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ARB.O.P.(Com.Div) No.347 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.347 of 2023

Aviagen India Poultry Breeding Company Private Limited,
Rep. by D. Vijayakumar – Finance Director & Company Secretary,
Elayamuthur, Gandhinagar, Udumalpet TK,
Tiruppur, Tamil Nadu – 642 154. ... Petitioner

Vs.

Prince Hatchery,
Rep. by Mr.Vinod Rathi & Mrs.Sushila Devi,
VPO Village Sahanpur,
Tehsil Safidon District Jind,
Haryana – 126 112. ... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator in terms of Clause 18 of the Terms and Conditions of Sale forming part of the invoices dated 20.11.2018, 22.11.2018, 25.11.2018, 28.11.2018(2 in No.), 30.11.2018, 05.12.2018, 12.01.2019, 14.01.2019, 15.01.2019, 17.01.2019, 19.01.2019 and 21.01.2019 to resolve the disputes between parties, in accordance with the Arbitration & Conciliation Act, 1996 and direct the respondent to pay the petitioner, cost of the petition.



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For Petitioner : Mr.Muthuchharan Sunderesh

For Respondents : Mr.T.C. Gopalakrishnan
(Vakalat returned)

ORDER

This petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act'), seeking for appointment of an Arbitrator by this Court.

2. The petitioner has supplied poultry items to the respondent based on Purchase Orders placed by the respondent. The petitioner has raised several invoices and the details of which, are as follows:-

<i>S.No.</i>	<i>Invoice No.</i>	<i>Date</i>	<i>Amount</i>	<i>Balance (INR)</i>
1	51	20/11/2018	109,200*	0
2	54	22/11/2018	2,818,400*	2,427,600
3	56	25/11/2018	1,944,600	1,944,600
4	59	28/11/2018	627,600	627,600
5	60	28/11/2018	2,576,200	2,576,200
6	61	30/11/2018	2,223,800	2,223,800
7	66	05/12/2018	769,200	769,200
8	413	12/01/2019	1,889,200	1,889,200
9	87	14/01/2019	1,294,600	1,294,600
10	90	15/01/2019	170,000	170,000
11	92	17/01/2019	2,537,000	2,537,000
12	95	19/01/2019	2,510,800	2,510,800
13	99	21/01/2019	598,400	598,400
TOTAL			20,069,000	19,569,000



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3. Along with the respective invoices, terms and conditions of sale are attached to all the invoices. Each of the invoices contain an arbitration clause which is extracted hereunder:-

“18. Dispute Resolution:

18.1 These conditions, the order and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall governed by and construed in accordance with the Indian Law. All disputes shall be subject to arbitration, by a sole arbitrator at Chennai. Subject to the arbitral remedy, the parties hereby submit to the exclusive jurisdiction of the Indian Courts. It shall be open to Aviagen to seek interim protection of its Day Old Chicks and to seek custody thereof, by way of interim reliefs, pending any arbitral proceedings.

18.2 In cases where dispute inter alia pertains to breach of Clauses 5.1, 5.2 or 5.6 hereof, Aviagen shall have the right to seek by way of interim protection, receivership of the establishment of the Purchaser, as well as restraining order to prevent any sale of chicks by Purchaser until the dispute is resolved through arbitration.”



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4. According to the petitioner, a sum in excess of Rs.2 Crores is due and payable by the respondent to the petitioner under the aforementioned invoices. The petitioner has also filed acknowledgment of liability given by the respondent, acknowledging that a sum of Rs.2,00,69,000/- is liable to be paid by the respondent to the petitioner. The petitioner has also invoked arbitration in accordance with the arbitration clause by issuing notice to the respondent on 15.02.2023. Even though the respondent has received the said notice, they have chosen not to send any reply. Since there was no consensus between the parties with regard to the name of the Arbitrator, the petitioner has filed this petition under Section 11 of the Act seeking for appointment of an Arbitrator by this Court.

5. The respondent has been duly served in this petition. A learned counsel has submitted before this Court that he undertakes to file vakalat on behalf of the respondent. The vakalat filed by the counsel earlier on behalf of the respondent has been returned by the Registry as seen from the cause list today. Till date, no counter has been filed by the respondent. The learned counsel for the respondent has also not disputed the existence of the arbitration clause.



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6. Since there is a valid arbitration clause available in all the invoices which are the subject matter of dispute and the petitioner has also invoked arbitration in accordance with the arbitration clause by issuing notice to the respondent on 15.02.2023 and since there is no consensus between the parties with regard to the name of the Arbitrator, this Court will have to necessarily appoint an Arbitrator to adjudicate the dispute arising out of the aforesaid invoices.

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

- (a) This Court appoints Mr. Justice N. Paul Vasanthakumar (Retd.), Former Chief Justice of Jammu & Kashmir High Court, having Office at Ashirvadh, No.24-A, II Street, Kamaraj Avenue, Adayar, Chennai – 600 020, as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the invoices dated 20.11.2018, 22.11.2018, 25.11.2018, 28.11.2018, 28.11.2018, 30.11.2018, 05.12.2018, 12.01.2019, 14.01.2019, 15.01.2019, 17.01.2019, 19.01.2019 and 21.01.2019.



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ABDUL QUDDHOSE, J.

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(b) The Arbitrator shall be paid his remuneration/fees in accordance with the mutual agreement between the parties or as per the IV Schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the Arbitrator's fees.

(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.

15.09.2023

Index: Yes/ No

Speaking/Non-speaking order

Internet: Yes/No

Neutral Citation: Yes/No

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