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Arb.O.P (Com.Div.) No.290 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.290 of 2024
& O.A.Nos.354 to 356 of 2024

Flemingo Dutyfree Shop Private Limited,
D-73/1, TTC Industrial Area,
MIDC-Turbhe,
Navi Mumbai 400 075,
Rep by its Authorized Signatory Mr.Upender Arora

... Petitioner

Vs.

1.Airports Authority of India,
Through Chairman,
Corporate Headquarters, Rajiv Gandhi Bhawan,
Safdarjung Airport, New Delhi 110 001

2.Airport Director,
Airport Authority of India,
Chennai International Airport,
Chennai Airport, Chennai 600 016

... Respondent

Prayer:

Arbitration Original Petition filed under Section 11(4)(5)&(6) of the
Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to



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adjudicate over the dispute arising out of the Concession Agreement dated 16.06.2016 between the petitioner and the respondents.

For Petitioners : Mr.Manishankar,
for Mr.Rahul M.Shankar

For Respondent : Mr.Ramaswamy Meyyappan
for R1 and R2

ORDER

This Arbitration Original Petition has been filed under Section 11(4)(5)&(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. The learned counsel for the petitioner would submit that the petitioner and the respondent had entered into Concession Agreement dated 16.06.2016 for operating and maintaining the duty-free outlets at various International Airports. Subsequently, a dispute arose between the parties in terms of the provisions of said Agreement and the said dispute was not resolved between the parties amicably. Therefore, the petitioner sent a notice



dated 07.06.2024, under Section 21 of the Act, invoking Arbitration in terms of the Article 22.2 of the Concession Agreement. However, no consent was given by the respondent for Arbitration. Hence, this petition has been filed.

3. In reply, the learned counsel for the respondent had also accepted the submission made by the learned counsel for the petitioner. After taking appropriate instructions, he requests this Court to appoint any Retired High Court Judge as sole Arbitrator to adjudicate the disputes between the parties.

4. Heard the learned counsel for the petitioner and the respondent 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 Concession Agreement dated 16.06.2016. Upon perusal of the said agreement, it is clear that the dispute among the parties arising out of the Concession Agreement and the same can be resolved by virtue of Arbitration as per the Article 22.2 of the said Agreement, which reads as follows:



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"Article 22.2 Arbitration

22.2.1 Any Dispute which is not resolved amicably, as provided in Clause 22. 1, shall be finally decided by reference to arbitration by a Sole Arbitrator to be appointed by the Chairman of the Authority. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and shall include amendments to or any re-enactments thereof, as in force from time to time. The venue of such arbitration shall be LOCATION OF THE AIRPORT or such venue as the Arbitrator may decide, and the language of arbitration proceedings shall be English. The cost of arbitration shall be borne equally by both the Parties."

6. Considering the submissions made by the learned counsel for the petitioner and the respondent and also in view of the fact that the dispute between the petitioner and the respondent is arising out of the Concession Agreement dated 16.06.2016 and the same can be resolved by virtue of



Article 22.2 of the said Agreement, this Court is inclined to appoint a Sole Arbitrator.

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

i) **The Hon'ble Mr.Justice K.Kalyanasundaram, Former Judge, Madras High Court, Plot No.406, 5th South Cross Street, Kapaleaswarar Nagar, Neelankarai Chennai 600 115, Mobile No.93810 11077,** 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



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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 reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

9. As far as the connected original applications in O.A.No.354 to 356 of 2024 are concerned, the interim order already granted by this Court on 16.05.2024 is extended till the date of first hearing before the Arbitral Tribunal.

10. Thereafter, the learned Arbitrator shall consider the present applications as Section 17 applications and accordingly, the respective parties may make submission for further continuation of the interim



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injunction granted by this Court. The parties are granted liberty to raise all their contentions before the learned Arbitrator, including the arbitrability of the present dispute.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

nsa

Note: Issue order copy on 09.08.2024



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KRISHNAN RAMASAMY.J.,
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