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Arb.O.P.(Comm.Div.).No.560 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.560 of 2022

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

... Petitioner

**/versus/**

Vandana Bhagwandas Desai

... Respondent

**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 05.12.2017 to 18.11.2019.

For Petitioner : Mr.G.Janaki

For Respondent : No appearance

**ORDER**

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of a Sole Arbitrator to resolve the dispute arising out of Clause 5 of the Invoices period from 05.12.2017 to 18.11.2019.



2.Learned counsel for the petitioner submitted that the petitioner is a Company registered under the Companies Act, 1956 and the respondent, who is a Proprietor of Mantralaya Impex, has involved in the business activities of the firm. Learned counsel for the petitioner further submitted that the respondent 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 respondent as per its requirements vide various invoices raised by the petitioner. While so, during the period from 05.12.2017 to 18.11.2019, though the respondent has received certain goods, he 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 respondent had made certain part payment, but he is liable to pay a sum of Rs.20,31,449.92, which includes principal and interest at the rate of 24% per annum as per the terms of the invoices. Learned counsel for the petitioner further submitted that the invoices issued by the petitioner to the respondent 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 17.01.2022 calling upon the respondent to make payment in respect of the above claim of Rs.20,31,449.92 and suggesting the name of the Arbitrator to adjudicate and decide the disputes between the parties. As the respondent has not



chosen to reply to the said notice dated 17.01.2022, the petitioner approached this Court seeking for appointment of a Sole Arbitrator.

3.In spite of notice to the respondent and his name has been printed in the cause list, there is no representation on his behalf either through counsel or by himself.

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

5.It could be seen from records that the respondent had been dealing with the purchase of various categories of glass and that the petitioner used to supply the same to the respondent as per its requirements vide various invoices raised by the petitioner. Though the respondent has received certain goods during the period from 05.12.2017 to 18.11.2019, he has 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 17.01.2022 calling upon the respondent to make payment in respect of the above claim of Rs.20,31,449.92 and suggesting the name of the Arbitrator to adjudicate and decide the disputes between the parties. The Invoices issued by the petitioner to the



respondent 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.”

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.

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 2<sup>nd</sup> 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



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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 respondent 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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