Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO. 26940 OF 2024

Jayant Kumar …Petitioner

Versus

Jambopay Express Pvt Ltd …Respondent

Mr Kunal Vaishnav, *with Suraj Iyer & Vijeet Trivedi, i/b Ganesh & Co, for the Petitioner.*

CORAM: ARIF S. DOCTOR, J

DATED: 13th September 2024

PC:-

SHEPHALI SANJAY MORMARE

Digitally signed by SHEPHALI SANJAY MORMARE Date: 2024.09.19 15:07:47 +0530

1. The Petitioners claim in the captioned Commercial Arbitration Petition arises out of a Master Shareholders Agreement (MSA) read with a Share Transfer Agreement (Buy Back Agreement) entered into between the Petitioner and the Respondent.

2. Mr Vaishnav, Learned Counsel appearing on behalf of the Petitioner points out that the Petitioner had pursuant to the Master Shareholders Agreement invested in Respondent-Company. He submitted that subsequently by virtue of the Share Transfer Agreement (Buyback Agreement), the Petitioner had been given a partial exit of the investment made by the Petitioner under the MSA. He submitted that

despite execution of the Buyback Agreement the Respondent had on some pretext or the other failed and neglected to act upon the same and effect the exit option agreed upon *inter alia* by making the necessary payment to the Petitioner in terms of the Buyback Agreement.

3. He then invited my attention to a chain of emails between the Petitioner, the Respondent's CEO and Managing Director as also the Advocates who were facilitating the said transaction and pointed out the Respondents CEO and Managing Director had whilst on the one hand affirming the Buyback Agreement on the other hand was on one pretext or the other delaying giving effect the same. It was thus he submitted that the Respondent was not serious in making payments to the Petitioner of the amounts which were agreed to be paid to the Petitioner as contemplated under the said Buyback Agreement. Mr Vaishnav then placed reliance on an Affidavit of Service dated 13th September 2024 to point out that the Petition had been served upon the Respondent despite which the Respondent had failed and neglected to appear today. He pointed out that this only compounded the Petitioners apprehension that the Respondent was not serious in acting in furtherance of the Buyback Agreements and was seeking to defeat the rights of the Petitioner.

4. He then invited my attention to both the MSA as also the Buyback Agreement and pointed out that both contained an Arbitration Clause. He submitted that given that there was no dispute as to the liability of the Respondent to make payment to the Petitioner of the amounts under the Buyback Agreement coupled with the fact that the Respondent had today not appeared to contest the Petition on merits, despite being served he submitted that the Petitioner was entitled to interim relief in terms of prayer clauses (a) and (b) of the Petition which read thus:

> *"(a) That pending the culmination of Arbitral Proceedings and till the Award passed therein becomes enforceable, this Hon'ble Court be pleased to issue an order directing the Respondent to disclose on oath the following information within a period of 3 weeks from the date of such direction! Order:*
>
> *(i) all its· Bank Accounts along with their Statements from 01.03.2024 till date;*
>
> *(ii) particulars of all its assets, properties (both movable and immovable) along with details of any encumbrances, if any;*
>
> *(iii) Audited Financial Statements, including cash flow statements of the Company, including the management letter provided by the auditor, for the Financial Years ending 2021-22, 2022-23 and 2023-24;*
>
> *(iv) Unaudited quarterly Financial Statements, including cash flow statements certified by the chief financial officer/ Director of the Respondent for the quarters ending June 2021 to March 2024 (both inclusive);*
>
> *(v) Minutes of the Board and General Meeting of the Respondent for the last 3 (Three) years;*
>
> *(vi) details of significant events, if any, impacting the Company that may have occurred on or after October, 2021; and*

> *(vii) annual· budget and annual business plan as approved by the Board of Directors.*
>
> *(b) That pending the culmination of Arbitral Proceedings and till the Award passed therein becomes enforceable, this Hon'ble Court be pleased to issue an order directing the Respondent to deposit with this Hon'ble Court a sum of Rs.30,72,708/-."*

5. After having Learned Counsel and perusing the MSA, the Buyback Agreement as also the chain of correspondence upon which reliance was placed, I am *prima facie* of the view that the obligations/liability of the Respondent under the Buyback Agreement is admitted. I am also *prima facie* satisfied that the Respondent is delaying the discharge of its obligations under the Buyback Agreement for no genuine and bonafide. It is thus I find that the Petitioner having made out a strong *prima facie* case the balance of convenience lies entirely in favour of the Petitioner, more so as the Respondent has chosen not to appear today. It is thus I am, therefore, presently inclined to grant the Petitioner ad interim relief in terms of prayer clause (a) already extracted above. Though I presently am not inclined to grant the Petitioner interim relief in terms of prayer clause (b) I direct that the Respondent shall till the next date of hearing keep aside an amount of Rs.21,82,068/- earmarked by the Respondent in their bank accounts until the next date of hearing.

6. Let the Affidavit of Disclosure be filed within a period of two weeks from today, i.e., on or before 4th October 2024. The Learned Counsel appearing on behalf of the Petitioner undertakes to give notice to the Respondent of the next date of hearing along with a copy of this order shall be served upon the Respondents forthwith.

7. List the matter on 10th October 2024.

8. All concerned will act on production of an authenticated copy of this order.

(ARIF S. DOCTOR, J)