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O.P.No.352 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

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THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

O.P.No.352 of 2021

M/s.Convastay Hospitality Private Limited,
Rep. By its Director Mrs.M.Karunya Lakshmi
having office at New No.25,
Second street, Balaji Nagar,
Royapettah, Chennai – 14.

.. Petitioner

-VS-

Ms.Lavanya Iyer

... Respondent

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

For Applicant : Mr.Leelesh Sundaram B.
for M/s.Natham and Associates

For Respondent : Mr.Roshan Balasubramanian



O.P.No.352 of 2021

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short “the Act”), seeking for appointment of an arbitrator.

2. The petitioner had entered into a lease agreement dated 28.10.2015 with the respondent for a commercial purpose. There seems to be some dispute between the parties arising out of the said agreement. There is an arbitration clause available in the agreement dated 28.10.2015, which is extracted hereunder:-

“17. Arbitration:

Any dispute arising out of this agreement shall be first referred to Arbitration within the Jurisdiction of Chennai.”

3. The petitioner had invoked the arbitration clause by issuing a notice to the respondent on 24.09.2020 suggesting the name of the arbitrator. However, since there has been no consensus between the parties, the petitioner has filed this petition under Section 11 of the Act seeking for



O.P.No.352 of 2021

appointment of an arbitrator.

WEB COPY

4. Learned counsel for the respondent would submit as follows:-

(a) As seen from the definition of Section 2(f) of the Act, if an individual is a national of, or habitually resident in, any country other than India, and a dispute arises out of an agreement, it is an international commercial arbitration. Therefore, since the respondent is a foreign citizen, the dispute between the petitioner and the respondent is an international commercial arbitration, hence, this Court does not have the jurisdiction to entertain this petition in view of the statutory bar provided under Section 11(12)(a) of the Act, which prescribes that in case of international commercial arbitration, only the Hon'ble Supreme Court has got jurisdiction to appoint an arbitrator.

(b) The lease agreement entered into between the petitioner and the respondent has been insufficiently stamped and is not a registered document and therefore, the present petition is not maintainable, in view of the judgment of the Hon'ble Supreme court in ***N.N.Global Mercantile Private Limited Vs. Indo Unique Flame Limited and others*** [2023 SCC Online SC



O.P.No.352 of 2021

WEB COPY

(c) Despite the respondent intimating the petitioner about the change in her address, the petitioner had sent a notice invoking arbitration as per Section 21 of the Act to the old address of the respondent and therefore, according to the respondent, the notice issued under Section 21 of the Act by the petitioner is not proper.

5. Learned counsel for the petitioner, to counter the contentions of the respondent, would submit as follows:-

(a) The petitioner was not aware that the respondent is a foreign citizen (US citizen).

(b) They came to know about the same only after a reply dated 04.07.2019 was sent by the respondent to the petitioner.

(c) With regard to the document (lease agreement) being insufficiently stamped, the learned counsel for the petitioner would submit that the petitioner is prepared to pay the penalty as per Section 33(2) of the Indian Stamp Act.

(d) The notice was sent by the petitioner invoking the arbitration



O.P.No.352 of 2021

clause as per Section 21 of the Act only to the last known address of the respondent.

6. After giving due consideration to the contentions of the respective parties, an interesting issue, that arises for consideration, relating to international commercial arbitration as defined under Section 2(1)(f) of the Act. Therefore, the petitioner will have to first satisfy Section 2(1)(f) of the Act, which defines international commercial arbitration before satisfying the other objections raised by the respondent. Section 2(1)(f) of the Act reads as follows:-

Section 2(1)(f):- “international commercial arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) an association or a body of individuals



WEB COPY



O.P.No.352 of 2021

*whose central management and control is exercised
in any country other than India; or
(iv) the Government of a foreign country;*

7. As seen from the definition, international commercial arbitration means an arbitration relating to disputes arising out of the legal relationship, whether contractual or not, considered as commercial under the law in force in India, where at least one of the parties is an individual, who is a national of, or habitually resident in, any country other than India. It is clear that if one of the party to the dispute is a foreign citizen or is habitually resident of a foreign country, other than India, the dispute will fall under the definition of “international commercial arbitration”.

8. In the case on hand, the respondent is admittedly a foreign citizen holding US passport, which is also filed as a document by the respondent. She holds US passport dated 01.10.2012 bearing Passport No.683188164. She has also filed her birth certificate dated 18.03.1985 to prove that she was born in the State of California, USA, and the same is also not disputed by the learned counsel for the petitioner, though he may state that the



O.P.No.352 of 2021

petitioner was not aware of the same earlier.

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9. In fact, as seen from the petitioner's own typed set of papers, the petitioner was aware of the fact that the respondent is a foreign citizen from the reply of the respondent dated 04.07.2019 sent to the petitioner, which has been received by them, and in said letter, the respondent had disclosed that she is a foreign citizen (US citizen).

10. Learned counsel for the respondent has relied upon a judgment of the Hon'ble Supreme Court in *Amway India Enterprises Private Limited Vs. Ravindranath Rao Sindhia and another [(2021) 8 SCC 465]*, which relates to an international commercial arbitration. In the said decision, the Hon'ble Supreme Court in paragraph No.16 has categorically held that on an analysis of Section 2(1)(f) of the Act, any dispute involving the parties, out of which, one of whom is a foreign national, or habitually resident in, any country other than India, it is an international commercial arbitration. Paragraph No.16 of the Hon'ble Supreme Court's decision referred to supra is extracted hereunder:-



O.P.No.352 of 2021

WEB COPY

“16. In this view of the matter, the argument that there is no international flavour to the transaction between the parties has no legs to stand on. Indeed, an analysis of Section 2(1)(f) would show that whatever be the transaction between the parties, if it happens to be entered into between persons, at least one of whom is either a foreign national, or habitually resident in, any country other than India; or by a body corporate which is incorporated in any country other than India; or by the Government of a foreign country, the arbitration becomes an international commercial arbitration notwithstanding the fact that the individual, body corporate, or government of a foreign country referred to in Section 2(1)(f) carry on business in India through a business office in India. This being the case, it is clear that the Delhi High Court had no jurisdiction to appoint an arbitrator in the facts of this case.”



O.P.No.352 of 2021

WEB COPY

11. From the aforesaid decision of the Hon'ble Supreme Court, it is clear that since the respondent is admittedly a foreign national (US citizen) and the dispute which has resulted in filing of this petition under Section 11 of the Act by the petitioner arises out of an international commercial arbitration, this Court does not have the jurisdiction to decide this application in view of Section 11(12)(a) of the Act, which gives power only to the Hon'ble Supreme Court to appoint an arbitrator in case of an international commercial arbitration. Section 11(12)(a) of the Act reads as follows:-

“Section 11 (12)(a):- Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other international commercial arbitration, the reference to the “Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “Supreme Court”.

12. Even though the learned counsel for the petitioner had argued with



O.P.No.352 of 2021

conviction that the other objections raised by the respondent, namely, (a) Insufficiently stamped document (lease agreement dated 28.10.2015); (b) unregistered document (lease agreement dated 28.10.2015); and (c) notice issued under Section 21 of the Act dated 24.09.2020 being improper does not have force, the said contentions are not required to be considered by this Court in view of the settled law that in case of international commercial arbitration, only the Hon'ble Supreme Court has the jurisdiction to appoint an arbitrator. Therefore, only on the ground of lack of jurisdiction, this Court is dismissing this petition. No Costs.

01.08.2023

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O.P.No.352 of 2021

ABDUL QUDDHOSE, J.

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O.P.No.352 of 2021

01.08.2023