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Arb.O.P (Com.Div.) No.172 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.172 of 2024

Poclain Hydraulics Private Limited
Having its registered office at:
131/2, Kothapurinatham Road,
Mannadipet Commune Panchayat,
Thiruvandar Koil Village,
Pondicherry-605102
Represented by its Authorised Signatory
Mr.Vijay Ganesh

... Petitioner

Vs.

Eisenmann India Private Limited
Having its registered office at:
Technosoft Knowledge Gateway, 1st Floor,
Plot No.B-14, Road No.1, Wagle Industrial
Estate, Thane (W)-400604,
Maharashtra.

... Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate upon the disputes and differences that have arisen between the Petitioner and the Respondent under the Equipment Purchase Agreement



Arb.O.P (Com.Div.) No.172 of 2024

dated 12.04.2019 and direct the Respondent to pay costs of the present petition.

For Petitioner : M/s.Cibi Vishnu
For Respondent : Mr.V.P.Raman

ORDER

This petition has been filed to appoint a sole Arbitrator to adjudicate upon the disputes and differences that have arisen between the Petitioner and the Respondent under the Equipment Purchase Agreement dated 12.04.2019 and direct the Respondent to pay costs of the present petition.

2. The learned counsel for the petitioner would submit that the petitioner and the respondent had entered into a Equipment Purchase Agreement dated 12.04.2019 for the supply, installation, testing, commissioning and warranty services of a new paint shop equipment to be set up at the Petitioner's manufacturing factory. Thereafter, disputes arose between the Petitioner and the Respondent in relation to the obligation under the said Agreement and the Respondent failed to act as per the Agreement and the Respondent is liable to pay damages for the losses



incurred due to breach committed by the Respondent. In spite of communication from the Petitioner, the respondent had not made any payment to the petitioner. Hence, a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) was sent to the respondent on 20.07.2023 and the same was received by the respondent on 20.07.2023. Despite the fact that the dispute between the parties arising out of the Equipment Purchase Agreement, where there is an Arbitration Clause for resolution of dispute, which has been invoked by the Petitioner vide Notice dated 20.07.2023, the Respondent filed a petition before the National Company Law Tribunal, Chennai Bench under Section 9 of Insolvency and Bankruptcy Code on 02.01.2024.

3. Further, the learned counsel for the petitioner would submit that the present dispute is arising out of the Equipment Purchase agreement dated 12.04.2019 and the same can be arbitrable in terms of Article 20 of the said agreement, which reads as follows:

“Any dispute or difference or claim arising out of or in relation to this Agreement shall be settled and finally resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996. The arbitration shall be conducted by a sole arbitrator to



be appointed by mutual agreement of the parties. In the event of failure of the parties to agree on the appointment of a sole arbitrator within 30 days of the dispute being referred to arbitration, either party may apply to the Honourable High Court of Madras for the appointment of sole arbitrator."

By referring the said clause, he would submit that since arbitration notice being issued to the Respondent on 20.07.2023, the Respondent does not have any admitted debt to initiate proceedings under Section 9 of Insolvency and Bankruptcy Code and therefore the present dispute may be referred to Arbitration.

4. Per contra, learned counsel for the respondent would submit that there was no delay on the part of the Respondent in fulfilling their obligations as per the Equipment Purchase agreement dated 12.04.2019 and therefore they are not liable to pay the damages .

5. Since arbitration proceedings has already been initiated, both the learned counsels submitted that as far as admitted debt is concerned, this Court may consider that the said issue may be resolved independently by the



NCLT and as far as the dispute with regard to Equipment Purchase Agreement is concerned, this Court may appoint arbitrator to resolve the said dispute.

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

7. In view of the above, this Court is satisfied that the present dispute is arising out of the said Equipment Purchase Agreement and the same is arbitrable in terms of Article 20 of the Equipment Purchase Agreement. Hence, this Court is inclined to appoint a sole Arbitrator.

8. Accordingly, this Court feels it appropriate to pass the following order:

i) The Hon'ble Thiru.Justice.R.Pongiappan (Retd.), residing at No.26, Kaliasman Kovil Street, Salaipudur, Salaipudur P.O., Kodumudi Via, Erode District Mobile No:9444011433, is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties



Arb.O.P (Com.Div.) No.172 of 2024

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.

iv) With regard to the aspects of debt, it is left open to the parties concerned to avail the legal remedies, if any, available in addition to the present arbitration, in law before any other forum in which case such forum may decide the admissibility of debt independently.

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

31.07.2024

Speaking/Non-speaking order
Index : Yes / No



Arb.O.P (Com.Div.) No.172 of 2024

Neutral Citation: Yes / No
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Note: Issue order copy on 09.08.2024



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Arb.O.P (Com.Div.) No.172 of 2024

KRISHNAN RAMASAMY.J.,

arr

Arb.O.P (Com.Div.) No.172 of 2024

31.07.2024