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Arb.O.P (Com.Div).No.279 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.03.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div).No.279 of 2021

M/s.Interarch Building Products Pvt Ltd.,
Represented by its Authorised Representative
Mr.Subodh Kumar Sharma
Having office at Farm No.8, Khasra No.56/23/2/
Dera Mandi Road
Mandi Village, Tehsil Mehrauli,
New Delhi – 110047.
And also at -
Plot No.D-1/1, SIPCOT, Industrial Park,
Madambakkam, Sriperumbudur – 602105.

... Petitioner

vs.

M/s.Shri Kailash Logistics (Chennai) Ltd.,
Registered office at
No.8, Veekay Manor, Gopala Krishna Road
T.Nagar, Chennai.

... Respondent

Prayer:

Arbitration Original Petition filed under Section 11(6) of Arbitration and Conciliation Act, 1996 to appoint an Independent Arbitrator and direct the reference of the disputes mentioned above between the parties to the said arbitrator to adjudicate upon the same.



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For Petitioner : Mr.K.M.Aasim Shehzad,
of M/s.BFS Legal [Law Firm]

For Respondent : Mr.Ashaiq Ismail,
of M/s.Isaac Chambers [Law Firm]

ORDER

Captioned Arb OP has been presented in this Court on 27.10.2021 under Section 11(6) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' (hereinafter 'A and C Act' for the sake of convenience and clarity) with a prayer for appointment of Arbitrator.

2.Mr.K.M.Aasim Shehzad of M/s.BFS Legal [Law Firm], learned counsel for the petitioner and Mr.Ashaiq Ismail of M/s.Isaac Chambers [Law Firm], learned counsel on behalf of the lone respondent are before this Court.

3.From the case file placed before this Court, it comes to light that arbitration agreement between the parties [petitioner and respondent] is in the form of two Clauses in Purchase Order/Work Order dated 25.07.2018 issued by the respondent. These are Clauses 12 and 13 and the same read as follows:



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'12) Arbitration

All disputes arising out of this contract shall be referred to an Arbitrator to be jointly appointed by purchaser and contractor whose decision shall be final and binding on the parties.

13)Jurisdiction

All disputes relating to this order between the purchaser and the vendor shall be subjected to and be referred to the courts of law situated in Chennai.'

4.Learned counsel for the petitioner, advertng to the pleadings in the Captioned Arb O.P submits that the petitioner has executed work as per aforementioned Purchase Order/Work Order and raised invoices but the same remain unpaid. Broadly stated, this in sum and substance is the arbitrable dispute is his say.

5.Learned counsel for respondent submits that there is disputation regarding the averment that the invoices remain unpaid. Owing to the narrow scope of a legal drill under Section 11 of A and C Act, this Court refrains itself from expressing any view or opinion on the rival contentions



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qua arbitrable disputes leaving open all issues to be decided by the sole Arbitrator who is to be appointed.

6.This Court reminds itself that the scope of a legal drill under Section 11 of A and C Act is broadly controlled by sub section (6A) which in turn is confined to examination of existence of arbitration agreement. This principle was reiterated by Hon'ble Supreme Court in **Mayavati Trading case law** i.e., **Mayavati Trading Pvt. Ltd vs Pradyuat Deb Burman** reported in **2019 (8) SCC 714**. The relevant paragraph is paragraph No.10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgement, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgement in Duro Felguera'



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7.The reason as to why this Court is adopting such an approach is, there is no disputation or disagreement about the aforementioned two Clauses namely, Clauses 12 and 13 in the Purchase Order/Work Order. The aforementioned two Clauses serve as an arbitration agreement between the petitioner and respondent i.e., 'arbitration agreement' within the meaning of Section 2(1)(b) 'read with' ('r/w' for brevity) Section 7 of A and C Act. A careful perusal of the aforementioned provisions also makes it clear that the parties have agreed that the supervisory Court shall be Chennai and it is also a sequitur qua seat/venue being Chennai.

8.This Court is informed that the claim is in the region of a little over Rupees Forty lakhs and it is a case of work done as per the Purchase Order/ Work Order and alleged non-payment of invoices for the work done.

9.Therefore, this Court appoints *Mr.Amalraj S.Penikilapatti, Advocate* having office at *No.27-R, III Floor, Pandu Klix Plaza, Door No.330, Old No.168, Thambu Chetty Street, Chennai – 600 001 [Mobile:*



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98402 02279] as sole arbitrator. Learned sole arbitrator is requested to enter upon reference, adjudicate arbitrable disputes that have arisen between the petitioner and the respondent by holding sittings at Madras High Court Arbitration Centre [MHCAC] under the aegis of this Court in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and Hon'ble Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

10.Captioned Arbitration O.P is disposed of in the aforesaid manner.

There shall be no order as to costs.

09.03.2022

Speaking/Non-speaking order

Index : Yes / No

Internet : Yes / No

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Note: Registry is directed to communicate a copy of this order forthwith to

1. Mr.Amalraj S.Penikilapatti, Advocate
No.27-R, III Floor, Pandu Klix Plaza,
Door No.330, Old No.168, Thambu Chetty Street,
Chennai – 600 001 [Mobile: 98402 02279]



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WEB 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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