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Arb.O.P (Com.Div.) No. 61 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No. 61 of 2022

M.N.S.Printers Pvt. Ltd.,
Rep. By its Authorised Signatory
Nanasaheb Baban Chroghe
Having registered office at No.345/4
BhataraHalli, Old Madras Road
Bangalore – 560 049

... Petitioner

Vs.

Imayam Publications Pvt. Ltd.,
Through its Managing Director Mr.R.A.Jebaraj
New No.17, Old No.9 VSSJJJ House
3rd Street, Ashok Nagar
Chennai – 600 087

... Respondent

Arbitration Original Petition 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 respondent as per clause 26 of the agreement between the parties dated 19th August 2015.

For Petitioner : Mr.Antony R.Julian

For Respondent : Mr.M.Sudhan



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ORDER

In the captioned 'Arbitration Original Petition' ['Arb.OP' for the sake of brevity] Mr.Antony R.Julian, learned counsel for lone petitioner and Mr.M.Sudhan, learned counsel for lone respondent are before this Court, read this in conjunction with and in continuation of earlier proceedings made by this Court in previous listings on 15.02.2022 and 01.03.2022, which read as follows:

'Proceedings dated 15.02.2022

Captioned 'arbitration original petition' ['Arb OP'] has been filed under Section 11(5) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] with a prayer for appointment of a sole arbitrator.

2. Mr.Antony R.Julian, learned counsel for petitioner, who is before this Court submits that the arbitration agreement between the parties i.e., petitioner and respondent is in the form of a Clause i.e., Clause 26 in an 'agreement dated 19.08.2015' [hereinafter 'said agreement' for the sake of convenience and clarity]. To be noted, 'Clause 26 of said agreement' shall be referred to as 'said arbitration agreement' for the sake of convenience and clarity.



3. *Said agreement between petitioner and respondent is for outsource printing work qua a Daily. It may not be necessary to dilate further on facts. Suffice to say that learned counsel submits that said agreement ran into rough weather as according to petitioner's counsel, bills raised for the work done remained unpaid.*

4. *Adverting to petition in the captioned Arb OP, more particularly paragraph No.7 thereat, learned counsel submits that discussions took place between parties regarding what according to him are outstanding payments, but the same did not resolve this issue and therefore, a notice dated 20.10.2021 was issued invoking said arbitration agreement. This notice invoking said arbitration agreement was received by respondent on 26.10.2021 is learned counsel's say. To be noted, captioned Arb OP has been presented in this Court on 11.01.2022 under Section 11(5) of A and C Act, as said arbitration agreement provides for arbitration by sole arbitrator and no specific procedure for appointment of arbitrator has been agreed upon.*

5. *Learned counsel submits that the trigger notice dated 20.10.2021 has not evoked any reply or response from respondent and therefore, the captioned Arb OP was presented in this Court.*

6. *Said arbitration agreement as between petitioner and respondent i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act which is in*



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the form of Clause 26 of said agreement which reads as follows:

'26. ARBITRATION & JURISDICTION

Any dispute and/or difference arising out of or in relation to this agreement shall be resolved by joint discussions of the authorized representatives of both the parties. However, if the disputes/differences are not resolved by discussions as stated above, then the matter shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996. The decision of the Arbitrator shall be final and binding on both the parties. The place of arbitration shall be at Chennai. Further the Hon'ble Courts in Chennai alone shall have jurisdiction to adjudicate any dispute that are beyond the scope of Arbitration.'

7. Prima facie case made out regarding the existence of arbitration agreement between the parties.

8. Issue notice to respondent returnable in a fortnight i.e., returnable by 01.03.2022. Private notice permitted. Notice through all available electronic modes of communications (subject of course to proof being demonstrated) also permitted.

9. List on 01.03.2022.'

'Proceedings dated 01.03.2022



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*Read this in conjunction with and in continuation of
earlier proceedings made in the previous listing on 15.02.2022.*



2. Mr.Antony R.Julian, learned counsel for the lone petitioner is before this court. Mr.S.Thanka Sivan, learned counsel with address for service at No.229/6 Mercantile Plaza, 1st Floor, Opposite to High Court, Chennai, who is before this physical Court submits that he has instructions to enter appearance on behalf of the respondent. Learned counsel for respondent requests for a short accommodation to get instructions and revert to this Court. Request acceded to.

List after a week. List on 10.03.2022.'

2. Learned counsel on both sides submit that factual matrix and the trajectory the matter has taken have been correctly captured in the aforementioned proceedings made in the earlier listings.

3. The aforementioned proceedings made in earlier listings shall be read as integral part and parcel of this order. Short forms, abbreviations and short references used in earlier proceedings shall continue to be used in this order wherever necessary.

4. Learned counsel for respondent submits on instructions that there is no dispute about the existence of arbitration agreement between the parties



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i.e., Clause 26 of said agreement i.e., agreement dated 19.08.2015. In the light of sub-section (6A) of Section 11 of A and C Act, this by itself is good enough for disposal of captioned Arb.OP.

5. This Court proceeds to appoint Mr.P.J.Sri Ganesh, learned Member of this Bar, having address for service at No.10A, 14th Avenue, Harrington Road, Chetpet, Chennai – 31, Mob: 98848 62677, E-mail: sriganeshraja@gmail.com as sole Arbitrator. Learned Arbitrator is requested to enter upon reference, embark upon the exercise of adjudicating arbitrable disputes that have arisen between the petitioner and respondent qua said agreement i.e., agreement dated 19.08.2015. Learned Arbitrator is requested to hold sittings in the Madras High Court Arbitration and Conciliation Centre under the aegis of this Court (MHCAC), conduct arbitration in accordance with the Madras High Court Arbitration Proceedings Rules 2017 and fee of the learned Arbitrator shall be governed by the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.



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6. Captioned Arb OP is disposed of in the aforesaid manner. There shall be no order as to costs.

17.03.2022

Speaking/Non-speaking order

Index : Yes / No

gpa

Note:

The Registry is directed to communicate this order forthwith to

1. Mr.P.J.Sri Ganesh,
No.10A, 14th Avenue,
Harrington Road, Chetpet,
Chennai – 31,
Mob: 98848 62677,
E-mail: sriganeshraja@gmail.com
2. The Director
Tamil Nadu Mediation Conciliation Centre
-cum- Ex-Officio Member
Madras High Court Arbitration Centre
Chennai - 104.



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M.SUNDAR.J.,

gpa

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