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Arb. O.P. No. 563 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 13.12.2022

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**THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY**

**Arb. O.P(Com.Div). No.563 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 Power of Attorney,  
Mr.P.Sandeep

... Petitioner

Vs.

Ajay Rao Kanoji  
Proprietor  
M Panel Exteriors & Interiors  
Shop No-1-7-388, G3,  
Gayathri Shri Sai Enclave,  
Opp. Care Hospital, Musheerabad,  
Hyderabad -80 .

... Respondent

**PRAYER :** Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint the sole arbitrator at Chennai to arbitrate and adjudicate the disputes that have arisen between the



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petitioner and respondent as per Clause 5 of the invoices period from  
11.08.2018 to 16.08.2018.

For Petitioner : Ms.Janaki

For Respondent : Mr.S.Manuraj

### **ORDER**

This Original Petition has been filed seeking for appointment of Sole Arbitrator to constitute the Arbitral Tribunal to resolve the dispute that have arisen between the petitioner and the respondent.

2.The case of the petitioner is that the respondent approached the petitioner during the year 2018 for the purchase of various categories of glass and the petitioner had accordingly supplied the same to the respondent vide the various invoices which are mentioned below:

| Sr.No | Date       | Invoice No.    | Amount (Rs.) |
|-------|------------|----------------|--------------|
| 1     | 11.08.2018 | 10218191101065 | 79,886.00    |
| 2     | 15.08.2018 | 10118191102204 | 1,85,615.00  |
| 3     | 16.08.2018 | 10118191102217 | 8,011.00     |
| Total |            |                | 2,73,512.00  |



3. After receiving the goods, despite several reminders, the respondent failed to settle the dues. Therefore, the petitioner sent a notice of demand cum arbitration dated 22.01.2022, calling upon the respondent to pay a sum of Rs.4,98,881/- (Rs.2,73,512/- towards principal plus interest Rs.2,25,369/-) calculated at 24% p.a as per the terms of the invoices. However the respondent has not chosen to respond the said notice dated 22.01.2022. In the said notice, the petitioner has also stated that if the respondent fails to make payment within a period of 30 days from the date of receipt of the notice, it will be construed as a notice for invocation of arbitration in terms of Clause 5 of the invoice raised by the petitioner, which is extracted hereunder:

“All dispute shall be subject to Arbitration,  
there shall be a sole arbitrator nominated by FGIPL.  
Seat of Arbitration at Chennai.”

Hence, the present petition has been filed to appoint an arbitrator to resolve the disputes.



4. On the other hand, the learned counsel appearing for the respondent filed counter denying the liabilities; the receipt of the invoices and arbitration clause. The learned counsel for the respondent would fairly submit that the goods were received by the respondent, however, the invoices are not received by the respondent. Since, they have not received any invoices, the present dispute cannot be adjudicated by the Arbitrator.

5. In reply, the learned counsel appearing for the petitioner would submit that the respondent received invoices for the goods delivered and they have made an endorsement also. Further, Clause No.5 of the Tax invoices clearly states that all the disputes shall be subject to the arbitration. The petitioner has also sent notice to the respondent stating that if the respondent fails to make payment within a period of 30 days from the date of receipt of the notice, it will be construed as a notice for invocation of arbitration. Despite the same, the respondent has not acted upon and hence, she prayed to allow the present petition.



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6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

7. Upon hearing and perusal of the document, it is clear that either side counsel have admitted that the petitioner sent the goods and respondent received the same. However, the respondent raised the issue that they have not received invoices. It is quite shocking that the respondent has received the goods without receiving the invoices. The respondent has to let in evidence before the Arbitrator and the said issue cannot be decided by this Court and all other issues with regard to the non-payment of the invoices etc., are subject to arbitration clause which would be decided only by the Arbitrator. Certainly, in such circumstances, this Court cannot decide the said issue. Further, it is not fair on the part of the respondent to say that the respondent has not received the invoices and it might be received by somebody else on their behalf. Therefore, failure to receive the receipt from the agent or dealer is not a fault on the petitioner and it is the fault of the respondent. Therefore, this Court is inclined to appoint the sole arbitrator, in terms of Clause 5 of the invoices.



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8. Accordingly, Mrs.M.Shirijha Advocate (Enrollment No.1036/92), residing at F3, Aradhana Apartmnets, Temple Avenue, Srinagar Colony, Saidapet, Chennai-15 (Mob.No.99401 95896), is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. The learned 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 the Order. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by her 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.

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**KRISHNAN RAMASAMY, J.**

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