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Arb.O.P(Com.Div.)No.252 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.252 of 2023

M/s.Govindaraja Mudaliar Sons Private Limited,
Represented by its Authorised Signatory
K.Ganapathy,
New No.46 (Old No.41),
SIDCO Industrial Estate, Ambattur,
Chennai – 600 098.

... Petitioner

Vs.

Viprah Technologies Limited,
Sri Kamakshi Krishna Anugruha,
S.F.No.79/2-3-4,
Aalampalayam Road, Tekkalur,
Tiruppur – 641 654.

... Respondent

Prayer: Original Petition is filed under Section 11(6-B) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate upon the differences and disputes between the Petitioner and the Respondent in terms of the Arbitration Agreement i.e., Supply agreement, dated 11.10.2019 and to direct the Respondent to pay the costs.

For Petitioner : Mr.N.Nikhilesh

For Respondent : Mr.Antony R.Julian



ORDER

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This petition has been filed under Section 11(6-B) of the Arbitration and Conciliation Act, 1996 for appointment of the Arbitrator in terms of the Purchase Order placed by the respondent on the petitioner on 11.10.2019.

2. The Purchase Order placed by the respondent on the petitioner is a composite purchase order, made separately for sale of goods and for the works to be carried out.

3. Relevant portion of the Purchase Order relating to resolution of dispute through Arbitration and Conciliation Act, 1996, reads as under:-

"This Purchase order shall be construed and enforced in accordance with and under the laws of the Government of India. Both parties agree that in any case of any difference or dispute between the SELLER and the BUYER will be resolved with Mutual discussions and agreement. However, unresolved issues, if any, will be settled by arbitration as per the Indian Arbitration and Conciliation Act, and the venue of the arbitration will be Coimbatore, Tamil Nadu."

4. This petition is opposed by the learned Counsel for the respondent on the strength of the decision of the Hon'ble Supreme Court in **M/s.Kone Elevator India Private Limited Vs. State of Tamil Nadu and others**, (2014) 7 SCC 1, wherein, it is specifically held that once there is composite contract for



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supply and installation, it has to be treated as a works contract, for the contract not that of a sale of goods/chattel simpliciter. It is further submitted that the instrument is under-stamped and therefore the Agreement is not enforceable in the light of the recent decision of the Hon'ble Supreme Court in **N.N.Global Mercantile Private Limited Vs. Indo Unique Flame Limited and others**, 2023 SCC Online SC 495.

5. The arguments advanced by the learned Counsel for the respondent that there is a composite contract for supply and installation and that there was a works contract within the meaning of the provisions of the Tamil Nadu Value Added Tax Act, 2006 in the light of the decision of the Hon'ble Supreme Court in M/s.Kone Elevator's case (referred to supra), cannot be countenanced. It is also irrelevant to infer under stamping of instrument namely the Purchase Order which contains the arbitration clause.

6. *Prima facie*, the arrangements between the petitioner and the respondent are governed by exemption to Article 5 of the Indian Stamp Act, 1899. It reads as under:-



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<i>Description of Instrument</i>	<i>Proper Stamp-duty</i>
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT- (a) If relating to the sale of a bill exchange; (b) if relating to the sale of a Government security or share in an incorporated company or other body corporate; (c) if not otherwise provided for Exemptions Agreement or memorandum of agreement — (a) for or relating to the sale of goods or merchandise exclusively, not being a NOTE OR MEMORANDUM chargeable under No. 43; (b) made in the form of tenders to the Central Government for or relating to any loan;	Two annas. Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share. Eight annas

7. Therefore, there is no merit in the submission of the respondent to oust the resolution of dispute through arbitration particularly in the light of the fact that Purchase Order itself has been placed by the respondent, which explicitly incorporates the arbitration clause as extracted above.



WEB COPY 8. Considering the above, Court is inclined to pass the following order:-

(i) **Mr.Roshan K.Balasubramanian, Advocate, Enrollment No.748/2012, (Cell No.9962097003) having Office at No.6, Indian Chambers (SICCI), Ground and Second Floor, Annex Building, Esplanade (Opposite to Raja Annamalai Mandram), Chennai - 600 108,** is appointed as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

(ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

(iii) The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains *ex parte*,



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the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

9. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

10. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

16.10.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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