

In the High Court of Judicature at Madras

Dated : 18.03.2016

Coram :

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

O.P.No.91 of 2016

M/s.SGS Electronics,
rep. by its Proprietor S.Sathyanarayanan,
18/14, 3rd Cross Street,
R.A.Puram,
Chennai-600 028.

.. Petitioner

-VS-

M/s.BORG Energy India Private Ltd.,
Registered office at
No.37, Greams Road,
PN Towers, 9th Floor, 9C & D
Opp : Ali Towers,
Chennai-600 006.

.. Respondent

Petition filed under Section 11 (4) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator to resolve the dispute that has arisen between the petitioner and the respondent in relation to the Master Franchisee Agreement dated 27.12.2013 entered into between the petitioner and the respondent.

For Petitioner : Ms.Vasudha Thiagarajan

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ORDER

An agreement for Master Franchisee for BORG Astra Turnkey Group (BATG) Products was entered into *inter se* the parties. The agreement provided for resolution of any dispute to arbitration in terms of Clause 35, as under:-

“35.ARBITRATION: Any dispute, difference or question which may arise at any time hereafter between the BORG India and the MASTER FRANCHISEE touching the true construction of this agreement of the rights and liabilities of the parties hereto shall be referred to the decision of a single arbitrator at Chennai to be agreed upon between the parties or in default of the agreement to be appointed at the request of either party in accordance with and subject to the provisions of the Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof for the time being in force.”

2. The petitioner alleges breach of contract on account of non-payment and has drawn the attention of this Court to the letter dated 22.5.2015 proposing settlement by the respondent by 30.06.2015. There

was no settlement and thus, legal notice dated 29.07.2015 was issued, requiring payment of Rs.24,55,171/-. This notice was preceded by bounced cheques issued by the respondent with stop payment instruction received from them.

3. The petitioner issued another notice dated 03.11.2015 invoking the arbitration Clause and suggesting the proposed Arbitrator. There was once again no reply.

4. The respondent has been served, but none has put in appearance. It is, thus, a case of no return.

5. In view of the fact that undisputedly an agreement *inter se* the parties contained an arbitration Clause and disputes have arisen *inter se* the parties within the jurisdiction of this Court, the Arbitrator has to be appointed in pursuance to the petition filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996.

6. I, thus, appoint Mr.V.Subramanian, a retired Judicial Officer, No.A/20, Tower Block, Taylors Road, Kilpauk, Chennai-600 010 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.

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

(S.K.K., CJ.)
18.03.2016

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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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