



WEB COPY



Arb.O.P (Com.Div.) No.68 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No.68 of 2022

M/s.Fibro Flex (India) Pvt. Ltd.,
Represented by its Director Mr.R.Kamakoteeswaran
New No.69, Old No.5, Greams Road
Thousand Lights, Chennai - 600 006 ... Petitioner

Vs.

Mrs.S.Muthulakshmi
Proprietor
M/s.Coir Hortitech
24, Thiruvallur Street
Perunalpuram
Tirunelveli - 627 007 ... Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint Mr.Sharath Chandran (Contact +919884445442), Advocate High Court, Madras as sole Arbitrator on behalf of the parties to resolve the dispute in terms of the Memorandum of Understanding dated 24.09.2014 and Lease Agreement dated 09.03.2015 between the petitioner and the respondents.

For Petitioner : Mr.S.R.Raghunathan



WEB COPY



Arb.O.P (Com.Div.) No.68 of 2022

For Respondent : Mr.N.Nithianandam

ORDER

Read this in conjunction with and in continuation of earlier proceedings made by this Court on 18.02.2022, 10.03.2022 and 17.03.2022, which read as follows:

Proceedings made on 18.02.2022

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 07.02.2022 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] (wrongly mentioned as Section 11(6) in the caption to petition) with a prayer to appoint the person named therein as a sole Arbitrator.

2. Mr.S.R.Raghuathan, learned counsel for petitioner advertng to case file submits that the captioned matter is predicated on a 'memorandum of understanding' [MOU] dated 24.09.2014 and a lease deed dated 09.03.2015. Arbitration clause is clause 19 of MOU which reads as follows:

'19. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be resolved by the Parties by way of Arbitration. The provisions of the Arbitration and Conciliation Act, 1996 shall apply for such proceedings. All proceedings in any such



arbitration shall be conducted in English. The venue of the arbitration proceedings shall be Chennai.'

3. Learned counsel submits that the above clause serves as an Arbitration Agreement 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. Learned counsel also submits that MOU and lease deed stand telescoped into one another owing to clause 20 of MOU.

4. Learned counsel also submits that the trigger notice qua arbitration is dated 07.09.2021 (page No.33 of typed set of papers) and this did not evoke any response. Trigger notice became necessary as the respondent took composite lease of demised property together with machineries and employees but defaulted in making payments is his say. Broadly stated, this is the arbitrable dispute. It may not be necessary to dilate further on this at this prima facie stage.

5. Learned counsel submits that the aforementioned trigger notice did not evoke any reply or response though the same has been duly served on the respondent/noticee which has necessitated the presentation of Arb OP in this Court on 07.02.2022 is his further say.

6. In the light of the narrative thus far, prima face case for issue of notice made out.

7. Issue notice to respondent returnable in 10.03.2022. Private notice permitted. Private notice through electronic modes of communications (subject to proof being demonstrated) also



permitted.

8. List on 10.03.2022.'

Proceedings made on 10.03.2022

'Re-notified.

2. List on 17.03.2022.'

Proceedings made on 17.03.2022

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 18.02.2022.

2. Mr.Vigneshwar Elango, learned counsel for petitioner who is before this Court advertng to aforementioned earlier proceedings submits that notice qua the lone respondent has since been served.

3. Mr.N.Nithianandam, learned counsel with address for service at 84 Law Chambers, High Court, Chennai - 104, who is before this Court submits that he has instructions to enter appearance on behalf of lone respondent. Learned counsel requests for a short accommodation to get instructions and revert to this Court. Learned counsel also submits that vakalatnama has already been filed on 15.03.2022 vide Diary No.8037 of 2022.

4. Registry to show the name of learned counsel for respondent if the vakalatnama is in order.

List on 22.03.2022.'



Arb.O.P (Com.Div.) No.68 of 2022

2. Mr.S.R.Raghunathan, learned counsel for sole petitioner and

Mr.N.Nithianandam, learned counsel for respondent are before this Court.

Adverting to earlier proceedings, learned counsel on both sides submit that there is no dispute about the existence of arbitration agreement and therefore, both sides have agreed on a sole Arbitrator. The sole Arbitrator mutually agreed by both sides is as follows:

Ms.R.J.Radhika
Advocate
No.33/73, Flat No.3, 1st Floor
Abiramee Apartments
3rd Main Road, Kasturbai Nagar
Adyar, Chennai - 600 020
Ph: 99405 50666

3. Though obvious it is made clear that this Court does not express any opinion or view on the merits of the matter and all questions are left open to be adjudicated upon by the sole Arbitrator. Learned sole Arbitrator is requested to enter upon reference, adjudicate upon the arbitrable disputes that have arisen between the petitioner and respondent in accordance with the Madras High Court Arbitration Proceedings Rules 2017. The learned Arbitrator shall hold sittings in 'Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) and learned Arbitrator's fee shall be as



Arb.O.P (Com.Div.) No.68 of 2022

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

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

22.03.2022

Speaking/Non-speaking order

Index : Yes / No

gpa

Note:

The Registry is directed to communicate this order forthwith to

1. Ms.R.J.Radhika
Advocate
No.33/73, Flat No.3, 1st Floor
Abiramee Apartments
3rd Main Road, Kasturbai Nagar
Adyar, Chennai - 600 020
Ph: 99405 50666
2. The Director
Tamil Nadu Mediation Conciliation Centre
-cum- Ex-Officio Member
Madras High Court, Arbitration Centre
Chennai - 104.



WEB COPY



Arb.O.P (Com.Div.) No.68 of 2022

M.SUNDAR.J.,

gpa

Arb.O.P (Com.Div.) No.68 of 2022

22.03.2022