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Arb.O.P. (Com.Div.) No.604 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.604 of 2022

M/s.Earthline Services Private Limited,
Represented by its Managing Director,
No.A-1, 4th Floor,
11th Cross Lingarajpuram,
St.Thomas Town, P.O.,
Bangalore, Karnataka.

.. Petitioner

Vs.

State Bank of India Officer's Association (SBIOA),
Represented by its Authorised Signatory,
No.229, N.S.C. Bose Road,
2nd Floor Mercantile Plaza,
Chennai – 600 001.

.. Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to constitute an Arbitral Tribunal consisting of a Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent in terms of the Tender Document dated 10.05.2017.



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For Petitioner : Mr.R.Siva Kumar for
M/s.K.M.Vijayan Associates

For Respondent : Ms.Hareepriya E.Narasimhaa
for Mr.Thriyambak

ORDER

The dispute between the petitioner and the respondent is arbitrable in terms of Clause B11 of the Tender document issued by the respondent which reads as under:-

“B.11.Settlement of Disputes:

B.11.1Matters to be settled by Employer:

All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the works or after their completion shall be referred by the contractor to the Employer and the Employer shall within a reasonable time after their presentation make and notify decisions thereon in writing.

The decisions, directions, clarification, measurements, drawings and certificates with respect to any matter the decision for which is specially provided for by these or other special conditions to be given and made by the Employer/Employer's authorised representative are matters which are referred to hereinafter as Excepted matters and shall be final and binding upon the contractor and shall not be set aside on account of non-observance of any formality, any omission, delay or error in proceeding in or about the same or on any other ground or for any reason and shall be without Appeal.

B.11.2 In the event of any disputes or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and



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liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the employer of any of any certificate to which the contractor may claim to be entitled to or if the employer fails to make a decision within a reasonable time, then and if any such case, but except in any of the Excepted matters referred to in the above clause, the contractor after 90 days of his presenting his final claim on the disputed matters, may demand in writing that the dispute or difference be referred to arbitration. The such demand for arbitration shall specify the matters which are in question, dispute or difference, and only such dispute to difference other than Excepted matters of which the demand has been made and no other dispute or difference shall be referred to the arbitration of an officer of the Employer to be nominated by Managing Director of the Employer for the time being or if there be no Managing Director at the relevant time then by the Board of Directors of the company. “

2. The dispute has arisen between the parties and therefore the petitioner has sent a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 30.10.2021 followed by a two notice/reminder dated 30.10.2021. However, the respondent failed to respond the same. Hence, this Arbitration Petition was filed by the petitioner on 01.11.2022.

3. This Original Petition was not taken up for hearing, as issue



regarding unstamped was pending before the larger bench of the Hon'ble Supreme Court pursuant to order passed earlier by the Hon'ble Supreme Court in the case of **N.N.Global Mercantile Private Limited Vs. Indo Unique Flame Limited and others**, 2023 SCC Online SC 495.

4. The issue has now been clarified by a larger bench of the Hon'ble Supreme Court on 13.12.2023 in the case of **In Re:Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899**. The Hon'ble Supreme Court has ultimately concluded as follows:-

“234.The conclusions reached in this judgment are summarised below:

(a).Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;

(b).Non-stamping or inadequate stamping is a curable defect;

(c).An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists:

(d)Any objections in relation to the stamping of the agreement fall within the ambit of the arbitral Tribunal and

(e)The decision in NN Global 2 (supra) and SMS Tea Estates (supra) are overruled. Paragraphs 22 and 29 of Garware Wall Ropes (supra) are overruled to that extent.”



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5. Thus, there is no impediment in appointing an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

6. Considering the same and considering the fact that the respondent has not responded to either of the notice, it is deemed that the respondent has forfeited their rights to participate in the process for appointment of an Arbitrator and in the constitution of the Arbitral Tribunal as per the Tender Document.

7. Considering the same, **Mr.R.SINGARAVELAN, Senior Advocate, (Mobile No.96771 85695) having office at No.4, Kondi Chetty Street, 2nd Floor, Chennai – 600 001, New Address: No.64/108, 1st Floor, Catholic Centre, Armenian Street, Chennai – 600 001,** is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties.

8. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, 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.

9. The learned Arbitrator appointed herein 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.

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

11. It is made clear that the petitioner shall pay requisite Stamp



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Duty before the conclusion of the arbitral proceedings. It is also made clear that in case the Stamp Duty is not paid, if any Award is passed in favour of the petitioner, it shall be unenforceable. The petitioner is permitted to expedite the issue relating to payment of Stamp Duty before the concerned jurisdictional Registrar under the provisions of the Indian Stamp Act.

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

13. 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.

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

C.SARAVANAN, J.

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