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Arb.O.P.(Comm.Div).No.559 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2022

Coram:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arbitration Original Petition (Com.Div.) No.559 of 2022

Fuso Glass India Pvt. Ltd.,
having Registered Office at
Fuso House 91, Poonamallee High Road,
4th Floor, Egmore,
Chennai – 600 084,
rep. by its Authorised Signatory
Mr.P.Sandeep

... Petitioner

/versus/

1.Saket Metal Technocraft Dharwad,
A Partnership Firm

2.Saket Arora

3.Sumit Arora

... Respondents

Prayer: This Arbitration Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a Sole Arbitrator at Chennai to arbitrate and adjudicate the disputes that have arisen between the petitioner and respondent as per Clause 5 of the Invoices period from 11.08.2018 to 16.07.2019.

For Petitioner : Mr.G.Janaki

For Respondents : No appearance



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ORDER

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2.Learned counsel for the petitioner submitted that the petitioner is a Company registered under the Companies Act, 1956 and the first respondent is a Partnership Firm and respondents 2 and 3, who are the partners of the first respondent firm, have involved in the business activities of the firm. Learned counsel for the petitioner further submitted that the respondents had been dealing with the petitioner for the purchase of various categories of glass for some time and that the petitioner used to supply the same to the respondents as per its requirements vide various invoices raised by the petitioner. While so, during the period from 11.08.2018 to 16.07.2019, though the respondents have received certain goods, they have neither raised any dispute with regard to the quality or quantity of the goods nor made any payment with regard to the goods supplied by the petitioner. Thereafter, the respondents had made certain part payment, but they are liable to pay a sum of Rs.13,00,649/-, which includes principal and interest at the rate of 24% per annum as per the terms of the invoices. Therefore, the petitioner vide legal notices dated



28.09.2019 and 10.10.2019 demanded the respondents to clear the outstanding amount at the earliest. But they have not come forward either to reply the notices or to make the payment of the outstanding amount. Learned counsel for the petitioner further submitted that the invoices issued by the petitioner to the respondents for the supply of the goods contain an Arbitration Clause No.5 as well as a jurisdiction clause. Therefore, the petitioner sent a notice of demand cum Arbitration dated 22.01.2022 calling upon the respondents to make payment in respect of the above claim of Rs.13,00,649/- and suggesting the name of the Arbitrator to adjudicate and decide the disputes between the parties. As the respondents have not chosen to reply to the said notice dated 22.01.2022, the petitioner approached this Court seeking for appointment of a Sole Arbitrator.

3.In spite of notice to the respondents and their names have been printed in the cause list, there is no representation on their behalf either through counsel or by themselves.

4.Heard the learned counsel for the petitioner and perused the materials placed on record.

5.It could be seen from records that the respondents had been dealing with the purchase of various categories of glass and that the



petitioner used to supply the same to the respondents as per its requirements vide various invoices raised by the petitioner. Though the respondents have received certain goods during the period from 11.01.2018 to 16.07.2019, they have not come forward to make any payment with regard to the goods supplied by the petitioner. Therefore, the petitioner sent a notice of demand cum Arbitration dated 22.01.2022 calling upon the respondents to make payment in respect of the above claim of Rs.13,00,649/- and suggesting the name of the Arbitrator to adjudicate and decide the disputes between the parties. The Invoices issued by the petitioner to the respondents for the supply of the goods contain an Arbitration Clause No.5 as well as a jurisdiction clause.

6.It is appropriate to extract the above Clause No.5 as under:

“All disputes shall be subject to Arbitration, there shall be a Sole Arbitrator nominated by FGIPL. Seat of Arbitration at Chennai.

.....Subject to Chennai jurisdiction only”

7.On a perusal of the above, it is clear that any dispute arising between the parties, shall be decided by a Sole Arbitrator appointed by the petitioner and the jurisdiction for the same shall be at Chennai and the matter can be adjudicated and settled by the Sole Arbitrator.



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8. Therefore, this Court is of the view that an Arbitrator be appointed to enter upon reference and adjudicate the dispute in accordance with law. Hence, this Court feels it appropriate to pass the following order:

i) Hon'ble. Mr. Justice M. Govindaraj (Retd.), residing at No.4/225, Sri Kapaleeswarar south 2nd street, Neelangarai, Chennai – 41, Contact No.94442 57157 is appointed as Sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) That the learned Sole Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of the Order.

iii) That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

9. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator. No costs.



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KRISHNAN RAMASAMY, J.

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