



Arb.O.P.(Com.Div.) No.431 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.431 of 2023

Deceuninck Profiles India Private Limited,
through its Authorized Signatory,
Building 09, Casa Grande Distripark,
Satharai Village – Thiruvallur Taluk,
Tamil Nadu – 631 203.

... Petitioner

Vs.

M/s.Quibic Infra,
through its Proprietor Punati Rupa Chowdary,
D.No.6-39, Chinthapallipadu Village,
Vatticherukuru Mandal,
Guntur, Andhra Pradesh – 522 017.

... Respondent

Prayer : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying for appointment of a Sole Arbitrator in terms of Clause 18.2 of the Contract, Supply Agreement dated 18.10.2018 entered into between the Petitioner and the Respondent under the Arbitration and Conciliation Act, 1996 and to direct the Respondent to pay costs of the Petition to the Petitioner.

For Petitioner : Mr.A.Venkatesh Kumar

ORDER

This Original Petition has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.



WEB COP 2. The petitioner has already issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 31.12.2022 asking the respondent to consent for appointment of an Arbitrator in terms of Clause 18.2 of the Supply Agreement entered between them on 18.10.2018. Relevant Clause reads as under:-

"18.Arbitration & Dispute Resolution :

The Parties shall try and resolve any dispute arising in terms of this Agreement in the manner following:

18.1 The Parties shall first try and amicably resolve among themselves any dispute that may arise out of this Agreement.

18.2 If the Parties are unable to resolve any such dispute within a period of 30 (thirty) days from the date of the same arising, the Parties shall refer the same to an arbitrator to be mutually appointed by the Parties. If the Parties fail to appoint a common arbitrator, each Party shall appoint one Arbitrator each and the said Arbitrators shall appoint a third Arbitrator. The dispute shall thereafter be resolved by arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996.

18.3 The language of the arbitration shall be English and arbitration proceedings shall be conducted in Chennai, India.

18.4 The arbitral award shall be final and binding on the Parties hereto and shall be enforceable in any court of competent jurisdiction.

18.5 The cost of the arbitral proceedings shall be borne equally by the Parties.

18.6 This Agreement shall be governed by and construed in accordance with the laws of India. The Parties shall subject themselves to the courts in Chennai, India only.



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18.7 Subject to the other terms of this Agreement, the Parties will continue to perform their respective obligations under this Agreement, and under any purchase order, pending the resolution of a Dispute under this Clause 18."

3. By e-mail dated 13.01.2023, the respondent had responded by stating that the amounts due will be cleared, however, failed to pay the same and therefore the petitioner has issued second notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 14.06.2023.

4. In the aforesaid notice, the petitioner has called upon the respondent to suggest the names of individuals for appointment of an impartial and an independent Sole Arbitrator for resolving the dispute between the parties. Since the respondent has failed to respond to the said notice, the petitioner has filed this Original Petition for appointment of an Arbitrator.

5. The respondent having failed to respond to the notice dated 14.06.2023 issued under Section 21 of the Arbitration and Conciliation Act, 1996 and having failed to respond to the Court Notice ordered in this Original Petition and thus forfeited their rights to appoint an Arbitrator in terms of the aforesaid Clause in the Supply Agreement dated 18.10.2018.



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6. The Clause contemplates appointing a Sole Arbitrator under a mutual consent or two Arbitrators to be nominated by each of the parties, who are thereafter appoint a Presiding Arbitrator as a third Arbitrator.

7. Since the respondent has failed to nominate an Arbitrator, it has to be construed that the respondent has forfeited the rights under the Supply Agreement dated 18.10.2018.

8. Considering the over all facts and circumstances of the case, **Mrs.R.Sucharitha, Former Judicial Member, National Company Law Tribunal (NCLT) residing at A4, Kumars Suja Apartment, No.5, Kamala Bai Street, T.Nagar, Chennai - 600 017 (Mobile No.9444028065),** is appointed as an Arbitrator to resolve the *inter se* dispute between the parties.

9. 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-



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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.

10. The learned Arbitrator appointed herein shall be paid fees and other 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.

11. 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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