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Arb.OP.(comdiv) No.338 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

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THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.338 of 2023

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

.. Petitioner

-VS-

Swathi Poultry Breeding Farm,  
Rep. by Mr.Nanjundappa,  
New Extension Road,  
Kolar - 563 101.

.. 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 in terms of Clause 18 of the terms and conditions of Sale forming part of the invoices dated 30.01.2020 and 05.02.2020 between the petitioner and the respondent.



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For Petitioner : Mr.Muthuchharan Sundaresh

The respondent is set exparte

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 supplied poultry items to the respondent through Invoice Nos.385 and 401. The terms and conditions of the sale were attached to the respective invoices and a copy of the same was also given to the respondent. The respondent has not paid the value of the above said invoices. In the terms and conditions of the sale, there is 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 be 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."*

3. The petitioner has also invoked arbitration in accordance with the arbitration clause by issuing a notice to the respondent on 15.02.2023. Despite the said notice, the respondent has neither replied to the same nor have they agreed with regard to the name of the arbitrator to adjudicate the dispute between the parties. According to the petitioner, a sum of Rs.43,37,240/- is due and payable by the respondent to the petitioner after adjusting the part payments made by the respondent towards unpaid invoices.

4. The respondent has been duly served in this petition. However, the respondent has chosen not to enter appearance in this petition till date. Hence, the respondent is set exparte by this Court.



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5. Since there is a valid arbitration agreement available in the terms and conditions of the sale, which has been attached to the unpaid invoices, namely, Invoice Nos.385 and 401, and the petitioner has also invoked arbitration in accordance with the arbitration clause by issuing a notice to the respondent and there is no consensus between the parties with regard to the name of the arbitrator, this Court will have to necessarily appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. Accordingly, this petition is allowed with the following directions:

(a) This Court hereby appoints Ms.G.Dhana Madhri, Advocate, having office at Old No.152, New No.76, Secretariat Colony, 2nd street, Kellys, Chennai-10 (Mobile No.9940157312) as the sole arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of Invoice Nos.385 and 401 and the terms and conditions of the sale attached therewith.

(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



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Conciliation Act, 1996.

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(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.

**27.09.2023**

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



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**ABDUL QUDDHOSE, J.**

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