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Arb.O.P (Com.Div.) No.125 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.125 of 2024

K.Ramachandran
Proprietor of M/s.Sri Akshai,
24/47, St. Xavier Street,
Seven Wells,
Chennai-600 001.

... Petitioner

Vs.

The Airports Authority of India,
Represented by its Airport Director, Tiruchirapally,
Tiruchirappalli International Airport,
Tiruchirapalli- 620007.

...Respondent

Arbitration Original Petition filed under Sections 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2021 to resolve the disputes between the Petitioner and the Respondent in terms of Clause 25 of the License Agreement dated 30.09.2019 entered into between the Petitioner and Respondent.



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For Petitioner : Mr.Niranjan S.Kumar

For Respondent : Mr.K.Venkatesan
Standing counsel

ORDER

This petition has been filed to appoint a sole Arbitrator to adjudicate the dispute between the Petitioner and the Respondent.

2. The learned counsel for the Petitioner submitted that the Respondent floated a tender to provide amenities and facilities to passengers and visitors at the Trichy International Airport and since the Petitioner was engaged in the business of providing such services, the Petitioner participated in the tender process and emerged as the highest bidder. Consequently, the Petitioner and the Respondent entered into a License Agreement dated 30.09.2019, as per the terms of which, the Petitioner agreed to provide automated parking and other services at the Trichy International Airport managed by the Respondent for a period of 5 years. It is further submitted that despite the efforts being taken by the petitioner to act as per the agreement, due to unforeseen circumstances, such as, travel restrictions imposed due to Covid-19, refusal of airport staff to co-operate



and other circumstances, severe losses were caused to the Petitioner. The Petitioner, with the intention of ensuring smooth operation of services, requested the Respondent to make certain concessions such as reduction of the license fee etc. However, the Respondent was not amenable to the same. Therefore, the Petitioner sent a notice dated 07.04.2021 to the Respondent, under Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) to refer the matter to Arbitration, pursuant to which, the Respondent convened a meeting vide notice dated 09.04.2021. Yet, the dispute remained unresolved and therefore, the Petitioner sent a 2nd Notice on 01.08.2022 to refer the matter to Arbitration and again, the Respondent convened a meeting vide notice dated 16.11.2022, wherein also the dispute remained unresolved. Hence, the Petitioner requested the Respondent to refer the matter to the Dispute Referral Committee for redressal vide notice dated 03.07.2023, for which the Respondent sent a reply dated 22.08.2023, requesting the Petitioner to apply for mediation. Pursuant to the said reply, the petitioner applied for mediation on 22.08.2023, but, to his surprise, he received a communication dated 15.09.2023 from the Respondent stating that the respondent is not agreeable for mediation and therefore, the



Petitioner sent another notice dated 23.11.2023 terminating the License Agreement. Since the Respondent has not settled the rightful claims arising out of the License Agreement dated 30.09.2019 and even failed to appoint Arbitrator, the present petition came to be filed.

3. The learned counsel for the Petitioner further submitted that since the present dispute arises out of the License Agreement dated 30.09.2019 and the same can be arbitrable in terms of Clause 25 of the said agreement, which reads as follows:

“(25) All disputes and differences arising out of or in any way touching or concerning this Agreement (except those the decision whereof is otherwise herein before expressly provided for or to which the AAI Act, 1994 and the rules framed there under which are now enforce or which may here-after come into force are applicable), shall, in the first instance, be referred to a Dispute Resolution Committee (DRC) setup at the airports, for which a written application should be obtained from the party and the points clearly spelt out. In case the dispute is not resolved within 45 days of reference, then the case shall be referred to the sole arbitration of a person to be appointed by the Chairman/Member/RED of the Authority. The award of the Arbitrator so appointed shall be final and binding on the parties. The Arbitration and Conciliation Act,



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1996, as amended up to date shall be applicable. Once the arbitration clause has been invoked, the DRC process will cease to be operative. It will be no bar that the arbitrator appointed as aforesaid has been an employee of the authority and the appointment of arbitrator will not be challenged or be open to question in any court of law, on this account."

the present dispute may be referred to Arbitration.

4. Mr.K.Venkatesan, learned standing counsel appearing for the Respondent fairly submitted that he has no objection for appointment of sole arbitrator

5. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

6. Since the very prayer in this petition is only for appointment of an Arbitrator for redressing the dispute between the parties and since the respondent also has fairly agreed that this matter is arbitrable, this Court is inclined to appoint a sole Arbitrator.



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7. Accordingly, this Court passes the following order:

i) Hon'ble Thiru. Justice M.Govindaraj (Retd.), Former Judge, Madras High Court, No.4/225, South 2nd Cross Street, Sri Kapaleeshwarar Nagar, Neelankarai, Chennai-600 041. is appointed as sole 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. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by 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 can recover the same directly from the respondent and vice versa.



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8. With the above directions, this Arbitration Original Petition is
allowed.

06.06.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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Note: Issue order copy on 19.06.2024

To

The Airports Authority of India,
Represented by its Airport Director, Tiruchirapally,
Tiruchirappalli International Airport,
Tiruchirapalli- 620007.



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KRISHNAN RAMASAMY.J.,
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