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Arb.O.P.(Comm.Div.) No.121 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Arb.O.P.(Comm.Div.) No.121 of 2022

M/s.MEPTRO TECHNOLOGY (INDIA) CO PVT. LTD

Through its Director, Mr.V.N.Srikanth

Having its Registered Office at

“Kurios”, Plot No.24,

2nd Cross Street, Ambattur

Industrial Estate, Chennai,

Tamil Nadu-600 058

E-mail Id-srikanth@maitrox.asia

PH:+91 9821078616

... Petitioner

VS.

1. M/s.SERVICE COMMUNICATION SOLUTIONS

Through its Founder & Director, Mr.SHVAM GUPTAA

having its Registered Office at

A-180, First Floor, Sukhdev Nagar

Market, Bhishma Pitamah Marg, Kotla

Mubarakpur, Timber Market, Main Road,

Opp. Indusind Bank, Near Defence Colony

Market Red Light, New Delhi-110 003.

2. Mr.SHVAM GUPTAA

Founder and director M/s.Service and Communication
Solutions

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F-26/4, Okhla Phase-2,
Ground Floor, Near Yamaha Center,
Nathu Sweets Road, Okhla,
New Delhi-110 020
Also At:B-320 Ground Floor,
Prashant Vihar,
Rohini, Delhi-110 085
E-mail ID-wecare@care1.in
PH:+91 9315256031

... Respondent

PRAYER: Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, pleased to appoint a Sole Arbitrator to resolve the disputes between the Petitioner and the Respondents with regard to the Spare Parts Consignment Agreement dated 30/11/2018.

For Petitioner : Mr.K.R.Gokul Sundar for
M/s.A.Umashankar

ORDER

The Petitioner seeks the constitution of an arbitral tribunal to resolve disputes arising out of the Spare Parts Consignment Agreement dated 30.11.2017 between the petitioner and the respondent, Mr.Shvam Guptaa, Proprietor of Service and Communication Solutions.



2. The petitioner states that the above mentioned agreement was entered into between the parties in relation to the supply of spare parts by the petitioner to the respondent. Pursuant thereto, it is stated that spare parts were supplied and invoices were issued to the respondent. In view of nonpayment thereof, the petitioner invoked the arbitration clause under notice dated 29.06.2021 and called upon the respondent to make the payment demanded under the said notice. The respondent refused to receive the said notice. Hence, this petition.

3. Notice was issued to the respondent. Since such notice could not be served, permission was granted to the petitioner to effect service by publication. Such service was effected as recorded by learned Master on 21.11.2022. In spite of service of notice and printing the names of the respondents in the cause list, there is no representation for the respondents. In these circumstances, the matter is proceeded with in the absence of the respondents.



4. The petitioner has placed the Spare Parts Consignment Agreement on record. The said contract was executed by the petitioner and M/s. Service and Communication Solutions. Mr.Shvam Guptaa has executed the contract as the Proprietor of M/s.Service and Communication Solutions. Since the said concern was described as a company, the petitioner has issued a Section 21 notice not only to M/s. Service and Communication Solutions but also separately to Mr.Shvam Guptaa.

5. The above mentioned contract contains an arbitration clause in clause 9 thereof, which is set out below:

“9 Governing Law and Dispute Settlement

9.1 The substantive laws of India shall govern this Agreement, without giving effect to the principles of conflict of law. Each party agrees to submit any dispute arising out of or related to this Agreement to the exclusive jurisdiction of the Courts in Chennai.

9.2 Both Parties shall first settle any dispute arising from, or in connection with the Agreement through friendly negotiation. In case both Parties can reach no settlement to disputes through amicable negotiation, the disputes shall be submitted to Arbitrator in accordance with its arbitration



rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both Parties. The arbitration fees shall be borne by the losing party except otherwise awarded by the arbitration commission. The language of the arbitration shall be English and the arbitration proceedings shall be held at Chennai.

9.3 To the fullest extent permitted by law, this arbitration proceeding and the arbitrator's award shall be maintained in confidence by the Parties so as to protect relevant valuable information or intellectual property rights.

9.4 Notwithstanding any reference to arbitration, both Parties shall continue to perform their respective obligations under the Agreement except for those matters under arbitration.”

6. The section 21 notice is also on record. The petitioner has placed evidence that the respondents refused to receive the said notice. The above arbitration clause provides for resolution of disputes by arbitration at Chennai. Therefore, this Court has jurisdiction to entertain this petition. Since the Section 21 notice could not be served on the respondents on account of refusal by the respondents to receive the same, the petitioner is entitled to maintain and sustain this petition.



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7. For reasons set out above, Arb.O.P.(Com.Div.) No.121 of 2022 is allowed by appointing Mr.K.Ashok Kumar, Advocate, New No.38, Old No.49, Padmanabha Nagar, 4th Street, Adyar, Chennai-600 020, Mobile No.94449 58093, as the sole arbitrator. The sole arbitrator is called upon to enter upon reference and adjudicate the dispute. The fees and expenses in relation to the arbitral proceedings shall be fixed by the arbitrator in consultation with the parties.

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Index : Yes / No

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