



**CMP No. 565 of 2021**

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

**DATED THIS THE 6<sup>TH</sup> DAY OF JULY, 2022**

**BEFORE**

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

**CIVIL MISC. PETITION NO.565 OF 2021**

**BETWEEN:**

M/S BESTPAY SOLUTIONS PRIVATE LIMITED  
REPRESENTED THROUGH ITS  
MANAGING DIRECTOR MR. SUSHIL  
HAVING ITS REGD. OFFICE AT  
3RD H-318 PLOT NO.H-7  
CENTRAL WAZIR PUR, NETAJI SUBHASH PLACE  
PITAMPURA, DELHI 110 034

ALSO AT:  
530, UDYOG VIHAR, PHASE-5, GURUGRAM  
HARYAYA-122016.

...PETITIONER

(BY SRI. LALITH BESOYA, ADVOCATE FOR  
MS. EKTA PRADHAN., ADVOCATE AND  
MS. MEHAK KATRA, ADVOCATE)

**AND:**

M/S RAZORPAY SOFTWARE PRIVATE LIMITED  
REPRESENTED THROUGH ITS  
AUTORISED SIGNATORY  
MR ATUL MEHTA SENIOR VP-SALES  
HAVING ITS REGD. OFFICE AT  
1ST FLOOR, SJR CYBER  
22 LASKER HOSUR ROAD  
ADUGODI, BANGALORE-560 030  
KARNATAKA.

...RESPONDENT

(BY SRI. VIKAS MAHENDRA .,ADVOCATE FOR  
SRI. PRADEEP NAYAK, ADVOCATE  
SRI VEDANTH ANAND, ADVOCATE)

THIS CIVIL MISC. PETITION IS FILED UNDER SEC.11(6) OF  
THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO PASS



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AN ORDER U/S 11(6) OF THE ARBITRATION & CONCILIATION ACT, 1996 APPOINTING A SOLE ARBITRATOR AS PER AGREEMENT DATED ENTERED ON DATED: 18/11/2020 TO THE ARBITRATION AND CONCILIATION CENTRE, KARNATAKA (DOMESTIC AND INTERNATIONAL) AT KHANIJA BHAVAN, RACE COURSE ROAD, BENGALURU AND ETC.,

THIS CIVIL MISC. PETITION COMING ON FOR 'ADMISSION' THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

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

*"A. Pass An Order U/S 11(6) of the Arbitration & Conciliation Act, 1996 appointing a sole arbitrator as per agreement dated entered on dated: 18/11/2020 to the Arbitration and Conciliation Centre, Karnataka (Domestic and International) At Khanija Bhavan, Race Course Road, Bengaluru.*

*B. Pass any other direction which this Hon'ble Court deems fit under the facts & circumstances of the case".*

2. The contention of the petitioner is that the petitioner and the respondent had entered into a service agreement dated 18.11.2020 where under the respondent was required to provide certain gateway services to the petitioner. The said agreement is governed by an Arbitration Clause in terms of Clause 15 thereof, which reads as under:



**"15. GOVERNING LAW AND DISPUTE RESOLUTION:**

*15.1 This Agreement shall be governed by and construed in accordance with the laws of India. The courts of Bengaluru shall have jurisdiction in respect of any such disputes or claims.*

*15.2 All disputes, differences and/or claim arising out of this Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (including any statutory modification (s) or re-enactment thereof) and shall be referred to a sole arbitrator nominated with the mutual consent of the parties. The award given by such an arbitrator shall be final and binding on the parties to this Agreement. The seat and venue of arbitration proceedings shall be Bengaluru".*

3. The petitioner had also entered into another agreement with ICICI Bank where under they engaged service of respondent Bank as a payment gateway. The respondent has setoff certain amount, which was available in the account of the petitioner on account of alleged dues claimed by the respondent under the agreement with ICICI Bank. Therefore, it is contended that the respondent could not have adjusted the amount under a different agreement, both the agreements occupying different



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fields and as such deduction made by the respondent being improper, notices were issued by the petitioner to the respondent calling upon them to return/ refund the amount which had been deducted from the account of the petitioner.

4. When no such resolution occurred, the petitioner issued a notice dated 29.06.2021 invoking aforesaid arbitration clause and nominated its arbitrator for respondent choose from. However, the respondent vide its reply dated 01.07.2021 replied that there is no such amount, which is required to be repaid. It is further contented that setoff which was made by the respondent on account of agreement with ICICI and not under agreement with the petitioner and there being no privity of contract for invoking the arbitration clause, invoking of the arbitration clause was rejected. It is in that background the petitioner is before this Court.



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5. Sri Lalith Besoya, learned counsel for the petitioner would submit that the respondent in an illegal manner has deducted the amount available in the account of the petitioner. The amount standing in the account of the petitioner under agreement dated 18.11.2020.
  
6. The Arbitration clause in relation thereto has been invoked by the petitioner and therefore all the disputes are required to be referred to an arbitrator.
  
7. Sri Vikas Mahendra, learned counsel appearing for respondent submits that the respondent has deducted the amount in view of a lien, which is available under the agreement with ICICI Bank, wherein it is mentioned that M/s Razorpay Software Private Limited would have the right to set off any amounts including as regards any excess credit given to the merchant inadvertently by the payment get to a service provider cum the amount payable to the



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payer via ICICI Bank, thus is the deduction now made is not under the agreement dated 18.11.2020 but is under tri-parted agreement dated 15.01.2021. Hence, no arbitration can be resorted to under the said agreement as regards the said dispute.

8. He submits that the arbitration clause in the agreement dated 18.11.2020 is restricted to "this agreement" which restricts the applicability of the arbitration clause to any disputes only under the agreement dated 18.11.2020, which cannot extend to the agreement with ICICI Bank dated 15.01.2021 and as such he submits that for that reason the respondent has rejected the request for appointment of an arbitrator.
  
9. He further submits that respondent has initiated commercial suit in Commercial O.S.No.879/2022 as against the petitioner and ICICI Bank, which is a composite suit which encompasses the entire dispute



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and all the disputes would be adjudicated in the said suit between all the parties concerned and this Court may not refer the matter to the arbitrator.

10. In this regard he relies upon the decision of the Hon'ble Apex Court in the case of ***Sukanya Holdings Pvt. Ltd. Vs Jayesh H Pandya & Another*** reported in ***2003 (5) SCC 531*** and submits that the cause of action cannot be split, in as much as the petitioner cannot seek for one dispute between the petitioner and the respondent to be referred to arbitration while the entire gamut of the dispute is now being adjudicated in the commercial original suit. He therefore submits that the petition may be dismissed.
11. Heard Sri Lalith Besoya, learned counsel for the petitioner and Sri Vikas Mahendra, learned counsel for the respondent and perused the papers.



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12. The facts and contentions as above are not disputed, suffice to say that legal notice which had been issued by the petitioner on 29.06.2021 invoking the arbitration clause was issued to the company i.e., respondent and its Directors and certain officers. A perusal of the said notice would indicate various references made to service agreement entered into with the ICICI Bank and the transaction relating thereto.
  
13. Even according to the respondent, the deduction which has been made is on account of lien which is provided under the agreement with the ICICI Bank, more particularly clause 15 thereof. In pursuance of which the respondent had lien to setoff any amount, which were due to it.
  
14. The contention of the respondent is that they had charged reduced commission fee charge. In view thereof, on a reconciliation of account being carried





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out, a payment of the differential amount was setoff on account of the petitioner not making payment once notice was issued.

15. It is clear from the facts and contentions addressed by both the counsels that the transaction is entered into between the petitioner, respondent and ICICI Bank, if that was so, it is required for the petitioner to issue notice to the ICICI Bank also since the contentions and/or the disputes are between all the three parties. That not having been done, I am of the considered opinion that legal notice, which has been issued by the petitioner itself is defective on account of ICICI Bank not having been made a party.
  
16. Though Sri Vikas Mahendra, learned counsel for the petitioner has contended that the agreement dated 18.12.2020 is only restricted to the dispute between the petitioner and the respondent as regards the said agreement but however considering that it is a



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composite transaction, I am of the considered opinion that the said clause would have equally apply to any dispute between the ICICI Bank, the petitioner and the respondent and the petitioner could have invoked the arbitration clause as against ICICI bank also since agreement entered into by the petitioner with respondent as also with ICICI Bank refer to each other and form one composite transaction.

17. In the present case one of the necessary parties namely ICICI Bank not having issued a notice and not having made as a party to the petition and, I am of the considered opinion that the present petition cannot be considered by this Court.
  
18. Notice not having been issued as per Section 21 of the Arbitration and Conciliation Act, 1996 it would go to the root of the matter. Hence, the petition is dismissed reserving liberty to the petitioner to re



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agitate its claim by issuing proper notices to all the concerned parties.

19. The above petition is dismissed.

**Sd/-  
JUDGE**

NMS