

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No. 627 of 2020
and
A.No.484 of 2021

M/s.Ashlok Leyland Limited
represented by its Divisional Manager,
Mr.Joiestin David,
No.1, Sardar Patel Road,
Chennai – 600 032.

...Petitioner

-V-

M/s.Gaurav Automobiles,
Proprietor – Mr. Vinit Bansal,
Opposite to Mohini Filling Station,
Village Sangteda,
Kotputli, Jaipur – 303 108,
Rajasthan.

...Respondent

Prayer: Original Petitions filed under Section 11(6)(B) of the Arbitration and Conciliation Act, 1996 praying to appoint a sole Arbitrator to adjudicate the disputes that have arisen between the parties based on the Service Centre Agreement dated 07.09.2018, respectively.

For Petitioner : Mr.S.Vijayanand

For Respondents : Served – No appearance

ORDER

The above application is filed for appointing an Arbitrator to resolve the disputes between the parties in respect of the Service Centre Agreement dated 07.09.2018.

2.The petitioner would submit that they had entered into an Agreement to service the vehicles manufactured by the petitioner herein. It is the case of the petitioner that the issues had cropped up during the pendency of the Agreement with reference to certain fake claims relating to the purchase of the spares, etc., by using fake invoices. The respondent had also raised certain false claims with reference to repair operation/services provided by them. Therefore, the petitioner had terminated the services of the respondent and had also invoked the Arbitration Clause by appointing an Arbitrator.

3.The respondent had sent a reply notice denying the allegations and submitting that an Arbitrator may be appointed at Jaipur and that the Arbitral Tribunal should consist of three Arbitrators. Since the petitioner was not agreeable for the same the petitioner is before this Court.

4.In the meanwhile, the respondents had also moved Section 9 applications before this Court in A.No.483 and 484 of 2021 invoking the provisions of Section 9 of the Arbitration and Conciliation Act seeking stay of the termination order issued on 02.09.2020.

5.The respondents were served and one Mr.V.Ashok, Advocate had undertaken to file vakalat, however, the same was not filed. The respondents were represented by the said Ashok in the connected applications in A.Nos.483 and 484 of 2021 but no vakalat was filed by him in these Original Petitions. Considering the fact that the respondents have been served and taking into account the provisions of Section 11(13) of the Arbitration and Conciliation Act, 1996, I have proceeded to hear the petitioner and pass orders.

6.It is seen from the records that the parties had entered into an Agreement which contains an Arbitration Clause which reads as follows:

“12.3: in the event of Parties failing to resolve any dispute amicably, the same shall be referred to a single arbitrator. The arbitration proceedings shall be conducted in English and in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 or any statutory modification or enactment thereof. The venue and place of arbitration shall be in Chennai. The cost of arbitration shall be mutually shared by and between the parties unless the Award determines to the contrary.”

7.A reading of Clause 12.3 of the Agreement would clearly indicate that the parties had agreed that the dispute would be referred to the single Arbitrator and the seat and venue of the arbitration at Chennai. Further, taking into account the fact that the respondent has also invoked the arbitration proceedings by filing Section 9 application before this Court.

Hence, this Court appoints the Hon'ble Mr Justice R. Sudhakar, former Chief Justice of Manipur High Court, as an Arbitrator to resolve the disputes between the parties.

8. Accordingly, it is ordered as follows:

i) The Hon'ble Mr Justice R. Sudhakar, former Chief Justice of Manipur High Court, residing at No.21, Greenways Road, Raja Annamalaipuram, Chennai – 60 028, Phone No.044-24615411, 044-24620923, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) 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. It is open to the respondent to raise all legal objections as to the validity of contract.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

P.T. ASHA. J.

mps

iv) 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.

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

08.03.2021

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
mps

To

The Hon'ble Mr Justice R. Sudhakar,
former Chief Justice of Manipur High Court,
No.21, Greenways Road,
Raja Annamalaipuram,
Chennai – 60 028.

O.P.No.627 of 2020
and A.No.484 of 2021