



Arb. O.P. No. 674 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09.01.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.674 of 2022

M/s.Johnson Lifts Private Limited,
rep. by its Authorized Signatory,
Mr.Rose Blessed King,
No.1, East Main Road,
Anna Nagar West Extension,
Chennai-600 101.

... Petitioner

Vs.

D.Ratnamala,
Proprietrix of Sri Chaitanya's Institute
of Power Yoga & Panchakarma Centre,
Sri Sitarama Building, Santhapeta,
Opp. Municipal High School,
Ongole-523 001.

... Respondent

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a sole arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent under the Contract/Work Order no.JL/55/AP03/01344/A01 dated 06.01.2018.



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For Petitioner : Mr.G.Raj Kumar for
M/s.A.R.Karunakaran

For Respondent : No Appearance

ORDER

This Original Petition has been filed seeking for appointment of Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent under the Contract/Work Order no.JL/55/AP03/01344/A01 dated 06.01.2018.

2.The case of the petitioner is that the respondent awarded the contract for supply and erection of 1 No.(L-L2614) of the petitioner's Company's lift, at their site at Yeracharla, Prakasam District. Both parties entered into an Agreement on 06.01.2018. The total contract value would be a sum of Rs.8,55,000/-. Pursuant to the agreement, the petitioner had completed the contract work on 10.11.2019. According to the petitioner, after giving credit to all the part payments, a sum of Rs.4,40,000/- excluding interest, is due and payable by the respondent to the petitioner. The last part-payment by the respondent was received on 20.02.2018. Though, last payment was received



on 20.02.2018, the petition was filed in the year 2022. The learned counsel for the petitioner submitted that due to Covid-19 Pandemic situation and also in view of the specific order passed by the Hon'ble Supreme Court extending the limitation period, the petitioner could not proceed with the appointment of Arbitrator and hence, the present claim is not barred by limitation. The petitioner sent several remainders including a demand notice dated 13.01.2021 to the respondent. However, the respondent has not sent any reply notice and had failed to settle the said outstanding dues till date. But he has assured to make the balance payment. Therefore, the petitioner has sent notice dated 10.07.2021 under Section 21 invoking arbitration clause in terms of the provisions of the Act as extracted below:

"ARBITRATION:

If any dispute, controversy or claim between the parties arises out of or in connection with this contract, including its existence, breach, termination or validity thereof, the parties shall use all reasonable endeavours to negotiate with a view to resolve the dispute amicably. If the dispute has not been settled pursuant to the said negotiations and the parties are unable to resolve the dispute amicably, then the dispute shall be finally



resolved by arbitration as per the provisions of Arbitration and Conciliation, 1996 and the Rules framed therewith by a sole arbitrator appointed by Johnson Lifts from the Panel of Arbitrators maintained by Johnson Lifts. Any such Arbitration Award passed by the said Arbitrator shall be final and binding on both parties. The seat of the arbitration shall be at Chennai and the language of the arbitration proceedings shall be English".

3. By referring to the above Clause, the learned counsel would submit that the dispute is covered within the terms and conditions of the Agreement and hence, it is arbitrable. On perusal of the Arbitration Clause and the agreement entered by the parties, it is clear that if the dispute is not settled and the parties are unable to resolve the dispute amicably, then it shall be finally resolved by the Arbitrator as per the provisions of the Act.

4. After filing the present Original Petition, this Court ordered notice to the respondent. Despite service of notice and printing the name of the respondent in the Cause list, none appeared on behalf of the respondent, which shows that the respondent is not interested to prosecute the petition.



5. Heard the learned counsel appearing for the petitioner and perused the records.

6. On a perusal of the Arbitration Clause extracted above, it is clear that any dispute arising between the parties, shall be decided by a Sole Arbitrator appointed by the petitioner from their panel of Arbitrators and the jurisdiction for the same shall be at Chennai and the matter can be adjudicated and settled by the Sole Arbitrator.

7. The learned counsel would submit that in terms of the arbitration clause in the Agreement dated 06.01.2018, the petitioner is entitled to appoint a sole arbitrator. However, the petitioner has approached this Court, by way of present petition in the light of the law laid down by this Court recently for appointment of neutral arbitrator by the Courts.

8. Therefore, this Court is of the view that an Arbitrator be appointed to enter upon reference and adjudicate the dispute in accordance with law. Hence, this Court feels it appropriate to pass the following order:



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i) Mr.A.M.Sridharan, Advocate, Office at No.24, II Floor, Thambiah Reddy Road, West Mambalam, Chennai-033, Contact No.99400 12655 is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) That the learned 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 same shall be borne by the parties equally.

iv) In the event of non-appearance of the respondent before the learned Arbitrator, the petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, the petitioner can recover the same directly from the respondent.

9. 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



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provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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KRISHNAN RAMASAMY, J.

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