



O.A.No.162 of 2022

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M.SUNDAR., J

O.A.No.162 of 2022

Captioned application has been presented in this Court on 21.03.2022 *inter alia* under Section 9 of 'The Arbitration and Conciliation Act 1996 (Act 26 of 1996)' (hereinafter 'A and C Act' for the sake of brevity) with a prayer to restrain the respondent from acting upon and giving effect to a 'Termination Letter dated 07.03.2022' [hereinafter 'said Termination Letter' for convenience and clarity].

2. Mr.A.L.Somayaji, learned senior advocate instructed by Mr.Adithya Reddy, counsel on record for applicant who is before this Court submits that the captioned application is predicated on 'Clause 16.11' (captioned 'Arbitration') of an agreement captioned 'DISTRIBUTOR AGREEMENT and dated 09.02.2016' [hereinafter 'primary contract' for the sake of convenience and clarity].

3. Aforementioned Clause 16.11 of primary contract reads as follows:

'16.11 Arbitration

The parties hereto shall endeavor to settle by mutual conciliation any claim, dispute, or controversy ("Dispute") arising out of, or in relation to, this Agreement, including any Dispute with respect to the existence or validity hereof, the interpretation hereof, the activities performed hereunder, or the breach hereof. Any Dispute which cannot be so



O.A.No.162 of 2022

WEB COPY

resolved through such conciliation shall be referred to a mutually elected arbitrator in accordance with the (Indian) Arbitration and Conciliation Act, 1996 and rules provided thereunder. In case of unresolved Disputes, arbitration shall be the sole remedy under this Agreement. Application may be made to such court having jurisdiction for a judicial acceptance of the award and an order of enforcement. The venue of arbitration will be Chennai, India.'

4. Mr.Arun C.Mohan, learned counsel who was present in Court accepted notice on behalf of lone respondent and requested for a pass over for getting instructions. Request was acceded to. When the matter was taken up post lunch (in the II call), Mr.P.S.Raman, learned senior advocate appeared on behalf of Mr.Arun C.Mohan. Mr.Arun C.Mohan, learned counsel shall file his vakalatnama in the Registry before close of working hours tomorrow.

5. Both learned senior counsel on instructions submitted that there is no disputation, disagreement or contestation about the existence of aforementioned Clause 16.11 and the position that it serves as an arbitration agreement between the applicant and the respondent i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. Both learned senior counsel on further instructions agreed for appointment of a former Hon'ble Judge of this Court as sole Arbitrator. Therefore it is not necessary to set out factual matrix in great detail. In other words it is not necessary to dilate much



O.A.No.162 of 2022

on facts. Suffice to say that the aforementioned primary contract ran into rough weather resulting in the respondent terminating the primary contract in and by said Termination notice. One of the anxieties expressed by the applicant in the captioned application is articulated in paragraph 41 of support affidavit and the same reads as follows:

'41. If notice of this application is received by the respondent, the respondent will forthwith take steps to render the present application infructuous by executing a fresh distributor agreement with a third party.'

6. On instructions, learned senior counsel for respondent submits that a distributor (Alpha Motors, Kathmandu) has since been appointed in and by a stamped agreement dated 25.02.2022. It was further submitted that the first Letter of Intent is dated 03.02.2022 and the first billing was on 18.02.2022. It was also submitted that the first consignment has left for Kathmandu. Learned senior counsel for applicant, on instructions submits that these facts are subject to disputation. Therefore this Section 9 Court refrains itself from expressing any view or opinion on these submissions. This is more so as both sides have agreed that the captioned application can now be presented before the agreed sole Arbitrator, who will constitute the 'Arbital Tribunal' ['AT'] so that AT can



O.A.No.162 of 2022

examine the captioned application as one under Section 17 of A and C Act.

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7. By consent of both sides, Hon'ble Mr.Justice K.Kannan (Retd.), former Judge of this Court and Punjab and Haryana High Court at Chandigarh, residing at New No.3, Old No.11, Lakshmi Colony 1st Street, North Crescent Road, T.Nagar, Chennai-600 017, Mobile: 97800 08145 email: justicekkannanoffice@gmail.com; mnkkannan@gmail.com; is appointed as sole Arbitrator. Hon'ble sole Arbitrator is requested to conduct arbitration in the 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' ('MHCAC') in accordance with the Madras High Court Arbitration Proceedings Rules 2017 and learned Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

8. Be that as it may, without prejudice to the rights and contentions of both sides it was submitted by respondent that the respondent will not appoint any further distributor and will maintain status quo as of today i.e., status quo on the basis that a stamped agreement appointing Alpha Motors, Kathmandu as distributor is now operating. As already alluded to supra, this is subject to disputation by applicant and this will be adjudicated upon and decided by Hon'ble Sole Arbitrator. This status quo will operate for a fortnight from today



O.A.No.162 of 2022

WEB COPY

i.e., up to 11.04.2022 or a decision on the same (whichever is earlier). Though obvious, for the purpose of specificity it is made clear that Hon'ble Arbitrator shall hear the Section 17 application on its own merits and in accordance with law uninfluenced by this order {obviously except his appointment}.

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

28.03.2022

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Note: Registry to communicate this order forthwith to:

1. Mr.K.Kannan (Retd.)
Former Judge of Madras High Court and
Punjab and Haryana High Court at Chandigarh,
New No.3, Old No.11,
Lakshmi Colony 1st Street,
North Crescent Road,
T.Nagar, Chennai-600 017,
Mobile: 97800 08145.
email: justicekkannanoffice@gmail.com; mnkkannan@gmail.com
2. The Director,
Tamil Nadu Mediation and Conciliation Centre-cum-
Ex-Officio Member,
Madras High Court, Arbitration Centre,
Chennai – 104.



WEB COPY



O.A.No.162 of 2022

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