



WEB COPY



Arb.Original Petition (Com.Div.) No.18 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.Original Petition (Com.Div.) No.18 of 2023

Oasys Cybernetics Private Limited,
A Company incorporated under the Companies Act, 1956,
Represented by its Director S.E.Valavan,
Having its registered address at:
at OAS Towers, No.3, Stringers Road,Vepery,
Chennai - 600 003.

... Petitioner

Vs.

Healthmed Technologies India Private Limited,
A Company incorporated under the Companies Act,
Having its registered office at:
12/151A, Janakiram Nagar,
Kolathuvancherry, Chennai - 600 122.

... Respondent

PRAYER: The Original Petition has been filed under Section 11 (6) (b) of Arbitration and Conciliation Act, 1996, to appoint the second Arbitrator to the panel of Arbitrators to adjudicate the dispute between the petitioner and the respondent in terms of Clause 15 of the Memorandum of Understanding dated 18.06.2018.



Arb.Original Petition (Com.Div.) No.18 of 2023

For Petitioner : Mr.M.Nirmal Kumar
for Mr.R.Pushkar

For Respondent : Mr.S.Sathish Kumar

ORDER

The present Original Petition has been filed under Section 11 (6) of Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondent under the Pump and Selling License Dated 03.03.2014.

2. According to the petitioner, the total contract value of first Memorandum of Understanding is Rs.1,29,80,000/- including GST and that the petitioner should have paid only 30% of the total contract value as on date to the tune of Rs.38,94,000/- for the work done by the respondent, but, the petitioner has paid a sum of Rs.78,77,777/- which is in excess, at respondent's request as support. Therefore, the respondent is liable to refund the balance amount of Rs.39,83,777/- towards the first Memorandum of Understanding. The respondent is liable to refund a sum of Rs.52,72,009/- invested in the respondent's Company pursuant to the second Memorandum of Understanding.



Arb.Original Petition (Com.Div.) No.18 of 2023

In total, a sum of Rs.92,55,786/- should be paid back to the petitioner by the respondent along with interest at 18% per annum.

3. The learned counsel for the petitioner further submits that the petitioner has sent a legal notice on 23.05.2022 to the respondent calling upon the respondent to repay the sum of Rs.92,55,786/- along with interest at 18% per annum until realization, but, the respondent, vide his letter dated 27.06.2022, sent a reply denying the contentions raised by the petitioner. Hence, the petitioner proposed to settle the disputes through sole arbitrator, however, the petitioner nominated Mr.P.Vasanthakumar Visweswaran, Advocate, as Arbitrator and the same was intimated to the respondent through notice dated 18.10.2022, but, there was no response from the respondent. Hence, the petitioner has constrained to file the present Petition to appoint the second Arbitrator to adjudicate the dispute between the petitioner and the respondent.

4. The learned counsel appearing for the petitioner further submits that the present dispute between the parties can be referred to the Arbitrator, in terms of Clause 15 of the first Memorandum of Understanding dated



Arb.Original Petition (Com.Div.) No.18 of 2023

11.06.2018, which reads as follows:-

WEB COPY

"15. DISPUTE RESOLUTION & GOVERNING LAW

15.1 All disputes arising out of or in connection with this MOU shall be attempted to be settled within (30) thirty days following the day of written notification of the dispute by either party, through good faith negotiations between the senior management of both the parties.

15.2 If the dispute is not resolved amicably within thirty (30) days from the date of commencement of discussions or such longer period as the parties agree in writing, the same shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, then in effect, unless otherwise agreed by the parties. Each party shall appoint an Arbitrator and both the appointed arbitrators shall appoint a third arbitrator. The arbitration shall be held in Chennai and be conducted in the English language. The award of the arbitrators shall be final and conclusive and binding upon the parties.

15.3 The validity, interpretation and implementation of this MOU shall be governed by and in accordance with the laws of India."

5. The learned counsel for the petitioner further submits that the present dispute can also be referred to the Arbitrator, as per the Arbitration Clause mentioned in the second Memorandum of Understanding dated 20.02.2019, which reads as follows,



Arb.Original Petition (Com.Div.) No.18 of 2023

WEB COPY

"Arbitration : In the event of any dispute on validity, interpretation, implementation, alleged breach of any provision of this agreement, the parties should resolve the same amicably. In the absence of any resolution the proceedings may be referred to under the Indian Arbitration Act in Chennai."

6. The learned counsel appearing for the respondent has filed a counter affidavit stating the first Memorandum of Understanding dated 18.06.2018 itself has expired and the period mentioned in the Memorandum of Understanding lapsed long back and therefore, it is unenforceable one. He also stated that in the second Memorandum of Understanding dated 20.02.2019, there is no clause regarding the appointment of Arbitrators and the subject matter of the first and second Memorandum of Understandings are not connected to each other.

7. Though the learned counsel appearing for the respondent initially has objections, he would fairly suggest that Mr.T.Gowthaman, learned Senior Advocate, may be appointed as Arbitrator to settle the dispute between the parties.



Arb.Original Petition (Com.Div.) No.18 of 2023

WEB COPY

8. Considering the submission made by the learned counsel appearing on either side, this Court is of the considered view that the present dispute squarely falls within the scope of the Memorandum of Understandings and the same may be referred to the Arbitrator. Hence, this Court is inclined to appoint a sole Arbitrator to decide the issue that is involved in this case and accordingly, ***Mr.T.Gowthaman, learned Senior Advocate, Flat GE, Ground Floor, Dev Eswari Apartments, 18 (Old No.11-12), 8th Cross Street, Shastri Nagar, Adyar, Chennai - 600 020, Phone No.044-42144900***, is appointed as 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 (6) 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 him and the same shall be borne by the parties equally.



WEB COPY



Arb.Original Petition (Com.Div.) No.18 of 2023

9. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. It is open to the parties to raise all the issues, which have been put forth before this Court and the learned Arbitrator is directed to decide the issue between the parties on his own without taking any observation made in this order.

06.04.2023

asi



WEB COPY



Arb.Original Petition (Com.Div.) No.18 of 2023

KRISHNAN RAMASAMY, J.

asi

Arb.Original Petition (Com.Div.) No.18 of 2023

06.04.2023