



Arb. O.P. (Com. Div.) No. 95 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P. (Com. Div.) No. 95 of 2022

SHV Energy Private Limited,
8-2-334, 4th Floor, SUPERGAS House,
S.D.E. Serene Chambers,
Road No. 7, Banjara Hills,
Hyderabad – 500 034,
Rep. by Mr. Palanivelu Dinesh working as Account Manager
Petitioner

...

Vs.

M/s. Simplex Naigai Casting Private Limited,
No. 116-C/1, KHB Colony, 5th Block,
Koramangala,
Bangalore – 560 034.

... Respondent

PRAYER: This Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator for the purpose of adjudicating the disputes between the Petitioner and the Respondent, in pursuance to the Clause 6(q) of the Agreement dated 03.11.2016 vide **Annexure – 'B'**.

For Petitioner : Ms. E.Santhanalakshmi

For Respondent : No appearance



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ORDER

The present petition has been filed for appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. After the filing of this petition, notice had been ordered to the respondent and despite service of notice and printing the name of the respondent, no one has entered appearance on behalf of the respondent. It clearly shows that the respondent is not interest in contesting the matter. Therefore, this Court proceeded to decide the matter.

3. The respondent has entered into agreement with the petitioner on 03.11.2016 to buy goods and services of the petitioner. As per the terms and conditions of the agreement, the petitioner is supposed to install complete system of 4 x 450 kg SUPERGAS Maxima LPG installation, which includes 4 Nos. 450 Kg SUPERGAS Maxima LPG Cylinders, electrical vaporizers, Electronic Automatic Change Device (EACD), hoses, adaptors, piping, valves, primary pressure regulators systems, pallet trolley portable stand etc. along with other associated services (hereinafter referred to as 'SGS' for short). The



petitioner has also supplied LPG subsequent to commissioning of the SGS. The respondent has purchased LPGs on various dates for which the petitioner has also raised invoices. According to the petitioner, the respondent is liable to pay a sum of Rs.16,56,144/- and despite communications for making payment on 24.02.2020 and 13.01.2021, the respondent has not come forward to settle the dispute. The present dispute is arbitrable in terms of clause 6(q) of the agreement dated 03.11.2016 entered between the petitioner and the respondent, which reads as follows:-

“6(q) All disputes or differences arising between the parties, unless settled amicably, shall be referred to Arbitration by appointing a Sole Arbitrator. The Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof. The seat of Arbitration shall be at Chennai.”

By referring to the said clause, learned counsel for the petitioner submits that the present dispute is arbitrable by Sole Arbitrator and therefore, they have sent notice of arbitration by e-mail dated 07.05.2021 by nominating Mr. P.Rosiah, District and Sessions Judge (Retired) as Sole Arbitrator for which



he has also given consent. However, the petitioner has received a reply e-mail dated 19.06.2021 from the respondent stating that the petitioner cannot unilaterally appoint a Sole Arbitrator. Since the petitioner could not arrive at any consensus with the respondent to appoint a Sole Arbitrator, he has approached this Court.

4. Considering the submissions made by learned counsel for the petitioner and in view of the fact that the present dispute is arising out of agreement dated 03.11.2016 entered between the petitioner and the respondent, this Court feels that the present dispute is arbitrable in terms of Article 6(q) of the said agreement. Accordingly, this Court passes the following order:

i) Hon'ble Mr. Justice T.Mohandass, District Judge (Rtd.), residing at New No. 5, Old No. 3, Solaiamman Koil Street, Purasawalkam, Chennai – 600 007, Contact No. 94431 93382 is appointed as Sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) That the learned Sole 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.

iii) That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the



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same shall be borne by the parties equally. In the event of the respondent not coming forward to appear before the learned Sole Arbitrator, the petitioner shall bear all the charges including the remuneration of the learned Sole Arbitrator and thereafter, reimburse the share of the respondent from it.

iv) That the learned Sole Arbitrator appointed herein shall decide the matter on merits without being influenced or inhibited by any of the observations made in the order of this Court.”

5. 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 learned Sole Arbitrator.

02.01.2023

vjt

Note: Issue order copy on 09.01.2023.

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order

Copy to

Hon'ble Mr. Justice T.Mohandass,
District Judge (Rtd.),
New No. 5, Old No. 3, Solaiamman Koil Street,
Purasawalkam, Chennai – 600 007.



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KRISHNAN RAMASAMY, J.

vjt

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