

In the High Court of Judicature at Madras

Dated : 01.04.2016

Coram :

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

O.P.No.917 of 2015

Janaki Vembu

.. Petitioner

-VS-

1.M/s.Bharat Sanchar Nigam Ltd.,
rep. by its Chief General Manager,
Having registered office at
"Sanchar Bhavan",
No.20, Ashoka Road,
New Delhi
And having local office at
Chennai Telephones
No.78, Purasaiwalkam High Road,
Chennai-600 010.

2.The Deputy General Manager,
M/s.Bharat Sanchar Nigam Ltd.,
O & M, Ambattur BSNL,
Ambattur Telephone Exchange,
CTH Road, Chennai-600 098.

.. Respondents

Petition filed under Sections 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an independent arbitrator to adjudicate the disputes arising between the petitioner and the respondents in connection with or relating to the Lease Deed dated 16.07.2005.

For Petitioner : Mr.G.Ashokapathy
for
M/s.Pass Associates

For Respondent : Mr.M.Govindaraj

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ORDER

The dispute *inter se* the parties arises from the lease deed dated 16.07.2005, where the petitioner is lessor and the first respondent is lessee. The petitioner claims damages for use and occupation. The agreement contains arbitration clause as under:-

"13. (a) This agreement shall be subject to the jurisdiction of the Courts at Chennai.

(b) Should any dispute or difference arise concerning the subject matter of these presents or interpretation of any covenants clause or thing herein contained or otherwise arising or of these agreement, the same shall be referred for arbitration to the tribunal having sole arbitrator. At the time of making a request for reference of dispute to the arbitration, the claimant shall along with such request send a panel of five persons to other party. The other party shall within 15 days of the receipt of such communication select one member of the panel to act as the sole arbitrator. In case none of the proposes panel is acceptable to the other party such party shall within the above 15 days send another panel of five persons to claimant, and the claimant shall be entitle to nominate the sole Arbitrator from among the panel sent by the opposite party. In case none of the members of this panel is acceptable to the claimant, the sole Arbitrator shall be appointed by the Secretary, Department of Legal Affairs, Government of India, New Delhi."

2. It is quite clear from the reading of the arbitration clause that what is envisaged is that initially the claimant being the petitioner should send a panel of five Arbitrators, which the petitioner did vide letter dated 27.8.2015, duly received by the respondents. If none of the proposed Arbitrators from the panel of five was acceptable to the respondents, the respondents were required to say so within fifteen days. The respondents were also entitled to propose a five member panel for the petitioner to select one. None of these two things was done. It is on the failure of the parties to appoint any Arbitrator from these ten names would the occasion arise for the petitioner/claimant to address a communication to the Secretary, Department of Legal Affairs, Government of India, New Delhi to appoint an Arbitrator.

3. The respondents have not filed their reply despite opportunities granted and thus, it is a case of no return.

4. In view of the arbitration clause and the pleadings of the petitioner, it is obvious that disputes have arisen, they are to be resolved through arbitration and the jurisdiction is of Chennai Courts. It is always open to the respondents to raise all such defences in the arbitration as are permissible in law.

5. In view of the aforesaid position, any of the five Arbitrators proposed by the petitioner could be appointed as an Arbitrator.

6. The learned counsel for the respondents states that the respondents is agreeable to Mr.Yashod Vardan, Senior Advocate from the panel of five Arbitrators.

7. In view thereof, I appoint Mr.Yashod Vardan, Senior Advocate (Mobile – 9841075397), No.155, Lingi Chetty Street, III Floor, Chennai-600 001 as the Sole Arbitrator, to enter upon reference and adjudicate the disputes *inter se* the 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.

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

(S.K.K., CJ.)
01.04.2016

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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

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