



Arb.O.P.(Com. Div.)No.62 of 2024

C.SARAVANAN.J.,

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The dispute between the petitioner and the respondent appears to be arbitrable in terms of Clause 6 of the lease agreement dated 27.04.2007, which reads as under:

“6. Dispute Resolution

6.1. Any notice under this Lease deed shall be in writing and may be served on the LESSOR and on the LESSEE at the address mentioned above by sending it by Registered Post with Acknowledgement Due or Courier.

6.2. If any dispute, difference or question concerning the interpretation or implementation of any provision of this agreement arises or as to the right, liabilities and duties of either party, the same shall be referred to the arbitration which shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, including any statutory modification thereof. The place of such arbitration shall be Chennai. The decision of the arbitrator shall be final and binding on both the parties.

6.3. Notwithstanding to the above clause, the LESSEE shall have the right to proceed against the LESSOR in the event of failure to repay the security deposit and related issues as per law. This Agreement shall be governed by the laws of India and Courts at Chennai shall have jurisdiction”



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2. The aforesaid lease agreement supplemented with a supplementary licence deed dated 15.07.2016 which also contains an arbitrable Clause which read as under:

“22. Any dispute or claim between the parties hereto arising out of or relating to this agreement, or its implementations and/or its effect, or the breach, termination, due to efflux of time or otherwise, or invalidity thereof, either during its subsistence or after its termination, shall be referred to the arbitration of a sole arbitrator in accordance with the provisions of Arbitrations and Reconciliation Act, 1996. The Arbitration shall be held at Chennai.”

3. The petitioner has also sent a notice under Section 21 of the Arbitrations and Conciliation Act, 1996 for appointing the Arbitrator. The respondent has filed a formal counter objecting to the appointment of Arbitrator. The counter reads as under:

“4. Without adverting to any of the claims/allegations raised by the petitioners in this application, this respondent hereby raise the preliminary objection to this application in view of the Hon'ble Supreme Court Judgment in SMS Tea Estates Vs. Chandmari Tea Co. Private Ltd. Reported in 2011 (14) SCC 66 and recently confirmed by the Hon'ble Supreme Court by order dated 25.04.2023 in N.N.Global Mercantile Pvt. Ltd. Vs. Indo



Unique Flame Ltd. In Civil Appeal No.3802-3803 of 2020. The Hon'ble Supreme Court in the above judgments decided the issue of validity of arbitration agreement in an unstamped/insufficiently stamped agreement. The Court held that an instrument, which is exigible to stamp duty, may contain an Arbitration Clause and which is not stamped, cannot be said to be a contract, which is enforceable in law.”

4. There are no serious grounds on which this petition for appointment of arbitrator can be disallowed. The issue is also now answered in the light of the decision of the Seven Judge Bench of the Hon'ble Supreme Court in Curative Petition (C) No.44 of 2023 in Review Petition (C) No.704 of 2021 in Civil Appeal No.1599 of 2020, 2023 SCC OnLine SC 1666. Considering the same, Elizabeth Seshadri, Advocate, No.15/8, 7th Cross Street, Indiranagar, Adyar, Chennai – 600 020 (Mobile No.98402 99520) is appointed as Arbitrator to resolve the dispute between the parties.

5. 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



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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.

6.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 petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

7.The Original Petition is allowed with the above observations, leaving the parties to bear their own costs.



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

11.03.2024

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