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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+ ARB.P. 1060/2023
THOUGHT PARTNERS GLOBAL SERVICES PRIVATE LIMITED. ..... Petitioner
Through: Mr. Amit Srivastava, Adv.
versus
LEVERAGE ED - TECH PRIVATE LIMITED ..... Respondent
Through: Mr. Vipul Wadhwa, Ms. Carina Arora, Advs.
Mr. Avishkar Singhvi, Mr. Naved Ahmed, Mr. Vivek Kr. Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **09.04.2024**

1. This is a petition seeking appointment of a sole arbitrator to adjudicate dispute between the parties arising out of the agreement dated 04.03.2022.
2. The brief facts are that the petitioner i.e. "Thought Partners Global Services Private Limited" is a Business Process Management and Consulting Company. It helps companies bring positive and sustainable changes in their businesses in a cost-effective manner. The petitioner is a start-up incorporated in February, 2022.
3. The respondent is "Leverage Ed-Tech Private Ltd. and is engaged in the business of education consultancy.
4. It is stated that the respondent approached the petitioner company for available processing services.
5. After negotiation, the petitioner and the respondent entered into a Letter of Intent (LoI) dated 04.03.2022 and the petitioner continued to provide services to the respondent for about 9 months.
6. Thereafter, it is stated that the respondent using its dominant position informed the petitioner regarding termination of the contract.

7. It is stated in the petition that the petitioner, out of coercion, wrote an email dated 21.12.2022 agreeing to termination of the contract on certain payments. Timely payments were the essence of the email. Since the respondent breached the said timelines, the petitioner on 06.03.2023 revoked the email dated 21.12.2022 and invoked the arbitration clause.

8. Learned counsel for the petitioner has relied upon the judgment of this Court titled as "***Knowledge Podium Systems Pvt. Ltd. vs. S M Professional Services Pvt. Ltd.***" [CS(COMM) 377/2020], "***Abdul Waseem & Anr. vs. Abdul Azim***" [ARB.P. 869/2023] and the judgment of the Hon'ble Supreme Court titled as "***Lata Construction and Others vs. Dr. Rameshchandra Ramniklal Shah & Anr***" [(2000) 1 SCC 586].

9. The contentions of the petitioner are disputed by Mr. Wadhwa, learned counsel for the respondent. He states that the email dated 21.12.2022 was out of the free will of the petitioner, the petitioner accepted all the payments pursuant to the email and after receiving the payments, the petitioner out of greed, has invoked the arbitration clause.

10. The respondent has relied upon "***M/s Young Achievers vs. IMS Learning Resources Pvt. Ltd.*** [(2013) 10 SCC 535].

11. I have heard learned counsels for the parties.

12. The arbitration clause as per the LoI reads as under:-

> *". . . . .*
> *Any dispute arising under this LOI shall be referred to Arbitration in accordance with the Arbitration and Conciliation Act, 1996. The parties shall mutually appoint an arbitrator and the seat and venue of arbitration shall be New Delhi, India."*

13. The email dated 21.12.2022 written by the petitioner reads as under:-

From: Anand Verma <anand.verma@thoughtpartnersglobal.in>
Sent: Wednesday, December 21, 2022 21:15
To: Aditya Arora <aditya@leverageedu.com>; jatin.arora@leverageedu.com <Jatin.Arora@leverageedu.com>; Vipul Wadhwa <vipul.wadhwa@leverageedu.com>; saugata@leverageedu.com <saugata@leverageedu.com>; Digvijay Gagneja <digvijay@leverageedu.com>
Cc: Deepakk Geraa <deepakk.s.geraa@thoughtpartnersglobal.in>
Subject: Agreement termination terms

Dear Aditya & Jatin,

We at ThoughtPartners, would like to thank you for the business opportunity and support provided in the last 9 months of our engagement with Leverage Edu

We were looking for a long-term engagement with Leverage Edu and in furtherance of our discussion yesterday, we understand your business needs and thus the decision to Terminate the agreement/program with ThoughtPartners. I am sure we will be able to find opportunities in the future to work together.

While it is going to be a very tough situation to manage, with respect to our existing commitments towards employees and suppliers, on such a short notice, we are extending our support to you in the interest of our established relationship.

On the basis of my in-person discussion with both of you (Aditya & Jatin) at your Leverage Edu office in Noida today morning and then over a call today afternoon, we have agreed on the following terms and conditions to ramp down the program (Editorial services & App submission):

- 100% program to ramp down by 30^{th} Dec 2022
- Last day of Leverage Edu operations at ThoughtPartners will be 30^{th} Dec 2022
- A notice of 30 days by Leverage Edu to ramp down the program (until 20^{th} Jan 2023)
- Leverage Edu to provide a sign off on reverse transition by 31^{st} Dec 2022T

<u>Payment terms agreement–</u>

- Nov Invoice (TPGSPL \ DM2022 \ 011) dated 15^{th} Dec will be paid by Leverage Edu on or before 28^{th} Dec 2022 (INR 27,80,050 + applicable taxes)
- Dec Invoice will be raised by ThoughtPartners on 1^{st} Jan and will be paid by Leverage Edu on or before 5^{th} Jan 2023 (INR 27,80,050 + applicable taxes)
- Notice period invoice of 20 days will be raised by ThoughtPartners on 1^{st} Jan will be paid by Leverage Edu on or before 20th Jan 2023 (INR 18,53,367 + applicable taxes)

Keeping the coming festival season in mind, we are going to communicate about the termination of our contract to the office staff post new year and therefore, we would like to request you to treat this information as confidential, pre-inform all your team members to not divulge this information to anyone at the ThoughtPartners' office as this may have an impact on our ability to function until 30^{th} Dec and may also cause unrest in the office environment at ThoughtPartners.

We look forward to your continued support and hope to work with Leverage Edu in future.

Merry Christmas and a great year ahead to Leverage Edu & team

Regards

Anand Verma
Founder & CEO
ThoughtPartners
Phone - 9168694555
E-mail - anand.verma@thoughtpartnersglobal.in
www.thoughtpartnersglobal.in

India| USA| Canada| Middle East

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Thanks
Aditya Arora
Finance Controller | Leverage Edu
Your Dream University Is Not A Dream Anymore

14. The said offer was accepted by the respondent on 22.12.2022 and reads as under:-

Anand Verma

From:	Aditya Arora <aditya@leverageedu.com>
Sent:	22 December 2022 17:39
To:	Anand Verma
Cc:	jatin.arora@leverageedu.com; Vipul Wadhwa; Saugata Sarkar; Digvijay Gagneja; Deepakk Geraa
Subject:	Re: Agreement termination terms

Dear Anand,

We thank you for the association. We hereby accept the mutual termination of our association with Thought Partners on the following terms:

- 100% program to be ramped down by 30^{th} Dec 2022
- Last day of operations by ThoughtPartners will be 30^{th} Dec 2022
- LE shall make payment of the monthly charges to Thought Partners accrued/payable as on 20th January 2023.

As far as the payment terms are concerned, we would like to clarify as under:

1. For the monthly charges/expenses/cost accrued/incurred for the period of 01st January 2023 to 20th January 2023, LE shall make payment on or before 28th January 2023.
2. No amount either towards services rendered, expenses/costs etc. shall be paid for any expense/cost incurred or services rendered by Thought Partners to LE after 20th January 2023.
3. Invoices raised till date for the month of November 2022, shall be paid on or before 31st December 2022;
4. All invoices for December 2022 shall be raised by 31st December 2022 and shall be payable to you by 07th January 2023;

Further, kindly explain as to what do you mean by reverse transition by 31st December 2022?

Kindly acknowledge the aforementioned terms, and provide the necessary clarifications as a response to this email.

On Thu, Dec 22, 2022 at 1:01 PM Vipul Wadhwa <vipul.wadhwa@leverageedu.com> wrote:

> Hi Anand,
>
> We are reviewing this internally and revert in due course of time.
>
> On Thu, 22 Dec 2022, 12:32 Anand Verma, <anand.verma@thoughtpartnersglobal.in> wrote:
>
>> Hi Aditya/Jatin,
>>
>> Please acknowledge the terms so that we can initiate the ramp down related activities at our end
>>
>> Regards
>> Anand
>>
>> Get Outlook for iOS

15. The payment schedule was changed and the December 2022 payment was released on 18.01.2023 against agreed timeline of 07.01.2023.The January 2023 payment was released on 03.03.2023 against the agreed timeline of 28.01.2023.

16. After receipt of the payment, the petitioner wrote an email on 06.03.2023 stating that the settlement was out of undue coercion and by using the dominant position of the respondent.

17. In order to decide the petition for appointment of an arbitrator, I will have to decide the question whether *prima facie* it can be said that the email dated 21.12.2022 was written out of coercion and by using the dominant position of the respondent.

18. A perusal of the email shows that the petitioner agreed for termination of the LoI on the basis of payment terms. The said offer was accepted by the respondent on 22.12.2022.

19. From 22.12.2022 till 06.03.2024, there was no communication by the petitioner stating that the respondent coerced the petitioner or used its dominant position. The petitioner was only following up for the payment.

20. Once the petitioner received the entire payment (though belatedly), the petitioner sought to resile and invoked the arbitration clause. There is no communication by the petitioner refusing the payment.

21. In my view, the terms of the LoI stood superseded by the email dated 21.12.2022 accepted by the respondent on 22.12.2022. The same amounts to novation of the original contract by mutual consent.

22. The reliance on the judgement of "***Abdul Waseen & Anr"*** is misconceived. In that case, the Court observed that "*10. The very fact that the petitioner alleges that the retirement deed as well as the settlement deed has been executed by the petitioner without his free will and consent, is in itself an issue which needs to be adjudicated and therefore, the disputes between the parties need to be referred to the arbitration."* In the present case, the petitioner has alleged that the e-mail for terminating the contract was written under coercion. However,

after the alleged “coerced e-mail”, the petitioner has subsequently acted upon that e-mail and accepted payments from the respondents. The argument that the e-mail for termination of contract was under coercion, *prima facie,* does not inspire my confidence.

23. The reliance on the judgement of ***Knowledge Podium Systems Pvt. Ltd.*** (supra) is also misconceived. In that case, the Court was of the view that “29. *In the present case, in my opinion, as the facts noted above show, it cannot be prima facie said that there is a completely new contract and that the old registered Lease Deed dated 21.02.2017 read with the Maintenance Agreement of the same date have been novated and substituted by a completely new contract. The e-mail dated 15.10.2018 sent by the defendant merely agrees to reduction of rent. It does not specifically state that all the terms and conditions of the Lease Deed and the Maintenance Agreement stand superseded or novated. The issue would require deeper consideration and is best left to the arbitral tribunal to adjudicate upon.”* In the present case, it is not the case that only some terms and conditions of the contract were altered subsequently. The whole contract stood terminated on 22.12.2022 in toto, subject to certain payments. Hence, there can be no margin for confusion.

24. The judgement of “***Lata Construction***” (supra) is also not applicable in the present case. The Supreme Court held that:-

> *“11. In the instant case, the rights under the original contract were not given up as it was specifically provided in the subsequent contract that the rights under the old contract shall stand extinguished only on payment of the entire amount of Rs 9,51,000. Since the amount was not paid by the appellants as stipulated by the subsequent contract, the rights under the*

original contract were still available to the respondents and they could legally claim enforcement of those rights. Obviously, under the original contract, the appellants were under an obligation to provide a flat to the respondents. This right would come to an end only when the appellants had, in pursuance of the subsequent contract, paid the entire amount of Rs 9,51,000 to the respondents. Since they had not done so, the respondents could legally invoke the provisions of the earlier contract and claim before the Commission that there was "deficiency in service" on the part of the appellants."

25. In the present case, the termination of the contract was to take place on the payment of certain amounts, which were duly paid by the respondents (though belatedly). Hence, I am of the view that after the conditions of the e-mail dated 21.12.2022 have been satisfied, i.e, the respondents making the payments. The petitioner has also duly accepted the payments from the respondents and the LoI stood suspended and superseded by e-mails dated 21.12.2022 and 22.12.2022.

26. The petition is dismissed in the aforesaid terms.

27. In case the petitioner is aggrieved by the late payment and/ or has suffered some damages on account of the late payment, the petitioner is at liberty to avail of the appropriate legal proceedings which, in my view, is not the present petition under Section 11 of the Arbitration and Conciliation Act, 1996.

JASMEET SINGH, J

APRIL 9, 2024 / (MS)