



Arb.O.P (Com.Div.) No.205 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

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M/s.KONE Elevator India Private India,
Plot No.A-28, Sipcot Industrial Park,
Pillaipakkam, Sriperumpudur Talulk,
Kancheepuram District,
Tamil Nadu 602 105,
Represented through its Authorized Signatory
Mr.C.V.S.Krishnakumar.

... Petitioner

Vs.

Lucky Bar & Restaurant,
Through its Proprietor,
Pritiben S Patel
S.No.168/1,
Village Jani Vankad,
Nani Daman,
Daman – 396210.

... Respondent

Prayer:

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint petitioner's nominee Mr.V.Shailendran, Advocate as the Sole Arbitrator under Contract dated



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27.08.2019 bearing Reference No.KEI/0054/201908/0009277434 in accordance with Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 and to direct the respondent to pay the petitioners the cost of the instant application.

For Petitioners : Mr.N.P.Vijayakumar

For Respondent : No appearance

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondent.

2. In the present case, notice was served and the name of the respondent was also printed in the cause list. However, there is no representation on behalf of the respondent, which shows that they have no interest in contesting this matter. Therefore, this Court is inclined to hear the petitioner and proceed to pass the present order.



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3. The learned counsel for the petitioner would submit that the parties had entered into a Contract dated 27.08.2019 for installation of 2 elevators at the respondent's Hotel. As per the said Contract, the petitioner had delivered two elevators to the respondent and raised invoice for a sum of Rs.15,00,000/-, however, the respondent failed to honour its commitment. Out of the said amount, the respondent only paid a sum of Rs.2,00,000/- to the petitioner. Therefore, the petitioner sent a notice dated 25.05.2023, under Section 21 of the Act, invoking Arbitration in terms of the provisions of the said Contract. However, no consent was given by the respondent for Arbitration. Hence, this petition has been filed.

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

5. In the present case, it appears that the dispute between the parties is arising out of the Contract dated 27.08.2019. Upon perusal of the Contract, it is clear that the dispute among the parties can be resolved by virtue of Arbitration as per provisions of the said Contract, which reads as follows:



“Arbitration: In the event of difference or dispute arising out of or in connection with this agreement, over the rights or obligations of parties, the dispute would first be attempted to be resolved by consultations between the parties. Upon failure of such mutual consultations, the dispute or difference would be referred to Arbitration of a Sole Arbitrator, to be appointed by KONE and the provisions of the Arbitration and Conciliation Act, 1996 shall be applicable to such Arbitration.”

6. Considering the submissions made by the learned counsel for the petitioner and also in view of the fact that the dispute between the petitioner and the respondent arose out of the Contract dated 27.08.2019 and the same can be resolved by virtue of Arbitration Clause available in the said Contract, this Court is inclined to appoint a Sole Arbitrator to adjudicate the disputes between the parties.

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

i) Mr.R.Prathap Kumar, Advocate, Singapore Plaza,



F-6, Second Floor, Linghi Chetty Street, Chennai 600 001,
Mobile No.94431 19818, 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.

8. This Arbitration Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other



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reliefs under the provisions of Arbitration and Conciliation Act 1996

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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Note: Issue order copy on 09.08.2024



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KRISHNAN RAMASAMY.J.,

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