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Arb.O.P(Com.Div)No.511 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.511 of 2023

M/s.Kone Elevator India Pvt.Ltd.,
Plot No.A-28, Sipcot Industrial Park,
Pillaipakkam, Sriperumpudur Taluk,
Kancheepuram District 602 105
Rep.through its Authorized Signatory
Bhupendra Chaturvedi

... Petitioner

Vs.

M/s.Tirupati Construction Company
C-29, Gulmohar Shopping Complex,
Sector-15, Noida,
Uttar Pradesh 201 301.
Respondent

...

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended Act, 2019, praying to appoint petitioner's nominee Mr.Gaurav Chaterjee, Advocate as the sole arbitrator under Contracts bearing Reference Nos.KEI/0050/0001007087 dated 20.04.2011 and KEI/0050/0001488082 dated 07.07.2011 in accordance with Section 11(6)9a) of the Arbitration and Conciliation Act, 1996 and directing the respondent to pay the petitioners cost of the instant application.



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For Petitioner : Mr.Krishna Sumanth

For Respondent : Mr.N.P.Vijayakumar

ORDER

The dispute between the parties is arbitrable in terms of clause a(5) of terms and conditions of the contract signed between the petitioner and the respondent on 20.04.2011. A similar clause exists under contract dated 07.07.2011 clause a(5) from the respective contract read identically. They are reproduced below:-

<i>Clause A(5) of the Terms and Conditions of Contract</i>	
A(5) Arbitration : In the event of difference or dispute arising out of, under or in connection with this agreement, over the rights of obligation of parties hereto, the dispute or difference shall be referred to the Arbitration of a Sole Arbitrator to be appointed by KONE Elevator India Private Limited. The Venue of the Arbitrator shall be at Chennai and the Courts in the City of Chennai alone shall have the jurisdiction in relation to the Arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall be applicable to such Arbitration.	A(5) Arbitration : In the event of difference or dispute arising out of, under or in connection with this agreement, over the rights of obligation of parties hereto, the dispute or difference shall be referred to the Arbitration of a Sole Arbitrator to be appointed by KONE Elevator India Private Limited. The Venue of the Arbitrator shall be at Chennai and the Courts in the City of Chennai alone shall have the jurisdiction in relation to the Arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall be applicable to such Arbitration.



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2. This petition is for appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996. The respondents have entered appearance and also filed their counter today.

3. The learned counsel for the respondent submits that the dispute is time barred and therefore in terms of decision of the Hon'ble Supreme Court , the dispute need not be referred to the Arbitration.

4. The learned counsel for the petitioner on the other had would submit that the respondent has been made payments even as belatedly as 2021. This issue can be agitated before the Arbitrator to decide the issue.

5. After hearing the counsels, this case was passed over to consent for appointment of an Arbitrator. After the case was passed over, the learned counsel for the respondent reported that no objection for all the issue including preliminary objection regarding arbitrability of dispute to be decided by an arbitrator to be appointed by this Court.



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6. Recording the above submission, Court is inclined to appoint

Mr. Justice N. Authinathan, (Retd.) Cell No.94455 08822) Former Judge of Madras High Court residing at Flat No.37, A-Block, Lakshmi Nivas, (Opp. To Rajarathinam Stadium) Rukmani Lakshmipathy Salai, Egmore, Chennai 600 008 , as a sole Arbitrator to enter appearance and decide the dispute between the parties. The petitioner will file all the documents to substantiate that the claim is not time barred. Learned Arbitrator shall endeavour to pass preliminary Award under Section 16 of the Arbitration and Conciliation Act, 1996 after hearing both the parties.

7. 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 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.



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8. 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 remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

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

10. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

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Index : Yes/No

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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