



WEB COPY



Arb.OP.(comdiv) No.276 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.276 of 2023

Anantara Solutions Private Limited,
Rep. By its whole time director Sundaraj Subbarayalu,
Module # 0104A, C South Block,
First Floor, Tidel Park,
4, Rajiv Gandhi Salai,
Taramani,
Chennai – 600 113.

.. Petitioner

-VS-

K.S.Aiyar & Co.,
Rep. By its Partner Mr.S.Kalyanaraman,
54/2, Paulwells Road,
St. Thomas Mount,
Chennai – 16.

.. Respondent

Petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed seeking to appoint a sole arbitrator to adjudicate the dispute between the petitioner and the respondent.



WEB COPY



Arb.OP.(comdiv) No.276 of 2023

For Petitioner : Mr.T.K.Bhaskar

For Respondent : Mr.S.Mukund, Sr. Counsel
for Mr.Adith Narayanan

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator.

2. The petitioner has availed certain services from the respondent under a Letter of Engagement dated 16.06.2016, which was subsequently extended on 15.05.2017, 26.04.2018, 07.05.2019, 16.06.2020. There seems to be a dispute arising out the aforementioned letters of engagement. There is an arbitration clause available in the Letter of Engagement dated 16.06.2016. According to the petitioner, due to improper advise given by the respondent, who is their consultant, the petitioner had incurred certain losses and had to pay interest towards statutory payments. The same is disputed by the respondent as seen from the counter affidavit filed by them.

3. According to the respondent, the claim of the petitioner is not an



Arb.OP.(comdiv) No.276 of 2023

arbitrable dispute for the following reasons:-

WEB COPY

(a) Being a deficiency of service alleged by the petitioner, the arbitration claim is not maintainable.

(b) There is a remedy provided under the Goods and Service Tax Act, 2017, for the petitioner to redress their grievance and hence, the dispute raised by the petitioner is not an arbitrable dispute.

4. Admittedly, there is an arbitration clause available in the Letter of Engagement dated 16.06.2016, which is extracted hereunder:-

“10. Settlement of disputes:

In the event of any dispute arising under or by virtue of this agreement or any difference of opinion between the parties concerning their rights and obligations under this agreement, the parties shall use their best efforts to resolve such dispute or difference amicably by discussion and mutual accord. If the dispute cannot be resolved in this manner within fifteen (15) days, the parties shall arrange a meeting between appropriate representatives designated by each party, who shall have an additional fifteen (15) days to



Arb.OP.(comdiv) No.276 of 2023

resolve the dispute or difference. If the dispute or difference is not settled within the thirty (30) days period, then, unless the parties otherwise agree in writing, either party may serve written notice on the other party stating its intention to proceed to arbitration. Any unresolved disputes shall be referred to arbitration consisting of a single arbitrator appointed by mutual agreement between the parties herein and shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or such amendments. The venue of arbitration shall be Chennai. The award passed in such arbitration shall be final and binding on the parties. Such arbitration shall be the sole and exclusive remedy between the parties with respect to such dispute. This agreement shall be governed by and construed in accordance with the law of India and the jurisdiction being Chennai only.

Both parties will be entitled to injunctive relief before or during the handling of a dispute by arbitration.

In the event of any claim, dispute or difference being referred to arbitration, this



WEB COPY



Arb.OP.(comdiv) No.276 of 2023

agreement will continue to be enforced.

The expenses incurred by the parties to participate in the arbitration are to the respective parties' accounts."

5. The existence of arbitration clause in the Letter of Engagement dated 16.06.2016, which is the subject matter of the dispute, is also not disputed by the respondent as seen from the counter affidavit filed by them. The respondent was appointed as the petitioner's consultant under the Letter of Engagement dated 16.06.2016. Based on the advise given by the respondent, the petitioner had erroneously remitted tax dues in a different account and for the said reason, the petitioner claims that they have suffered certain losses and they have also suffered interest loss. They are claiming the said amount from the respondent pursuant to the terms and conditions of the contract, namely, Letter of Engagement dated 16.06.2016 and the subsequent extension of Letters of Engagement dated 15.05.2017, 26.04.2018, 07.05.2019 and 16.06.2020.

6. The claim of the petitioner is disputed by the respondent as seen



Arb.OP.(comdiv) No.276 of 2023

from the counter affidavit filed by the respondent before this Court and they have also raised the above mentioned grounds by stating that the present dispute raised by the petitioner is not an arbitrable dispute.

7. This Court, while deciding an application under Section 11 of the Arbitration and Conciliation Act, 1996, will have to take only a prima-facie view with regard to existence of arbitration clause in the subject matter of the dispute. Admittedly, there is an arbitration clause available in the subject matter of the dispute, namely, Letter of Engagement dated 16.06.2016. The arbitration clause is also extracted supra. The petitioner has also invoked arbitration in accordance with arbitration clause by sending a notice to the respondent on 22.11.2022. A reply has also been sent by the respondent to the arbitration invocation notice on 19.12.2022 raising the very same contentions, that have been raised in their counter affidavit filed before this Court.

8. The final view with regard to existence of arbitration clause and the



Arb.OP.(comdiv) No.276 of 2023

arbitrability of the petitioner's claim can be adjudicated only by the arbitrator and not by this Court while deciding an application under Section 11 of the Arbitration and Conciliation Act, 1996. Since, admittedly, there is a valid arbitration clause available in the subject matter of the dispute, this Court will have to necessarily appoint an arbitrator. Accordingly, this petition is allowed with the following directions:

(a) This Court hereby appoints Mr.Prasad Vijayakumar, Advocate (Enrol.No.1254/99), having office at No.26, Dharanija Apartments, 25, 1st Seaward Road, Valmiki Nagar, Chennai-41 (Mobile No.9940673979), as the sole arbitrator to adjudicate the dispute between the petitioner and the respondent arising out Letter of Engagement dated 16.06.2016 and the subsequent Letters of extension of Engagement dated 15.05.2017, 26.04.2018, 07.05.2019 and 16.06.2020.

(b) The Sole Arbitrator appointed by this Court shall be paid remuneration as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.



Arb.OP.(comdiv) No.276 of 2023

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

(e) Both the parties shall share equally the fees payable to the sole arbitrator.

21.09.2023

rkm
Index:yes/no
Neutral citation:yes/no
Speaking/non-speaking

ABDUL QUDDHOSE, J.



WEB COPY



Arb.OP.(comdiv) No.276 of 2023

rkm

Arb.O.P.(Comm.Div.) No.276 of 2023

21.09.2023