



CMP No. 290 of 2021

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 11<sup>TH</sup> DAY OF AUGUST, 2022**



**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**CIVIL MISC. PETITION NO. 290 OF 2021**

**BETWEEN:**

MINIONS VENTURES PRIVATE LIMITED  
A COMPANY REGISTERED UNDER THE  
INDIAN COMPANIES ACT, 2013  
HAVING ITS REGISTERED OFFICE AT  
WING A GROUND FLOOR OFFICE-1  
BLOCK A, SALAPURIA SOFTZONE  
BELLANDUR VILLAGE, VARTHUR HOBLI  
BANGALORE-560103  
REP. BY AUTHORISED REPRESENTATIVE  
MANISH KUMAR

...PETITIONER

(BY SFI. GURU PRASANNA.S, ADVOCATE-PH)

**AND:**

1. MR. HARDIK SHAH  
R/O NO.401, GAYATRI  
JAYRAJNAGAR  
BORIVALI (WEST)  
MUMBAI-400091
2. MR. KUNAL TEKWANI  
R/O 9C, ROOM NO.403  
NEELAM NAGAR  
MULUND EAST  
MUMBAI-400081
3. M/S IKSHAVAKU SOFTWARE  
VENTURES INDIA PVT LTD

Digitally signed by  
POORNIMA  
SHIVANNA  
Location: HIGH  
COURT OF  
KARNATAKA



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905, PREMIER RESIDENCIES  
KIROL ROAD, KURLA (WEST)  
MUMBAI-400070  
THROUGH ITS AUTHORISED REPRESENTATIVE

4. MR. PATHIK PARESH SHAH  
9C, ROOM NO.403  
NEELAM NAGAR  
MULUND EAST  
MUMBAI-400081

... RESPONDENTS

(BY SRI. MURALIDHARA.C, ADVOCATE R1 TO R4)

THIS CMP IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT 1996, R/W CLAUSE 2 OF THE APPOINTMENT OF ARBITRATORS BY THE CHIEF JUSTICE OF KARNATAKA HIGH COURT SCHEME, 1996, PRAYING EXERCISE THE POWER UNDER SECTION 11 OF THE ARBITRATION AND CONCILIATION ACT, 1996 AND APPOINT MR. I.S.ANTIN, RTD. DISTRICT JUDGE AS SOLE ARBITRATOR TO ADJUDICATE THE DISPUTES INVOLVED THAT HAS ARISEN BETWEEN THE PETITIONER COMPANY AND THE RESPONDENTS AS PER CLAUSE 14 OF ANNEXURE A DATED 10.04.2017 AND CLAUSE 14 OF ANNEXURE B DATED 13.10.2017 IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

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THIS CMP COMING ON FOR FURTHER HEARING AND HAVING BEEN RESERVED FOR ORDERS ON 29.07.2022, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

1. The petitioner is before this Court seeking for the following reliefs:



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- a. *Exercise the power under Section 11 of the Arbitration and Conciliation Act, 1996 and appoint Mr. I.S.Antin, Rtd. District Judge as Sole Arbitrator to adjudicate the disputes involved that has arisen between the Petitioner Company and the Respondents as per Clause 14 of Annexure A dated 10.04.2017 and Clause 14 of Annexure B dated 13.10.2017 in the interest of justice and equity.*
  - b. *Cost of the proceedings.*
  - c. *Grant such other reliefs as this Hon'ble Court deems fit to grant in the circumstances of the case, in the interest of justice and equity.*
2. The petitioner is a Company incorporated under the Companies Act, 2013 engaged in the business of operating an Online Technology Platform. The platform is an online marketplace for three kinds of parties viz., the sellers who have sold goods or provided services against an invoice to the customer, the second being the customer who has availed the goods/services from the sellers and is liable to pay the invoice amount to the sellers and the third being the financiers or the purchasers, who wish to purchase the right to receivables under the invoice from the sellers.



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3. Respondent No.1 is stated to be an ex-employee of the petitioner, who joined the employment of the petitioner as Senior Manager Business Development. It is contended that respondent No.1 had agreed to the terms and conditions of the Employment Agreement dated 10.04.2017. The said Employment Agreement is governed by an arbitration clause.
4. It is stated that the respondent No.2 is also an ex-employee of the petitioner, who joined the services as a Sales and Business Development Manager and an Employment Agreement dated 13.10.2017 came to be executed between the petitioner and the respondent No.2, which is governed by an arbitration clause in terms of Clause 15 thereof, which is reproduced hereunder for easy reference:

**"66. Arbitration:**

*You agree that the interpretation and enforcement of this Agreement shall be governed by the laws of India and all disputes under this Agreement shall be governed by the provisions of the Arbitration and Conciliation Act, 1996. The venue for arbitration will be Bangalore. The arbitration shall*



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*be conducted by a sole arbitrator appointed by the Company, and the award of the arbitration shall be final and binding upon you”.*

5. Respondent No.3 is stated to be a Private Limited Company incorporated in May 2018, who is also engaged in running an invoice discounting market place and lease rentals discounting business, which is identical to that of the petitioner.
6. Respondent No.4 is stated to be the brother of respondent No.1 and respondents No.1, 2 and 4 are the founders and Directors of respondent No.3-Company.
7. The petitioner was intended to start a non-banking financial company and as such, several meetings were held in which respondent No.1 had participated and thereby became a recipient of privileged confidential and sensitive information. After receipt of the information, respondent No.1 resigned from the employment without assigning any reason. At that time, respondent No.1 had consented to the



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terms of the Exit Agreement dated 09.05.2018 and the said Exit Agreement dealt with confidentiality of the information as also is covered by an arbitration clause.

8. Subsequently, some of the customers of the petitioner had informed the petitioner that respondent No.1 had approached the said customers offering to provide the same service as that provided by the petitioner at a lesser rate. It is after enquiry that the petitioner came to know of respondents No.1, 2 and 4 having formed respondent No.3- Company and the same being in violation of the Employment Agreement as also Exit Agreement. The petitioner has initiated proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 in Com.A.A.No.72/2019 and also issued a notice on 17.08.2019 nominated its arbitrator seeking for concurrence from the respondent.



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9. Respondents No.1 and 2 replied to the notice on 17.09.2019 and 01.10.2019 denying all claims made by the petitioner and called upon the petitioner to withdraw the notice. It is in that background that the petitioner is before this Court seeking for the aforesaid reliefs.
10. Upon service of notice, respondents have entered appearance and filed their respective Statement of Objections.
11. Respondent No.1 has contended that respondent No.1 has resigned from the employment with the petitioner company not for the reasons attributed by the petitioner but for certain other reasons viz., the manner in which the petitioner was carrying on its business. All other contentions and claims of the petitioners have been denied. It is contended that there is no arbitration agreement/clause which has been entered into between petitioner and respondent No.1. There is no privity of contract between the



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petitioner and respondent No.1 inasmuch the Employment Agreement has not been signed by the respondent No.1 so also is the contention as regards the Exit Agreement of respondent No.1.

12. Respondent No.2 has filed a separate Statement of Objections contending that the arbitration proposed to be initiated by the petitioner is in violation of Section 27 of the Indian Contract Act. Respondent No.2 does not have any proprietary or confidential information of the petitioner in its possession. Respondents No.1 and 4 had formed respondent No.3 – Company in which respondent No.2 joined at a later point of time.

13. The business model of respondent No.3 – Company is on the basis of the concept paper issued by the Reserve bank of India and there is no manner of copying resorted to by the respondents and as such, it is contended that the arbitration clause would not



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cover the dispute between the parties and as such, the application is required to be dismissed.

14. Respondents No.3 and 4 have together filed their objections contending that there is no agreement between the petitioner and respondents No.3 and 4 much less an arbitration agreement. The proceedings have been initiated against respondents No.3 and 4 only to cause losses to respondents No.3 and 4. The business model which has been adopted by respondent No.3 is a common business model and not that which can be said to be owned or created by the petitioner. There being no confidential information, as such the very allegation made by the petitioner not being maintainable, the petition is liable to be dismissed.

15. Sri.S.Guru Prasanna, learned counsel for the petitioner would submit that:



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15.1.The Employment Agreement contains an arbitration clause so does the Exit Agreement. Therefore, respondent No.1 is bound by the arbitration clause. As regards respondent No.2, he submits that the Employment Agreement is governed by an arbitration clause and as such, the present proceedings are maintainable against respondent No.2.

15.2.As regards respondents No.3 and 4, he submits that respondents No.1 and 2 along with respondent No.4 have joined together and formed a Company-respondent No.3 making use of the confidential information of the petitioner. The very formation of the Company is in violation of the terms and conditions of the Employment Agreement entered into an agreement between the petitioner and respondents No.1 and 2. Respondent No.4 having actively participated in the same, the



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violation of the agreement being also attributable to respondent No.4, the arbitration clause governing the relationship with respondents No.1 and 2 would also govern respondent No.4 and as such, respondent No.3 being the methodology through which the violations are sought to be committed, both the respondents No.3 and 4 would also be governed by the arbitration clause and the dispute being one and the same, the cause of action being the same, a single arbitrator can be appointed to arbitrate the dispute between the petitioner and the respondents No.1 to 4.

15.3. On enquiry, as to whether the Employment Agreement has been signed by the parties, he fairly submits that the Employment Agreement between the petitioner and respondent No.1 has not been signed. However, the agreement has been exchanged by emails.



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- 15.4. Time was granted to the counsel for the petitioner to produce the emails. Despite which, the petitioner has not been able to produce it. However, a statement is produced insofar as Exit Agreement between the petitioner and respondent No.1 is concerned to contend that the same is digitally signed. The said statement is not accompanied by a certificate in terms of Section 65B nor does the statement reflect the contentions urged by the learned counsel for the petitioner that the same is an electronic signature of the agreement.
- 15.5. As regards the Employment Agreement with respondent No.2, it is stated that the said agreement has been signed. In the above background, the matter may be referred to arbitration by appointing an arbitrator.
16. On the Statement of objections being filed, a rejoinder has been filed by the petitioner contending



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that there being an admission on part of the respondent No.1 that he was employed with the petitioner Company for over a year, respondent No.1 would be bound by the Arbitration clause contained in the Employment Agreement, he being aware of the standard terms and conditions of the Employment Agreement. It is further contended that respondent No.1 having received the salary and other benefits under the Employment Agreement cannot deny the existence and/or applicability of the Employment Agreement.

17. Respondent No.1 having received the benefits of Employee Stock Option Scheme cannot deny the contents of the Employment Agreement. Respondent No.1 having derived the benefits, respondent No.1 cannot now deny the arbitration clause since it is not beneficial to respondent No.1. The Exit Agreement has been digitally signed and the Document Completion Certificate has been produced which



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cannot be disputed and as such, the Exit Agreement would be binding on respondent No.1. On that ground, it is contended that the matter is required to be referred to arbitration.

18. Per contra, Sri.Harish Narasappa, learned Senior counsel appearing for all the respondents No.1 to 4 submits that there is a misjoinder of cause of action inasmuch as there is no appropriate clause governing the relationship between the petitioner and respondent No.1 as also that between respondent No.3 and 4 and the petitioner. The only arbitration clause if at all is that which exists in the agreement between the petitioner and respondent No.2 and as such if at all the petitioner intends to initiate any action for arbitration, it can only be initiated against respondent No.2 and not against the other respondents. He submits that on this ground itself, the petition is required to be dismissed.



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19. Heard Sri.S. Guru Prasanna, learned counsel for the petitioner and Sri.Harish Narasappa, learned Senior counsel for respondents No.1 to 4 and perused the papers.

20. The points that would arise for consideration are as under:-

**1) Whether there is an arbitration agreement in existence between the petitioner and each of the respondents?**

**2) Whether respondent Nos.3 and 4 would be governed by the arbitration clause allegedly contained in the employment agreement executed between the petitioner, respondent No.1 and respondent No.2?**

**3) Whether the matter is required to be referred to arbitration?**

**4) What order?**

21. I answer the above points as under:-

22. **Answer to Point No.1: Whether there is an arbitration agreement in existence between the petitioner and each of the respondents?**

**And**

**Answer to Point No.2: Whether respondent Nos.3 and 4 would be governed by the**



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**arbitration clause allegedly contained in the employment agreement executed between the petitioner, respondent No.1 and respondent No.2?**

22.1. Both the points being connected are answered together as under.

22.2. Admittedly, the alleged Employment Agreement between the petitioner and respondent No.1 has not been signed. The contention of the petitioner is that the agreement has been exchanged between the parties and respondent No.1 having derived the benefit under the said agreement, he cannot deny the applicability of the arbitration clause in the said agreement.

22.3. Section 7 of the Arbitration and Conciliation Act, 1996, which deals with the arbitration agreement is reproduced hereunder for easy reference:

**7. Arbitration agreement:**

*(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all*



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*or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*

*(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*

*(3) An arbitration agreement shall be in writing.*

*(4) An arbitration agreement is in writing if it is contained in;*

*(a) a document signed by the parties;*

*(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement;*

*or*

*(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.*

*(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.*

22.4. A perusal of the above provision would indicate that an arbitration agreement has to be in writing. It could be signed by the parties or it could come into existence by parties having exchanged the same electronically or otherwise,



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thereby meaning that the same is not essentially required to be signed by the parties.

22.5. In the present case, the Employment Agreement produced by the petitioner does indeed have an arbitration clause, but has not been signed. However, despite opportunities having been granted to the petitioner, the petitioner has been unable to produce any document to establish exchange of Employment Agreement between the petitioner and respondent No.1 which could signify and/or indicate the consent on part of respondent No.1 to the arbitration clause during the course of exchange. Thus, I am of the considered opinion that the existence of an Arbitration agreement between the petitioner and respondent No.1 under the Employment Agreement has not been established.



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22.6. The other contention is that there is an arbitration clause in the Exit Agreement between the petitioner and respondent No.2. Again this agreement is also not physically signed by respondent No.1. What is contended is that there is a digital signature to the said document in terms of the Document Completion Certificate vide Annexure-P to the Rejoinder which has been filed.

22.7. Having perused the said Annexure-P, the only reference that could be made in the said document is as regards to respondent No.1's Exit Agreement. The signature type is stated to be E-signature and IP address given is common to all the three of the signatures found mentioned in the document. The said document does not in any manner indicate exchange of the Exit Agreement by way of an email and/or digital signature thereof. Even the



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E-signature that is sought to be contended is not established by the said document. Thus, I am of the considered opinion that even execution of the Exit Agreement has not been *exfacie* established before this Court. Thus, there is no arbitration agreement either under the Employment Agreement or Exit Agreement which has been established.

22.8. As regards respondent No.2, there is no dispute as regards the Employment Agreement being executed and containing an arbitration clause.

22.9. As regards respondents No.3 and 4, what is sought to be contended is because respondent No.4 is the brother of respondent No.1 and respondents No.1 and 4 had joined together to form respondent No.3 - Company, the arbitration agreement between the petitioner and respondent No.1 would govern respondent No.3 and 4 also. Similarly, it is contended that



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the arbitration agreement/clause between petitioner and respondent No.2 would also govern respondent No.3 and 4 also.

22.10.As I have come to a conclusion that there is no Arbitration Agreement between Petitioner and Respondent No.1, the question of by implication the same binding Respondent No.4 and then Respondent No.3 would not arise.

22.11.I Answer point no.1 by holding that there is an arbitration agreement in existence between the petitioner and respondent No.2, there is no arbitration agreement in existence between the petitioner on the one hand and respondents No.1, 3 or 4 either jointly or severally.

**23. Answer to Point No.3: Whether the matter is required to be referred to arbitration?**

23.1. The dispute between the petitioner on the one hand and Respondents on the other is one and the same. The cause of action for the petitioner



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is also one and the same in as much as the allegation is that Respondent no.3 company has been created to do the same business as that of the petitioner by using the confidential information of the Petitioner.

23.2. The dispute in the present case is as regards breach and not as regards performance and that the breach has been committed through a third party.

23.3. In the present case, the arbitration agreement between the petitioner and respondent No.1 not having been proven, the question of referring the dispute between Petitioner and Respondent No.1 to arbitration would not at all arise. It is not that the petitioner is remediless, the petitioner can initiate any other action against respondent No.1 as available. Similar would be the situation as regards Respondents no.3 and 4.



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23.4. In the above background I am of the considered opinion that the cause of action in so far as Respondent No.2 which is governed by an Arbitration clause cannot be split and there would be no purpose served by only referring the dispute of the Petitioner with Respondent No.2 to Arbitration, by taking into consideration the dicta of the Hon'ble Apex court in ***Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya and Ors., (2003) 5 SCC 351.***

**24. Answer to Point No.4: What Order?**

24.1. Applying the decision of the Hon'ble Apex Court in the case of ***Sukanya Holdings (P) Ltd. vs. Jayesh H. Pandya & Anr*** reported in ***(2003) 5 SCC 531***, there cannot be splitting of causes of action one between the civil suit and the other arbitral proceedings. Hence, the dispute alleged by the petitioner against the



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respondents cannot be split and referred to arbitration under these proceedings.

24.2. It is not that the petitioner is remediless. If the arbitration clause would not apply, the petitioner would be entitled to initiate civil proceedings and/or criminal proceedings as against the respondents. Thus, the arbitration being a special remedy which can be created only under a contract, the same not having been created and come into being the remedy of the petitioner is only by way of ordinary civil and/or criminal remedies. As such, I pass the following:

**ORDER**

The petition stands dismissed.

**Sd/-  
JUDGE**

Prs\*