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Arb.O.P.No.44 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2023

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.No.44 of 2022

S.Vasanth,
D2, 1st Block,
Alsa Green Park,
28/80, Hasthinapuram Main Road,
Chrompet, Chennai-600 044.

... Petitioner

VS.

Arjun Chemicals Private Limited,
Represented by its Directors,
Plot No.78-79,
Phase-II Sipcot Indl. Complex,
Ranipet, Vellore-632 403.

And also having its corporate office at
RVI Tower-2nd Floor, 149,
Velachery Tambaram High Road,
Chennai-600 100.

... Respondent

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, pleased to (a) Appoint an arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the arbitration agreement dated 05.09.2018.

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For Petitioner : M/s.G.Santhosh Kumar
Mr.Vigneshwar Elango
Mr.M.B.Elakkumanan
For Respondent : Mr.Rohan Rajesekaran

ORDER

The petitioner seeks the constitution of an arbitral tribunal to adjudicate the disputes arising out of an Employment Agreement dated 05.08.2018 between the petitioner and the respondent.

2. This petition was filed after issuing a notice dated 06.07.2022 by which the arbitration clause was invoked. Since there was no reply to the said notice, the petitioner proceeded to file the present petition.

3. Learned counsel for the respondent invited my attention to the arbitration clause and pointed out that the said clause provides for the appointment of a neutral arbitrator by the auditors of the company. Since the petitioner did not request the auditors of the company to make such appointment, it is stated that the present petition is liable to be rejected.



4. The admitted position is that the contract between the parties provides for dispute resolution by arbitration. The relevant arbitration clause is set out below:

“10.5 Arbitration

If any dispute arises between the Parties hereto during the subsistence of this Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement, the dispute shall be referred to a sole Arbitrator who is a neutral and suitably qualified third party appointed by the auditors of the Company.

The place of arbitration shall be Chennai. The arbitration proceeding shall be governed by the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be held in the English language.”

5. The respondent also admits the receipt of the notice dated 06.07.2022 by which the petitioner made a claim for a sum of Rs.11,77,711/- and also pointed out that the dispute would be referred for arbitration in accordance with the arbitration clause in the Employment Agreement, if the demand made in the notice is not met within the period of



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30 days. Admittedly, this notice was not replied to in spite of receipt thereof. The notice was issued in July 2022 and the petition was filed in September 2022. If the respondent intended to object on the ground that the auditors should be approached for the constitution of the arbitral tribunal, the respondent should have replied to the notice and called upon the petitioner to approach the auditors. Therefore, the respondent is not justified in raising such objection at this juncture and this objection is rejected.

6. In the result, Arb.O.P.No.44 of 2022 is allowed by appointing Ms.Chitra Narayan, Advocate, Mobile No.90940 31934, as the sole arbitrator. The sole arbitrator is called upon to enter upon reference and adjudicate the dispute. The fees and expenses in respect of the arbitral proceedings shall be fixed by the arbitral tribunal in consultation with the parties.

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Index : Yes / No

Internet : Yes / No

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