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Arb.O.P (Com.Div.) No.148 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.148 of 2023

Howden Solyvent India Private Limited,
No.147, Poonamalee High Road,
Numbal Village,
Kancheepuram District 600 077
Rep.by its Authorised Signatory, Mr.Sambit Dash

... Petitioner

Vs.

1.BGR Boilers Private Limited,
Rep.by its Managing Director,
443, Anna Salai, Teynampet,
Chennai 600 018.

2.Indian Council of Arbitration,
Rep.by its Registrar,
Room 112, Federation House,
Tansen Marg, New Delhi 110001.

... Respondents

Arbitration Original Petition filed under Section 11(6) of the
Arbitration and Conciliation Act, 1996 to appoint the 1st respondent's



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nominee arbitrator as well as a presiding arbitrator to constitute the 3 member arbitral Tribunal to adjudicate the disputes which have arisen between the petitioner and the 1st respondent pursuant to Clause 11 of the original Purchase Order dated 23.05.2013 and Clause 17.1.0 of the GCC entered between the petitioner and the 1st respondent.

For Petitioner : Ms.Vaishnavi Subramanyam

For Respondents: Mr.C.P.Prashanth Gopal, for R1
No Appearance, for R2

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) to appoint the 1st respondent's nominee arbitrator as well as a presiding arbitrator to constitute the 3 member arbitral Tribunal to adjudicate the disputes which have arisen between the petitioner and the 1st respondent pursuant to Clause 11 of the original Purchase Order dated 23.05.2013 and Clause 17.1.0 of the GCC entered between the petitioner and the 1st respondent.



2. The learned counsel for the petitioner would submit that the petitioner is a manufacturer and supplier of Industrial Fans, Blowers and Compressors and the Purchase Order bearing Ref.BBX-0001-FANS-0014 was entered between the petitioner and the 1st respondent on 23.05.2013. The petitioners had supplied the materials in accordance with the said Purchase Order and raised invoices against the 1st respondent towards the supplies made. However, despite several reminders and letters sent by the petitioner, the respondent has failed to honour the same. Hence, the petitioner intend to initiate arbitration proceedings, since the present dispute is arising out of the Purchase Order dated 23.05.2013 and the same can be arbitrable in view of the Arbitration Clause available in Clause 11 of the said Purchase Order, which reads as follows:

“Settlement of Disputes and Arbitration

Any dispute or difference whatsoever arising between the parties out of or in relation to the construction, meaning, scope, operation or effect of this Contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration and Conciliation of the Indian Council of Arbitration and the Award made in pursuance thereof shall be binding on the parties. The seat of Arbitration shall be in Chennai. Arbitration shall be in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996.”



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3. By referring the said clause of the purchase order, the learned counsel for the petitioner would submit that an Arbitrator may be appointed in terms of Indian Council of Arbitration (ICC).

4. However, when the matter taken up, the learned counsel for the respondent had given consent for the appointment of a sole Arbitrator by this Court and the learned counsel for the petitioner also agreed for the said submission made by the learned counsel for the respondent.

5. In view of the submissions made by both the learned counsel and considering the fact that the dispute is arising out of the said Purchase Order and the same is arbitrable in terms of Clause 11 of the Purchase Order, this Court is inclined to appoint a sole Arbitrator.

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



i) Hon'ble Mr.Justice N.Kirubakaran (Rtd.), residing at No.36, 2nd Cross Street, Rayala Nagar, Ramapuram, Chennai 600 089, Contact No.9445025454, 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.

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 1st respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the 1st respondent.

7. This Arbitration Original Petition is allowed 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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8. After the passing of this order, the learned counsel for the petitioner would submit that they had already deposited a sum of Rs.16,72,963/- with the 2nd respondent in terms of the contract and seeks for refund of the said amount.

9. In view of the above submission, this Court is of the considered view that since both the parties agreed for the appointment of the Arbitrator, the said amount shall be refunded by the 2nd respondent to the petitioner in accordance with the ICA Rules within a period of 4 weeks from the date of receipt of a copy of this order.

10. With the above directions, this Arbitration Original Petition is allowed.

27.04.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

nsa

Note: Issue order copy on 03.05.2023.



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KRISHNAN RAMASAMY.J.,
nsa

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