IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 152 OF 2024

Vendiman Pvt. Ltd.	...Applicant
Versus	
Sandeep Banerjee	...Respondent

AND

ARBITRATION PETITION (L) NO. 25529 OF 2024

Sandeep Banerjee	...Applicant
Versus	
Vendiman Pvt. Ltd.	...Respondent

Mr. Amey Nargolkar, *a/w Aishwarya Teli, Akshata Jadhav, i/b Agram Legal Consultants, for Applicant in ARBAP/152/2024 & for Respondent in ARBPL/25529/2024.*

Mr. Ashish Kamat, *a/w Charles De Souza, Manaswi Agarwal, Shantanu Ray & Salomi Kalwade, i/b Shantanu Ray, for Respondent in ARBAP/152/2024 & for Applicant in ARBPL/25529/2024.*

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : JANUARY 16, 2025

PC :

1. Arbitration Application No.152 of 2024 is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 ("***the Act***") filed by Vendiman Ltd. ("***<u>Vendiman</u>***"), seeking appointment of an arbitrator to adjudicate disputes and differences in connection with an

agreement dated May 28, 2021 between the parties to this Application, and a set of promoters of Vendiman.

2. Arbitration Petition (L) No.25529 of 2024 is a Petition under Section 9 of the Act filed by Mr. Sandeep Banerjee ("***Banerjee***"), who is a Respondent in the Application under Section 11 referred to above.

<u>Section 11 Application:</u>

3. The material on record is clear that the parties have serious disputes and differences among them, all of which emanate from the aforesaid agreement dated May 28, 2021 and contemporaneously executed agreements. The existence of the arbitration agreement is not disputed. The existence of disputes and differences between the parties is writ large on the face of the record. Consequently, this Application deserves to be allowed by appointing an arbitral tribunal as prayed for, leaving all issues on merits to be dealt with by the arbitral tribunal.

4. When a choice of arbitrator was put to the parties, Learned Counsel for the parties have jointly submitted that they have consensus on referring the disputes and differences between them to arbitration by Justice (Retd.) Akil Kureshi, a former Chief Justice of Rajasthan and

Tripura High Courts, and a former judge of this Court. Consequently, Arbitration Application No.152 of 2024 under Section 11 is hereby finally disposed of directing the parties to approach the Learned Sole Arbitrator hereby appointed, who shall adjudicate all disputes and differences between the parties in connection with the agreement dated May 28, 2021, and any ancillary and contemporaneously executed and connected agreements governed by the arbitration clause contained therein, and covered by the Section 11 Application.

Section 9 Petition:

5. The issue left for consideration is what equitable interlocutory arrangements are to be made, pending the disputes being adjudicated by the Learned Sole Arbitrator. Ideally, a Petition under Section 9 ought to be referred to the Learned Sole Arbitrator, and to be treated as an Application under Section 17 of the Act, and leaving it to the Learned Sole Arbitrator to make appropriate interlocutory arrangements among the parties best suited for a fair and effective adjudication of the dispute.

6. In a nutshell, Learned Counsel on behalf of Banerjee submits that he has a right to recover over Rs.2.2 Crores towards committed

salary that was payable to him in the sum of Rs.8 Lakhs per month, which right he had voluntarily deferred, with a right to demand that such deferment be stopped. His submission is that such deferment of his salary was only to aid the cash flows of the company Vendiman, and effective March 30, 2023, he had taken a decision not to defer the salary any further. The parties have had serious disputes and differences from around this time. Learned Counsel for Vendiman submits that there are serious allegations about the manner of conduct of Vendiman's operations by Banerjee. There are counter-claims from Vendiman against Banerjee too.

7. There is one other facet of the disputes between the parties, namely, ownership of 10% of the equity share capital of Vendiman which was contracted to be issued to Banerjee, under the aforesaid agreement, by way of employee stock options. It is common ground that all the employee stock options granted to Banerjee had vested in him and he is entitled to exercise them. Banerjee's contention is that he has ten more years of exercise period left during which he may exercise such options. Learned Counsel for Vendiman submits that a "Liquidity Event" as defined in the documentation governing the stock options has taken place, and that entitles Vendiman to accelerate the exercise of the options to one month from the date on which the Liquidity Event takes

place.

8. Having perused the record with the assistance of both Counsels, it is apparent that the term “Liquidity Event” is defined as an event by which those in complete ownership of Vendiman get diluted to 50% or lower of the ownership. Multiple forms of “change in control” provisoins (conventional clause in the case of accelerated exercise of employee stock options) have been contracted by the parties. It is seen from the record that on July 26, 2024, Vendiman wrote to Banerjee intimating him that a Liquidity Event has taken place, and that he has 30 more days to exercise his stock options (instead of the residual ten years) and pay the exercise price to get the share that he would be entitled to. Such accelerated exercise would have resulted in Mr. Banjerjee having to pay the exercise price towards these shares no later than August 25, 2024. This is hotly contested on behalf of Banerjee, on the premise that there is no clarity as to the means by which the Liquidity Event clause is being invoked.

9. Learned Counsel for Vendiman submits that the basis of stating that the Liquidity Event has taken place, is the contracting of a new investment by a investor, which would result in owners of 100% of the equity capital of Vendiman being diluted to about 30% of its capital

upon completion of their investment. He submits that a substantial part of the investment has already been effected and the final definitive documents are anticipated to be executed by the end of this month, at which time, the dilution of the erstwhile 100 % owners will come down to below 50%. Therefore, the Liquidity Event had indeed occurred, according to him.

10. Indeed, both parties have much to say about how to interpret the term "Liquidity Event" too, and that would require an examination of the material on the record, which is in the domain of the Learned Sole Arbitrator hereby appointed. The claims and counter-claims on funds payable to, and claimed from, Banerjee, too would need to be adjudicated.

Interlocutory Measures:

11. At this stage of the matter, purely to adjust and balance the equities between the parties, even while they present themselves to the Arbitral Tribunal, it is made clear that Vendiman shall separately open and earmark a fixed deposit for a sum of Rs.2 Crores and mark a lien in favour of the Prothonotary and Senior Master of this Court over such fixed deposit in accordance with applicable rules. Such fixed deposit

shall be created no later than January 31, 2025 and the Prothonotary and Senior Master shall be approached for marking a lien on the fixed deposit, which shall abide by the outcome of the proceedings before the arbitral tribunal.

12. As regards the Liquidity Event, until January 31, 2024, it is made clear that the acceleration effected by letter dated July 26, 2024 would stand suspended. The parties would be at liberty to approach the Learned Sole Arbitrator hereby appointed to make appropriate arrangements for balancing equities, which may include securing the amounts that are payable by Banerjee towards the exercise price, and ensuring allotment of the 10% equity shares that ought to be given to him for such consideration. The Learned Sole Arbitrator may impose such conditions and arrangements as he may consider to be fair and proper in the circumstances of the case. However, it is made clear that since the Liquidity Event is taking place, the valuation and the size of 10% ownership of Banerjee would be on a "pre-money basis" i.e. the value and size of Vendiman's share capital before the current infusion of money by the new incoming investor, and not the value and size of Vendiman's capital, obtaining after the infusion of this round of funding (which is the cause of the Liquidity Event).

13. All facets of the merits of the matter are left open to the Learned Sole Arbitrator to adjudicate, both the Application under Section 11, and the Petition under Section 9 are hereby finally disposed of.

14. The parties may approach the Learned Sole Arbitrator at the earliest, at a time convenient to him before January 31, 2025. The contents of the Section 9 Petition shall be treated as an Application under Section 17 of the Act.

15. Needless to say, each party would be at liberty to seek from the Learned Sole Arbitrator, such appropriate interlocutory arrangements that it would require to balance equities during the conduct of the arbitral proceedings. With these directions, both these proceedings are finally disposed of. Needless to say, any Interim Application in either of the Petitions would also stand ***finally disposed of.***

16. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]