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Arb.O.P(Com.Div.)No.510 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.510 of 2023

CredAvenue Private Limited,
Represented by its authorized signatory,
Sanjutha Dhansekar,
A company within the meaning of
Companies Act, 2013, having its
Registered office at 12th Floor,
A-Wing, Prestige Polygon,
No.471, Anna Salai, Nandanam,
Chennai – 600035

... Petitioner

Vs.

1.Rahul Agarwal

2.Finnup Services Private Limited,
A company incorporated under the
Companies Act, 2013
Having its registered office at
Flat No.B/101, Greenash Building,
Vasant Garden, Mulund West,
Mumbai, Maharastra – 400 080.
abhishek@finnup.com

... Respondents



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Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to adjudicate the disputes between the Petitioner, Respondent Nos.1 and 2 under Clause 18 of the Employment Contract.

For Petitioner : Mr.Sathish Parasuran
Senior Counsel for M/s.Vivrti Law

For Respondents : Mr.Karthik Sundaram

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator. The first respondent was employed by the petitioner on 01.10.2020. An agreement dated 29.09.2021 was signed between the petitioner and the first respondent. Under the said agreement the first respondent was employed by the petitioner with retrospective effect from 01.10.2020. The aforesaid agreement contemplates an arbitration Clauses for resolving the dispute between them.

2. The case of the petitioner is that the first respondent was transferred to associate company namely CredAvenue Securities with effect from 01.04.2022. However, within two months from the date of joining of the associate company, the first respondent quit the company and has floated the second respondent's



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company and has taken away vital information in breach Employment Contract

dated 29.09.2021.

3. The learned Senior Counsel for the petitioner would submit that the dispute between the petitioner and the first respondent is arbitrable in terms of Clause 13, as per which, the first respondent was required to maintain confidentially while in employment and after termination of the employment. He further submits that vital information have been gathered which indicate with the first respondent violated the confidential Clause in the aforesaid Employment Contract dated 29.09.2021.

4. The learned counsel for the 1st respondent would submit that there is a novation of the Employment Contract agreement between the first respondent namely CredAvenue Private Limited of the petitioner herein on 01.04.2022.

5. The learned counsel for the respondent has drawn attention to the following three decisions:

(i) ***Union of India Vs. Kishorilal Gupta and Brothers*** [1959 SCC Online Sc 6];

(ii) ***Young Achievers Vs. IMS Learning Resources Private Limited*** [(2013) 10 SCC 535] and



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(iii)***B.L.Kashyap and Sons Limited Vs. Mist Avenue Private Limited*** [2023 SCC Online Del 3518]

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6. That apart, it is submitted that question of invoking the arbitration Clause in the Employment Contract dated 21.09.2021 will not arise since a new contract has been signed.

7. The learned counsel for the respondent also drawn attention to the decision of the Hon'ble Supreme Court in ***Cox and Kings Limited Vs. SAP India Private Limited and another*** in Arbitration Petition (Civil)No.38 of 2020. Specific reference was referred to para 165(L).

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

9. In ***Cox and Kings Limited Vs. SAP India Private Limited and another***, it was held as under:

165.L. At the referral stage, the referral Court should leave it for the arbitral tribunal to decide whether the non-signatory is bound by the arbitration agreement.

10. Since the dispute between the petitioner and the first respondent is arbitrable, Court is inclined to appoint **Mr.M.Aravind Subramaniam, Senior Advocate, (Cell No.9840037677) having Office at Caithness Hall, 2nd Floor,**



Old No.157, New No.323, Linghi Chetty Street, Chennai – 600 015, is

appointed as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

(i) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

(ii) The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

11. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.



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12. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

13. All the issues relating to jurisdiction of the arbitrator is left open to be decided and preliminary objections of the first respondent and the second respondent are left open to be canvass before the learned Arbitrator. The parties are directed to appear before the learned Arbitrator and the parties shall pay the fees to the learned Arbitrator shall as per the order to be passed by the learned Arbitrator. In case, the respondents failed to pay the fees, it is open for the petitioner to pay the same and recover the same from the respondents in respect of the outcome of the arbitration proceedings. The learned Arbitrator shall endeavour to pass an Award as expeditiously as possible preferably within a period of 12 months from the date of receipt of a copy of this order.

19.12.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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