

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE R DEVDAS

CIVIL MISC. PETITION NO. 77 OF 2023

BETWEEN:

J K TECHNOSOFT LIMITED
INCORPORATED UNDER
THE COMPANIES ACT 2013
BEARING CIN-U64202DL1988PLC030870
REGISTERED OFFICE AT A-2,
SHOPPING COMPLEX, MASJID MOTH, GK-II,
NEW DELHI 110048
REPRESENTED BY MR.SANJEEV SINGH BHARWAN
email Id. saiyad.amir @ ktech.com

...PETITIONER

(BY SRI. ANIRUDH SURESH, & SRI. AYUSH G, ADVOCATES)

AND:

UNIKUL SOLUTIONS PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT OF 1956
BEARING CIN U72200R2009PTC011230
R/O 62/63, 6TH CROSS,
VENKATADRI LAYOUT, JP NAGAR 4TH PHASE
BANGALORE-560078
email Id. pulak unikul.com

...RESPONDENT

(RESPONDENT SERVED – UNREPRESENTED)

Digitally signed
by JUANITA
THEJESWINI
Location: HIGH
COURT OF
KARNATAKA

LEGAL MEDIA GROUP

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THIS CIVIL MISCELLANEOUS PETITION IS FILED UNDER SEC.11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING THIS HONBLE COURT TO EXERCISE ITS JURISDICTION AND POWER UNDER SECTION 11(6) OF THE ARBITRATION CONCILIATION ACT, 1996 AND APPOINT A SECOND ARBITRATOR, WHO OUGHT TO HAVE BEEN APPOINTED BY THE RESPONDENT, TO ADJUDICATE AND RESOLVE ALL THE DISPUTES THAT HAVE ARISEN IN TERMS OF CLAUSE 11 OF SERVICES AGREEMENTS DATED 02.12.2016 AND 11.03.2020 ATTACHED HEREWITH AS ANNEXURE E AND ANNEXURE G AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

R.DEVDAS J., (ORAL):

This Civil Miscellaneous Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the Act' for short) seeking appointment of a sole Arbitrator in terms of the arbitration Clause contained in the Service Agreements dated 02.12.2016 and 11.03.2020 at Annexures-E and G.

2. The parties herein entered into a Service Agreement dated 11.03.2020, wherein the petitioner herein is the service provider and the respondent is the receiver of the services provided by the petitioner. It is not disputed that earlier too, the parties had entered into a service agreement on 02.12.2016. The petitioner had raised several demands, calling upon the respondent to pay the outstanding amount that was required to be paid in terms of the agreement. Replies were also given by the respondent denying the claim made by the petitioner. Therefore, the petitioner invoked the arbitration clause contained in Clause 11.1 of the Service Agreement and nominated three learned Counsels and called upon the respondent to agree for the appointment of one of such learned Counsels as arbitrator to resolve the dispute that arose between the parties. Learned Counsel for the petitioner submits that although the respondent received the arbitration notice, they have not come forward for arbitration and therefore, the petitioner is before this Court.

3. Though notice is served on the respondent, there is no representation for the respondent.

4. During the course of these proceedings, this Court found that the Service Agreement, whether it is of the year 2016 and 2020, is it not signed by the respondent. It is also not clear as to whether the document produced before this Court is the original or whether the original is with the respondent. Be that as it may, in view of the latest judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of ***M/s. N.N.Global Mercantile Private Limited Vs. M/s. Indo Unique Flame Ltd., and Others*** reported in ***2023 SCC OnLine SC 495***, wherein it was directed that it shall be the duty of the courts considering an application filed under Section 11 to consider as to whether the document on which the parties have placed reliance is sufficiently stamped or not. The earlier view that the said exercise can be undertaken by the arbitrator has been reversed and it has been directed that the courts considering an application under Section 11

shall undertake such exercise. In that view of the matter, when the learned Counsel for the petitioner was called upon to answer as to whether the service agreement in question is duly stamped, the learned Counsel admits that it is not written on any stamp paper. However, the learned Counsel sought to contend that since the agreement is not signed by the respondent, it cannot be construed as an instrument which would attract stamp duty.

5. Learned Counsel had also submitted that even if a contract is not signed by one of the parties or both the parties it can still be a construed as contract and the Hon'ble Supreme Court has also clarified in the judgment ***N.N.Global***, (*supra*) regarding this aspect of the matter.

6. Insofar as the second limb of the argument of the learned Counsel for the petitioner regarding the acceptance of a document as a contract, even if it is not signed by one of the parties or either of the parties, is accepted, since the position of law in that regard has been

clarified by the Hon'ble Supreme Court, in **N.N.Global**. It has been held that having regard to Section 7 of the Arbitration and Conciliation Act, 1996, it can be safely concluded that an arbitration agreement even though in writing need not be signed by the parties, if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunications. Section 10 of the Contract Act recognises oral agreements and that a written agreement is a *sine qua non* for a valid arbitration agreement. Section 10 of the Contract Act, it must be noticed, in the second part, provides that nothing contained in the first part, would affect any law, which, *inter alia*, requires that any contract is required to be made in writing. Section 7(3) of the Act which insists that an arbitration agreement must be in writing harmonises with Section 10 of the Contract Act.

7. However, it was also held that whenever an arbitration agreement, as defined in Section 7 of the Arbitration Act, also attracts stamp duty under the Stamp

Act, then, the provisions of Sections 33 and 35 of the Stamp Act would come into play. This explanation found in paragraph No.91 of the judgment in ***N.N.Global***, clearly explains that although a contract is not signed by the parties, but it is in writing, such a document can be accepted as a contract between the parties. However, wherever such documents attract stamp duty under the provisions of the Stamp Act, then the provisions of Sections 33 and 35 of the Stamp Act would get attracted.

8. When a question was posed to the learned Counsel for the petitioner as to whether the service agreement sought to be relied upon by the petitioner is a document which would attract the stamp duty or not, the learned Counsel fairly submits that such a service agreement would attract stamp duty. However, it is sought to be contended that since the respondent has not signed to the document, it would not attract stamp duty. This argument of the learned Counsel for the petitioner

cannot be accepted, since the position has been clarified in paragraphs No.90 and 91 of the decision in ***N.N.Global***.

9. At this juncture, learned Counsel for the petitioner submits that the two documents produced at Annexures-E and G, are not the originals. In fact the petitioner has filed I.A.No.1/2023 seeking dispensation of production of the originals of the two service agreements and at the same time the petitioner has also filed I.A.No.2/2023 under Order XI Rule 12 read with Section 151 of the CPC to direct the respondent to produce the originals of the service agreements dated 02.12.2016 and 11.03.2020 at Annexures-E and G. That being the position, the question of impounding the two documents since they are only photo copies, would not arise. Having this in mind, the learned Counsel prays that the matter may be referred to arbitration. As and when the respondent produces the original documents, only then the question of the consideration regarding impounding of the documents on the ground they are insufficiently stamped would arise.

10. Accepting the submissions of the learned Counsel for the petitioner, this Court proceeds to pass the following:

ORDER

- (a) The Civil Miscellaneous Petition is ***allowed*** appointing Shri. H.M.Nanjundaswamy, retired District Judge as the sole arbitrator to enter reference of the disputes between the petitioner and the respondent and conduct proceedings at the Arbitration and Conciliation Centre (Domestic and International), Bengaluru according to the Rules governing the said Arbitration Centre.
- (b) All contentions *inter se* parties are left open for adjudication in the arbitration proceedings.



- (c) The office is directed to communicate this order to the Arbitration and Conciliation Centre and to Shri.H.M.Nanjundaswamy, retired District Judge, as required under the Arbitration and Conciliation Centre Rules, 2012.

11. In view of disposal of the main petition, pending I.As., do not survive of consideration and are accordingly disposed of.



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**Sd/-
JUDGE**