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Arb.O.P.(Comm.Div.) No.520 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.520 of 2022

Shine Outdoor Advertising Pvt. Ltd.

Represented by its Authorised Signatory, N.Rajadurai

No.161-A, Avarampalayam Road,

New Sidhapudur,

Coimbatore 641 004.

... Petitioner

vs.

1.Coimbatore City Municipal Corporation,

represented by its Commissioner,

Coimbatore 641 001.

2.The District Collector,

Coimbatore District,

Coimbatore 641 018.

... Respondents

(R2 deleted as per order dated 03.11.2022)

PRAYER: Arbitration Original Petition filed under Section 11(6) (a) of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator to adjudicate the disputes between the Petitioner and the Respondent Corporation in terms of the Agreement dated 26.10.2015 with reference to (1) Waiver / remission of Permission Fees for the years 2020-2021 and 2021-2022 when the Government of India and the Government of Tamil Nadu imposed lock downs in view of the pandemic COVID-19; (2) collection of Tax on



Advertisement after the same was subsumed under Goods and Service Tax with effect from 01.07.2017; (3) renewal of licence of the bus shelters maintained by the Petitioner for the period beyond 30.09.2019; and (4) any other disputes in the contract between the Respondent Corporation and the Petitioner arising out of the Agreement No.7095/2015/MH5 dated 26.10.2015.

For Petitioner : Mr.Kandhan Duraisami

For Respondents : Mr.K.Magesh, SC for R1
Mr.A.Edwin Prabakar, Spl.G.P.for (CS)
Asst. by R.Siddharth, GA (CS)

ORDER

The petitioner seeks the constitution of an arbitral tribunal to resolve the dispute between the parties by citing clause 18. Clause 18 is set out below:

18.0. DISPUTE

RESOLUTION

18.1. Amicable Resolution

(a) Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including non-completion of the Project between the Parties and so notified in writing by either Party to the other



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(the “Dispute”) in the first instance shall be attempted to be resolved amicably by the CCMC and failing such resolution of the same, in accordance with the procedure set forth in sub-clause (b) below.

(b). Either Party may require the Dispute to be referred to Monitoring group for amicable settlement. Upon such reference, DBOP the Parties and the Monitoring group shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provisions of Arbitration clause.

18.2 Arbitration Committee:

a). Arbitrators

Any Dispute which is not resolved amicably shall be finally settled by the District Collector as Arbitration Committee Chairman and the arbitration will take place in accordance with Arbitration and Conciliation Act, 1996.

b). Place of Arbitration



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*The place of arbitration shall be
Coimbatore, Tamilnadu.*

2. Learned counsel for the petitioner states that several communications were issued seeking waiver of rent in view of the COVID-19 pandemic. Eventually, by communication dated 05.01.2022, the respondent informed the petitioner that the COVID-19 pandemic had a temporary effect and that, therefore, if rent is not paid, the contract would be terminated. In those circumstances, the arbitration clause was invoked under communication dated 06.01.2022. By reply dated 14.07.2022, the respondent did not agree to the proposal of the petitioner and instead suggested a retired District Judge to be appointed as arbitrator. The present petition is filed in the said facts and circumstances.

3. Learned standing counsel for the respondent refers to the arbitration clause and points out that the said clause provides for amicable resolution of disputes through the monitoring group. He states that the petitioner did not endeavour to resolve the dispute amicably by requesting for a reference to the monitoring group. The second submission is that the arbitration clause provides for arbitral proceedings to be conducted at



Coimbatore. Therefore, without prejudice to the earlier objection, he submits that the arbitral proceedings should be conducted at Coimbatore and that, it is appropriate that a retired District Judge based in Coimbatore be appointed.

4. As pointed out by learned standing counsel for the respondent, clause 18.1 (a) and (b) provide for the amicable resolution of the dispute through the monitoring group in the first instance. However, upon issuance of multiple communications by the petitioner, including the notice dated 06.01.2022, the respondent proposed a retired District Judge to act as arbitrator and resolve the dispute. In these circumstances, the respondent has waived the requirements of clause 18.1 (a) and (b) and instead agreed to the resolution of disputes by an arbitral tribunal without exhausting the option of amicable settlement through the monitoring group. The other submission that the arbitral proceedings should be held at Coimbatore is liable to be accepted.

5. Accordingly, this petition is allowed by appointing



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Mr.J.V.Raj, retired District Judge, E-10, Sangamithra Garden, next to Krishna Park, Nehru Nagar West, Coimbatore-641 048 (Mobile No.9445436345) as the sole arbitrator. The sole arbitrator is called upon to enter upon reference and adjudicate the dispute. The fees and expenses in relation to the arbitral proceedings shall be fixed in consultation with the parties.

03.11.2022

Index : Yes/No

Internet : Yes/No

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SENTHILKUMAR RAMAMOOTHY J.



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