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Arb.O.P.(Com.Div.) No.449 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.449 of 2023

Amazon Seller Services Private Limited,
8th Floor, Brigade Gateway,
No.26/1, Dr.Raj Kumar Road,
Bangalore, Karnataka – 560 055.
Also having office at :
14th Floor, International Trade Tower,
Nehru Place, New Delhi – 110 019.

... Petitioner

Vs.

Arpad Cine Factory Private Limited,
Old No.22, New Number 18/A,
1st Street Kamdar Nagar, Nungambakkam,
Chennai, Tamil Nadu – 600 034.
Also at,
33/18, Kamdar Nagar, 1st Street,
Nungambakkam, Chennai,
Tamil Nadu – 600 034.

... Respondent

Prayer : Original Petition is filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, praying for appointment of a Sole Arbitrator in terms of Clause 14.6 of the Digital Video License Agreement dated 17.04.2019 to adjudicate upon the differences and disputes between the parties under the Agreement dated 17.04.2019.



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For Petitioner : Ms.Meenakshi Raman
for Mr.Rahul Balaji

For Respondent : Ms.P.Sarvalogasundari
for M/s.Magestic Law Firm

ORDER

Despite name being printed in the cause list after service of notice on the respondent, there is no representation on behalf of the respondent.

2. The petitioner has filed this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointing a Sole Arbitrator.

3. The dispute between the petitioner and the respondent is arbitrable in terms of Clause 14.6 of the Digital Video License Agreement dated 17.04.2019.

It reads as under:-

"14. Miscellaneous :

14.6. Governing Law and Dispute Resolution :

This Agreement is governed exclusively by the laws of India and all disputes, differences relating to this Agreement or any interpretation thereof shall be referred to arbitration by a sole arbitrator, to be appointed mutually by both parties, in accordance with the Indian Arbitration and Conciliation Act, 1996. The venue of arbitration shall be Chennai. The arbitral award shall be final and binding on the Parties. Subject to arbitration, the Parties agree to submit to the exclusive jurisdiction of courts in Chennai in connection with any dispute arising out of or in connection with this Agreement. In any such action or proceeding, each party hereby agrees irrevocably to submit to, and to be bound by, the



exclusive personal and subject matter jurisdiction and venue of such courts."

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4. The petitioner has sent a notice as early as 11.04.2023 seeking invocation of arbitration clause in terms of Clause 14.6 of the aforesaid Digital Video License Agreement dated 17.04.2019. However, despite receipt of the same, the respondent has not come forward to consent for appointment of an Arbitrator.

5. It is under these circumstances, the petitioner has filed this original petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 on 15.09.2023. Notice was ordered through Court and privately on the respondent on 21.09.2023. After service of notice, on 16.11.2023, Mr.P.Anandan, learned counsel for M/s.Majestic Law Firm appeared and undertook to file vakalat by 30.11.2023. Thereafter, on 30.11.2023, at the request of the respondent's counsel the case was adjourned to 07.12.2023 for filing of counter affidavit. Even on 07.12.2023, this case was adjourned at request and is once again listed today. However, till date, neither a vakalat nor a Counter Affidavit has been filed.



6. Thus, the respondent has forfeited the rights to participate in the nomination of the learned Arbitrator under the contract/Agreement, both before and after the institution of this original petition.

7. Therefore, this Court is inclined to appoint **Hon'ble Mr.Justice M.Sathyannarayanan (Retd.), Former Judge of Madras High Court residing at Old No.9, New No.5/1, 2nd Avenue, 2nd Extension, Indra Nagar, Adyar, Chennai - 600 020 (Mobile No.9498022255)** as the Sole Arbitrator to enter upon reference to adjudicate/resolve the *inter se* dispute between the parties.

7 (i) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

7 (ii) The learned Arbitrator appointed herein shall be paid fees and other



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incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

8. All the issues including preliminary objections regarding arbitrability of the dispute/maintainability of the claim are left open to be canvassed by the parties before the learned Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996.

9. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

21.12.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.



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