

## **/ : M/S.Human Interface Consulting vs M/S.Mphasis Limited on 4 January, 2019**

IN THE COURT OF THE VI ADDL. CITY CIVIL & SESSIONS JUDGE  
AT BENGALURU CITY  
(CCCH.11)

Dated this the 4th day of January, 2019

PRESENT: Sri. Rama Naik, B.Com., LL.B.,  
VI Addl.City Civil & Sessions Judge,  
Bengaluru City.

A.S.NO:21/2016

PLAINTIFF / : M/s.Human Interface Consulting  
PETITIONER India Pvt.Ltd.  
No.17/3, Ali Askar Road,  
Bengaluru-560 042.  
Reptd.by its Managing Director-  
Mr.Bharath.G.V  
[By Pleaer Smt.Nidhishree.B.V]

/Vs/

DEFENDANT : M/s.Mphasis Limited,  
RESPONDENT Bagmane World Centre,  
Marathalli Ring Road,  
Doddanakundi Village,  
Bengaluru-560 048.  
Represented by its Vice President,  
Company Secretary, General Counsel  
and Ethics Officer - Sri.A.Sivaram  
  
[By Pleader Sri.Dhananjay Joshi]

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### **JUDGMENT**

This is a suit filed by the Plaintiff under Section 34 of the Arbitration and Conciliation Act, AS.21/2016 1996, for setting aside the impugned award dated 06.11.2015.

2) The brief facts of the Plaintiff's case are that, the Plaintiff is a Company incorporated under the provisions of the Companies Act, 1956 and is engaged in the field of providing human resource services by way of sourcing candidates to be recruited and employed by its clients. The Defendant is a Company engaged in the business of Information Technology, Information Technology Enabled Services and Business Process Outsourcing.

3) The Plaintiff entered into an Agreement dated 14.05.2010 viz., "Agreement for Recruitment Services, 23.09.2011 titled Service Provider Agreement No.SCM/MSA/SR/2011/0322 and Statement of Work No.SCM/MSA/SR/2011/0564 dated 10.11.2011" under which, the Plaintiff was to provide referrals of prospective employees having sufficient required skills and knowledge as AS.21/2016 requested by the Defendant from time to time. Thereafter, the Defendant undertook an internal audit check in June 2012, wherein, allegedly it found that the Plaintiff had systematically, deliberately and repeatedly raised and submitted invoices in respect of referral of candidates under more than one invoice between the months of April 2011 to April 2012. The Defendant also alleged that the Plaintiff has raised separate invoices at different rates for the same candidates sourced by the Plaintiff to the Defendant. Consequently, the Defendant got issued a legal notice dated 16.08.2012 to the Plaintiff claiming an amount of Rs.52,72,746/- towards alleged overpayment made to the Plaintiff. The Plaintiff replied on 28.08.2012 denying the claim of the Defendant calling upon the Defendant to resolve the dispute by way of Arbitration and nominating its choice of Arbitrator, in accordance with the Agreement dated 23.09.2011.

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4) The Plaintiff has stated that, having been unsuccessful in initiating criminal proceedings against the Plaintiff, the Defendant approached the Hon'ble High Court of Karnataka in CMP.No.22/2014, wherein, the Hon'ble High Court was pleased to appoint Justice R.Gururajan(retd.), as the Sole Arbitrator vide its order dated 23.01.2014; accordingly, Arbitral Tribunal came to be constituted and the parties entered appearance and filed their Claim and Statement of Defense and the impugned order came to be passed on 06.11.2015. The Plaintiff has challenged the impugned award on the following among other grounds.

(i) The impugned award is patently illegal and opposed to public policy as well as opposed to the terms of the agreement entered into between the parties.

(ii) The impugned award is ultra vires the terms of reference and adjudicates the matters that were beyond the scope of the dispute.

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(iii) The learned Arbitrator has failed to consider that the Agreement for Recruitment Services and Non-Disclosure Agreement both dated 14.05.2010 do not form part of the Service Provider Agreement dated 23.09.2011.

(iv) The learned Arbitrator fails to take into consideration that the Defendant has based its entire claim on the Audit Report, which is self-serving and liable to be discarded.

(v) The learned Arbitrator fails to appreciate that the Plaintiff has sent several e-mail communications to the Defendant seeking clarification on certain bills that were prepared and sent by the designated person of the Defendant as they came across some discrepancies in terms of amounts and recruitment fee percentages.

(vi) The learned Arbitrator has completely ignored the pertinent facts that the Defendant had filed a PCR No.15527/2013 against the Plaintiff in respect of the same transaction, which AS.21/2016 was referred to the jurisdictional police station for investigation and the Police filed a 'B' report in the matter on the ground that the Defendant Company had not produced any documentary evidence in support of the investigation.

(vii) The learned Arbitrator has erred in dismissing the Application under Order XII Rule 6 read with Order VIII Rule 5 of CPC., read with Section 58 of the Indian Evidence Act, filed by the Plaintiff, which was vital in so far as the admissions made by the witness examined on behalf of the Plaintiff, wherein, he has admitted to the contents of the excel sheet showing the alleged multiple invoices raised by the Plaintiff. The Plaintiff has given an explanation for admitting to the multiple invoices raised for a single candidate being that, it was an incentive/claw back policy fixed by the representative of the Defendant and the same was verified by a Manager of a considerable position in the Defendant Company.

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(viii) The learned Arbitrator has failed to take into consideration that the Plaintiff has provided services to the Defendant outside the scope of the agreement, which is not arbitrable. The arbitral award gives a contradictory findings on this issue stating that the Plaintiff may have provided services outside the contract, but it cannot be held that it is outside the four corners of the Agreement.

For all these reasons, the Plaintiff prays for setting aside the award.

5) In pursuance of suit summons, the Defendant marked its appearance through its counsel and filed detailed statement of objection. The Defendant in its statement of objection has stated that, suit has been filed only to drag on the proceedings and delay the filing of the Execution petition by the Defendant. The Plaintiff is only seeking a re-hearing of the arbitration proceedings and has failed to establish any defect in the award that merits the intervention of this Court. The Plaintiff has failed to AS.21/2016 make out any ground meriting this Court's intervention in the award. The Plaintiff is only seeking a fresh hearing of the very same grounds that it has raised in the arbitration proceedings and all of which have been appropriately dealt with, in the award. Hence, prays for dismissal of the suit.

6) Heard. Perused the pleadings and the materials placed in this case.

7) The points that arise for my consideration are:-

(1) Whether Plaintiff has made out any of the grounds as mentioned in Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award?

(2) What Order?

8) My answer to the above points are :-

Point No.1 - In the Negative; Point No.2 - As per final order, for the following :

#### REASONS

9) POINT NO.1 : The Plaintiff has challenged the impugned award dated 06.11.2015 passed in AS.21/2016 AC.No.100/2014, wherein, the Defendant has been awarded a sum of Rs.52,72,746/- with interest at 10% p.a., from 18.10.2014 to 06.11.2015, failing which, the Defendant would be entitled to 15% future interest and costs.

10) The Plaintiff's main contention is that, the matters that were referred to the learned Arbitrator for adjudication were not arbitrable. The Agreement for Recruitment Services and Non-Disclosure Agreement dated 14.05.2010 do not form part of the Service Provider Agreement dated 23.09.2011.

The earlier two agreements do not have an arbitration clause. The Arbitral Tribunal has failed to consider these facts.

11) The Defendant contends that the learned Arbitrator after taking into consideration of the contentions of the Plaintiff, framed a specific issue at Issue No.6 and gave the findings at Para-18 to 20 in the award. The Plaintiff has not proved any grounds to AS.21/2016 establish that the conclusion arrived at in the award is erroneous.

12) The learned Arbitrator, after taking into consideration of the contentions of the Plaintiff and the Defendant, has framed specific issue which is as follows :

" 6. Whether the Respondent proves that the Claimant availed the services of the Respondent outside the scope of the agreement dated 23.09.2011? "

13) In para-19 and 20 of the arbitral award, the learned Arbitrator was pleased to discuss Issue No.6 in detail as to the contention raised by the Plaintiff. Para-19 and 20 of the award read as follows :

" 19. The learned Counsel for the Respondent on the basis of the terms of the contract would argue that the claimant cannot seek arbitration in the light of the work being outside scope of agreement. The learned Counsel for the Claimant on the other hand would refer to the order of the High Court Section 7 of the Act. I have seen the materials on record. It may be that the work may be outside the contract, but may not strictly fall within the four corners of the agreement. But what cannot be forgotten is the material placed before this tribunal with regard to the arbitral AS.21/2016 dispute between the parties. The claimant has chosen to issue a legal notice claiming a sum of Rs.52,72,746/- along with interest @ 18% p.a. in terms of legal notice dated 16.8.2012. As per Ex.R2, a reply has been sent by the respondent. In Ex.R2 the respondent would say that the claim made by the claimant is arbitrable. In fact in

Para 6 the respondent would nominate Mr.Justice Chinnappa as its Arbitrator. It would require the claimant to appoint its Arbitrator in terms of clause 18 of the agreement dated 23.9.2011. At this stage this Tribunal also has to notice the order of the order of the High Court in CMP.No.22/2014. The High Court refers to the service provider agreement dated 23.9.2011. After noticing the High Court in Paras 3 and 4 would rule as under:-

"3. There is no dispute as to the existence of arbitration clause to resolve the dispute in the agreement at Annexure-B. It is also clear that there is a dispute in relation to the aforesaid agreement between the parties. Therefore, it is just and proper to appoint an arbitrator to resolve the dispute.

4. The civil miscellaneous petition is allowed in part. Hon'ble Sri.Justice R.Gururajan, a former Judger of this Court, is requested to enter upon reference and arbitrate over the dispute between the parties and conduct arbitration proceedings at Arbitration Center in terms of the Arbitration Center-

Karnataka (Domestic and International) Arbitration Center -

Karnataka (Domestic & International) Rules, 2012."

20. In the light of the order of the High Court and in the light of reply notice, the argument of the learned AS.21/2016 Counsel for the Respondent cannot be accepted. In fact section 7 of the Act would provide with regard to exchange of statement of claim, and defense statement providing for arbitration. In the light of the order of the High Court read with Ex.R2 and further read with section 7 of the Act, the contention of the learned Counsel for the Respondent of no arbitration or outside scope of work cannot be accepted."

14) A meaningful reading of the award makes it clear that, the Hon'ble Arbitrator has framed specific issue at Issue No.6 regarding the contentions raised by the Plaintiff. The Hon'ble Arbitrator, after placing reliance on Ex.R2-reply, which has been sent by the Plaintiff to the Defendant and after referring the order passed in CMP.No.22/2014 by the Hon'ble High Court of Karnataka and Section 7 of the Arbitration and Conciliation Act, has rightly held that the claim made by the Defendant is arbitrable.

15) The next contention of the Plaintiff is that, the Defendant has based its claim on the audit report, which has not been produced by the Defendant in the arbitral proceedings, instead, it has produced excel sheet detailing of the Invoice AS.21/2016 details for the period between May, 2004 to April, 2012, which is self attested by the Defendant. The Hon'ble Arbitrator has erroneously decided two issues in favour of the Defendant based on this document.

16) The Defendant has contended that the Hon'ble Arbitrator has framed Issue No.1 and 2 and dealt with the same against the Plaintiff. The Plaintiff has not made out any grounds to establish the

conclusion drawn in the award as erroneous.

17) Having gone through the award it is clear that, the learned Arbitrator has framed two specific Issues in this regard, which are as follows :

- "1. Whether the Claimant proves that they have paid excess amount during the months of April 2011 to April 2012 to the Respondent?
2. Whether the Claimant proves that the Respondent has raised multiple invoices for the same candidate? "

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18) The learned Arbitrator, after placing reliance upon the documentary evidence as well as oral testimony of the parties, was pleased to answer Issue No.1 and 2 in favour of the Defendant. It is relevant to mention the findings of learned Arbitrator at Para-3 and 4 of the award regarding the contentions raised by the Plaintiff. The findings at Para-3 and 4 of the award reads as follows :

" 3. Coming to the merits of this case, it is seen that apart from pleadings the Claimant has examined CW1 in support of its case. It is an admitted fact that the respondent was to provide reference and to raise the bill on the claimant towards the services rendered by it. It is also an admitted fact that the sums claimed has been paid by the claimant to the respondent. What is to be considered is whether the said payment is an over payment warranting refund to the claimant. CW- 1 has produced Ex.C5 which is a statement prepared based on the invoices raised. The claimant has provided all the details in the said statement including over billing. The said statement is filed for the period of May 2004 to January 2012. The said statement if read carefully would show that the respondent has raised invoices in respect of certain candidates and over billed. In addition to these documents claimant has also placed before me Ex.C8, a consolidated statement providing for all the details AS.21/2016 like the name, date of billing, level, correct invoice details, invoice numbers, invoice date, correct rate payable, correct amount paid, fraudulent multiple invoice number and date, instances of dual fraud by excessive claim of the fee % rate in the fraudulent multiple invoice, amount defrauded etc. This statement is for the period May 2004 to June 2012. In the last column the total amount shown is Rs.52,72,746/-. This statement is marked in evidence. When this statement was confronted to the respondent, RW-1, in his cross- examination, he would admit that the contents of Ex.C.8 are correct. He admits that there are multiple invoices in respect of the same candidate. However, he gives explanations by adding that the double and triple payment made by the claimant is an incentive fixed by the representative of the claimant company and verified by the higher manager for every invoice. Therefore, this Tribunal is of the view that Ex.C8 is supported by material and the said statement would show how the respondent has claimed over payment in terms of the pleadings and evidence of CW-1. However, the defence of this payment

being towards incentive has to be considered by this Tribunal. RW-1 has an explanation in his admission by way of incentive. However, the witness would say in cross examination that he has not produced any documentary evidence with regard to the right of the respondent to claim incentive. He is not sure as to whether he has filed any documents with regard to verification of invoices by hiring manager as stated by him in his earlier sentence. He also admits showing the name of Dhananjay AS.21/2016 R.K. twice in Ex.C16. In so far as Ex.C24 is concerned he would say that refund is made as per Claw back policy of claimant. He admits that page 46 of Ex.R8 does not explain or show as to what is claw back policy. He also admits that he do not know as to whether the claw back policy refers to refund of payments received by the respondent in respect of candidates who have quit soon after joining or in respect of over payments. He also admits that about over writing in ink in Ex.C34 and the same is not done by him. In the absence of any acceptable material with regard to incentive or the Claw back policy, the explanation or the defence with regard to admission falls to ground. In the circumstances, this Tribunal is of the considered view that the Claimant has successfully proved that the respondent has issued invoices by way of double/triple billing and the Claimant has made over payment to an extent of a sum of Rs.52,72,746/-.

4. The learned Counsel for the Claimant has placed before me several judgments with regard to consideration of an admission in a matter like this."

19) The findings of the learned Arbitrator at Para- 3 and 4 of the award makes it clear that, the Plaintiff has raised all these contentions before the learned Arbitrator and the learned Arbitrator after taking into consideration of the rival contentions of the parties, framed two specific Issues and after AS.21/2016 considering the evidence of CW.1 and Ex.C8 came to a definite conclusion that the Defendant has successfully proved that the Plaintiff issued Invoices by way of double/triple billing and that there is no material placed with regard to incentive or the Claw back policy. In view of the specific findings of the learned Arbitrator regarding the contentions of the Plaintiff, which are based on reasonings, under such circumstances, the question of interfering with the award is not warrantable.

20) The Plaintiff contends that the impugned award violates Wednesbury principle. The Tribunal has failed to consider the relevant materials, while passing the impugned award.

21) In the case of Associate Builders Vs. Delhi Development Authority reported in (2015) 3 Supreme Court Cases 49, wherein, it is held that Wednesbury principle is also categorized as one of the fundamental policy of Indian law. It has been held that the decisions that fall short of the AS.21/2016 standards of reasonableness are open to challenge in a court of law. Wednesbury principle as laid down in the decision stated supra, reads as follows :

" The juristic principle of Wednesbury reasonableness is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation.

It is settled law that where:

- (i) a finding is based on no evidence, or
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse."

22) Here in this case, the Hon'ble Arbitrator has framed necessary Issues, the parties were provided with sufficient opportunities to adduce their oral and documentary evidence; accordingly Plaintiff and the Defendant had adduced their oral and documentary evidence before the Hon'ble Arbitrator. The Hon'ble Arbitrator, after considering the oral testimony and documentary evidence, was pleased to answer each AS.21/2016 issue by appreciating the evidence placed before him and came to the definite findings. The findings of the Hon'ble Arbitrator have been supported by reasonings. No circumstances come in the way that the award can be set aside on the ground of public policy. The award passed is well within the principles laid down in Wednesbury reasonableness. Under such circumstances, the contentions of the Plaintiff that the Wednesbury reasonableness is not complied with, is devoid of merits and the same is unsustainable.

23) The Plaintiff has contended that the learned Arbitrator has erred in dismissing the application filed under Order XXI Rule 6 Read with Order VIII Rule 5 of CPC., with Section 58 of Evidence Act. This aspect of the matter has been clearly mentioned in Para-27, Page-14 of the award that :

" 27. At the time of arguments Sri.V.Sreenidhi, learned Counsel for the Respondent filed an interlocutory application under Order XII Rule 6 read with Order VIII Rule 5 of CPC read with section 58 of the Indian Evidence Act 1872 and read with section 151 of CPC AS.21/2016 explaining the admission made by his client. The Claimant has filed its objections to the I.A. After hearing the said I.A., it is disposed of vide separate order."

24) It is important to note that the Plaintiff has not challenged the said order. If Plaintiff is really aggrieved by the said order, he could have challenged the same before the competent court of law. Instead, it has proceeded with the arbitral proceedings and thereby award has been passed.

25) The Plaintiff has contended that, the Plaintiff has given explanation for admitting to the multiple invoices placed for single candidate being that it was incentive/Claw back policy fixed by the Defendant.

26) Looking into the award it is clear that, the entire findings of the Hon'ble Arbitrator is based on oral and documentary evidence of the parties. The Hon'ble Arbitrator extracted the oral evidence of the Plaintiff in the award. It is relevant to mention particular portion of the oral evidence of the Plaintiff that has been AS.21/2016 extracted in the award. Page-13 of the award reads as follows :



" 24. ....He states that he has not produced any documents evidencing his right to claim incentive in terms of the evidence. He admits that Ex.C16 showing the name of Sri.Dhananjay R.K twice the same employee as suggested. He has refunded Rs.64,428/- towards refund due to the claimant. He admits that at page 46 of Ex.R8 claw back policy is shown. He admits that it does not explain or show as to what is claw back policy. He does not know as to whether the claw back policy refers to refund of payments received by the respondent."

27) The Plaintiff has failed to produce any documents regarding its right of incentive and the terms in Ex.R.8 themselves do not explain what is Claw Back Policy. Moreover, the Plaintiff does not know what the Claw Back Policy is. The Plaintiff expresses its ignorance as to whether Claw Back Policy refers to refund of payment received by the Defendant (Plaintiff). Under such circumstances, the contention of the Plaintiff that multiple Invoices raised for a single candidate being that it was an incentive has no merit and the same is not tenable.

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28) The Plaintiff has relied upon the following decisions :

(i) MANU/SC/8443/2008 [ Yogi Agarwal Vs. Inspiration Clothes and U and Ors.] " 7. ....It is fundamental that a provision for arbitration, to constitute an arbitration agreement for the purposes of Sections 7 and 8 of the Act, should satisfy two conditions. Firstly, it should be between the parties to the dispute. Secondly, it should relate to or applicable to the dispute.

8. In this case, neither of the two conditions was satisfied. Firstly, the suit related to transactions said to have taken place between Plaintiff and first defendant company and its two directors, whereas the documents put forth as containing the arbitration agreement related to some transactions between a proprietary concern of second defendant and Plaintiff. Secondly, the provision for arbitration is not contained in any contract or document relating to the suit transactions, but contained in documents relating to some unconnected independent transactions. It is significant that, in their application under Section 8 of the Act, the defendants did not even allege that there was an arbitration agreement in regard to the subject matter of the suit. What they alleged was that 'subject matter of the suit' was similar to or identical with the subject matter of the arbitration AS.21/2016 agreement'. That does not entitle them to seek relief under Section 8 of the Act. As there was no 'arbitration agreement', the requirements of section 7 were not met."

(2) MANU/SC/0812/2011 [State of Goa Vs. Praveen Enterprises] "10. Reference to arbitration can be in respect of all disputes between the parties or all disputes regarding a contract or in respect of specific enumerated disputes. Where 'all disputes' are referred, the arbitrator has the jurisdiction to decide all disputes raised in the pleadings (both claims and counter claims) subject to any limitations placed by the arbitration agreement. Where the arbitration agreement provides that all disputes shall be settled by arbitration but excludes certain matters from arbitration, then, the arbitrator will exclude the excepted matter and decide only those disputes which are arbitrable. But where the reference to the arbitrator is to decide specific disputes enumerated by the

parties/court/appointing authority, the arbitrator's jurisdiction is circumscribed by the specific reference and the arbitrator can decide only those specific disputes."

29) Here in this case, as observed, the dispute was arisen between the Plaintiff and the Defendant. The Plaintiff itself suggested the name of Justice Sri.Chinnappa as its Arbitrator. The Hon'ble High Court AS.21/2016 in CMP.No.22/2014 was pleased to appoint the sole Arbitrator in view of Clause-18 of the Service Provider Agreement dated 23.09.2011. Under such circumstances, the ratio laid down in the above decisions are not applicable to the facts of the Plaintiff's case.

30) In view of the foregoing discussion, I am of the opinion that, the Plaintiff has not made out any grounds as enumerated in Section 34 of the Arbitration and Conciliation Act, to set aside the award. As held in Associate Builders case stated supra, the merits of the arbitral award can be assailed only when it is in conflict with the Public Policy of India. Here, the award passed is based on evidence and it is well reasoned award; accordingly, I answer the above point in the negative.

31) POINT NO.2 : In view of the foregoing reasons and answer to Point No.1, the suit of the AS.21/2016 Plaintiff fails and liable to be dismissed. In the result, I proceed to pass the following:

ORDER The suit filed by the Plaintiff under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 06.11.2015 passed by the learned Sole Arbitrator in A.C.No.100/2014; is hereby dismissed.

(Dictated to the Judgment Writer, transcribed and computerized by her, transcript thereof corrected and then pronounced by me in open court, dated this the 4th day of January, 2019.) (RAMA NAIK) VI Addl.City Civil & Sessions Judge, Bengaluru City.