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Arb. O.P. No. 629 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.629 of 2022

Total Energies Marketing India Private Limited,
Formerly M/s.Total Oil India Private Limited,
registered office at
3rd Floor, The Leela Galleria,
Andheri-Kurla Road, Andheri(East),
Mumbai-400 059

&

LPG Division Corporate office at 138,
Ground and First Floor,
Raheja Paramount, Residency Road,
Bangalore-560 025
rep. by its Authorised Signatory,
Mr.Arun Babu Sundaram

... Petitioner

Vs.

SE FORGE LIMITED,
registered office at
no.5, Shrimali Society,
near Shri Krishna Complex,
Navarangpura,
Ahmedabad-380 009

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and also at

Plot no.1

SIL High Tech Engineering Products-SEZ,
Kittampalyam Village, Karumathampatti(PO),
Palladam Taluk,
Coimbatore-641 659

... Respondent

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying

(i)to pass an order of appointing a sole arbitrator to adjudicate the disputes that has arisen between the petitioner and the respondent based on the Agreement dated 30.07.2008,

(ii) and to direct the respondent to pay costs of this petition.

For Petitioner : Mr.S.Vijayanand

For Respondent : No appearance

ORDER

This Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, seeking for appointment of Sole Arbitrator to adjudicate the disputes that has arisen between the petitioner



and the respondent based on the Agreement dated 30.07.2008.

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2. The petitioner is a Company incorporated and registered under the provisions of the Companies Act 1956 and is carrying on the business of importing, storing, bottling, refilling, marketing LPG for domestic use, as well as industrial, automotive and commercial uses. The petitioner is also engaged in carrying on the business of installation, design, equipment and machinery including fabrication, erection, commissioning and maintenance. During the course of business, the petitioner entered into an Agreement dated 30.07.2008 with the respondent herein, to provide LPG storage and related equipments at the premises of the respondent. Further, as per the Agreement dated 30.07.2008, the petitioner provided the storage bullets, fittings and accessories which were installed at the premises of the respondent at the cost and expenses of the petitioner including the cost of transporting the equipments to the installation site.

3. Further, the case of the petitioner is that as per Clause 1.6 of the Agreement dated 30.07.2008, the respondent has to pay the petitioner every



quarter the annual charges for LPG facilities provided as per the terms agreed upon in the Agreement dated 30.07.2008. As per the terms and conditions of the Agreement, he has raised 7 invoices on various dates. According to the petitioner, apart from invoices, the respondent is liable to pay a sum of Rs.63,88,720/- being the outstanding invoice amount of Rs.2,58,720/-; towards indemnity of Rs.60,00,000/-; and also a sum of Rs.1,30,000/- towards the cost of dismantling and transportation. In this regard, the petitioner issued a legal notice dated 17.08.2021 by appointing Thiru S.A.Sreeramulu, former District Judge, Coimbatore as the sole Arbitrator. However, the respondents in their reply dated 01.10.2021 disputed the claim of the petitioner and further, they did not agree with the appointment of Thiru S.A.Sreeramulu, former District Judge as the sole arbitrator and on the other hand, they have suggested the name of Mr.K.Dinakar as an arbitrator for the purpose of the arbitration.

4. Therefore, since the respondent has not agreed for the sole Arbitrator proposed by the petitioner, the petitioner has come forward with the present petition.



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5. Despite service of notice on the respondent and the name also printed in cause list, none appeared on behalf of the respondent.

6. Heard the learned counsel appearing for the petitioner and perused the records.

7. Clause 11 of the Contract Agreement dated 30.7.2008 between the parties provides that all disputes or differences between the parties pertaining to the contract, unless settled amicably, shall be referred to arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996, which reads thus:-

“11. Attribution of Jurisdiction:

11.1 This Agreement has been made in Coimbatore and all payments thereunder shall be due and made in Coimbatore, unless otherwise directed by the Company. The Courts in the cities of Coimbatore alone shall have jurisdiction to entertain any suit, application or other proceeding in respect of any claim or dispute arising under this Agreement. The governing law applicable will be the Indian Law.



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11.2 All disputes or differences between the parties pertaining to this Contract, unless settled amicably, shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The venue of such arbitration shall be Coimbatore.”

8. On a perusal of the affidavit and other documents and also the reply sent by the respondent dissenting the appointment of the sole Arbitrator made by the petitioner and in view of the arbitral clause contained in the contract agreement, this Court feels it appropriate to pass the following order:

i) Mr.Naveen Kumar Murthi, Advocate, T6, 3rd Floor, Singapore Plaza, No.164, Linghi Chetty Street, Chennai-600 001, Contact No.9884740424 is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) That 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.

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.



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(iv) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, which shall be borne by both parties equally. However, it is made clear that in case the respondent fails to appear and contest the dispute before the learned Arbitrator, the petitioner shall, at first, pay the entire remuneration payable to the learned Arbitrator and later at liberty to recover the same from the respondent.

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.

Dn

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