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Arb.O.P (Com.Div.) No.218 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.218 of 2024

Mr.Arul Prasad Senniappan

... Petitioner

..Vs..

M/s.Viprah Technologies Ltd.,
Represented by its Managing Director
Mr.Anantha Subramaniam
S.F.No.79, Aalampalayam Road,
Thekkalur, Avinashi Taluk,
Coimbatore District.

...Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to decide the disputes that have arisen between the Petitioner and the Respondents under the Term Sheet Dated 02.07.2015 read with Business Participation and Subscription Agreement read with Convertible Debenture Agreement.

For Petitioner : Mr.P.J.SriGanesh

For Respondent : No appearance

ORDER



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WEB COPY This petition has been filed to appoint a sole Arbitrator to adjudicate the disputes that have arisen between the Petitioner and Respondents.

2. The learned counsel for the Petitioner would submit that the Petitioner and the Respondent executed a Term Sheet dated 02.07.2015 and thereafter, the Petitioner and the Respondent entered into a Business Participation and Subscription Agreement and a Convertible Debenture Agreement dated 23.07.2015 containing detailed terms and conditions with respect to the proposed infusion of funds into the Company at a coupon rate of 10% per annum. Thereafter, two addendums dated 23.10.2015 and 21.01.2016 were executed to the Business Participation and Subscription Agreement, extending the time lines for the investment into the Respondent, pursuant to which, the Petitioner invested a sum of Rs.2.23 crores beginning from 30.07.2015 to 06.11.2016, for which the Respondent had issued a subscription receipt for a part sum of Rs.1.15 crores during the year 2015-2016. He further submitted that despite the investments being made by the Petitioner, the Respondent failed to either return the monies or allot shares



by converting the debentures, thereby breached the terms of the Terms Sheet and the aforesaid Agreements dated 23.07.2015. He further submitted that the Respondent is liable to pay a sum of Rs.3,33,50,216/- (Rupees Three Crores Thirty Three Lakhs Fifty Thousand Two Hundred and Sixteen) towards Principal and interest, by adjusting a sum of Rs.70 lakhs paid at the time of securing the bail. Hence, a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) was sent to the respondent on 07.11.2022, by nominating a Retired Judge of this Court and the same was received by the respondent, for which the Respondent sent a reply dated 12.12.2022, denying the said proposal. Thereafter, the Respondent invoked the Arbitration Clause as early as on 12.10.2021 and 15.04.2022, which was duly replied by the Petitioner on 11.11.2021 and 18.04.2024. Thereafter, the Respondent also filed a Petition under Section 11, which came to be dismissed as withdrawn vide order of this Court dated 06.04.2022. He further submitted that Respondent also sent another notice dated 24.04.2023, containing false and baseless allegations. Hence the Petitioner is constrained to file the present petition.



3. Further, the learned counsel for the petitioner would submit that the present dispute arises out of the Term Agreement dated 02.07.2015 and the same can be arbitrable in terms of Clause 31 of the said agreement, which reads as follows:

“31.Dispute Resolution:

”The laws of India will govern this term sheet and the Definitive Agreements executed pursuant to it.

All disputes between the parties in relation to this term sheet will be subject to arbitration by a sole arbitrator/panel of three arbitrators under the Arbitration Act rules of the country.

The venue of the arbitration will be subject to the arbitration provision above, all disputes between parties in relation to this term sheet will be subject to the exclusive jurisdiction of courts in Chennai.

The Definitive Agreements will set out a dispute resolution mechanism for any dispute arising out of the Definitive Agreements.”

By referring to the above said clause, he would submit that the present dispute may be referred to Arbitration.



4. Despite notice being served on the Respondent and its name printed in the cause list, none appeared on its behalf.

5. From the records, it is seen that the Respondent had already filed a petition under Section 11 of the Act before this Court seeking appointment of Arbitrator, but it was withdrawn subsequently and it is also not in dispute that the Respondent had already invoked Clause 31 of the Term Sheet dated 02.07.2015, by sending notice to the Petitioner twice. Thus, it is clear that Respondent had evinced interest in the appointment of Arbitrator.

6. In view of the above, this Court is satisfied that the present dispute is arising out of the Term Sheet dated 02.07.2015 as well as Business Participation and Subscription Agreement and Convertible Debenture Agreement executed by the Petitioner and the Respondent Company dated 23.07.2015 and the same is arbitrable in terms of Clause 31 of the Term Sheet. Hence, this Court is inclined to appoint a sole Arbitrator.



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

i) **The Hon'ble Mr.Justice.T.Ravindran, Former Judge, Madras High Court**, residing at New No.27, Old No.12, 3rd Avenue, Indira Nagar, Adyar, Chennai- 600 020, possessing Mobile Nos. **99413 50926** and **9444399700**, 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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WEB COPY 7. With the above directions, this Arbitration Original Petition is allowed.

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Speaking/Non-speaking order
Index : Yes / No
Neutral Citation: Yes / No
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KRISHNAN RAMASAMY.J.,
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