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Arb.O.P.(Comm.Div.)No.145 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.06.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.) No.145 of 2023

Asianet Star Communications Private Limited,
Represented by its Authorised Signatory,
Ms.Dhanya Nandakumar
Kochar Jade, Plot No.22,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai – 600 032.

...Petitioner

Versus

Aswathi Hosieries Private Limited,
1/401-A, Kuttaitjottam, Neriperichal,
Pooluvapatti – PO, Tirupur – 641 602.

...Respondent

Original Petition filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 praying to appoint an Arbitrator as deemed fit by this Court in accordance with Clause 15 of the Agreements dated 31.12.2021, 11.01.2022, 07.03.2022 and 07.01.2022 to adjudicate upon the disputes that have arisen between the parties in relation to the Agreements.

For Petitioner : Mr.Rahul Balaji

For Respondent : No Appearance



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ORDER

The present petition has been filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint an Arbitrator for adjudicating the dispute between the petitioner and the respondent arising out of the four Agreements dated 31.12.2021, 07.01.2022, 11.01.2022 & 07.03.2022.

2. The learned counsel for the petitioner submitted that the petitioner and the respondent have entered into four Agreements, for telecasting a certain set of the respondent's advertisements in the petitioner's channels viz., Vijay SD and HD Channels. The details of the said agreements are mentioned hereinbelow:

<i>S.No.</i>	<i>Date of Acceptance</i>	<i>Broadcast occasion</i>	<i>Consideration (Rs.)</i>
1	31.12.2021	Vijay SD and HD – Super & Music – January 2022	Rs.11,01,500/- + 18% GST
2	07.01.2022	Vijay SD and HD – Cooku with Comali for the period January 22 nd , 2022 - April 17 th 2022	Rs.92,56,500/- + 18% GST
3	11.01.2022	Vijay SD and HD – WTP movie Netrikann – January 15 th , 2022	Rs.4,24,000/- + 18% GST
4	07.03.2022	Vijay SD and HD – Women's Day Wishes – March 8 th , 2022	Rs.4,12,950/- + 18% GST



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2.1. The petitioner sent the aforesaid four agreements to the respondent through e-mail for getting a formal confirmation from the respondent. Thereafter, the respondent also conveyed its acceptance to the aforesaid four agreements through e-mail dated 31.12.2021, 07.01.2022, 11.01.2022 & 07.03.2022 respectively. Pursuant to the said agreements, the respondent handed over 11 post-dated cheques to the petitioner for the purpose of paying consideration for the services being rendered by the petitioner. The details of the Cheques given by the respondent are as follows:

<i>S.No.</i>	<i>Date of the Cheques</i>	<i>Cheque No.</i>	<i>Amount</i>
1	19.04.2022	1083	Rs.7,57,944/-
2	26.04.2022	1084	Rs.7,57,944/-
3	03.05.2022	1085	Rs.7,57,944/-
4	10.05.2022	1086	Rs.7,57,944/-
5	10.05.2022	1222	Rs.4,79,022/-
6	17.05.2022	1087	Rs.7,57,944/-
7	24.05.2022	1088	Rs.7,57,944/-
8	31.05.2022	1089	Rs.7,57,944/-
9	07.06.2022	1090	Rs.7,57,944/-
10	22.06.2022	996	Rs.6,49,885/-
11	28.06.2022	1081	Rs.7,57,944/-
Total			Rs.76,66,548/-

Out of the above 11 post-dated Cheques issued by the respondent, 9 Cheques were dishonoured for the reason, “insufficient funds”.



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2.2. The learned counsel drew the attention of this Court to the e-mails dated 31.03.2022 & 29.04.2022 sent by the respondent to the petitioner, wherein, the respondent requested the petitioner to hold the aforesaid post-dated Cheques and not to present the same for encashment and further, undertook that they would clear the outstanding dues in the first week of May, 2022. However, the respondent did not clear the outstanding dues in the month of May 2022, as promised in its e-mails dated 31.03.2022 & 29.04.2022.

2.3. The respondent has committed a wilful default in making payments to the petitioner. Hence, the petitioner vide Legal Notice dated 13.07.2022, called upon the respondent to pay the outstanding amount of Rs.76,66,548/- along with interest at 18% per annum from the date when the sums became first due till the date of payment, within a period of 15 days from the date of receipt of that notice. However, the respondent did not send any reply to the said legal notice.

2.4. The learned counsel further submitted that as per Clause 15 of the aforesaid four agreements, if any dispute arises between the parties in



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relation to these agreements, the same shall be referred to Arbitration under the Act. For better appreciation, Clause 15 of the aforesaid four agreements is extracted hereunder:

“15. Governing Law, Jurisdiction and Dispute Resolution:

(i) The terms of this Agreement shall be construed in accordance with the laws/regulations of India. Subject to Clause 15(ii) below, the Parties agree that in case of any dispute arising out of or in relation to this Agreement, the Courts in either Chennai shall have jurisdiction.

(ii) If any dispute arises under this Agreement, such dispute shall be submitted to Arbitration under the [Indian] Arbitration and Conciliation Act, 1996 and conclusively resolved by a single arbitrator appointed by mutual consent or failing which by such process as is laid down under the [Indian] Arbitration and Conciliation Act, 1996. The seat and venue of arbitration shall be Chennai and the arbitration shall be conducted in English. The decision of the arbitrator shall be in writing and shall be final and binding upon the Parties.”

Hence, the petitioner vide Notice dated 11.01.2023, called upon the respondent to nominate an arbitrator from the panel with the names of Mr.Suhrith Parthasarathy, Advocate and Mr.Giridharan Padmanaban, Advocate, to adjudicate the issue involved herein. Even after the receipt of said notice, the respondent did not send any reply to it. Therefore, left with no other alternative, the petitioner has filed the present petition before this Court.



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3. Despite the service of notice and name of the respondent is being printed in today's cause list, none appeared on behalf of the respondent.

4. Heard the learned counsel for the petitioner and perused materials placed before this Court.

5. Upon perusing the materials and hearing the submissions made by the learned counsel for the petitioner, it is crystal clear that the dispute involved herein is arbitrable as per Clause 15 of the Agreements dated 31.12.2021, 07.01.2022, 11.01.2022 & 07.03.2022. Hence, this Court is inclined to pass the following order:

(i) **Mrs.Chitra Narayan, Advocate, No.3E, KGEYES ETERNITY, Parvathy Street, Kalakshetra Colony, Besant Nagar, Chennai – 600 090, Mobile No.9094031934** is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.

(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.



(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by her, equally.

(iv) In the event of non-appearance of the respondent before the learned Arbitrator, petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, petitioner can recover the same directly from the respondent.

6. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the 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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Index : Yes/No

Speaking Order (or) Non-Speaking Order

Note to Registry: Issue order copy on 12.07.2023



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