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Arb.O.P. (Com.Div.) No.53 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.53 of 2024

M/s.Nirbhay Agencies Private Limited,
Registered office at No.3, Bonfield Lane,
Kolkatta, West Bengal – 700 001,
Rep by its Director Mr.S.A.Vadivelan,
Residing at 11, Mullai Street,
Puludivakkam, Madipakkam,
Chennai,
Tamil Nadu – 600 091.

.. Petitioner

Vs.

M/s.P.Senthil and Co.,
Rep by its Partner Mr.P.Anbarasan,
S/o.Mr.E.A.Palanisamy,
No.1C, Krishna Nagar,
Sugunapuram,
Kuniyamuthur,
Coimbatore – 641 008.

.. Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondent under the Memorandum of Understanding dated 01.01.2017.



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For Petitioner : Mr.A.Manoj Kumar

For Respondent : Mr.S.Senthil

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondent under the Memorandum of Understanding dated 01.01.2017.

2. The dispute between the parties is arbitrable in terms of Clause 12.4 of the Memorandum of Understanding dated 01.01.2017. Clause 12.4 of the Memorandum of Understanding dated 01.01.2017 reads as under:-

“12.4.Any and all disputes (“Disputes”) arising out of or in relation to or in connection with this MOU between the parties or relating to the performance or non-performance of the rights and obligations set forth herein or any other terms of this MOU thereof shall be referred for arbitration in accordance with the terms of Indian Arbitration and Conciliation Act, 1996 or any amendments thereof. The language used in the arbitral proceedings shall be English. The arbitral Award shall be in writing and shall be final and binding on each party and shall be enforceable in any court of Competent jurisdiction.”



3. Mr.S.Senthil, learned counsel appears on behalf of the respondent and submits that the vakalat has not been filed and it will be filed by end of this week. He also submits that he has instructions to report that the respondent has no objection for allowing this Original Petition for appointment of an arbitrator.

4. Recording the same, **Hon'ble Mr.Justice K.Kalyanasundaram, Retired Judge of this Court, (Mobile No.9381011077)** residing at **Plot No.406, 5th South Cross Street, Kapaleaswarar Nagar, Neelankarai, Chennai**, is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties.

5. **Hon'ble Mr.Justice K.Kalyanasundaram, Retired Judge of this Court**, who is appointed as an Arbitrator is requested to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties after issuing notice to the parties and upon hearing them.

6. The learned Arbitrator appointed herein, shall 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.

7. The learned Arbitrator 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 respondent remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

8. The parties are at liberty to workout the venue for Arbitration at Chennai.

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



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

12.02.2024

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

C.SARAVANAN, J.



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