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Arb.O.P.(Comm.Div.) No.359 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.11.2024

Pronounced on: 29.11.2024

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P.(Comm.Div.) No.359 of 2024

Eswari Electricals Private Limited,
Represented by its Authorised Signatory,
Plot No.64, Industrial Estate, Perungudi,
Chennai – 600 096.

... Petitioner

VS.

New Chennai Township Private Limited,
Represented by its Authorised Signatory,
Seekinakuppam Cheyyur, Chengalpet District,
Pincode – 603 305, Tamil Nadu.

... Respondent

PRAYER: Arbitration Original Petition filed under Sections 11(6) (a) & (c) of the Arbitration and Conciliation Act, 1996, the petitioner prays;

(a) to appoint an Arbitrator to arbitrate over the dispute arising out of the violation of the Lease Deed and Cancellation of the Lease Deed dated 10.04.2023;

(b) To direct the Respondent to pay the cost of the petitioner.

For Petitioner : Mr.S.R.Sundar

For Respondent : Mr.B.Ramana Kumar



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ORDER

The petitioner seeks appointment of an arbitrator under section 11(6)(a) & (c) of the Arbitration and Conciliation Act of 1996 to arbitrate the dispute arising out of alleged violation of the lease deed and cancellation of lease deed between the petitioner and the respondent company.

2. I have heard Mr.S.R.Sundar, learned counsel for the petitioner and Mr.B.Ramanakumar, learned counsel for the respondent.

3. The learned counsel for the petitioner, taking me through the documents filed along with the typed set of papers would submit that the petitioner is a lessee under the respondent and that the respondent was obligated to provide certain amenities in the subject property which were absolutely necessary for the very functioning of the petitioner company in the tenanted lease premises. Consequent to such alleged default on the part of the respondent, the petitioner has suffered irreparable loss and hardships and therefore, he has attempted to settle the disputes with the respondent. However, the talks have not been successful and further, according to the learned counsel for the petitioner, the respondent also issued a cheque dated



14.02.2024 for a sum of Rs.15,02,304/- towards reimbursement of the expenses incurred by the petitioner. However, the said cheque was dishonoured on presentation, in respect of which a notice was issued on 28.02.2024 and the petitioner has also initiated proceedings under Section 138 of the Negotiable Instruments Act, 1882.

4. The learned counsel for the petitioner would further submit that the respondent has issued a notice under the Insolvency and Bankruptcy Code 2016, (in short 'IBC') claiming a sum of Rs.1,72,18,246/- from the petitioner and in furtherance of the same notice, the respondent has also filed CP(IB) CHE No.147 of 2024 before the NCLT Chennai. In the said proceedings, the petitioner has also filed an Application under Section 65 of the IBC, to penalise the respondent herein for prosecuting the said proceedings with malafide intention.

5. The learned counsel for the petitioner would also refer to Clause 9 of the lease deed dated 10.04.2023 which contemplates arbitration proceedings in the event of any dispute between the parties. The petitioner nominated one Mr.V.Vasanthakumar, learned Advocate as the petitioner's



arbitrator amongst the three arbitrators to adjudicate the dispute and called upon the respondent to nominate the arbitrator on the side of the respondent.

6. According to the learned counsel for the petitioner, there was no reply to the said notice dated 03.06.2024 and therefore, the present petition has been filed for appointment of arbitrators.

7. The learned counsel for the respondent, Mr.Ramana Kumar would submit that the arbitration proceedings are only a counter-blast to the IBC proceedings already initiated by the respondent before the IBC. The learned counsel would further submit that huge amounts are due and payable by the petitioner/lessee to the respondent/lessor and since the arbitration clause was not invoked before issuance of the Form 3 demand notice issued by the respondent, the petition for appointment of an arbitrator is not maintainable and is liable to be dismissed.

8. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records, documents filed by way of a typed set of papers both from the petitioner and



the respondent.

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9. It is not in dispute that the parties had contemplated to resort to arbitration for settling the disputes. The said arbitration Clause in the contract is admitted. The only point that is now put against the petitioner seeking appointment of the arbitrator is that proceedings are already initiated before the NCLT, Chennai and the same was pursuant to Form 3 demand notice issued by the respondent. According to the respondent, after the issuance of Form 3 demand notice, it is not open to the petitioner to invoke Section 11(6) of the Arbitration Act.

10. In this regard, I may usefully refer to Section 14 of the Insolvency and Bankruptcy Code 2016, which speaks about the Moratorium period. Prohibition of institution of suits or proceedings or continuation of the same against the corporate debtor are prohibited only on and from the insolvency commencement date. Under Section 7, a financial debtor is entitled to file an application for initiating a corporate insolvency resolution process against the corporate debtor for any default that occurred on the part of the corporate debtor. Section 7(6) clearly mandates that the corporate insolvency



resolution process shall commence from the date of admission of the application under subsection 5. In the present case, admittedly the respondent has not been able to show that the adjudicating authority has been satisfied that a default has occurred and that the Application under Sub-Section 2 of Section 7 is complete and consequently, admitted such application. There is no material to show that such an exercise has been undertaken by the adjudicating authority and that the application of the respondent has been admitted. The only defence taken by the respondent is that Form 3 notice has been issued and NCLT proceedings have been initiated.

11. I am unable to accept the contention put forth by the learned counsel for the respondent that mere filing of an application before the NCLT would be sufficient to kick in the prohibitory provisions of Section 14 of the NCLT. Therefore, the petitioner is entitled to seek appointment of an arbitrator.

12. The arbitration Clause in the contract is extracted for easy reference:



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9. DISPUTES & ARBITRATION

a) In the event of any dispute or difference between the parties arising out of or in connection with this Deed or with regard to performance of any obligations by either party, the parties hereto shall use their best efforts to resolve such dispute or difference amicably by mutual negotiations.

b) All disputes arising in connection with this Deed that have not been amicably settled shall be referred to arbitration. Each of the parties is entitled to appoint one Arbitrator and the presiding Arbitrator shall be appointed by the two Arbitrators. The Arbitration shall be as per the provisions of Arbitration and Conciliation Act, 1996 (with such statutory amendment/modification thereof). The Arbitration shall be conducted in the English language and the venue of such Arbitration shall be in Chennai, India. The costs shall be as determined by the Arbitrator.

13. The contract contemplates appointment of three arbitrators, one each by the petitioner and respondent and the third, by the arbitrators appointed by the petitioner and respondent to be the presiding arbitrator. The petitioner has already nominated one **Mr.V.VASANTHAKUMAR, Advocate, having address at Chamber No.22 & 23, 3rd Floor, Andhra Insurance Building, No.323, Thambu Chetty Street, Chennai – 600 001 and Office of the Government Pleader, Government of Puducherry, Old Legal Aid Buildings, High Court Premises, Chennai – 600 104, Email ID: solicitorvasanth@gamil.com** as the petitioner's Arbitrator. However, the respondent has not chosen to nominate an Arbitrator as contemplated under the deed. Hence, **Mr.K.M.AASIM SHEHZAD, Advocate, having**



address at **BFS Legal, No.47/1, Rams Surabi Apartments, 1st Main Road, R.A. Puram, Chennai – 600 028, Cell:9841026786 Email ID**

aasimshehzad@bfslegal.in is appointed as Arbitrator for the respondent.

Both the petitioner's Arbitrator and respondent's Arbitrator shall jointly nominate the presiding Arbitrator and the Arbitrator Tribunal shall adjudicate the disputes between the petitioner and respondent in accordance with law.

14. The learned Arbitrators are entitled to fix their fees as per the Schedule-IV to the Act. This Court further requests the learned Arbitrators to endeavor to decide the dispute as expeditiously as possible, however, not later than six (6) months from the date of his entering into reference.

15. Accordingly, this Arbitration Original Petition is allowed.

29.11.2024

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Index : Yes / No

Internet : Yes / No

P.B.BALAJI, J.,



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