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ARB.O.P.(Com.Div) No.181 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.181 of 2023

M/s.Saffe Systems,
Rep. by its Authorised Signatory,
Mr.Mujesh C.K.P.,
XV/80E, Nochima,
NAD PO, Aluva 683563, Kerala.

... Petitioner

Vs.

BGR Energy Systems Limited,
Having its registered office at:
Plot No.A5, Pannamgadu Industrial Estate,
Ramapuram Post, Sullurpet (T),
Nellore Dist AP – 524 401.

... Respondent

Prayer : Arbitration Original Petitions (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the Arbitration Agreement i.e. Purchase Orders dated 21.06.2018, 07.11.2017, 11.10.2017, 12.04.2017, 01.11.2017, 10.03.2017, 18.03.2017, 29.05.2017 and 28.07.2017.

For Petitioner : Mr.Pranava Charan M.G.

For Respondents : Mr.C.P. Prasanth Gopal



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There is an arbitration clause available in all the Purchase Orders. According to the petitioner, the respondent has admitted liability by their email dated 03.04.2021, which is disputed by the respondent as seen from the counter-affidavit filed before this Court.

4. The petitioner has invoked arbitration in accordance with the arbitration clause by issuing a notice under Section 21 of the Act to the respondent on 05.12.2022. Since the respondent has not chosen to reply, the petitioner has been constrained to file this petition under Section 11 of the Act, seeking for appointment of an Arbitrator by this Court.

5. A counter-affidavit has been filed by the respondent before this Court. Their main contention is that the claim is barred by limitation.

6. However, the petitioner relies upon an email dated 03.04.2021 sent by the respondent to the petitioner and according to the petitioner, as per the said email, the respondent has acknowledged its liability to the petitioner which is disputed by the respondent.



7. While deciding an application under Section 11 of the Act, this Court will have to take only a *prima facie* view as to the existence of the arbitration clause in the subject matter of the dispute. Admittedly, there is an arbitration clause available in all the Purchase Orders which are the subject matter of dispute. The petitioner has also raised a dispute and has invoked arbitration in accordance with the arbitration clause by sending a notice to the respondent on 05.12.2022. They have also filed an email dated 03.04.2021 received by them from the respondent, which according to them, is an acknowledgment of liability made by the respondent. However, the same is disputed by the respondent as seen from the counter-affidavit filed before this Court.

8. As observed earlier, this Court will have to take only a *prima facie* view as to the existence of an arbitration clause in the subject matter of the dispute. Admittedly, there is an arbitration clause in the subject matter of the dispute namely the Purchase Orders placed by the respondent on the petitioner. The petitioner has also produced an email dated 03.04.2021 sent by the respondent to the petitioner, disclosing payments made by the



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respondent to the petitioner and disclosing the amount payable by the respondent to the petitioner in respect of the Purchase Orders. It is the Arbitrator who will have to take a final view with regard to the contentions raised by the respondent in this petition including the plea of limitation raised by them.

9. On a *prima facie* consideration, this Court is of the considered view that there is an arbitration clause available in the subject matter of dispute namely the aforementioned Purchase Orders and there is an email sent by the respondent to the petitioner dated 03.04.2021, which discloses that the respondent is due and payable to the petitioner certain sums of money, under the Purchase Orders which are the subject matter of dispute.

10. While that be so, this Court while exercising its powers under Section 11 of the Act, will have to necessarily appoint an Arbitrator by granting liberty to the respondent to file an application under Section 16 of the Arbitration and Conciliation Act, 1996, questioning the jurisdiction of the Arbitrator to adjudicate the dispute between the parties including, permitting them to raise the plea of limitation before the Arbitrator.



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11. For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for, by issuing the following directions:-

- (a) This Court appoints Mrs.Gladys Rosette C.Daniel, Advocate, having Office at III Floor, YMCA Building, No.223, NSC Bose Road, Chennai – 600 001, Mobile No:9789980909, as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the Purchase Orders dated 21.06.2018, 07.11.2017, 11.10.2017, 12.04.2017, 01.11.2017, 10.03.2017, 18.03.2017, 29.05.2017 and 28.07.2017.
- (b) The Arbitrator shall be paid her remuneration/fees in accordance with the IV Schedule of the Arbitration and Conciliation Act, 1996.
- (c) Both the parties shall equally share the Arbitrator's fees.



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(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

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Index: Yes/ No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No

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ABDUL QUDDHOSE, J.

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