

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.177 of 2019
and A.No.7377 of 2018

M/s.White Data Systems India Private Limited
No.3, Lakshmipuram First Lane,
Royapettha, Chennai-600 014
rep. by its Authorised Signatory .. Petitioner

Vs.

1. M/s.Safe Cargo Movers Private Limited,
7/11/A, Biyoygarh, Jadavpur,
Kolkata, West Bengal-700 032.
2. Mr.Souvik Mukherjee
Director of M/s.Safe Cargo Movers Private Limited,
7/11/A, Biyoygarh, Jadavpur,
Kolkata, West Bengal-700 032.
3. Mrs.Sonali Mukherjee
Director of M/s.Safe Cargo Movers Private Limited,
7/11/A, Biyoygarh, Jadavpur,
Kolkata, West Bengal-700 032.

R2 and R3 also at
226/5/1, N.S.C. Bose Road,
Giridhari Apartment, 1st Floor, Jadavpur,
Kolkata, West Bengal-700 092. .. Respondents

* * *

Prayer : Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the disputes between the petitioner and the respondents arisen under the Transportation Agreement dated 16.05.2017.

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For Petitioner : Mr.D.Pradeep Kumar
Applicant

For Respondents : Mr.Rajkumar Jabakh
in O.P.No.177/2019/
R1 in A.No.7377/2018

For R2 in A.No.7377/18: Mr.G.Gokul

For R3 in A.No.7377/18: Mr.S.Santhosh

COMMON ORDER

This Original Petition is filed seeking appointment of an Arbitrator to adjudicate the disputes arose between the petitioner and the respondents under the Transportation Agreement dated 16.05.2017.

2. The petitioner and the respondent entered into the Transportation Agreement dated 16.05.2017, which, *inter alia*, mandates the petitioner to supply lorries based on the first respondent's requirement. For the said services, the first respondent has to clear the bills within 30 days of its submission and last such service was rendered on 03.05.2018. Though the petitioner raised bills periodically, they were settled with some delay. The first respondent in its letter dated 16.07.2018 acknowledged that there was an outstanding of Rs.2,04,87,670/-. Excepting payment of Rs.50,000/-, the respondents have not chosen to clear the dues.

3. While so, the petitioner filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking prohibitory orders against the garnishees in A.No.7377 of 2018, wherein, an order of status quo was passed by this Court on 01.10.2018, which was extended periodically.

4. The petitioner in terms of Clause 15.1 of the Agreement nominated a sole arbitrator vide notice dated 05.11.2018 and sought for the consent of the respondents. In this backdrop, this petition is instituted seeking the abovesaid relief.

5. The learned counsel for applicant seeks appointment of a retired District Judge as arbitrator, since the nomination made by them earlier was not accepted by the respondent in O.P.No.177 of 2019, for which, the respondents have expressed no objection.

6. The Garnishees have affidavits stating that there are no dues to be paid to the first respondent in O.P.No.177 of 2019. Be that as it may, having regard to the submissions of the learned counsels on either side and the consent expressed by the learned counsel for the respondents, this Court appoints Mr.T.Venkattakrishnan, residing at

No.1 C, 'Blossom Apartment' (Dream Park), Sankarapuram, Sithalapakkam, Chennai-600 126, a retired District Judge, (Phone No.94867 94409), as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

7. The Original Petition is ordered accordingly, leaving the parties to bear their own costs. Consequently, A.No.7377 of 2018 is closed. It is open to the parties to file appropriate application before the learned Arbitrator for any relief in accordance with law. To enable the parties to move such application before the Arbitrator, the interim order granted by this Court is extended for a period of eight weeks.

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This petition is listed today under the caption "for being mentioned" at the instance of the learned counsel for the petitioner.

2. Learned counsel for the petitioner submitted that this Court vide order dated 02.07.2019 appointed Mr.T.Venkattakrishnan, a retired District Judge, as the Sole Arbitrator to adjudicate the disputes between the parties. But, the said Officer has been reemployed by this Court and he had also said to have filed a memo before this Court as such and thus, it is prayed that some other Arbitrator may be appointed in his place.

3. Heard the learned counsels on either side and perused the materials on record including the memo filed by the Arbitrator appointed by this Court on 26.08.2019.

4. Considering the submissions of the learned counsel for the petitioner, this Court appoints Mr.S.Senthil Kumaresan, a retired Principal District Judge, having office at No.37, "A" Block, "Lakshmi Nivas", Marshalls Road, Egmore, Chennai-600 008, (Phone No.94434 25159), as the Sole Arbitrator, in the place of Mr.T.Venkattakrishnan. The appointment of the Arbitrator will be subject to the disclosure and declaration to be made, as per the Sixth Schedule to the Arbitration

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and Conciliation Act, 1996 coupled with the amendments made therein.

5. Except the above modification, the order dated 02.07.2019 remains unaltered. Needless to say that the learned Arbitrator shall pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The Registry is directed to issue corrected order copy to the parties.

17.10.2019

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