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Arb.OP(Com.Div)No.80 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.OP(Com.Div)No.80 of 2024

M/s.Navio Shipping Private Limited, represented by
its Authorised Signatory Shantharam Nayak T.R.
Chennai-31

Petitioner

Vs

1. Ms.Pushpa Chitharanjan, Arrow Group, Vellore 632007

2. Preethi Sicilan, Arrow Group, Vellore 632 007

Respondentw

Prayer:- This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator conversant with the disputes pertaining to the agreement, dated 01.05.2022 to adjudicate upon the disputes.

For Petitioner : Mr.M.Ashwin Kumar

For Respondents : Mr.G.Kanimozhi-R1

ORDER

1. This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator conversant with the disputes pertaining to the agreement, dated 01.05.2022 to adjudicate upon the disputes.
2. The facts in a nutshell, which are leading to filing of this Arbitration Original Petition, are that the Petitioner is a registered Private Limited Company,



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engaged in the business of shipping, transportation and supply chain management services. The Petitioner and the Respondent Proprietorship Company, namely, Arrow Group, represented by the 1st Respondent as its Proprietor, have entered into a Contract Agreement, dated 01.05.2022, for supply of 50 numbers of Tipper Trucks of 12 wheels, to transport stones and the Petitioner had supplied 30 trucks to the Respondents. Since the Respondents failed to make payment for the said trucks and as there was breach of contractual provisions on the part of the Respondents, the Petitioner was not in a position to supply the entire 50 trucks, as per the said Contract Agreement. In the settlement meeting held between the parties to resolve the disputes, a Minutes of Meeting (MOM), dated 31.10.2022, was entered into between them. Though the 2nd Respondent was not a party to the Contract Agreement, she signed the said MOM in her representing capacity for the Arrow Group. Pursuant to the settlement meeting, the Respondents have issued five cheques and the said cheques were dishonoured. Hence, the Petitioner had issued a legal notice, dated 15.04.2023, invoking Clause 23 of the Contract Agreement, calling upon the Respondents to settle the dues or to initiate independent arbitration proceedings. However, the Respondents did not come forward to send a reply or to settle the dues. There is a condition in the said Contract Agreement for initiation of arbitration proceedings under Clause 23 of the same. Hence, based on Clause 23 of the said Contract Agreement, which stipulates for initiation of arbitration proceedings to resolve the disputes



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between them, this Arbitration Original Petition has been filed, seeking the relief as stated above.

3. This Court heard the learned counsel for the Petitioner and the 1st Respondent, considered their submissions and also perused the materials placed on record.
4. It appears that the dispute between the parties herein is arising out of the Contract Agreement dated 01.05.2022 and the MOM, dated 31.10.2022. On a perusal of the said Contract Agreement, it is clear that the same is arbitrable under Clause 23 of the said Contract Agreement, which reads as follows:-

“23. Dispute Resolution:- In the event of any disputes, differences or controversies arising between the parties hereto, out of and in relation to this agreement, the parties hereto shall thoroughly explore all possibilities for an amicable settlement. On parties failure to reach settlement, such unresolved disputes shall be referred to a Sole Arbitrator to be appointed by mutual consent of the Parties, in accordance with the Arbitration and Conciliation Act, 1996 and any amendment thereof. The seat of such arbitration shall be Chennai and the language shall be English. The cost of arbitration proceedings shall be subject to the arbitration award.”

5. It also appears that the Contract Agreement and the MOM entered into between the parties are not disputed. According to the Petitioner, even after receipt of the notice issued to the Respondents, calling upon them to settle the dues or to initiate arbitration proceedings, there was no reply from them and hence, to resolve the disputes between them, appointment of a Sole Arbitrator having conversant with the disputes pertaining to the Contract Agreement is necessary.



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6. Per contra, it is the case of the Respondents that though the 2nd Respondent, who is the daughter of the 1st Respondent, has signed the MOM in her representing capacity for the Arrow Group, she was not a party to the Contract Agreement, which was signed only by the 1st Respondent in her capacity as Proprietor of the 1st Respondent Company and therefore, even if any award is going to be passed, it will bind only the 1st Respondent, representing the Arrow Group, as its Proprietor and it will not bind the 2nd Respondent and further even if this Court thinks it fit to appoint a Sole Arbitrator, then the arbitration proceedings has to be conducted only between the Petitioner and the 1st Respondent.
7. From the above, it is clear that the dispute is only with regard to the impleadment of the 2nd Respondent. It is seen that the Respondent Company, namely, Arrow Group is a Proprietorship Firm and that the Contract Agreement, dated 01.05.2022 was signed only by the 1st Respondent, in her capacity as the Proprietor of Arrow Group and the 2nd Respondent was not a party to the said Contract Agreement. It is further seen that the 2nd Respondent has signed the MOM, dated 31.10.2022 in her representing capacity for the Respondent Proprietorship Firm, along with the 1st Respondent, who is the Proprietor of the Respondent Firm. Admittedly, the 2nd Respondent was not a party to the Contract Agreement. The 2nd Respondent has not undertaken anything independently in her personal capacity so as to enable her responsible and liable for the acts of the Respondent Company. Further, even the cheques were signed only



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by the 1st Respondent, who is the Proprietor of the Respondent Company.

In such view of the matter, impleadment of the 2nd Respondent in this Arbitration Original Petition is unnecessary and improper and against the terms of the Contract Agreement. Therefore, this Court is of the view that if at all, the arbitration proceedings shall be initiated only against the Respondent Proprietorship Company, namely, the Arrow Group represented by its Proprietor, the 1st Respondent and not against the 2nd Respondent.

8. In view of the above discussions and considering the materials placed on record, this Court is inclined to appoint a Sole Arbitrator to initiate arbitration proceedings against the Petitioner and the Respondent Firm, represented by its Proprietor, the 1st Respondent, to resolve the disputes between them, as prayed for.
9. Accordingly, this Arbitration Original Petition is disposed of, with the following directions:-

- (a) The Honourable Mr.Justice V.Bharathidasan, Former Judge, Madras High Court, Chennai, residing at No.22, Old No.L45, II Main Road, Kamaraj Nagar, Thiruvanmiyur, Chennai 600041 (Cell No.9444383139) is appointed as a Sole Arbitrator to enter upon reference and adjudicate the disputes between the parties, arising out of the above said purchase orders.
- (b) The arbitration proceedings shall be held between the Petitioner and the 1st Respondent only.
- (c) The Sole Arbitrator shall initiate arbitration proceedings and after issuing notice to the parties concerned and upon hearing them, pass an award, on merits and in accordance with law and uninfluenced by any of the observations made in this order,



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within a period of six months from the date of receipt of a copy of this order.

- (d) The Sole Arbitrator shall be paid fees and other incidental charges, as per the Schedule IV of the Act and the same shall be borne by both the parties equally. In the event of non-appearance of the Respondent, the Petitioner shall bear the entire remuneration and other expenses and thereafter, the Petitioner is at liberty to recover the same directly from the Respondent.

18.04.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation:Yes/No
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