

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 04.03.2021**

**CORAM**

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**O.P.No.491 of 2020**

**&**

**A.No. 3059 of 2020**

**&**

**O.A.Nos.201 & 202 of 2020**

M/s.SBI Cards and Payment Services Ltd.,

402, 4<sup>th</sup> Floor

Aggarwal Millennium Tower

E-1-2-3 Netaji Subash Place

Waziapur, New Delhi.

And an Office at Chennai

10<sup>th</sup> Floor, TVH Agnitio Park,

141, Rajiv Gandhi Salai,

Kandanchavady, Chennai – 600096

Represented by Asst. Manager (law)

And Authorised Signatory,

Mr.Prabhu Parthasarathy

Formerly Known as G.E.Capital Business

Process Management Services Pvt. Ltd.

... Petitioner

**Vs.**

M/s.True Value Homes India (Pvt) Ltd,

having its Regd Office at 21,

C.V.Raman Road,

Alwarpet, Chennai – 600 018.

... Respondent

**Prayer:** The Petition is filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to resolve the dispute between the petitioner and the respondents as per maintenance agreement dated 10.08.2021.

For Petitioner : Mr.S.Sethuraman

For Respondent : Ms.Abarajitha Vishwanath

### **ORDER**

The above petition is filed for appointing a sole arbitrator to resolve the dispute that has arisen between the petitioner and the respondent in respect to the maintenance agreement dated 10.08.2012.

2. The case of the petitioner is that they are the subsidiary of the State Bank of India and engaged in the business of credit card and providing ancillary services to its customers. The petitioner had taken on lease the premises measuring 58,202 Sq.ft. at Kandanchavady,

Chennai - 600096, belonging to the respondent by virtue of lease with the respondent. Thereafter, the lessor was M/s.Kotak with effect from 15.07.2015.

3. Initially, the petitioner and the respondent entered into the agreement for maintenance of common areas on 10.08.2012. The agreement contained several terms and condition regarding the maintenance of common areas as well as annual maintenance contracts in respect of the common facilities / common equipment.

4. The respondent had undertaken to provide operation and maintenance service. In consideration the petitioner was to pay the maintenance charge of a sum of Rs.7 per sq.ft. which was totally a sum of Rs.4,07,414/- per month. The agreement also contained an arbitration clause under which in case of disputes arising between the parties in respect of the said agreement parties had agreed to resolve their disputes through arbitration.

5. The petitioner has been regularly paying the maintenance charges without any default and all of a sudden they had received an e-mail dated 26.12.2019, wherein the respondent had raised certain issues regarding payment of the maintenance charges. The respondent was charging maintenance based on their own calculations which was not agreeable to the petitioner. The respondent by letter dated 09.03.2020 called upon the petitioner to pay a sum of Rs.43,90,439/- towards maintenance charges and a sum of Rs.92,03,482/- towards annual maintenance charges. The petitioner was therefore left with no other alternative except to invoke the arbitration clause, viz; clause 16.1 of the maintenance agreement for appointing a sole arbitrator and they had also named their arbitrator.

6. The respondent who had received the letter did not respond to the said appointment. Meanwhile, the respondent had also started threatening to disconnect the basic amenities. Therefore, the

petitioner has come forward with the application seeking interim orders under Section 9 of the Arbitration and Conciliation Act. They have also filed a petition under Section 11 of the Act for appointing an arbitrator since their request was not acceded to by the respondent.

7. The respondent has filed their counter to the Original Petition as well as the counter to the applications. A reading of the counter affidavit would indicate the following. The respondent had in the year 2019, during a large scale audit, come to know that they were raising invoices for an amount lower than the amount fixed under the agreement. The respondent also took a plea that the maintenance agreement is operational till such time as the lease agreement and once the lease agreement is terminated the maintenance agreement would automatically come to an end.

8. The respondent denied the contention that they had threatened to disconnect the essential services to the petitioner. They

would also contend that there is no arbitral agreement between the parties as it has not been renewed. The respondent therefore sought for the dismissal of the said petition.

9. Heard the learned counsels and perused the records.

10. Admittedly, the parties have entered into a Maintenance agreement stating that in the event of dispute, the same would be referred to arbitration. A perusal of the pleadings as well as the document would clearly show that there are disputes between the petitioner and the respondent. The terms of the arbitration agreement, namely, clause 16 is reproduced herein:

*“Any dispute between the parties with regard to or touching this agreement / leased premises shall be referred to arbitration of a sole arbitrator to be appointed mutually by the parties and the place for arbitration shall be Chennai. The arbitration proceedings will be conducted in accordance with the provisions contained in Arbitration*

*and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The arbitral award shall be final and binding on both the parties. The provisions of this clause shall survive the termination of this agreement”.*

11. In the light of the above circumstances, this Court is passing the following order:

i) Mr.P.V.Balasubramaniam, Advocate, No.47/1, I Main Road, Rams Surabhi Apartment, RA Puram, Chennai – 600028, Mob:9841041888 is appointed as an Arbitrator.

ii) The 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 entering reference. It is open to the respondents to raise all legal objections as to the validity of contract.

iii) The arbitrator is at liberty to fix the remuneration and other incidental expenses as per law.

iv) The proceedings may be conducted at the Nani Palkhivala Arbitration Centre, New D.No.22, Karpagambal Nagar, Mylapore, Chennai 600004. The Centre has been recognised as an Institution by orders of the Hon'ble Chief Justice dated 19.09.2005.

12. The Original Petition is ordered leaving the parties to bear their own costs. Interim order already granted by this Court on 21.05.2020 shall continue till the applicant moves the arbitral tribunal by way of Section 17 application. Consequently, other connected applications are closed giving liberty to the applicant to approach the arbitral Tribunal. No costs.

**04.03.2021**

Internet : Yes/No  
Index : Yes/No  
Speaking / Non-Speaking  
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**P.T. ASHA. J,**

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