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Arb. O.P(Com.Div). No.69 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.69 of 2023

M/s.J.K.Tyre & Industries Ltd.,
Having its Head Office at
“Patriot House”, No.3.Bahadur Shah Zafar Mart,
New Delhi – 110 002 and

Regional Office at
6th Floor, “Spencer Plazza”,
769, Anna Salai, Chennai – 600 002.
Represented by its Regional Operations Manager

... Petitioner

Vs.

M/s.KBS Manian Brothers & Pvt, Ltd.,
No.2, Jaffar Syrang Lane,
Chennai – 600 001.
Represented by its Managing Director.

... Respondent

PRAYER : Original Petition is filed under Section 11(4 & 6) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a sole arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of Clause 8 of Contract for clearance of imported consignments of raw materials arriving at Chennai Airport/Seaport for plants at Mysore, Kolathur, Benmore and Kankroil, sated 11.01.2017 and to pay the costs.



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For Petitioner : Ms.R.Uma Suthan

For Respondent : No Appearance

ORDER

This petition has been filed under Section 11 (4 & 6) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint an arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of Clause 8 of Contract for clearance of imported consignments of raw materials arriving at Chennai Airport/Seaport for plants at Mysore, Kolathur, Benmore and Kankroil, sated 11.01.2017 and to pay the costs.

2.Learned counsel appearing for the petitioner would submit that the petitioner awarded the contract for customs clearance and dispatch of their imported raw materials arriving at Chennai Airport/Sea Port for their plants located at different parts of India, to the respondent vide their contract dated 11.01.2017. The validity of the contract was initially for a period commencing from 15.01.2017 and ending by 31.03.2018. The tenure of the aforesaid contract was duly extended by the petitioner and accepted by the respondent in terms of letter dated 17.04.2018, 01.05.2019, 23.07.2020, 13.10.2020,



01.01.2021, 01.04.2021 and 16.10.2021. While so, during the contract period, they had awarded 11 numbers of assignments to the respondent in terms of the service contract dated 11.01.2017. However, the respondent miserably failed and neglected to render their service to them in respect of the aforesaid 11 consignments. Due to which, the petitioner suffered loss of Rs.2,48,86,480/- on account of demurrage levied on them by the customs/port authorities owing to belated delivery of consignments.

3.He would further submit that though the respondent admitted their lapse and liability to the petitioner herein, they failed and neglected to compensate the loss suffered by the petitioner. The petitioner issued notice dated 30.08.2022 to the respondent invoking the Arbitration Clause under the service contract dated 11.01.2017 and called upon the respondent to accept the Arbitrator nominated by them to resolve the dispute between the parties. For which, the respondent replied through notice dated 28.09.2002 requesting to hold this matter for 90 days to discuss further and sort out the issue. The 90 days period was also expired and the respondent has never come forward to discharge their liabilities. Hence, the present application came to be filed and he prayed for appointment of Arbitrator.



4.Though notice served and the name of the respondent is also printed in the causerslists, there is no representation for the respondent either in person or through counsel, which shows the respondent is not interested to contest the case. Hence, this Court proceeds to pass the following orders

5.For better appreciation, Clause 8 of the Service Contract dated 11.01.2017, is extracted hereunder:

“8.Arbitration

In the event of any dispute or difference arising under this contract, the same shall be referred to Vice President (Materials), KJ Tyre & Industries Limited, New Delhi or any person authorised by him to act on his behalf and whose decision shall be final and binding on both the parties.”

6.In view of the above submissions and a perusal of Clause 8 of the Service Contract dated 11.01.2017, it is clear that the present dispute is arbitable in terms of the said contract. Therefore, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondent.



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i) Accordingly, **Dr.Justice M.Jaichandren (Rtd.,)** residing at Door No.422, South 2nd Main Road, Kapaleeswarar Nagar, Neelankarai, Chennai – 600 115, (Contact No.9444964965) is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) 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, without influencing any of the observations made by this Court in this order.

iii) 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 herein, the petitioner herein shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent herein.

7.This Original Petition is ordered accordingly, leaving the parties to bear



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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 provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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