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Arb. O.P(Com.Div). No.387 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.387 of 2022

M/s.Randstad India Private Limited,
Represented by its Head Legal and
Regulatory Affairs and Authorised representatives,
Mr.Tapos Moitra, “Randstad House”,
Old No.5 and 5A,
New No.9, Pycrofts Garden Road,
Chennai – 600 006.

... Petitioner

Vs.

M/s.Illantus Technologies Private Limited,
Represented by its Founder President and Chairman,
Mr.Binod Singh, Novel Business Park, 57,
13th Cross Gajendra Nagar,
Baldwin's College Road,
Bangalore – 560 030.

... Respondents

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a sole arbitrator to adjudicate the disputes between the petitioner and the respondents arisen out of Deputation Service Agreement dated 13.01.2020.

For Petitioner : Mr.V.V.Sivakumar

For Respondent : No Appearance



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ORDER

This petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1996, seeking to appoint an Arbitrator for adjudication of dispute between the petitioner and respondent arising out of Franchise Deputation Service Agreement dated 13.01.2020.

2.Learned counsel appearing for the petitioner would submit that under the Deputation Services Agreement dated 13.01.2020, the respondent engaged the services of the petitioner to provide deputation services through its employees and agreed to pay the petitioner's service fee and expenses as per the payment terms and conditions stated therein. It was further agreed between the parties that once the invoices were raised by the petitioner, the respondent as per Clause 8(II) of the said agreement would be obliged to make payments against the said invoices within seven days of the receipt of the respective invoices raised on the respondent. In terms of the said agreement, the petitioner provided the man power. However, there was a due of Rs.27,62,809.74/- from the side of the respondent. According to the applicant, the present dispute is arbitrable under Clause 19 and 21 of the said agreement dated 13.01.2020.



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3. He would further submit that the petitioner has sent legal notice dated 13.01.2022 to the respondent placing true and correct facts on record and calling upon the respondent to make payment of the petitioner's outstanding dues aggregating to Rs.27,62,809.74/- inclusive of interest up to and including 31.12.2021, together with interest thereon at the rate of 10% per annum till payment and / or realization. The petitioner also stated in the legal notice that in the event that the respondent failed to comply with the demand of the petitioner, then a dispute shall be deemed to have arisen attracting the dispute resolution mechanism contained in the agreement dated 13.01.2020 and the petitioner has nominated three persons and called upon the respondent to select one of the proposed persons to act as sole arbitrator to adjudicate the disputes between the parties. Though the respondent had received the legal notice dated 13.01.2022, there was no response from the respondent. Therefore, the petitioner issued another notice dated 31.01.2022 and sought to appoint the Senior Advocate as its nominee Arbitrator and requested the respondent to nominate its nominee arbitrator, failing which the petitioner would approach the Court for appointment of arbitrator. Even then, there was no reply from the respondent. Hence, the petitioner has come out with the present petition.



4.Heard the learned counsel appearing for the petitioner.

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5.Though notice has been served and the name of the respondent is printed in the cause list, none appeared on behalf of the respondent before this Court, which shows that the respondent is not interest to prosecute the case. Therefore, this Court proceeds to pass following orders.

6.Upon hearing, it is seen that as per the Deputation Services Agreement dated 13.01.2020, executed between the parties, the petitioner provided the man power, however, there was a due of Rs.27,62,809.74/- from the respondent. In Paragraph No.7 of the affidavit, the petitioner has narrated the details of the invoices. The petitioner has called upon the respondent several times to make the payments of their outstanding dues. However, the respondent failed to make the payments. The petitioner has also sent legal notices dated 13.01.2022 & 31.01.2022, calling upon the respondent to nominate the arbitrator to adjudicate the disputes and he has also expressed in the legal notice dated 31.01.2022 that, in the event of failing to nominate the arbitrator, the petitioner is constrained to approach the Court. Even then, the respondent has not respond. Therefore, he prays to appoint Sole Arbitration in terms of the Clause 19 and 21 of the agreement dated 13.01.2020



7. For better appreciation, Clause 19 and 21 of the Deputation Services

Agreement is reproduced hereunder:

“19. Dispute Resolution: Any and all disputes, differences or questions relating to or arising out of this Agreement, including without limitation, any questions relating to the existence, validity and enforceability of any of the provisions of this Agreement (together 'Disputes'), shall be submitted for arbitration by a sole arbitrator mutually appointed under the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time with. If the parties fail to reach a consensus on a sole arbitrator, each party shall appoint one arbitrator and the arbitrators so appointed shall jointly decide on a third arbitrator. The place of arbitration shall be Chennai. The arbitral proceedings shall be in English. The decision of the arbitrator/s shall be final and binding on the parties.

21. Applicable Law and Jurisdiction: The applicable law shall be the laws of India. The Courts at Chennai shall have exclusive jurisdiction over the disputes arising between Client (respondent) and Randstad (petitioner).”

8. In view of the above submissions and a perusal of Clause 19 and 21 of the Deputation Services Agreement, it is clear that the present dispute is arbitable in terms of the said agreement. Hence, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the petitioner and the



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respondent.

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10. Accordingly, **Mr.P.Ganesan, District Judge (Rtd), residing at No.778, Judges Colony, Kakithapuram 4th Street, S.Kolathur, Kovilambakkam, Chennai – 600 117 (Mobile No.9600045571),** is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

11. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

23.01.2023

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Note: Issue Order Copy on 02.02.2023



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KRISHNAN RAMASAMY. J.,

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