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Arb O.P(COM.DIV.) NO. 422 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-12-2024

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THE HONOURABLE MR JUSTICE P.B. BALAJI

Arb O.P(COM.DIV.) NO. 422 of 2024

M/S.ICMC Corporation Ltd Rep by its authorised
signatory Mr.kannan
No. 36, Ambattur Industrial Estate, Chennai- 600
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Appellant(s)

Vs

M/S.ITI Ltd (Govt of india)
No.1,Jennis Road,3rd Floor,Panagal
building,Saidapet,chennai-600015

Respondent(s)

For Appellant(s):

M/s.Anirudh A.Sriram

For Respondent(s):

Mr.Althaf M.Hussain

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent under the Arbitration Agreement dated 01.02.2021.



2.Heard Mr.Anirudh A.Sriram, learned counsel appearing for the petitioner and Mr.Althaf M.Hussain, learned counsel for the respondent.

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3.The case of the petitioner is that a Sale Purchase Agreement was entered into by the petitioner with the respondent on 01.02.2021, for supply of Nitrile Gloves. The allegation of the petitioner is that in the course of business, the respondent instructed the petitioner to pay money for procurement and as instructed by the respondent, the respondent also paid various vendors through bank transactions, however, E-way bills were not made available by the petitioner. The petitioner was constrained to lodge a police complaint against the respondent and a charge sheet was also filed subsequent to investigation and the same is pending trial.

4.According to the petitioner, despite payments made by the petitioner, the said Nitrile Gloves have not been supplied to the approved vendors of the respondent and the petitioner has been able to only recover a small amount and a huge sum of Rs.82 lakhs, together with interest is recoverable from the approved vendors of the respondent. The petitioner invoked Section 21 of the Arbitration and Conciliation Act and issued a



notice on 18.08.2023. According to the petitioner, the petitioner and the respondent have not been able to arrive at a choice of any arbitrator and hence, with no other option, the petitioner has filed the present original petition.

5.The learned counsel for the petitioner would reiterate the averments made in the petition in support of the Section 11 petition and pray for appointment of a Sole Arbitrator.

6.The learned counsel for the respondent raised primary objections regarding the very existence and validity of the arbitration agreement since according to the respondent, the contract was entered into by an agent of the respondent who exceeded his authority and committed default, which appears to be the only major defence raised by the respondent opposing the appointment of the Sole Arbitrator.

7.Even though a detailed counter affidavit has been filed, the averments in the counter are mainly relating to the merits of the claim of the petitioner.



8.I have carefully considered the submissions made by the learned counsel on either side.

9.Admittedly, there is an arbitration agreement in writing, which is not in dispute. The only defence set up by the respondent is that the person who signed the agreement was not empowered or authorised to represent the respondent.

10.In view of the recent decisions of the Hon'ble Supreme Court, the High Court has to only see the existence of a written arbitration agreement and the issues like these viz., related to validity of the agreement being challenged by the respondent, has to be left to the determination by the arbitrator alone and the High Court is exercise of power under Section 11 is limited to such extent. Therefore, in the light of the recent decision of the Hon'ble Supreme Court, I have no hesitation in allowing the original petition as prayed for.



11.Considering the nature of disputes and the claims involved, I appoint **Mr.T.R.Rajagopalan, Senior Advocate, New No.5 (Old No.23), D'Silva Road, 1st Cross Street, Mylapore, Chennai – 04. / No.5 Law Chambers, High Court Buildings, Chennai – 104, Mob.Nos.9840120208 / 9710190455**, as sole Arbitrator to go into the disputes between the parties and attempt to amicably resolve the same.

12.The learned Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Arbitrator to endeavor to decide the dispute as expeditiously as possible, however, not later than three (3) months from the date of his entering into reference.

13.Accordingly, this Arbitration Original Petition is allowed.

18-12-2024

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To
1. M/S.ITI Ltd (Govt of india)
No.1,Jennis Road,3rd Floor,Panagal
building,Saidapet,chennai-600015



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