

In the High Court of Judicature at Madras

Dated : 27.11.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.333 of 2014

M/s.Transpacific Business Services
Pvt. Ltd., 1005, Maker Chambers-V,
Nariman Point, Mumbai.

.. Petitioner

-VS-

M/s.Tidel Park Ltd.
Rep. by its M.D.,
4, Rajiv Gandhi Road,
Tharamani, Chennai.

.. Respondents

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator in terms of Clause 9 of the Byelaws of TIDEL, to arbitrate the dispute that has arisen between the parties.

For Petitioner : Mr.Shrikanth
for M/s.Fox Mandal & Associates

For Respondents : Mr.Kulandhaivel
for M/s.King & Partridge

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O R D E R

Neither of the parties have cared to comply with the order dated 18.09.2015.

2.The petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, on account of disputes inter se the parties.

3.There is no caveat to the issue that there is valid and subsisting agreement inter se the parties, which contains an arbitration clause No.9 as under:

"9.DIFFERENCES AND DISPUTES

If any difference or dispute arises between and/or amongst two or more Allottees in respect of any matter covered by the Byelaws, such differences and disputes will be mutually settled between the parties failing which it will be settled by TIDEL.

Any dispute or difference between TIDEL and the Allottee or Allottee's with regard to the Byelaws and all connected and related matters shall be discussed and settled amicably. In the event of any failure to resolve the disputes or differences amicably, all such disputes or differences whatsoever, shall be referred to Arbitration. The Arbitration proceedings shall be conducted in English and in accordance with the provisions of the Indian Arbitration and Conciliation Act 1996 or any statutory modification or enactment thereof. The Venue of Arbitration shall be Chennai.

The parties have agreed that the Sole Arbitrator will be appointed mutually by both the parties. The Arbitration proceedings will be on a fast track. Any of the parties going for arbitration will submit its claim petition and documents to the

Arbitrator within one week of the reference being made to the Arbitrator, with a copy to the Opposite Party. The Opposite Party will submit its Counter and its documents to the Arbitrator after serving a copy to the party opting for arbitration, within one week thereafter. The parties can file their further replies or documents within one week thereafter. Immediately after the 3^d week, the Sole Arbitrator will endeavor to commence the hearing on the 22nd day and will endeavor to go on with the hearing of the case from day to day without any adjournment, as far as possible. The Sole Arbitrator will also endeavor to give his award as early as possible. The Arbitration proceedings will be completed as far as possible within 40 days from the date of reference. The decision of the Arbitrator will be final and binding on the parties.

Without affecting the validity of Arbitration clause hereinabove, all connected and related matters shall, in all respects, be subject to the exclusive jurisdiction of Chennai."

4. That disputes have arisen is not in question, that they have to be resolved through arbitration is again not in question and that the jurisdiction of this Court is also not in question. The only defence as indicated by the learned counsel for the respondent is that the petitioner really does not have a claim on merits against the respondent, an aspect which has to be examined by the Arbitrator alone.

5.I, thus, by consent, appoint **Mr.Justice S.Rajeswaran, a retired Judge of this Court**, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. As requested by learned counsel for parties, the arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

6.The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(S.K.K., CJ.)
27.11.2015

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Note: Mark a copy to

(i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.

(ii)The Arbitrator, as referred above.

The Hon'ble Chief Justice

(sra)

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