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Arb.O.P (Com.Div.) No.72 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.72 of 2023

Fujitec India Private Limited,
Plot No.52, 1st Cross Street,
8th Avenue, Mahindra World City,
Chengalpattu 603 004
Chengalpattu District.
Herein represented by,
Mr.V.Muralidhar, Director-Finance

... Petitioner

Vs.

N.Rose Developers Private Limited,
'Heaven Plaza', A Wing, 1st Floor,
Mr.Sammelan Hotel, S.V.Road,
ShantinagarDongri,
Dahisar (East),
Mumbai 400 068.

... Respondent

Arbitration Original Petition filed under Section 11(5) of the
Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator with



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directions to adjudicate the dispute between the parties hereto in connection with the contract dated 03.03.2016 and to give the award within such time as this Hon'ble Court may be pleased to determine.

For Petitioner : Mr.A.Narayanan

For Respondent : No appearance

ORDER

This Arbitration Original Petition has been filed for the appointment of the Arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter called as "the Act").

2. The learned counsel for the petitioner would submit that the petitioner-Company is engaged in the business of manufacture, supply, installation, testing, commissioning and maintenance of lifts. The respondent approached the petitioner for supply and installation of 6 lifts at their residential project viz., 'Heaven Plaza' at Dahisar, Mumbai. In this regard, the petitioner and the respondent had entered into a Contract dated 03.03.2016. All the lifts were installed and handed over to the respondent by the petitioner as per the terms of the said Contract. However, the



respondent had failed to pay a sum of Rs.4,66,214/- to the petitioner, in spite of several reminders.

3. By referring the said contract, the learned counsel for the petitioner would submit that as per Clause 4 of the Contract, if there is any delay in payment to the petitioner, the respondent is liable to pay interest to the petitioner on the defaulted sum at the rate of 1.50% per month and the same will be calculated from the date of default till the date of actual payment. Hence, the petitioner sent a legal notice dated 31.07.2021 to the respondent demanding the debt of Rs.4,66,214/- along with the interest of Rs.2,80,175/, aggregating a sum of Rs.7,46,389/-. Though, the respondent had received the said notice, he failed to pay the debt to the petitioner and thereby a dispute arose between the petitioner and the respondent.

4. The learned counsel for the petitioner would further submit that the aforesaid dispute is arbitrable under the terms of Clause 17 of the said Contract, which reads as follows:



“17.All disputes, differences and claims whatsoever which shall at any time arise between the parties hereto or their respective representatives concerning this contract and all other documents in pursuance hereof as to the rights, duties, obligations or liabilities of the parties hereto respectively by virtue of this contract shall be:

(a) First referred to Senior managers of both the parties. If after the meeting, the resolution is not achieved then it

(b) shall be referred to Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time. Such arbitration proceedings will take place in Chennai only, and shall be subjected to jurisdiction of the Courts in Chennai/Bangalore/Mumbai.”

5. By referring the above Clause, the learned counsel for the petitioner would submit that the present dispute is arbitrable and therefore, he sent a notice dated 17.12.2021 under Section 21 of the Act and the same was received by the respondent on 20.12.2021. However, the respondent had not sent any reply to the same. Therefore, once again, the petitioner had sent a notice dated 21.02.2022, nominating an Arbitrator and requesting the



respondent to give consent. However, after receipt of the said notice also, the respondent failed to provide consent. Hence, the petitioner had filed this present original petition for the appointment of a neutral Arbitrator.

6. After filing of this petition, this Court ordered notice to the respondent and the same was duly served to them. However, today none appeared on behalf of the respondent, which shows that they are not interested to contest this matter. Therefore, this Court is inclined to pass orders.

7. Upon hearing the learned counsel for the petitioner and perusing the materials available on records as well as the averments made in the petition, this Court is satisfied that the present dispute is arbitrable within the meaning of Clause 17 of the agreement. Hence, this Court is inclined to appoint an Arbitrator.

8. Accordingly, this Court feels it appropriate to pass the following order:



i) Mr.Roshan K.Balasubramanian, Advocate, residing at No.6, Indian Chamber (SICCI), Ground and 2nd Floor, Annex Building, Esplanade, Chennai 600 108, Mobile No:9962097003, is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties

ii) 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 Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) 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. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the applicant can recover the same directly from the respondent.

9. This Arbitration 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



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reliefs under the provisions of Arbitration and Conciliation Act 1996

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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KRISHNAN RAMASAMY.J.,
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