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Arb.O.P.No.7of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.07.2023**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Arb.O.P.No. 7 of 2023

Fujitec India Private Limited,
Plot No.52, 1st Cross St.,
8th Avenue, Mahindra World City,
Chengalpattu – 603 002,
herein represented by
V.Muralidhar, Director – Finance

...

Petitioner

Vs.

Kamala Mills Limited,
Kamala House, Kamala City,
Senapati Bapat Marg,
Mumbai – 400 013.

... Respondent

Arbitration Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, to appoint a sole Arbitrator with directions to adjudicate the dispute between the parties in connection with the contract bearing dated 08.06.2015 and to give the award within such time as this Court may be pleased to determine.

For Petitioner : Mr.A.Narayanan



Arb.O.P.No.7of 2023

ORDER

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2. The petitioner is a Company incorporated under the Companies Act 1956 having its registered office at Plot No.52, 1st Cross St., 8th Avenue, Mahindra World City, Chengalpattu-603 004. The respondent is a Company Limited by shares, registered under the Companies Act, 1956 having its Registered Office at Kamala House, Kamala City, Senapati Bapat Marg, Lower Parel, Mumbai-400 013.

3. The learned counsel for the petitioner submitted that the petitioner's company is engaged in the business of manufacturing, installation, testing and commissioning and maintenance of lifts; during the course of business, the respondent approached the petitioner's company for supply and installation of three lifts at a building called “Shakthi G Wing” at Malad West, Mumbai; a contract was entered into between the petitioner and the respondent on 08.06.2015 for a value of Rs.94,75,000/-; after the lifts were



supplied and commissioned, three annual maintenance contracts were also entered into between the petitioner and the respondent; the petitioner duly discharged the maintenance service as per the terms and raised invoices but the respondent did not paid the dues; hence, the petitioner caused a legal notice on 29.02.2020 calling upon the respondent to pay the dues as per the terms; even thereafter no payment was made by the respondent; a reply was sent by the respondent by totally misconstruing the facts and the petitioner reconciled the accounts; but the reconciliation statement was not accepted by the respondent; hence a dispute has arisen between the petitioner and the respondent.

3.1. The contract between the petitioner and the respondent contains an arbitration clause in Clause 17 of Appendix (IV) of Conditions of Contract to refer the dispute to arbitration; as per Clause 17 (a) of Appendix (IV) of the Conditions of Contract, the petitioner sent a notice dated 07.01.2022 to the respondent to nominate their Manager to participate in the meeting scheduled to be held on 24.01.2022; even that notice was refused by the respondent and the same was returned as “Undelivered”; the petitioner issued notice to the respondent on 15.03.2022 expressing his intention to refer the matter for Arbitration by suggesting the name of



Arb.O.P.No.7of 2023

Mr.Saravanan, Advocate, having office at Room No.7, No.273 (Old No.130)

II Floor, Thambu Chetty Street, Chennai – 600 001, to be appointed as a sole arbitrator to resolve the dispute; however the respondent did not send a reply for the same; hence this application has been filed to appoint a sole arbitrator.

4. The parties have agreed to settle the dispute, difference, etc. through arbitration by entering into a contract which contains an arbitration Clause. Clause 17 of Appendix (IV) of Conditions of Contract is extracted hereunder:

“ .. 17. All disputes, differences and claims whatsoever which shall at any time arise between the parties hereto or their respective representatives concerning this contract and all other documents in pursuance hereof as to the rights, duties, obligations or liabilities of the parties hereto respectively by virtue of this contract shall be:

(a) First referred to senior managers of both the parties. If after the meeting, the resolution is not achieved then it

(b) Shall be referred to Arbitration in accordance with the provisions of the Arbitration and Conciliation Act 1996 as amended from time to time. Such arbitration proceedings will take place in Chennai only, and shall be subjected to jurisdiction of the Courts in Chennai / Bangalore / Mumbai.”

5. Since the notice sent to the respondent was served and he did not make his appearance, a Sole Arbitrator is requested by the petitioner. Since



Arb.O.P.No.7of 2023

the petitioner had complied the statutory requirements for seeking appointment of an Arbitrator as per the Arbitration Clause of the Conditions of Contract, this application is allowed.

6. Thus, this Court appoints the **Hon'ble Mr.Justice T.Mohandass, District Judge (retired), residing at New No.5, Old No.3, Solaiamman Koil Street, Purasawalkam, Chennai – 600 007 (Mobile No.9443193382)** as an Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. The learned Arbitrator may, 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. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per schedule to the Arbitration & Conciliation Act, 1996. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The disclosure and declaration may be made by the learned Arbitrator in the form specified in the Sixth Schedule to the Arbitration and Conciliation Act, 1996.

06.07.2023

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Arb.O.P.No.7of 2023

R.N.MANJULA, J.
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Copy to:

Mr.Justice T.Mohandass, District Judge (retired),
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Purasawalkam,
Chennai – 600 007
(Mobile No.9443193382)

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