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Arb.O.P (Com.Div.) No.231 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

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THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No.231 of 2022

M/s.New Area Development Corporation Limited
Rep. by its Managing Director Chandrakant B Kamble
No.37, Rassi Towers
Ground Floor, JG Nagar
Kumaranandapuram 60 Feet Road
Tiruppur - 641 602.

... Petitioner

Vs.

M/s.Renaissance RTW Asia Private Limited
(Formerly known as Renaissance Creations India (P) Ltd.,)
Rep. by its Managing Director
C.Anandhakumar
Son of P.Chinnasamy
No.227-B, Kupbandampalayam
Veerapandi Post
Tiruppur - 641 605.

... Respondent

Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, to

(a) Appoint a sole Arbitrator or Arbitrators for settlement of the dispute between the petitioner and the respondent;

(b) To award the costs of this petition;



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For Petitioner : Ms.Preethi Rajan
for Mr.K.Selvaraj
For Respondent : Mr.Pranav V.Shankar

ORDER

This order will now dispose of the captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity].

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 09.06.2022 which reads as follows:

'Captioned Arb.OP is predicated on Clause 12 of an agreement captioned 'SERVICE AGREEMENT' [dated 15.04.2005] between petitioner and respondent. This 'SERVICE AGREEMENT' shall be referred to as 'primary contract' and clause 12 thereat captioned 'Dispute Resolution' shall be referred to as 'Arbitration Clause/Arbitration Agreement'.

2. Primary contract is for supply of water and arbitrable disputes have erupted between the parties when the primary contract was worked/operated. Arbitrable disputes inter alia pertain to a claim of about 72 lakhs towards water supply and encashment of Bank guarantee.



3. Respondent approached this Court qua jurisdiction and the same culminated in an order dated 19.08.2019 made in W.A.No.2449 of 2018, wherein a Hon'ble Division Bench directed the parties to resort to Arbitration owing to the aforementioned arbitration Clause/arbitration agreement. Thereafter, petitioner issued a notice dated 28.12.2021 inter alia nominating an Arbitrator. Be that as it may, in the interregnum, 'Lok Adalat' ['LA'] under the aegis of Tiruppur District Legal Service Authority has made an order in OS.No.145 of 2019 following the aforementioned Division Bench order leaving it to the parties to resort to Arbitration. Respondent has sent a reply dated 03.02.2022. A perusal of this reply dated 03.02.2022 brings to light that there is no disputation or disagreement about the existence of arbitration agreement and all that respondent has said is, Arbitral Tribunal can be downsized and a sole Arbitrator can be appointed. In such circumstances, captioned Arb OP has been presented in this Court on 20.04.2022.

4. Prima facie case made out for issue of notice.

5. Issue notice to sole respondent returnable by a fortnight i.e., returnable by 23.06.2022. Private notice permitted.

List on 23.06.2022.'

3. Aforementioned earlier proceedings dated 09.06.2022 shall be read



as an integral part and parcel of this order. The short forms, abbreviations and short references used in the aforementioned proceedings shall continue to be used in the instant order also for the sake of convenience and clarity.

4. Pursuant to earlier proceedings, notice has been duly served on the sole respondent, sole respondent has entered appearance through counsel and Mr.Pranav V.Shankar, learned counsel for sole respondent is before this Court. Learned counsel submits that he would file Vakalatnama along with his co-counsel in the Registry today before close of working hours. This submission is recorded.

5. Ms.Preethi Rajan, learned counsel representing Mr.K.Selvaraj, counsel on record for sole petitioner is before this Court.

6. Adverting to the aforementioned earlier proceedings, aforementioned two learned counsel i.e., both sides consent for downsizing of 'Arbitral Tribunal' [hereinafter 'AT' for the sake of convenience and clarity] i.e., appointment of sole Arbitrator.



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7. Learned counsel for respondent, adverting to the aforementioned earlier proceedings very fairly submits that respondent had opposed the proceedings in writ jurisdiction primarily on the ground that there is no arbitration clause and parties have to resort to ADR mechanism. Therefore, the respondent is not opposing the prayer in the captioned Arb OP for appointment of Arbitrator is learned counsel's further say. This makes the task of disposal of the captioned Arb OP fairly simple. In any event, a legal drill under Section 11 of A and C Act should perambulate within the statutory perimeter sketched by sub-section (6A) thereat which turns on examination of existence of Arbitration Agreement.

8. In the case on hand, there is no disputation or disagreement about the existence of Arbitration Agreement in the case on hand i.e., clause 12 of primary contract (to be noted, clause 12 of primary contract is the Arbitration Agreement between the parties within the meaning of Section 2(1)(b) read with Section 7 of A and C Act).



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9. In the light of the narrative thus far, Hon'ble Mr.Justice K.N.Basha (Retd.,) High Court, Madras, residing at Dr.Ambedkar Road (Old ICF Link Road), North Thirumalai Nagar, Villivakkam, Chennai, Mobile No.9444454545, Email ID : justiceknbasha@yahoo.com is appointed as sole Arbitrator. Hon'ble Arbitrator is requested to enter upon reference qua primary contract i.e., Service Agreement dated 15.04.2005 for water supply between the petitioner and respondent, adjudicate arbitrable disputes that have arisen between the parties qua primary contract and render an award by holding sittings in the 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC), in accordance with Madras High Court Arbitration Proceedings Rules 2017 and fee of Hon'ble Arbitrator shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.



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

23.06.2022

mk

Index: Yes/no

Speaking/non-speaking

Note: Registry to communicate this order forthwith to:

1. Hon'ble Mr.Justice K.N.Basha (Retd.,)
High Court, Madras,
Dr.Ambedkar Road (Old ICF Link Road),
North Thirumalai Nagar,
Villivakkam, Chennai,
Mobile No.9444454545,
Email ID : justiceknbasha@yahoo.com
2. The Director
Tamil Nadu Mediation and Conciliation Centre
-cum- Ex Officio Member,
Madras High Court Arbitration Centre
Madras High Court, Chennai – 600 104.



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M.SUNDAR.J.,

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