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Arb.O.P. No.31 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Arb.O.P. No.31 of 2022

M/s.Hyundai Auto Ever India Pvt. Ltd.,
Plot No.2 C (SP), Ocean Square,
Thiru-Vi-Ka Industrial Estate,
Behind Olympia Tech Park,
Guindy, Chennai-600 032.

... Petitioner

vs.

Mr.Dhushyant Janbandhu
S/o.Mr.Hetram Janbandhu
H.No.15, Ward No.7,
Tumdhobodh Road,
Dongargarh, Rajnandgaon,
Chattisgarh-491 445.

... Respondent

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act 1996 prays to appoint an Arbitrator as per the Clause 26 of the Appointment Letter dated 15.03.2019 offered by the Petitioner to the Respondent under the Arbitration and Conciliation Act, 1996 for the purpose of adjudication of dispute that arose between the Petitioner and Respondent under Section 11(6) of the Arbitration and Conciliation Act, 1996.

For Petitioner : Mr.Mahesh Kumar

For Respondent : Mr.Kamalesh Kumar Mishra



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ORDER

The petitioner seeks the constitution of an arbitral tribunal to adjudicate a dispute arising out of the appointment letter dated 15.03.2019 between the petitioner and the respondent.

2. The petitioner asserts that clause 26 of the appointment letter provides for dispute resolution by arbitration. After issuing a notice dated 22.06.2021, an arbitral tribunal was constituted. On account of objections raised to the unilateral constitution of such tribunal, by order dated 01.05.2022, learned Arbitrator closed the proceedings and permitted parties to seek legal recourse. The present petition is filed in the said facts and circumstances.

3. Learned counsel for the petitioner referred to clause 26 in the above mentioned appointment letter and submitted that the agreement provides for dispute resolution by way of arbitration. He further submitted that an aggregate sum of Rs.27,45,456/- was claimed under the six heads indicated in the notice dated 22.06.2021, which he described as the notice under Section 21 of the Arbitration and Conciliation Act 1996 (the Arbitration Act). In support of these



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submissions, he relied upon the judgments of the Hon'ble Supreme Court in *Vidya Drolia v. Durga Trading Corporation (Vidya Drolia) (2021) 2 SCC 1* and *Booz Allen & Hamilton Inc v. SBI Home Finance Limited (2011) 5 SCC 532*.

4. The petition is opposed strongly by the respondent. The principal ground on which the petition is opposed is that the respondent instituted proceedings before the authority under the Payment of Wages Act, 1936 (the Payment of Wages Act). Such proceedings culminated in an order dated 06.10.2022 by which the petitioner was directed to pay an aggregate sum of Rs.14,02,822/- to the respondent. Learned counsel for the respondent submits that the dispute between the parties pertains to alleged unauthorised absenteeism by the respondent. The said dispute was referred to the authority under the Payment of Wages Act and was duly adjudicated by such authority. Indeed, learned counsel points out that the application filed by the petitioner herein under Section 8 of the Arbitration Act was rejected by the authority under order dated 10.02.2022 on the ground that Section 23 of the Payment of Wages



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Act overrides a contract to the contrary. Therefore, learned counsel contends that the present dispute is manifestly non-arbitrable. In addition, learned counsel contends that the petitioner has initiated action for constitution of an arbitral tribunal only to harass an ex-employee and deprive such employee of the benefits of the order passed by the authority under Payments of Wages Act. He also points out that the respondent resides in Delhi and that he would be greatly prejudiced by the conduct of arbitral proceedings at Chennai.

5. The scope of inquiry in a petition under Section 11 is limited. The Hon'ble Supreme Court instructs in cases such as ***Vidya Drolia*** that the Court should undertake a *prima facie* review for purposes of eliminating deadwood. In course of such *prima facie* review, the Court should address issues such as whether an arbitration agreement exists between the parties, whether the dispute is manifestly non-arbitrable, whether the claim is *ex-facie* barred by limitation and the like.

6. From the notice dated 22.06.2021, it appears that the



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aggregate claim of Rs.27,45,456/- is in respect of failure to report for work, which resulted in outsourcing and consequential financial loss; unauthorised absence; issuance of notices to the headquarters of the petitioner for *mala fide* purposes; illegally accessing sensitive data; participation in unlawful gainful business while the employment contract subsisted; and loss of goodwill and reputation. Both parties admit that the appointment letter contains an arbitration clause and that this document was signed and accepted by the respondent. The arbitration clause provides for dispute resolution in respect of all claims arising out of the letter and the employment between the petitioner and the respondent. The adjudication by the authority under the Payment of Wages Act was confined to claims made by the employee on account of alleged unlawful deduction by the employer. In these circumstances, it cannot be concluded that the claims of the petitioner are manifestly non-arbitrable. This conclusion shall not, however, preclude the respondent from raising objections on the ground that the claims made are covered by the prior adjudication by the authority under the Payment of Wages Act.



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7. Since the claims are not manifestly non-arbitrable, the petitioner is entitled to succeed. Accordingly, Arb.O.P.No.31 of 2022 is allowed by appointing Mr. Suhrith Parthasarathy, Advocate, No.1, Jagathambal Colony, 2nd Street, Royapettah, Chennai-600 014 (Mobile No.8939717592) as the Sole Arbitrator. The sole arbitrator is called upon to enter upon reference and adjudicate the dispute. The fees and expenses of the arbitral tribunal shall be fixed in consultation with the parties. If an appropriate request is made for conduct of proceedings through video conference, learned Arbitrator is requested to consider the same in view of the fact that the respondent resides and works at Delhi.

20.12.2022

Index : Yes/No

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SENTHILKUMAR RAMAMOORTHY J.

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