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Arb.O.P (Com.Div.) No.64 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.64 of 2024

1.Sachin Jain
2.Nitin Jain

... Petitioner

Vs.

1.Kotak Mahindra Bank Limited,
Registered Office at 27 BKC, C27 G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai 400051

Also at,
7th Floor, Ambadeep Building, 14, KG Marg,
New Delhi 110001.

2.Suresh Bajaj,
Sr.Vice President,
Kotak Mahindra Bank Limited,
7th Floor, Ambadeep Building, 14, KG Marg,
New Delhi 110001.

3.Lalit Kumar,
Regional Business Manager,
Kotak Mahindra Bank Limited,
7th Floor, Ambadeep Building, 14, KG Marg,
New Delhi 110001.

... Respondent



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Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to resolve the disputes between the parties as per the clause 19 Sub-Clause 19.2 of the Direct Marketing Associate Agreement dated 07.02.2022 signed and executed between both the parties.

For Petitioner : Ms.N.Devi

For Respondent : Mr.Uma Shankar

ORDER

This petition has been filed to appoint a sole Arbitrator to adjudicate the dispute between the petitioner and the respondent.

2. The learned counsel for the petitioner would submit that the petitioners and the respondents had entered into the Direct Marketing Associate Agreement dated 07.02.2022 (DMA Agreement) for the business purpose of payouts/fees. However, the respondent had failed to pay the legally due charge, which has been mutually agreed as per Clause 4.1 of the said agreement. In this regard, the petitioner sent a legal notice to the respondent on 08.12.2022 demanding a sum of Rs.18,79,100/-, for which



the respondent sent a reply dated 29.12.2022. Thereafter, the petitioner had also issued a legal notice dated 26.06.2023 invoking the arbitration. However, the respondent had not replied for the said legal notice. Hence, the petitioner filed this petition.

3. Further, he would submit that since the present dispute between the petitioners and the respondents arise out of the aforesaid agreement, the same can be adjudicated vide arbitration as per the Clause 19 of the said agreement. Hence, he requests this Court to appoint an Arbitrator to adjudicate the dispute between the petitioners and the respondents.

4. In reply, the learned counsel for the respondents would also submit that the claim made by the petitioner is only for a sum of Rs.15,00,000/- and the said dispute is arbitrable. Hence, he also requests this Court to appoint an Arbitrator.

5. Heard the learned counsel for the petitioner and the respondents and also perused the materials available on record.



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6. In the present case, upon perusal of the DMA Agreement dated 07.02.2022, it is clear that the dispute among the parties shall be resolved by virtue of Arbitration as per the Clause 19 of the said agreement, which reads as follows:

“19. Dispute and Jurisdiction:-

19.1 Any and all disputes arising out of or in connection with this agreement or its performance shall be settled by arbitration by a single arbitrator to be appointed by the bank. The arbitration shall be held, in Chennai, in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

19.2 The Courts in Chennai shall subject to the above, have exclusive jurisdiction.”

7. Considering the submissions made by both the learned counsel and in view of the fact that the dispute between the petitioner and the respondent squarely falls within the purview of the Clause 19 of the DMA Agreement dated 07.02.2022, this Court is inclined to appoint an Arbitrator.



8. Accordingly, this Court feels it appropriate to pass the following order:

i) **Mr.P.Ganesan, District Judge (Rtd), No.778, Judges Colony, Kakithapuram 4th Street, S.Kolathur, Kovilambakkam, Chennai 600 117, Mobile No.96000 45571,** is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.



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9. This Arbitration Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

25.04.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

nsa

***Note:** Issue order copy on 03.05.2024.*



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KRISHNAN RAMASAMY.J.,
nsa

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