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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 04-02-2026

ORDER PRONOUNCED ON : 06-02-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

Arb O.P. (COM.DIV.) No. 413 of 2023

P.Santhosh, presently residing at Flat No.10,
Brook House, 60-62, Northbrook Street, Newbury,
Berkshire, Rep.by his power agent, L.Palavesh,
residing at Swastika illam 515, Rajaran Street,
Chandrapuram 3 ward, Kolapakkam Post,
Onaimanchery, Chennai 600 048

..Petitioner(s)

Vs

J.Kishore
S/o. S.Janakiraman,
No.20/43, Ranga Lane, Dr.Ranga Rao Road,
Mylapore, Chennai 600 004

..Respondent(s)

PRAYER: This Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, to (i) set aside the Award dated 01.10.22 passed by the Sole Arbitrator in its entirety and ii) direct the respondent to pay the costs.



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For Petitioner(s): Ms. R.S. Pornima
for M/s.Preeti Mohan

For Respondent(s): Mr. Vijayan Subramanian

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ORDER

The petitioner has assailed the Award passed by the sole Arbitrator dated 01.10.2022 by filing the present petition under Section 34 of the Arbitration and Conciliation Act, 1996, (for brevity, hereinafter referred to “the Act”).

2. The brief facts are as follows: The respondent was the claimant before the Arbitral Tribunal. The case of the respondent is that the petitioner approached the respondent and represented that he is an expert in the field of software technology. On the basis of the representation, both of them incorporated a company under the name of “**IDEO MIND PRIVATE LIMITED**”. The further case of the claimant is that both parties contributed a sum of Rs.50,000/- and each was holding 50% shares and the company commenced business in March, 2017.



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3. The parties entered into a Memorandum of Understanding dated 21.07.2017, whereby the claimant had invested a sum Rs. 50,00,000/- as a loan to the company. It was represented by the petitioner that he will carry forward the business in the name of ***“IDEO MIND PRIVATE LIMITED”*** and shall not carry on or solicit any business in the existing companies, or act as a consultant, advisor, director, employee, shareholder, etc., in any other company, either directly or indirectly, and that the petitioner will step down as an Active Director from all the existing companies from the effective date ending on 31.10.2017. The petitioner also agreed and undertook that at no point of time during which the petitioner is a shareholder in the company and for a period of two years thereafter, engage with any person or company in any capacity without the written approval of the claimant.

4. The claimant, representing the company, agreed to compensate the petitioner a sum of Rs.25,00,000/- towards the non-compete clause, and out of this amount, a sum of Rs.10,00,000/- was paid by way of cheque.

5. There was misunderstanding between the claimant and the petitioner and to put a quietus to the dispute, the parties entered into a Memorandum of



Understanding dated 14.09.2017, which is more in the nature of a settlement agreement. As per this agreement, the petitioner agreed to pay a sum of Rs.50,00,000/- to the claimant from the revenue generated through the live and pending projects of the company. In case, the payments generated from the pending projects did not cover the repayment within the stipulated period, the petitioner will mobilise the amount in his personal capacity and comply with the obligation prescribed under this agreement. On payment of the settlement amount, the parties agreed to take steps to wind up the company and the claimant also agreed to ease the non-compete clause so as to enable the petitioner to pay the settlement amount expeditiously.

6. The further case of the claimant is that as per the settlement agreement, the amount of Rs.50,00,000/- was agreed to be paid in six instalments and the agreement also contemplated granting grace period of two months upon written consent given by the claimant.

7. Pursuant to the above agreement, it is the case of the claimant that a sum of Rs.14,00,000/- was paid by the petitioner during the month of December, 2018. Thereafter, the petitioner refused to pay the balance amount. Under these circumstances, arbitration proceedings were initiated, a Sole



Arbitrator was appointed, and the respondent/claimant filed a claim petition by making a claim of Rs.51,12,000/-.

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8. The petitioner filed a statement of defence and took a stand that the Memorandum of Understanding dated 14.09.2017 was a document that was forced to be signed by the petitioner under duress. The petitioner took a further defence that the claimant did not establish investing a sum of Rs.50,00,000/- and the petitioner *bona fidely* repaid back a sum of Rs.10,00,000/- received at the time of execution of the first Memorandum of Understanding dated 21.07.2017 with interest and that a total sum of Rs.14,00,000/- was paid. Thus, the petitioner denied the entire claim made by the respondent and sought for rejection of the claim.

9. The sole Arbitrator, on considering the pleadings, framed the following issues for consideration:-

1. Whether this arbitral proceeding is bad for Non-joinder of necessary party namely IDEO MIND PRIVATE LIMITED?

2. Whether the respondent was coerced into signing the Memorandum of Understanding dated 14.09.2017?

3. Whether the respondent paid a sum of Rs.14,00,000/- pursuant to the terms of the Memorandum of Understanding dated 14.09.2017?



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4. Whether the respondent is liable to pay a sum of Rs.36,00,000/- as claimed by the claimant?

5. Whether the claimant is entitled to claim interest at the rate of 24% per annum since March 2018?

6. To what other relief are the parties entitled to?

7. Whether the respondent agreed to pay the settlement amount of Rs.50,00,000/- in his personal capacity to the claimant, as per the Memorandum of Understanding dated 14.09.2017?

8. Whether the claimant was invested a sum of Rs.50,00,000/- by way of loan to the Company “IDEO MIND PRIVATE LIMITED” as under the Memorandum of Understanding dated 21.07.2017?

10. The claimant examined C.W.1 and Exs.C1 to C32 were marked. The petitioner examined R.W.1 and Exs. R1 and R2 were marked.

11. The Sole Arbitrator upon considering the facts and circumstances of the case and on appreciation of evidence, allowed the claim and awarded a sum of Rs.36,00,000/- together with simple interest at the rate of 6% per annum from 14.03.2018 till 29.12.2020, payable by the petitioner to the respondent/claimant. The Sole Arbitrator also awarded costs. Aggrieved by the same, the present petition has been filed before this Court.



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12. Heard Ms. R.S. Pornima for M/s.Preeti Mohan, learned counsel for the petitioner and Mr. Vijayan Subramanian, learned counsel for the respondent.

13. The primary contention that was put forth by the learned counsel for the petitioner is that the claimant did not establish before the Tribunal investing a sum of Rs. 50,00,000/- in the name of the company and consequently, there was no liability on the part of the petitioner except a sum of Rs.10,00,000/- that was received from the claimant, which was repaid with interest totalling a sum of Rs.14,00,000/-.

14. The other ground raised by the learned counsel for the petitioner is that the Memorandum of Understanding dated 14.09.2017 styled as a Settlement Agreement is *non est* in the eye of law, since this document was forced to be signed by the petitioner under duress.



15. The sole Arbitrator dealt with the above issues and held that the petitioner did not discharge the burden of proof with respect to the allegation of coercion in signing the Memorandum of Understanding dated 14.09.2017.

16. The learned counsel for the petitioner laid great emphasis on the email communication exchanged between the parties, which was marked as Ex.R2. It was submitted that the language that was employed by the claimant in the email dated 18.09.2017, will establish that the petitioner was under duress.

17. The learned counsel for the petitioner pointed out that the words *“If I dont receive money on time, I will send my collection agents to collect money in whatever way possible”*. The learned counsel for the claimant elaborately read the cross-examination of the petitioner on this issue. It was submitted that during the cross-examination, the petitioner came up with a new case as if both the Memorandum of Understanding dated 21.07.2017 and 14.09.2017 were signed under coercion. The learned counsel submitted that if the Memorandum of Understanding dated 21.07.2017 was signed under coercion, it defies logic, since the petitioner received a sum of Rs.10,00,000/- under this agreement and that is an undisputed fact. Therefore, it was contended that such defence was



raised by the petitioner without any substance and the same has been rightly rejected by the Sole Arbitrator.

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18. The sole Arbitrator, upon appreciation of evidence, has held that the petitioner did not discharge the burden of proof since it was alleged by the petitioner that the Memorandum of Understanding was signed under duress. The sole Arbitrator held that in the reply email marked as Ex.R2, the petitioner did not even state that the signature was obtained in the Memorandum of Understanding by coercing the petitioner. Apart from that, the petitioner being an educated person, as a reasonable prudent man, would have at least lodged a complaint to the police and this normal human conduct was not exhibited on the side of the petitioner and therefore, this aspect was also put against the petitioner. The sole Arbitrator further held that except for the *ipse dixit* of the petitioner, there was no scrap of material available to conclude that the second Memorandum of Understanding, which was the Settlement Agreement, was signed by the petitioner under coercion.

19. A careful reading of the cross-examination of the petitioner shows that the petitioner came up with a completely different version during the cross-examination as if both the Memorandum of Understandings were signed under



coercion. The petitioner also admitted the fact that he received a sum of Rs.10,00,000/- at the time of execution of the first Memorandum dated 21.07.2017. This shows the vacillating mind of the petitioner, who has chosen to sing a different song at the time of deposing before the Sole Arbitrator than what was pleaded while filing the statement of defence.

20. The above findings were rendered by the Sole Arbitrator while dealing with Issue No.2 upon appreciation of evidence. It is certainly a possible and reasonable view and therefore, this Court cannot exercise its jurisdiction under Section 34 of the Act. Just because another view is possible on the very same set of evidence. Certainly the findings of the Sole Arbitrator does not suffer from perversity or patent illegality.

21. The next issue pertains to the investment of a sum of Rs.50,00,000/- by the claimant when the company was formed and which fact was put to question by the petitioner.

22. The Sole Arbitrator while dealing with this issue in Issue Nos.3 and 8 took into consideration the fact that the petitioner was admitting the receipt of a sum of Rs.10,00,000/- from the claimant and whereas, he was denying the



investment of a sum of Rs.50,00,000/- made by the claimant as a loan to the company. The Sole Arbitrator held that the petitioner cannot deny one portion of the Memorandum of Understanding dealing with investment made by the claimant and in the same breath, admit the receipt of Rs.10,00,000/- paid by the respondent. Therefore, the stand taken by the petitioner as if the respondent had never made any investment by way of loan to the company came to be rejected.

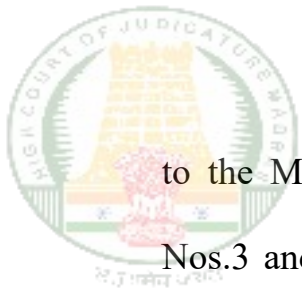
23. Apart from that above, the Sole Arbitrator also took into consideration the subsequent Memorandum of Understanding dated 14.09.2017, wherein the petitioner agreed to pay a sum of Rs.50,00,000/- to the claimant in six instalments and pursuant to the same, a sum of Rs.14,00,000/- was transferred by the petitioner to the claimant during the month of December, 2018. The Sole Arbitrator found that if the petitioner had chosen to transfer a sum of Rs.14,00,000/- pursuant to the Memorandum of Understanding dated 14.09.2017, the petitioner cannot be permitted to turn around and take a stand that the claimant did not invest a sum of Rs.50,00,000/- by way of a loan to the company.



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24. The petitioner is attempting to give an explanation as if a sum of Rs.14,00,000/- transferred during December, 2018, was towards a sum of Rs.10,00,000/- received, when the Memorandum of Understanding dated 21.07.2017 was executed added with interest of Rs.4,00,000/-. The petitioner for the first time, was attempting to come with the explanation at the time of filing the statement of defence. If really the petitioner was threatened and was made to sign the Memorandum of Understanding dated 14.09.2017 and the petitioner was only intending to repay back a sum of Rs.14,00,000/- towards what was received by the petitioner along with interest, as a prudent man, the petitioner would have at least sent a communication to the respondent in writing to that effect. If the petitioner had taken such a stand at the earliest point of time and explained the situation and the circumstances under which a sum of Rs.14,00,000/- was paid, it would have lent some credence to the stand taken by the petitioner. Unfortunately, the petitioner had merely transferred a sum of Rs.14,00,000/- during the month of December, 2018, after entering into the second Memorandum of Understanding dated 14.09.2017.

25. The Sole Arbitrator, upon appreciation of evidence, came to the conclusion that the claimant had invested a sum of Rs.50,00,000/- as a loan to the company and that the petitioner had paid a sum of Rs.14,00,000/- pursuant



to the Memorandum of Understanding dated 14.09.2017. Accordingly, Issue Nos.3 and 8 were answered. The findings rendered by the Sole Arbitrator are supported by reasons and it does not suffer from perversity or patent illegality.

26. Insofar as other issues before the Sole Arbitrator are concerned, the Sole Arbitrator has given sufficient reasons and has fixed a very reasonable rate of interest of 6% per annum from 14.03.2018 till the date of the claim petition. The costs awarded by the sole Arbitrator is also very reasonable.

27. In the light of the above discussions, this Court finds that the Award passed by the sole Arbitrator does not fall foul of any of the pigeonholes available under Section 34 of the Arbitration and Conciliation Act, 1996. Accordingly, the Award dated 01.10.2022 is upheld and the present petition is dismissed with costs of a sum of Rs.1,00,000/- (Rupees One Lakh only), payable by the petitioner to the respondent.

06-02-2026

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No

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N. ANAND VENKATESH, J.

Asi

To

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Mylapore, Chennai 600 004.

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