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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 349/2019**

**EVEREST INDUSTRIES LTD.**

..... Petitioner

Through: Ms. Vasundhara Nayyar, Adv.

versus

**SKM AGENCIES THROUGH: ITS PROPRIETOR, SHRI D.  
KRISHNAMURTHY**

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

% **05.08.2019**

1. An affidavit of service has been filed by the Petitioner enclosing Speed Post-delivery report that reflects delivery of an item. Relying upon the same, learned counsel for the petitioner contends that the Respondent was served with the notice of the present petition. Despite service, there is no appearance on behalf of the Respondent.

2. The present petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeks appointment of sole arbitrator for adjudicating the disputes stated to have arisen between the parties.

3. It is the case of the Petitioner that they engaged the services of Respondent for proper upkeep and maintenance of the Petitioner's goods/products stored at their depot/ go-down situated at Alundur, Trichy

(Tamil Nadu). The terms and conditions of engagement of the Respondent was recorded in the Agreement dated 15<sup>th</sup> March 2016 (hereinafter 'Agreement').

4. Learned counsel for the Petitioner contends that as per the arrangement between the parties, the Petitioner conducted regular inspection and verification of the stocks, and one such inspection was carried out in the presence of the Respondent on 08<sup>th</sup> November, 2018. Upon the inspection and verification, it was ascertained that there was a variance in stock of approx. 85 MT value, which is equivalent to 1166 number of sheets and the Respondent failed to explain the aforementioned discrepancy. It is further submitted that the Respondent thereafter abandoned and absconded from the depot. Respondent was not able to maintain the goods of the Petitioner as per the terms of the Agreement and hence there is a breach of Clause 2.1 of the said Agreement. Also, goods worth Rs. 12,60,000/- were found missing and for which the Petitioner had lodged a complaint against the Respondent at the Police Station, Manikandan, Trichy District vide Complaint CSR No. 126/2018 dated 01<sup>st</sup> December 2018. Petitioner called upon the Respondent to pay an amount of Rs.12,60,000/- and then vide letter dated 03<sup>rd</sup> December 2018 terminated the arrangement between the parties.

5. Learned counsel for the Petitioner further submits that the Respondent has not made payment of the dues and has disputed the liability vide reply dated 13<sup>th</sup> January 2019 and have also made a claim for an alleged amount of Rs.20,00,000/- against the Petitioner. On 28<sup>th</sup> January, 2019, Petitioner invoked the arbitration clause and proposed the name of a Retired District

and Sessions Judge, Delhi as the Sole Arbitrator for adjudicating the disputes that have arisen between the parties.

6. The Arbitration Clause contained in Clause No. 15.1 of the said agreement reads as under:

“All questions or differences whatsoever which may at any time hereafter arise between the parties hereto touching these presents or the subject matter hereof or arising out of or in relation hereto respectively and whether as to construction or otherwise shall be referred to arbitration in accordance with and subject to the provisions of Arbitration Act 1940, or any statutory modification or reenactment thereof for the time being and all proceedings in such arbitration shall be held in Delhi and not elsewhere and the, Award or Awards in such arbitration may be made a decree of the High Court of Judicature or other appropriate court at New Delhi/Delhi alone/only at the instance of either party. ”

7. Although, Respondent in his reply to the notice invoking arbitration agreed for an appointment of a sole arbitrator, but did not agree to the name proposed by the Petitioner. The relevant portion of the Respondents’ reply to the legal notice is reproduced hereunder:

“My client hereby expressed his consent for appointment of an Arbitrator for settling the disputes between our clients, provided such an Arbitrator is located in Tamil Nadu. If the Arbitration proceedings are conducted inside Tamil Nadu, both your client and my client would be benefited...

8. A perusal of Clause 15 of the agreement indicates that the parties intended to have the seat of arbitration at Delhi. In view of the aforesaid facts, since the arbitration clause between the parties is not in dispute, as is also evident

from the reply to the legal notice, there is no impediment in allowing the said application.

9. In view of the above, **Dr. T R Naval**, (Retired District and Sessions Judge) (Mob: 9910384662) is appointed as an Arbitrator to adjudicate upon the disputes and differences, including claims and counter-claims between the parties.

10. The parties are directed to appear before the Arbitrator as and when notified. Learned Arbitrator will issue a declaration under Section 12 read with the attendant provisions of the 1996 Act before entering upon reference.

11. The learned Arbitrator will be paid his fee in terms of the provisions of the Fourth Schedule appended to the Arbitration and Conciliation Act, 1996

12. The Petition is allowed in the above terms. No order as to costs. The Registry will despatch a copy of this order to the learned Arbitrator.

**SANJEEV NARULA, J**

**AUGUST 05, 2019**

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