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Arb.O.P (Com.Div.) No.85 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.06.2023

CORAM
THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.85 of 2023

M/s.Sharpline Automation Pvt. Ltd.,
rep. By its Director Mr.S.Meyyappan,
Having registered Office at Gen 19,
TTC Industrial Area, Vishnu Nagar,
Digha, Navi Mumbai- 400 708.

... Petitioner

Vs.

M/s. Vengov India Pvt. Ltd.,
rep. By its Managing Director,
Parvathy Nagar North,
Yeswanth Nagar, Madambakkam,
Chennai – 600 126.

... Respondent

Arbitration Original Petition filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent under the lease deed, dated 01.06.2021, and to pass further orders.

For Petitioner : Mr.T.Sai Krishnan

For Respondent : Mr.K.Chockalingam



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ORDER

This Arbitration Original Petition is filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as 'Act') to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent under the lease deed, dated 01.06.2021, and to pass further orders.

2. The case of the petitioner, as stated in the Petition in short are as follows:-

i) The respondent entered into a lease agreement with the petitioner, dated 01.06.2021, whereby, the petitioner leased out the property for rent for a period of five years. Since the respondent was irregular in making the payments right from inception of the lease, petitioner issued a notice, dated 12.09.2022, calling upon the respondent to settle the dues, failing which, the lease agreement would be terminated. Since no response was forthcoming from the respondent, the petitioner sent notice, dated 21.12.2022, thereby, terminating the lease deed and calling upon the respondent to vacate and handover the premises. The petitioner averred that despite issuance of such notice, terminating the lease deed, dated 01.06.2021, the respondent has



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neither settled the dues nor handedover the premises. Since in terms of Clause 12 (b) of the lease deed, dated 01.06.2021, the dispute between the parties could be resolved by initiation of arbitration proceedings, the petitioner is constrained to issue notice under Section 21 of Act. Since the same evoked no response, the petitioner has filed this Petition seeking to appoint an Arbitrator to settle the dispute,

3. Respondent-Company has filed a counter affidavit, *inter alia*, denying the allegations putforth by the applicant and stated that respondent has not committed default right from the date of inception of the lease deed, as alleged by the petitioner, and that, due to pandemic situation, their work was heavily hit and the Company got trapped in such turmoil, and the default is not wilful or wanton and so far, they have paid Rs.28,41,161/- and Rs.7,35,851/-,which would show that they do not have any intention to evade from making rent.

4. Mr.T.Sai Krishnan, learned counsel for the petitioner would submit that the respondent committed default in paying monthly rent right



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from the inception of the lease deed and despite the receipt of notice, dated 21.12.2022, terminating the lease deed, the respondent has neither paid the dues nor handedover possession and as on date, a sum of Rs.30,00,000/- is liable to be paid by the respondent, and therefore, prays for allowing the application and thereby, to refer the matter before the Arbitrator, since, in terms of clause 12(b) of the lease agreement, the dispute can be referred before the Arbitrator.

5. Mr.K.Chockalingam, learned counsel appearing for the respondent submitted that, respondent has not committed default from the date of inception of the agreement, as alleged by the petitioner, and only from the month of June, 2022 to till date, the respondent is unable to pay the rent, that too, owing to pandemic situation, with which, their Company was hit and the default is neither wilful nor wanton. The learned counsel also disputed the liability of Rs.30,00,000/- fastened by the applicant and stated that the respondent is liable to pay only a sum of Rs.12,00,000/-, which, the



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respondent is willing to pay and requested the matter to be referred before the Mediation Centre not the Arbitrator.

6. The learned counsel for the applicant also confirmed that the respondent committed default in payment of monthly rent from the month of June, 2022 to till date, however, with regard to the respondent's liability of Rs.12,00,000/-, learned counsel raised strong objection and prays for referring the matter before the Arbitrator.

7. Heard both sides and perused the petition as well as the counter affidavit filed by the respondent.

8. It would be beneficial to refer to **clause 12 (b) of the lease deed, dated 01.06.2021, which is extracted hereinbelow:-**

“ Any dispute, controversy or claim arising out of or relating to this lease or the lease deed, or the breach, termination, existence or invalidity thereof (collectively "dispute") shall be referred to and finally



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settled by arbitration in accordance with the arbitration and conciliation Act, 1996 as in force at the time of reference of the dispute by arbitrators appointed in accordance with the said Act. The place of arbitration shall be at Chennai. The language to be used in the arbitral proceeding shall be English. ”

8.1 Since the dispute is with regard to the determination of the exact sum payable by the respondent, this Court is the view that the same cannot be settled between the parties by means of negotiation, that too, with present offer made by the respondent and it could be very well settled by referring the matter before the Arbitrator, inasmuch as, in terms of lease agreement, there is referral clause of dispute before the Arbitrator, as noticed above. Hence, this Court is inclined to appoint a sole Arbitrator to adjudicate the disputes between the parties.

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

i) Mr.A.J.Jawad, Advocate, No.5/1, Jagajeevan Ram Avenue, East Coast Road, Injambakkam, **Chennai – 600 015**, possessing Mobile No.98400 87114, 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, as per Schedule IV of the Act 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 petitioner can recover the same directly from the respondent and vice versa.

iv) Liberty is granted to both the parties to explore the possibility of settlement before the Arbitrator. However, it is upto the learned Arbitrator, to take into consideration of the request, if any, made by the parties for exploring the possibility of settlement, and, in case of failure, the Arbitrator shall proceed with the case, in accordance with terms and conditions of the leased deed.

10. With the above direction, this Arbitration Original Petition is



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disposed of.

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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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