

In the High Court of Judicature at Madras

Dated : 12.02.2016

Coram :

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

O.P.No.840 of 2015

M/s.Shriram City Union Finance Limited.
No.221, Royapettah High Road,
Mylapore,
Chennai.

Rep. by its Authorised Signatory C.Subha. .. Petitioner

-VS-

M/s.MIRC Electronics Limited,
"ONIDA House", G1, M.I.D.C.,
Mahakali Cross Road,
Andheri East,
Mumbai-400 093.

.. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator on behalf of the respondent as per the provisions of the Arbitration and Conciliation Act, 1996 so as to enable the constitution of an Arbitral Tribunal under Clause 19 of the Agreement to adjudicate all disputes between the petitioner and the respondent.

For Petitioner : Mr.R.Uma Shankar

For Respondent : Ms.S.P.Arthi

* * * * *

ORDER

This petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 emanates from the disputes arising *inter se* the parties from the agreement dated 01.06.2012 executed between the parties. It is the case of the petitioner that finance facility for the customers of the respondent was extended under the said agreement and payments which were liable to be made by the respondent have not been so made, resulting in the disputes.

2. The petitioner made a demand vide e-mail dated 29.11.2014 based on the scrutiny of 1977 cases pertaining to March, 2014 to June, 2014, however, there was no response to the same. The dispute remained unresolved and the petitioner invoked the arbitration clause vide letter dated 07.07.2015, proposing for a sole Arbitrator. There was, however, no reply.

3. On notice being issued, none has entered appearance for the respondent, despite service. The matter was passed over once and called second time. It is 3.00 P.M.

4. The petition going unrebutted implies that the allegations are deemed to be correct. The documents have been filed by the petitioner. A reading of the agreement dated 01.06.2012 shows that as per Clause 19, arbitration is the chosen mode of settlement of the disputes. The Arbitral panel envisages three Arbitrators, one appointed by each side, with the Presiding Arbitrator being chosen by the two Arbitrators. The relevant Clause 19 reads as under:-

“19.Any dispute or difference arising out of this Agreement which Parties are unable to resolve within 10 days of commencement of such resolution process shall be referred to an arbitral tribunal at either Party's request. Such tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator and the two arbitrators so appointed shall appoint the presiding arbitrator. The decision of the tribunal shall be final and binding on Parties. All proceedings are to be initiated in accordance with the provisions of the Indian Arbitration and Conciliation Act of 1996, to be held at Chennai in the English language. This

Agreement shall be governed by the laws of India.”

5. The learned counsel for the petitioner submits that it may be appropriate to have a single Arbitrator to be appointed by this Court, instead of the panel of three Arbitrators, especially, when the respondent has failed to elect its nominee Arbitrator and has not even responded to the present petition. It is also proposed that the arbitration be governed by the Madras High Court Arbitration Centre Rules and the proceedings be held under the aegis of the Centre.

6. It is, at this stage, the learned counsel for the respondent has chosen to appear and states that he is receiving no instructions. I am of the view that an Arbitrator other than as proposed by the petitioner can be appointed, especially, as there is a sole arbitration now.

7. I, thus, appoint Mr.R.Narayanasamy, a retired Judicial Officer (agreed by both the counsel), No.P2/8/23, Vigneswara street, Ganesh Nagar, Guindy, Chennai-600 032 as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. The arbitration proceedings will be conducted under the aegis of Madras High Court Arbitration Centre and the parties will be governed by the Rules of the

Madras High Court Arbitration Centre (MHCAC) (Arbitration Proceedings)
& (Administrative Cost and Arbitrators' Fees) Rules, 2014.

8. The Original Petition is accordingly allowed, leaving the parties
to bear their own costs.

(S.K.K., CJ.)
12.02.2016

Index : Yes/No

Internet : Yes/No

bbr

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

bbr

O.P.No.840 of 2015

12.02.2016