



WEB COPY



Arb.O.P (Com.Div.) 84 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) 84 of 2022

Mr.Prem Kumar, Proprietor
M/s.Root and Stem Advisory Services
No.3093, Prestige Nottinghill, Bannerghata Road
Bangalore

... Petitioner

Vs.

M/s.Vodafone Idea Limited
Represented by its Managing Director/CEO
PSA Fort, No.A1, A2 and B, Neghru Nagar
1st Main Road, off OMR, Perungudi, Chennai – 600 096 ... Respondent

Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the arbitration agreement dated 27.07.2018 and to direct the respondent to pay costs.

For Petitioner : Mr.K.Krishnamoorthy

For Respondent : Mr.Anand David
of M/s.AAV Partners (Law Firm)



Arb.O.P (Com.Div.) 84 of 2022

ORDER

WEB COPY

Captioned 'Arbitration Original Petition' (hereinafter 'Arb.OP' for the sake of convenience and clarity), has been presented in this Court on 05.01.2022 with a prayer for appointment of a sole Arbitrator.

2. Mr.K.Krishnamoorthy, learned counsel for petitioner and Mr.Anand David of M/s.AAV Partners (Law Firm) for the respondent are before this Court.

3. There is no disputation or disagreement between the two learned counsel that captioned Arb.OP is predicated on Clause 19, more particularly Clause 19.2 and 19.3 in an agreement dated 27.07.2018 captioned 'DIRECT SALES ASSOCIATE AGREEMENT' (hereinafter 'primary agreement' for the sake of convenience and clarity).

4. The primary agreement is for appointment of petitioner as Direct Selling Agent (DSA) of the respondent. The petitioner has made certain claims qua certain services i.e., certain orders which according to the



Arb.O.P (Com.Div.) 84 of 2022

petitioner have been obtained by them pursuant to the primary agreement, for the respondent. The respondent has not fully honoured the remuneration (as agreed), is petitioner counsel's say. There is a change of policy and therefore, it is not possible to honour the petitioner's claim is respondent's stand. It is not necessary to dilate further on facts or narration of lis and it will suffice to say that this is broadly the area of arbitrable disputes that have arisen between the parties. As captioned Arb.OP is under Section 11 of 'The Arbitration and Conciliation Act, 1996' (Act No.26 of 1996)', which shall hereinafter be referred to as A and C Act, this Court does not express any opinion or view on this arbitrable dispute. Both the aforementioned learned counsel submit that there is no dispute regarding the existence of the arbitration clause i.e., Clause 19 in the primary agreement. There is also no dispute or contestation between the parties about the existence of arbitration agreement between them i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. This is the scope of a Section 11 legal drill owing to sub-section (6A) in the light of Mayavati principle i.e., ratio in ***Mayavati Trading Private Limited Vs. Pradyut Deb Burman*** reported in ***(2019) 8 SCC 714***.



Relevant paragraph in **Mayavati Trading** case law is paragraph 10, which reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.'

(underlining made by this Court to supply emphasis and highlight)

5. Therefore, this Court proceeds to appoint a sole Arbitrator.

6. Mr.P.Giridharan, Advocate, having address for service at Vanguard House, 3rd Floor, No.48, 2nd Line Beach, Parrys, Chennai - 600 001 (Mob: 98846 72733), is appointed as sole Arbitrator. Learned sole Arbitrator is requested to enter upon reference, adjudicate the *lis* i.e., arbitrable disputes



Arb.O.P (Com.Div.) 84 of 2022

that have arisen between the parties qua primary agreement. Learned Arbitrator is requested to hold sittings in 'Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and Hon'ble Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

7. Captioned Arb.OP is disposed of in the aforesaid manner. There shall be no order as to costs.

14.03.2022

gpa

Note: Registry is directed to communicate a copy of this order forthwith to

1. Mr.P.Giridharan, Advocate,
Vanguard House, 3rd Floor,
No.48, 2nd Line Beach,
Parrys, Chennai - 600 001
Mob: 98846 72733
2. The Director
Tamil Nadu Mediation Conciliation Centre
-cum- Ex-Officio Member
Madras High Court, Arbitration Centre
Chennai - 104



WEB COPY



Arb.O.P (Com.Div.) 84 of 2022

M.SUNDAR.J.,
gpa

Arb.O.P (Com.Div.) 84 of 2022

14.03.2022