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Arb O.P.(Com. Div.)No.284 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.03.2022

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

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M/s.Randstad India Private Limited,
Represented by its Head Legal and
Regulatory Affairs and Authorized Representative
Mr.Tapos Moitra,
"Randstad House",
Old No.5 and 5A, New No.9, Pycrofts Garden Road,
Chennai-600 006.

... Petitioner

Vs.

M/s.Magnum Aviation Private Limited,
Represented by its Managing Director Mr.Vishal Varshnei,
having its registered office at
No.8/134, A Block, Mehram Nagar Village, South West Delhi,
New Delhi-110010.

Also at:

M/s.Magnum Aviation Private Limited,
Represented by its Managing Director, Mr.Vishal Varshnei,
having its Corporate office at
No.68 AC, Noida Special Economic Zone, Noida Phase-II,
U.P.-201305.

... Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an arbitrator on behalf of the Respondent, to adjudicate the dispute between the petitioner and the respondent arising out of the Deputation Services Agreement dated 26.07.2019.



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For Petitioner : Mr.Chethan Sagar

ORDER

This order has to be read in conjunction with and in continuation of earlier proceedings made by this Court in previous listings on 24.02.2022, 28.02.2022 and 14.03.2022, which read as follows:

'Proceedings dated 24.02.2022

In the captioned matter, in the cause list, the names of learned counsel M/s.K.Ashok Kumar and K.Ganesan have been shown as counsel for 5th respondent. To be noted, there is only one respondent in the captioned Arb.OP. There is no 5th respondent. One more aspect of the matter is, the captioned Arb.OP is being listed for admission (Adjourned admission) and notice is yet to go to the respondent and therefore, the respondent entering appearance at this stage does not arise. In any event learned counsel Mr.K.Ashok Kumar who is before this Court says that he and/or his co-counsel have not entered appearance for any party in the captioned Arb OP.

2. Registry to rectify the aforementioned mistake and list the matter appropriately on Monday under the same cause list caption.

List on 28.02.2022.'

'Proceedings dated 28.02.2022



Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 24.02.2022.

2. Registry has since set the records straight.

3. Mr.Chetan Sagar, learned counsel for petitioner, who is before this Court, submits that 'Arbitration Original Petition' ('Arb.OP' for the sake of brevity) which has been presented in this Court on 26.11.2021 under Section 11(6) 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, is predicated on an arbitration agreement between the petitioner and respondent which is in the form of a clause i.e., Clause 19 in a contract dated 26.07.2019.

4. Learned counsel submits that trigger notice is dated 28.09.2021, the same has been received by the noticee on 04.10.2021 but there has been no response/reply though 30 days have elapsed necessitating the presentation of the captioned Arb.OP.

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

6. Issue notice to the respondent returnable in a fortnight i.e., returnable by 14.03.2022. Private notice permitted. Private notice through electronic modes of communications (subject to proof being demonstrated) also permitted.

7. List under the caption 'NOTICE REGARDING ADMISSION' in the MOTION LIST on 14.03.2022.'

'Proceedings dated 14.03.2022:

Re-notified.



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List on 23.03.2022.'

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2. Short forms and abbreviations used in earlier proceedings more particularly proceedings made in the listing on 28.02.2022 will continue to be used in the instant order. The earlier proceedings shall form an integral part and parcel of this order.

3. Mr.Chethan Sagar, learned counsel who is before this Court on behalf of sole petitioner submits that the lone respondent has been duly served and affidavit of service has been filed vide Diary No.7585 of 2022. To be noted name of the respondent is also shown in the cause list but there is no representation. This Court is informed that the lone respondent has not chosen to enter appearance through any counsel. The aforementioned earlier proceedings will also show that adequate and ample opportunities have been given to the respondent. Notwithstanding such adequate and ample opportunities respondent has not chosen to come before this Court and dispute or contest the existence of arbitration agreement between the parties.

4. Captioned Arb OP being a legal drill under Section 11 of A and C Act, before writing the operative portion, this Court reminds itself that a legal drill under Section 11 of A and C Act is largely controlled by sub-section (6A)



thereat. This is vide ratio laid down by Hon'ble Supreme Court in **Mayavati Trading Pvt. Ltd vs Pradyuat Deb Burman** reported in **(2019) 8 SCC 714**, 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 acord 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'

5. Aforementioned paragraph No.10 of **Mayavati Trading** case law takes us to **Duro Felguera** principle being ratio laid down by Hon'ble Supreme Court in **M/s.Duro Felguera S.A. Vs M/s.Gangavaram Port Limited** reported in **2017 (9) SCC 729**, relevant paragraphs in **Duro Felguera case** are paragraph Nos.47 and 59 and the same reads as follows:

'47. What is the effect of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as "the 2015 Amendment") with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996



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Act") is the crucial question arising for consideration in this case.

.....

59. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. and Boghara Polyfab. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists – nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Courts intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected."

6. In the case on hand, as the petitioner has demonstrated existence of arbitration agreement and as the respondent has not chosen to enter appearance and dispute the existence of arbitration agreement in spite of adequate and ample opportunities being given, this Court appoints Ms.K.Aparna Devi, Advocate, with address for service at No.160, Thambu Chetty Street, Hussain Plaza, First Floor, Chennai-600 001 (Mobile No.9994745719) as sole Arbitrator. Learned sole Arbitrator is requested to enter upon reference and adjudicate the arbitral disputes that have arisen between the petitioner and respondent-Company qua agreement dated 26.07.2019 captioned 'DEPUTATION SERVICES AGREEMENT' in accordance with Madras High Court Arbitration Proceedings Rules 2017 and



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Hon'ble Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

Captioned Arb OP disposed of in above terms. There shall be no order as to costs.

23.03.2022

Speaking/Non-speaking order

Index : Yes / No

kmi/nsa

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

1. Ms.K.Aparna Devi,
Advocate,
No.160, Thambu Chetty Street,
Hussain Plaza, First Floor,
Chennai-600 001. (Mobile No.9994745719)
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.,

kmi/nsa

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