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Arb.O.P (Com.Div.) 37 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

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THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) 37 of 2022

Gympac Ventures Private Limited
Represented by its Authorised Signatory
Mr.Thulasimani
1st Street Vinayaga Nagar, Okkiyam
Thoraipakkam, Chennai – 600 097 ... Petitioner

Vs.

M/s.AGR Fitness
Represented by its Partner
Mr.Rajeev Dubey
1/153A W Block
Saket Nagar, Kanpur
Utter Pradesh – 208 014 ... Respondent

Arbitration Original Petition filed under Section 11(4 & 6) of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator to arbitrate over the dispute and recover the outstanding amount due and payable to the Respondent to the petitioner and to pay the cost of the petition.

For Petitioner : Ms.Chandini Pradeep Kumar



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ORDER

In the captioned 'Arbitration Original Petition' ('Arb.OP' for the sake of brevity) Ms.Chandini Pradeep Kumar, learned counsel for sole petitioner is before this Court.

2. Regarding the crux and gravamen of the matter and the trajectory this matter has taken particularly qua lone respondent, this order is to be read in continuation of and in conjunction with earlier proceedings made in the previous listings on 08.02.2022, 22.02.2022 and 01.03.2022, which read as follows:

'Proceedings dated 08.02.2022

Captioned Arbitration Original Petition has been filed under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity with a prayer for appointment of an Arbitrator.

2. Mr.Rahul M.Shankar, learned counsel submits that the dispute arises out of an 'agreement dated 24.08.2019' [hereinafter 'said agreement' for the sake of convenience and clarity] between the petitioner and respondent caption 'Agreement for Purchase of Assets'. Learned counsel submits that it is for supply of GYM



equipments. To be noted, this Court is informed that GYM is the short form of Gymnasium. Learned counsel submits that arbitration agreement between the parties is in the form of a clause in said agreement and that clause is Article 12 of said agreement which reads as follows:

'Article 12 Dispute Resolution'

This Agreement is governed by the laws of India. If any dispute or difference shall arise between the parties hereto as to the interpretation of this Agreement or any covenants or conditions contained thereof of as to the rights, duties or liabilities of any party hereunder or as to any act, matter or thing arising out of or relating to or under this Agreement (even though the Agreement may have been terminated), the same shall be referred to the decision of a sole Arbitrator appointed by the SELLER as contemplated under the provisions of The Arbitration and Conciliation Act, 1996. The decision of the sole Arbitrator shall be final and binding on the parties to this agreement. The venue of such arbitration proceedings shall be at Chennai.'

3. A careful perusal of Clause 12 of said agreement reveals that the venue is Chennai.

4. Learned counsel for the respondent submits that the dispute is arbitrable as according to him money payable by the respondent for GYM equipments which have been supplied is the subject matter of disputation. Learned counsel also draws the



attention of this Court to a notice dated 26.11.2021 issued by petitioner through its counsel which according to learned counsel is trigger notice qua arbitration.

5. In the light of the narrative thus far, issue notice to respondent returnable by 22.02.2022. Private notice permitted. Private notice through electronic modes of service (subject to proof being demonstrated) also permitted.

6. List on 22.02.2022.'

'Proceedings dated 22.02.2022

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 08.02.2022.

2.Ms.Chandini Pradeep Kumar, learned counsel who is before this Court on behalf of petitioner submits that pursuant to aforementioned earlier proceedings, the respondent has since been served and affidavit of service has been filed. Registry to verify and do the needful.

List one week hence. List on 01.03.2022.'

'Proceedings dated 01.03.2022

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 22.02.2022 which reads as follows:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 08.02.2022.



2.Ms.Chandini Pradeep Kumar, learned counsel who is before this Court on behalf of petitioner submits that pursuant to aforementioned earlier proceedings, the respondent has since been served and affidavit of service has been filed. Registry to verify and do the needful.

List one week hence. List on 01.03.2022.'

2. In spite of the aforementioned earlier proceedings, there is no mention either about the affidavit of service or about the respondent in the cause list today. This Court is informed that the affidavit of service has been filed vide Diary No.SR No.5574 of 2022 dated 22.02.2022.

3.. Registry to do the needful at least in the next listing.

List one week hence. List on 08.03.2022'

3. The above proceedings are telltale qua the crux of the *lis* between the parties, the existence of arbitration agreement between the parties and the trajectory the matter has taken before this Court more particularly qua service on the lone respondent. The above proceedings being telltale, it is not necessary to dilate any further on those aspects of the matter. Suffice to say that the lone respondent has not chosen to come before this Court and dispute the existence of arbitration agreement between the parties i.e., 'arbitration agreement' within the meaning of Section 2(1)(b) read with Section 7 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of



1996)' {hereinafter be referred to as 'A and C Act' for the sake of brevity} is in the form of a covenant in an 'agreement dated 24.08.2019' [hereinafter 'said agreement' for the sake of convenience] qua Article 12 captioned 'Dispute Resolution'. All this is captured in earlier proceedings dated 08.02.2022.

4. To be noted, the short forms and abbreviations used in the previous proceedings (extracted and reproduced supra) shall continue to be used in this order also. In the light of sub-section (6A) of Section 11 and elucidation of the same qua *Mayavati Trading* principle qua ratio in *Mayavati Trading Private Limited Vs. Pradyut Deb Burman* reported in (2019) 8 SCC 714, this Court proceeds to appoint Mr.S.Arjun Suresh, Advocate with address for service at New No.54, 3rd Main Road, Gandhinagar, Adyar, Chennai - 20, Mob:9789971118, E-mail: arjun_ss@yahoo.co.uk, as sole Arbitrator. Learned Arbitrator is requested to enter upon reference, adjudicate the *lis* i.e., arbitrable disputes that have arisen between the parties by conducting sittings in 'Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and Hon'ble Arbitrator's fee shall be as per Madras



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High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

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

08.03.2022

gpa

Note: Registry to communicate this order forthwith to:

1. Mr.S.Arjun Suresh,
New No.54, 3rd Main Road,
Gandhinagar, Adyar,
Chennai - 600 020,
Mob:9789971118
E-mail: arjun_ss@yahoo.co.uk
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.,

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08.03.2022