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Arb.O.P.No.26 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.Original Petition No.26 of 2021

C.Saravanakumar

... Petitioner

Versus

1.M/s Yoopha Healthteh Pvt Ltd.,
A Private Limited Company
Having its Office at No.103, First Floor,
Velacherry Main Road, Venkatapuram,
Guindy, Chennai – 600 032.

2. Arun Justin Robert

3.Mrs.Rekha Mary

4.M/s Croncrew Technologies Pvt. Ltd.,
Door No.22, Plot No.29,
Thirumalai Nagar Annexe,
1st Main Road,
Perungudi,
Chennai – 600 096

5.Jayakumar
Respondents

...



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Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking to appoint Sole Arbitrator to adjudicate the differences and disputes between the petitioner and the respondent.

For Petitioner : No appearance

For R.1 to R.3 : M/s.a.M.Amutha Ganesh

ORDER

This petition has been filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator

2. The petitioner and the respondents have entered into the following agreements:-

(i) Credit Facility Agreement dated 18.07.2019

(ii) Business Transfer Agreement dated 18.07.2019



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3. There seems to be some dispute between the parties arising under the aforementioned agreements. Both the agreements contain arbitration clause, which are extracted hereunder:-

Credit Facility Agreement dated 18.07.2019:

7. Subject to the above clause, if such controversy, conflict or dispute arising out of or in connection with the Agreement are not settled amicably, conflict or dispute of any nature arising out of or relating to or in connection with the provisions of this Agreement, shall be settled exclusively and finally by arbitration carried out in Chennai and conducted in the English language. The arbitration shall be conducted and finally settled by sole arbitrator in accordance with the [Rules and Conciliation and Arbitration as prescribed under the Arbitration and Conciliation Act, 1996] in effect at the time of such arbitration. The seat and venue of the arbitration shall be in Chennai. The Parties agree, in connection with the enforcement of any arbitral award rendered pursuant to this Clause, to submit to the exclusive jurisdiction of the courts of Chennai.



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Business Transfer Agreement dated 18.07.2019:-

8.2 Arbitration

8.2.1. Subject to Clause 8.1 above, if any controversy, conflict or dispute arising out of or in connection with the Agreement are not settled amicably, such conflict or dispute of any nature arising out of or relating to or in connection with the provisions of this Agreement, shall be settled exclusively and finally by arbitration carried out in Chennai and conducted in the English language. Judgment on the award may be entered by any court having jurisdiction.

8.2.2. The arbitration shall be conducted and finally settled by any arbitrator in accordance with the [Rules and Conciliation and Arbitration as prescribed under the Arbitration and Conciliation Act, 1996,] in effect the time of such arbitration. The seat and venue of the arbitration shall be in Chennai. The Parties agree, in connection with the enforcement of any arbitral award rendered pursuant to this Clause, to submit to the exclusive jurisdiction of the courts of Chennai.

8.2.3. Nothing contained hereinabove shall prejudice either Party's right to have recourse to any court having jurisdiction for the purpose of interim or interlocutory orders.



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8.2.4. The sole arbitrator shall give a reasoned decision or award, including as to the costs of the arbitration, which shall be final and binding on the Parties. The Parties agree that the arbitrator's award may be enforced against the Parties to the proceedings or their assets, wherever they may be found.

8.2.5. The Parties shall co-operate in good faith to expedite (to the maximum extent practicable) the conduct of any arbitral proceedings commenced under this Agreement.

8.2.6. The costs and expenses of the arbitration, including without limitation, the fees of the arbitration, shall be borne equally by the Parties and each Party shall bear and pay its own costs, expenses, fees, disbursements and other charges of its counsel, in connection with the arbitration proceedings except as may be otherwise determined by the arbitrators.”

4. The existence of the arbitration agreement between the parties is also not disputed by the respondents. The petitioner has also sent a Notice dated 18.06.2021 to the respondents calling upon them to give their consent for appointment of Mr.John Azchariah, Advocate as an



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Arbitration, for which, the respondents through their lawyers have responded, but have not consented for the appointment of the named arbitrator.

5. Since there is an arbitration agreement in both the contracts, the parties will have to necessarily go for arbitration in accordance with the arbitration agreement.

6. Since the respondents have not given their consent for the named arbitrator, suggested by the petitioner, this Court is constrained to appoint an Arbitrator.

7. Accordingly, this Court appoints Mr.T.Venkattakrishnan, retired District Judge, residing at No.W903, Starwood Towers, Mambakkam Main Road, Venkai Vasal, Madambakkam Post, Chennai - 600 126 (Mobile No: 94867 94409) as an Arbitrator, who shall decide the dispute between the parties arising out of the Credit Facility



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Agreement dated 18.07.2019 and Business Transfer Agreement dated 18.07.2019. The Arbitrator shall act upon the reference after giving notice to both the parties and fix the date of hearing and thereafter proceed with the arbitration and pass an Arbitral award on merits and in accordance with law by following the procedure contemplated in the Arbitration and Conciliation Act, 1996 and its Rules.

8. The Arbitrator shall fix his remuneration as per the provisions of the Arbitration and Conciliation Act, 1996 and its Rules.

19.01.2022

sr/rgi

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order



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ABDUL QUDDHOSE, J
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