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Arb.O.P.(Com.Div.)Nos.6 & 8 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)Nos.6 & 8 of 2024

Mohamed Arshad Ali

.. Petitioner

[in Arb.O.P.(Com.Div.)No.6 of 2024]

Abbas Mandhiri

.. Petitioner

[in Arb.O.P.(Com.Div.)No.8 of 2024]

Vs.

M/s.S.R.K.Exports & Imports,
Rep. by its Proprietor,
Ms. Chitra Krishnamoorthy,
Having address at
No.10, Uthamar Gandhi Salai,
Nugabakkam High Road, Chennai – 600 034.

.. Respondent
(in both cases)

Prayer in Arb.O.P.(Com.Div.)No.6 of 2024: Original Petition is filed under Section 11(6)(c) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to go in to the dispute between the petitioner and the respondent in respect of the sale contract agreement dated 02.09.2022 and pass orders.

Prayer in Arb.O.P.(Com.Div.)No.8 of 2024: Original Petition is filed under Section 11(6)(c) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to go in to the dispute between the



Arb.O.P. (Com.Div.) Nos.6 & 8 of 2024

petitioner and the respondent in respect of the sale contract agreement dated 15.11.2022 and pass orders.

(In both cases):

For Petitioner(s) : Mr.P.Sidharthan
For Respondent : No appearance

COMMON ORDER

These Original Petitions have been filed under Section 11(6)(c) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to go in to the dispute between the petitioners and the respondent in respect of the Sale Contract Agreements dated 02.09.2022 & 15.11.2022.

2.The dispute between the petitioners and the respondent in both these Original Petitions are being disposed of by this common order.

3.The dispute between the petitioners and the respondent is arbitrable under the respective Sales Contract Agreements dated 02.09.2022 and 15.11.2022. They read as under:-



O.P.No.	Agreement date	Agreement Clause
6 of 2024	02.09.2022	10.0 GOVERNING LAW, ARBITRATION AND JURISDICTION 10.1 This Agreement shall be governed by and construed in accordance with the laws of India. 10.2 Any dispute or difference arising between the Parties in connection with, arising out of, or relating to this Agreement, including regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996 (as amended from time to time). The Parties agree that the arbitral tribunal shall comprise a Sole Arbitrator to be appointed by the Indian Council of Arbitration, Chennai from among the panel of its arbitrators upon request of the Party initiating the arbitration. 10.3 The place of the arbitration shall be at Chennai. The award shall be final and binding on the Parties. The language to be used in arbitration shall be English. The Parties agree that the arbitrator shall adopt and follow the procedure as laid out in the relevant rules of the Indian Council of Arbitration(ICA), Chennai (as amended from time to time) in relation to the procedural conduct of the arbitration proceedings. The arbitrator shall be required to provide reasons for his/her. award. During the pendency of the arbitration, the Parties shall continue to discharge their respective obligations under this Agreement. 10.4 Subject to Clause 10.2, the Parties agree to the exclusive jurisdiction of Courts of competent jurisdiction at Chennai with the sole exception of Section 36 of the Arbitration and Conciliation Act, 1996, for which the parties may seek recourse to any court of competent jurisdiction.
8 of 2024	15.11.2022	

4.The petitioners have also sent notices under Section 21 of the



Arbitration and Conciliation Act, 1996 on 21.10.2023 in respect of the respective Sales Contract Agreements dated 02.09.2022 and 15.11.2022, which has also been acknowledged by the respondent as is evident from the postal receipts enclosed in the typed set of papers.

5.The notice that was ordered on the respondent pursuant to order passed by this Court dated 11.01.2024 has also not evoked any response despite service of notice. On 08.02.2024, the Registry was directed to print the name of the respondent. Today also there is no representation on behalf of the respondent despite service of notice on the respondent in the above O.Ps and name being printed in the cause list.

6.It is therefore deemed that the respondent has forfeited the right to appoint an Arbitrator to participate in the constitution of the Arbitral Tribunal in terms of Clause 10 of the respective Sales Contract Agreements dated 02.09.2022 and 15.11.2022.

7.Considering the same, Court is inclined to appoint **Hon'ble Mr.Justice V.Parthiban, Former Judge, Madras High Court, (Mobile No.9444094401) residing at No.5069, 12th Street, Z Block, Anna**



Nagar, Chennai-600 040 as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties strictly in accordance with provisions of the Arbitration and Conciliation Act, 1996.

8.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.

9.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 respondents remain *ex parte*, the petitioners shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from



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the respondent.

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

11.These Original Petitions are allowed with the above observations, leaving the parties to bear their own costs.

22.02.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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