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Arb.O.P.(Comm.Div.) No.50 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

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1.M/s.Vonamor Entertainment Private Ltd.,
rep. by its Director,
Mr.S.Venkatesh
having its Office at L-116,
Ground Floor, 11th Street,
West Kamaraj Nagar,
Thiruvanmiyur,
Chennai - 600 041.

2.M/s.Vonamor Entertainment Private Ltd.,
rep. by its Director,
Mr.C.K.Mohammed,
having its Office at L-116,
Ground Floor, 11th Street,
West Kamaraj Nagar,
Thiruvanmiyur,
Chennai - 600 041.

... Petitioners

vs.

1.Nagarjuna Yanamala

2.Praveen Kumar Bandaru

3.Yanamala Sudersana Babu

... Respondents



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PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, pleased to appoint an arbitrator to adjudicate the disputes between the petitioners and the respondents in terms of the arbitration agreement dated 13.02.2020.

For Petitioners : Mrs.Vedavallikumar

For Respondent 1 : Ms.J.Amritha Sarayoo
for M/s.TVJ Associates

For Respondent 2 : Mr.J.Vasu

For Respondent 3 : Mr.S.Prabhakaran
for M/s.Udayveer Singh

ORDER

The petitioner seeks the constitution of an arbitral tribunal to resolve the dispute purportedly arising out of an agreement dated 13.02.2020, which is tiled as A.R.Rahman Concert, Pune and Hyderabad Investors Agreement (the Agreement).



2. Learned counsel for the petitioner pointed out that clause 10 of the Agreement provides for the resolution of disputes through arbitration and further pointed out that a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) was issued to all the respondents herein on 17.12.2020. Although all the respondents received such notice, it was submitted that only the third respondent replied thereto.

3. Learned counsel contended that the present petition is liable to be allowed for the following reasons:

(i) Although the second and third respondents did not sign the Agreement, they admittedly financed the organization and conduct of concerts pursuant to such Agreement.

(ii) The e-mails addressed by or to the respondents, including by copying the respondents, draw reference to the concerts and the disputes relating thereto. The profit and loss account, including the investors account, was sent to the respondents as attachments to an email.



(iii) The Section 21 notice was dispatched to and received by all the respondents.

4. In order to substantiate these contentions, learned counsel relied upon the following judgments:

(i) *Baluram -vs- P.Chellathangam and others*, (2015)13 SCC 579, particularly paragraph 15 thereof, with regard to the necessary parties to a dispute.

(ii) *Chloro Controls India Private Limited -vs- Severn Trent Water Purification Inc. and Others*, (2013)1 SCC 641, particularly paragraph 157 thereof, with regard to the circumstances in which a reference to arbitration is justified even in respect of non-signatories to an arbitration agreement.

5. These contentions were refuted by learned counsel for the first respondent on the following grounds:

(i) The Agreement was admittedly not signed by the second and third respondents herein.



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(ii) The Agreement was not signed in view of the inequitable sharing of profit and loss, as provided therein.

(iii) The requirements of Section 7 of the Indian Contract Act, 1872 (the Contract Act) are not satisfied.

(iv) The requirement of Section 2(a) read with Section 7 of the Arbitration Act are not fulfilled in as much as there is neither an arbitration clause - as part of the Agreement, which has been signed by all the parties hereto - nor a separate arbitration agreement between the parties.

6. In support of these contentions, learned counsel relied on the following judgments:

(i) *U.P.Rajkiya Nirman Nigam Ltd. -vs- Indure Pvt. Ltd., (1996)2 SCC 667*, particularly paragraphs 8 and 19 thereof, for the proposition that the existence of a written agreement to submit existing or future disputes to arbitration is a pre-condition for reference of the dispute to arbitration.



(ii) *PSA Mumbai Investments Pte. Limited -vs- Board of Trustees of the Jawaharlal Nehru Port Trust and another*, (2018)10 SCC 525, particularly paragraphs 12 and 14 thereof, with regard to the requirements of absolute and unqualified acceptance as per Section 7 of the Contract Act.

(iii) *Chloro Controls India Private Limited -vs- Severn Trent Water Purification Inc. and Others (Chloro Controls)*, particularly paragraph 133 thereof, wherein the Court refused to interfere with the ratio in *Sukanya Holdings Pvt. Ltd. -vs- Jayesh H.Pandya and another*, (2003)5 SCC 531.

7. Learned counsel for the second respondent submitted as under:

(i) The second respondent financed the concerts to the extent of Rs.1.16 Crore.

(ii) The second respondent was lured into investing on the basis of the petitioner's representation that they had a strong equation with Mr.A.R.Rahman. However, no accounts were provided thereafter.

(iii) The Agreement was not signed by the second respondent.

(iv) A FIR was registered and it is likely that a charge sheet would be filed soon.



8. Learned counsel for the third respondent submitted that the third respondent did not sign the Agreement and that correspondence was merely copied to the said respondent.

9. The sustainability of the petition should be determined in the context of the above contentions. At the outset, it should be noticed that there are two petitioners, both suing on behalf of a limited liability company, Vonamor Entertainment Private Limited. It is not possible to discern the reason for the same legal entity being arrayed as the first and second petitioners herein.

10. Turning to the Agreement, the Agreement contains the name of the petitioner, which is described as National Promoter. It also contains the names of each of the respondents herein, who are described as party one, party two and party three and collectively as investors. The admitted position is that only the petitioner and the first respondent signed the Agreement. The Agreement contains a provision for dispute resolution through arbitration (clause 10). Therefore, it should be examined whether the requirements of Section 2(a) read with Section 7 of the Arbitration Act



are otherwise satisfied. In order to satisfy the requirements of Section 7, there should be a written arbitration agreement. Such written arbitration agreement could be contained in an arbitration clause in a contract or in other documents, such as correspondence between the parties or even by reference in the contract to a document containing the arbitration clause provided such reference is sufficient to incorporate the arbitration clause by reference into the relevant contract. Apart from the impugned Agreement, learned counsel for the petitioner invited my attention to e-mails addressed by or to the respondents. None of the e-mails draw reference to the Agreement dated 13.02.2020. More importantly, the petitioner has failed to place on record any e-mails or communications from the respondents evidencing the intention to be bound by the arbitration clause contained in the Agreement. Although learned counsel for the petitioner relied upon an e-mail from the first respondent to the petitioner and the other respondents, such e-mail also does not draw reference to the Agreement although it draws reference to obligations, which may also be dealt with in the Agreement. For all these reasons, I conclude that the requirements of the Section 7 of the Arbitration Act are not satisfied.



11. The question whether a reference to arbitration is nonetheless warranted by recourse to the Group of Companies doctrine or the like remains to be considered. Both the petitioner and the first respondent relied upon ***Chloro Controls***. In the said judgment, the Hon'ble Supreme Court noticed that there was a primary or mother contract and several contracts ancillary thereto, which formed a composite whole. The Court also noticed that all the parties were part of a common Group of Companies. In those circumstances, the Court concluded that reference to arbitration under Section 45 of the Arbitration Act is justified. This principle was extended to references under Part I of the Arbitration Act by *Cheran Properties -vs- Kasturi and Sons Limited*, (2018) 16 SCC 413. Although the law laid down in ***Chloro Controls*** has been referred to a larger bench, it holds the field as on date. Applying the said principles to the facts of this case, each of the respondents is an individual. There is nothing on record to indicate that they have constituted a partnership or any other association. Learned counsel for the first respondent pointed out that the second and third respondents refused to sign the Agreement in view of clauses, such as clause 2.4, which provide for sharing of losses only by the investors. In



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these circumstances, reference to arbitration is not warranted even in terms of the ratio laid down in *Chloro Controls*.

12. For reasons set out above, this petition is liable to be rejected. Accordingly, Arb.O.P.(Comm.Div.) No.50 of 2021 is dismissed without any order as to costs by leaving it open to the petitioner to institute appropriate civil proceedings in relation to the dispute between the petitioner and the respondents.

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