

In the matter of Arbitration and
Conciliation Act, 1996

And

In the matter of Letter of Employment
dated 19.03.2018

and

In the matter of disputes between
Surendar Chitoor Pandarirao V.
EPIKInDiFi Software & Solutions
Pvt.Ltd.

Surendar Chitoor Pandarirao
Flat 1703 Sinovia Tower
House of Hiranandani,
Egattur,
Rajivgandhi Salai,
OMR, Chennai 603103.

.. Petitioner

Vs.

EPIKInDiFi Software & Solutions Pvt. Ltd.,
Rep. by its Directors Rajendra Awasthi
and Malavika Awasthi
Having its Registered Office at
"Karuna Nivas" bearing
Old No.3, and New No.5,
Chakrapani Road, Guindy,
Chennai-600 032.

.. Respondent

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

a Sole Arbitrator in terms of Clause 19 of Letter of Employment, dated

19.03.2018 to resolve the dispute between the petitioner and respondent.



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This Original Petition having been heard on 17.08.2021 in the presence of M/s.Tanya Kapoor, advocate for the petitioner herein and Mr.R.S.Divaagar for M/s.Vivrti Law, Advocates for the respondent herein and upon reading the petition and the Counter Affidavit of Rajendra Awasthi filed herein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto,

it is ordered as follows:-

That the Mr.M.Karunanidhi, Advocate (Mobile No.94440 66853), having office at Flat No.D-3, Yes Yes Villa, No.15-B, Reddy Street, Virugambakkam, Chennai-600 092 be and is hereby appointed as Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties.

2) That the learned Arbitrator appointed herein, shall, after issuing notice to the parties and upon hearing them, pass an order as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

3) That learned Arbitrator appointed herein shall be at liberty to fix his remuneration and other incidental expenses, as per the provisions of the Arbitration and Conciliation Act, 1996.

4) That the expenses incurred for arbitration shall be borne by the



respective parties.

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(5) That the arbitral proceedings shall be conducted under the aegis of the Arbitration Centre of the Madras High Court, High Court Buildings, Chennai and in accordance with the Madras High Court Arbitration Rules.

(6) That the parties hereto shall be at liberty to raise preliminary objection as to the maintainability of the arbitration before the learned Arbitrator, who shall decide the issue on its validity before proceeding further with the arbitration on merits.

(7) That the Arbitrator appointed herein shall be required to rule on his own jurisdiction in terms of Section 16 of the Arbitration and Conciliation Act, 1996 and in case the Arbitrator takes a decision to reject the plea, he shall continue with the arbitral proceedings and make an Arbitral Award.

8) That there shall be no order as to costs of the petition.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
31st DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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4

O.P.No.331 of 2021

ORDER

DATED: 31.08.2021

THE HON'BLE MR. JUSTICE
V.PARTHIBAN

FOR APPROVAL: 07.09.2021

APPROVED ON : 08.09.2021

Copy to:

1. Mr.M.Karunanidhi,
Arbitrator
(Mobile No.94440 66853),
having office at Flat No.D-3,
Yes Yes Villa, No.15-B,
Reddy Street,
Virugambakkam,
Chennai-600 092.

2.The Additional Registrar-
Vigilance

Madras High Court Arbitration Centre
Madras High Court Campus,
Chennai



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5

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.08.2021

Orders Pronounced on : 31.08.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

O.P.No.331 of 2021

Surendar Chitoor Pandarirao

.. Petitioner

Vs.

EPIKInDiFi Software & Solutions Pvt. Ltd.,
Rep. by its Directors Rajendra Awasthi
and Malavika Awasthi
having its Registered Office at
"Karuna Nivas" bearing
Old No.3, and New No.5,
Chakrapani Road, Guindy,
Chennai-600 032.

.. Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a Sole Arbitrator in terms of Clause 19 of Letter of Employment, dated 19.03.2018 to resolve the dispute between the petitioner and respondent.

For petitioner : M/s.Tanya Kapoor

For respondent : Mr.R.S.Divaagar for M/s.Vivrti Law

ORDER



Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator.

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2. According to the petitioner, the dispute had arisen with the respondent in terms of the employment agreement dated 19.03.2018 entered into between the petitioner and the respondent-Company.

3. The case of the petitioner briefly is that being a senior business development professional with his three decades experience with the large multi-national companies, the petitioner had been invited to join the respondent-Company, which was launching its start up, named "Epik Infotech LLP" in November 2017. According to the petitioner, he had left his erstwhile lucrative position and joined the respondent-Company. At the time, an agreement was entered into between the parties on 19.03.2018 containing the terms of employment of the petitioner with the respondent-Company, particularly compensation payable to the petitioner under various components. The agreement also contains a clause for arbitration in case of any dispute arising out of the relationship and during the course of their association. The employment of the petitioner is to be governed by the letter of employment and non-disclosure agreement, both dated 19.03.2018.

4. Subsequent to the employment, a dispute arose between the parties



in regard to the payment of compensation in terms of the agreement dated 19.03.2018 and e-mails were exchanged in this regard. Finally, a notice was also issued on 17.09.2019 by the petitioner seeking to furnish the list of Arbitrators in the respondent's panel to be appointed in terms of Clause 19 of the agreement for resolution of the dispute. At this, the respondent sent a reply notice dated 10.10.2019 disputing the fact of validity of the agreement dated 19.03.2018, as the petitioner has not signed the agreement.

5. Since there was no mutual agreement for appointment of an Arbitrator, the present petition has been filed for appointment of an Arbitrator.

6. The learned counsel for the petitioner, at the outset, submitted that the employment letter/agreement, dated 19.03.2018, under Clause 6 provides details of compensation payable by the respondent-Company in terms of Annexure-I to the employment letter. According to the learned counsel, the respondent did not honour the agreement in terms of the compensation payable to the petitioner, and therefore, a dispute was raised by the petitioner herein. The learned counsel referred to Clause 19 of the agreement, dated 19.03.2018, relating to dispute resolution, which reads as



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"19. Dispute Resolution: Any dispute or difference between the parties arising from, or in connection with, this letter agreement, shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996, as amended. The arbitration shall be conducted by a single arbitrator, chosen by both parties from a panel of arbitrators identified by the Board of Directors of the Company. The language of the arbitration English and it shall be conducted at Bengaluru. The arbitration shall be a confidential proceeding closed to the general public. The award rendered by the arbitrator shall be final, conclusive and binding on the parties and shall be subject to enforcement in any court of competent jurisdiction. Subject to the foregoing arbitration provision, the Courts in Chennai shall have exclusive jurisdiction with respect to this letter agreement.

Unless an award provides otherwise, each party shall bear the cost of preparing and presenting its case, and the other costs of arbitration, including fees and expenses of the arbitrator, shall be shared equally by the parties. When any dispute is referred to arbitration, except for the matters in dispute, the parties shall continue to exercise their remaining rights and fulfill their remaining obligations."

7. The petitioner has also entered into a confidentiality agreement on the same day and as per which, it was agreed under Clause 5.2 that any dispute or difference between the parties arising from and in connection with the agreement, will be referred to Arbitration. As there was no



filed.

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8. The learned counsel appearing for the respondent-Company submitted that the present petition is not maintainable for the simple reason that there was no concluded agreement/contract at all between the parties. He also drew the attention of this Court to the employment agreement and at the end of the agreement, it has been stated as under:

"Please return the duplicate copy of this letter agreement duly signed as acceptance of the above terms and conditions."

9. According to the learned counsel for the respondent, the petitioner has not signed duly accepting the terms and conditions as set out in the agreement and returned the same. Therefore, there was no conclusion of valid agreement at all. In the absence of any concluded contract, the question of invoking the arbitration clause did not arise at the instance of the petitioner.

10. At this, the learned counsel for the petitioner submitted that the respondent-Company has been taking an inconsistent stand all along. In this regard, the learned counsel relied on the counter affidavit filed by the respondent-Company before the National Company Law Tribunal (for short,



'the NCLT'), in response to the petitioner's application before it towards initiating corporate insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code, 2016. In the counter affidavit, the disclosed stand of the Company was that the notice was issued under Section 21 of the Arbitration and Conciliation Act, 1996 by the petitioner herein, and therefore, the proceedings before the NCLT was liable to be rejected.

11. On the basis of the stand taken by the Company, the NCLT had dismissed the said application, vide order dated 08.02.2021.

12. Having taken such a stand before the NCLT, and having succeeded in getting the application filed by the petitioner herein before the NCLT dismissed, it is not open to the respondent-Company to raise the objection as to the appointment of an Arbitrator before this Court.

13. In fact, the learned counsel further argued by referring to the counter filed before the NCLT by the respondent-Company that the claim of the petitioner was strongly refuted and resisted by relying upon certain clauses in the employment agreement. It is not open to the respondent-



clauses in the agreement, and on the other hand, they come up with the objection saying that there is no valid agreement at all.

14. The learned counsel for the petitioner also refuted the allegation that signature of the authorised representative of the Company in the agreement, had been forged, as what is being now sought is only the appointment of the Arbitrator and the question of forging anyone's signature did not arise in the first place.

15. At this, the learned counsel for the respondent-Company contended that the consistent stand of the Company before this Court and also before the NCLT was that there was no concluded agreement between the parties and it is also not the case of the petitioner herein that he had signed and returned the duplicate copy of the employment agreement, dated 19.03.2018. In the absence of any proof of a concluded contract between the parties, the question of invoking the Act, 1996, does not arise.

16. As regards the contention that some clauses of the agreement have been relied upon for resisting the claim of the petitioner before the NCLT, the learned counsel for the respondent-Company submitted that because the claims have been premised on several clauses of the agreement,



the Company was constrained to meet those claims by referring to the clauses of the agreement. However, it is the consistent stand of the Company that there was no valid agreement at all.

17. The learned counsel also referred to the findings of the NCLT while dismissing the case observing that the petitioner herein had not executed the confidentiality agreement and also did not return his letter of employment, dated 19.03.2018.

18. The learned counsel also referred to paragraph 5 of the counter filed before the NCLT, in which the same stand was taken that the petitioner herein did not return the letter of employment and the confidentiality and invention assignment agreement as executed by him to the respondent, as stipulated therein. He reiterated that it is not the case of the petitioner herein either that the employment agreement or the confidentiality agreement, has been returned by him duly signed.

19. The learned counsel lastly referred to the legal notice (reply) issued on behalf of the Company, dated 10.10.2019 and even in that notice, it has been specifically mentioned that the petitioner had never accepted the offer of employment by returning the document duly signed by him.



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20. The learned counsel further submitted that under Section 16 of the Act 1996, the issue as to whether there is valid arbitration clause existed as between the parties, can also be decided by the learned Arbitrator together with the merits of the inter-se claims of the parties, in the event of the learned Arbitrator holding that there is a valid arbitration clause. He therefore requested this Court to keep the said issue open for the Arbitrator to take a call on the validity of the arbitration clause.

21. But opposing the above contention, the learned counsel for the petitioner insisted that the issue must be decided before this Court and an Arbitrator may be appointed for deciding the case on merits. In support of her contentions, the learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2021 (2) SCC 1 (Vidya Drolia Vs. Durga Trading Corporation), which is distinguishable on the facts of this case.

22. This Court considered the submissions made by the learned counsel appearing for the parties and perused the pleadings and the materials placed on record.

23. The existence of arbitration clause in the employment agreement



and confidentiality agreement, both dated 19.03.2018, is admitted and it is borne out by records. However, the single point of objection from the respondent-Company is that the petitioner has not agreed to the terms of the contract by returning the copy of the agreement duly signed as acceptance of the terms and conditions set forth therein. As rightly contended by the learned counsel for the respondent, it is not even the case of the petitioner that he has signed the said agreement and returned the same to the respondent-Company. In the said circumstances, it gives rise to a genuine doubt as to whether there was any concluded contract at all between the parties.

24. Although the learned counsel for the petitioner placed heavy emphasis on the averments of the respondent-Company in the counter affidavit filed before the NCLT, yet, this Court finds that the respondent-Company has been consistently taken this objection against the petitioner that the agreement has not been accepted by the petitioner, in the first place. The explanation given on behalf of the Company that the Company was constrained to rely on certain clauses in the agreement in order to meet the claims of the petitioner herein on merits before the NCLT, appears to be plausible and reasonable.



25. What is "arbitration agreement" is defined under Section 7 of the Arbitration and Conciliation Act, 1996. Sub-clause (3) therein mandates that the arbitration agreement shall be in writing and it should be signed by the parties. Unless it is shown that the agreement has been validly entered into between the parties, in terms of Section 7 of the Act, 1996, it cannot be conclusively held that there exists valid arbitration agreement.

26. As rightly contended by the learned counsel for the respondent-Company, in terms of Section 16 of the Act, 1996, the Arbitral Tribunal is competent to rule on its own jurisdiction. Section 16(1) is extracted hereunder:

"Section 16: Competence of arbitral tribunal to rule on its jurisdiction:(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,--
(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
(b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause."

27. When the Tribunal has been conferred with the power for ruling on its own jurisdiction in response to any challenge and further this Court is



also of the view that in order to find out as to whether there is any valid execution of contract between the parties, evidence needs to be let in more than the documents that are to be relied upon by the parties, in which event, the Arbitral Tribunal is the competent forum to decide as to the existence of valid arbitration agreement between the parties.

28. In the light of the specific power being conferred on the Tribunal under Section 16 of the Act, 1996, this Court, instead of deciding the issue as to whether there is any valid agreement or not between the parties on the basis of the sketchy self-serving averments of the parties, in the fitness of things, is of the view that the issue is required to be left open for the Arbitral Tribunal itself to consider the jurisdictional issue.

29. In the above circumstances, the Original Petition is allowed:

(a) Mr.M.Karunanidhi, Advocate (Mobile No.94440 66853), having office at Flat No.D-3, Yes Yes Villa, No.15-B, Reddy Street, Virugambakkam, Chennai-600 092, is hereby appointed as Sole Arbitrator to enter upon the reference and adjudicate upon the dispute inter-se - parties.

(b) The above-said learned Arbitrator, shall, after issuing notice to the parties and upon hearing them, pass an order as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

(c) The learned Arbitrator is at liberty to fix his remuneration and



other incidental expenses, as per the provisions of the Arbitration and Conciliation Act, 1996.

(d) The expenses incurred for arbitration shall be borne by the respective parties.

(e) The arbitral proceedings shall be conducted under the aegis of the Arbitration Centre of the Madras High Court, High Court Buildings, Chennai and in accordance with the Madras High Court Arbitration Rules.

(f) It is made clear that the parties are at liberty to raise preliminary objection as to the maintainability of the arbitration before the learned Arbitrator, who shall decide the issue on its validity before proceeding further with the arbitration on merits.

(g) The Arbitrator shall be required to rule on his own jurisdiction in terms of Section 16 of the Arbitration and Conciliation Act, 1996 and in case the Arbitrator takes a decision to reject the plea, he shall continue with the arbitral proceedings and make an Arbitral Award.

(h) There shall be no order as to costs in the present O.P.

Sd./-V.P.N.J.,
31.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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