



Arb.O.P.(Comm.Div.) No.397 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.397 of 2022

M/s.Johnson Lifts Private Limited
Represented by its Authorized Signatory
Mr.Rose Blessed King
No.1, East Main Road
Anna Nagar West Extension
Chennai 600 101.

... Petitioner

vs.

M/s.Om Corporation
29, Sourabh Society
Near Sourabh Police Station
L.P.Savani Road,Pal Gam
Surat 395 009.

... Respondent

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent under the said contract.

For Petitioner : Mr.Benjamin E.Moses

For Respondent : No Appearance



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ORDER

WEB COPY The petitioner seeks constitution of an arbitral tribunal to adjudicate the dispute between the petitioner and the respondents.

2.The petitioner states that the respondent awarded a contract to the petitioner for the supply and erection of elevators in relation to its project at Raj Ratna Enclave in Surat. In relation to the said contract, it is stated that a work order was issued on 03.05.2014. According to the petitioner, the work was executed and the elevators were handed over to the respondent. The parties maintained a running account and the respondent made part payment. Since a dispute arose in relation to the non-payment of outstanding amounts under the agreement, the petitioner invoked the arbitration clause in the contract and issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996, on 25.08.2021. Since there was no reply to the said notice, the present petition is filed.

3.Pursuant to the order dated 09.09.2022 by which notice was issued to the respondent, the petitioner filed an affidavit of service and enclosed the



acknowledgment card as proof of service of notice on the respondent. After taking note of the same, by order dated 29.09.2022, the matter was adjourned to today so as to provide a further opportunity to the respondent. In spite of service of notice and the name of the respondent being printed in the cause list, there is no representation for the respondent. Accordingly, the petition is proceeded with in the absence of the respondent.

4.The contract between the parties is on record and has been duly signed by the petitioner and the respondent. The said contract contains a dispute resolution clause, which reads as under:

*“**ARBITRATION** : In case of any dispute between us, the matter shall have to be settled by arbitration in Chennai by an arbitrator appointed by Johnson Lifts and courts in Chennai city shall have exclusive jurisdiction.”*

5.In terms of the above clause, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 25.08.2021. In



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the said notice, the petitioner appointed the arbitrator since the clause empowered the petitioner to do so. The person appointed as arbitrator refused to enter upon reference in view of the absence of consent from the respondent. The petition is filed in the above facts and circumstances and is liable to be allowed.

6. Accordingly, Arb.O.P.(Comm.Div.) No.397 of 2022 is allowed by appointing Mr.Roshan Balasubramanian, Advocate, No.6, Indian Chambers (SICCI) Ground and 2nd Floor, Annexe Building, Esplanade, Chennai-600 108, as the sole arbitrator. The sole arbitrator is directed to enter upon reference and adjudicate the dispute. The fees and expenses for the arbitral proceedings shall be fixed by the arbitrator in consultation with the parties.

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Index : Yes / No

Internet : Yes / No



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