



Arb.O.P.(Com.Div.) No.479 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

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M/s.Log 9 Mobility Private Limited,
No.9, Bellary Road, Off Jakkur Main Road,
Next to ABNuvo Limited, Jakkur Layout,
Bangalore, Karnataka – 560 092.

... Petitioner

Vs.

M/s.Helping E-Services Private Limited,
House No.WZC-57, Gail No.78,
Arya Samaj Road, Uttam Nagar, West Delhi,
Delhi – 110 059.

... Respondent

Prayer: Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying for appointment of a Sole Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the Vehicle Lease and Operations Agreement dated 28.05.2022, as amended by Addendum dated 10.11.2022.

For Petitioner : Mr.Karunamoorthy

For Respondent : No Appearance



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ORDER

WEB COPY This Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, for appointment of an arbitrator.

2. The dispute between the petitioner and the respondent is arbitrable in terms of Clause 12.1(b) of the Vehicle Lease and Operations Agreement dated 28.05.2022 and Addendum 10.11.2022. It reads as under:-

“12.1 Dispute Resolution:

(a) If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with or arising out of this Agreement (whether before or after the termination or breach of this Agreement) the concerned representatives of the Parties shall promptly and in good faith negotiate with a view to an amicable resolution and settlement of the dispute.

(b) In the event no amicable resolution or settlement is reached within a period of fifteen (15) days, such dispute or difference shall be referred to a mutually acceptance single arbitrator or, upon the failure of the Parties to agree upon a single arbitrator, either Party can approach competent court for appointment of such arbitrator under the provisions of the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be held at Chennai, Tamil Nadu.

(c) The existence of any dispute or difference or the initiation or continuance of the arbitration proceedings shall not postpone or delay the performance by the Parties of their respective obligations pursuant to this Agreement. It is agreed that the arbitrator shall also determine and make an award as to the costs of the arbitration proceedings. Notwithstanding anything contained herein, the Parties shall have a right to



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institute legal proceedings to prevent any continuing breach of the provisions of this Agreement to seek an injunctive or any other specific relief.”

3. The petitioner was unable to serve notice on the respondent as the notice was returned earlier. Therefore, an application was filed for effecting substituted service of notice on the respondent through Paper Publication.

4. Pursuant to order passed by this Court, the petitioner has also effected Paper Publication in English Newspaper "The Hindu", in Delhi Edition and in Hindi Daily Newspaper "Punjab Kesari" on 15.01.2024.

5. There is deemed service of notice on the respondent. It is noticed that the petitioner had also issued Section 21 notice prior to institution of this petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 on 31.07.2023.

6. In the aforesaid notice, the petitioner has nominated a counsel



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from this Court as a Sole Arbitrator. However, it has not evoked any response from the respondent despite service of notice on the respondent.

7. It appears that the petitioner has also sent a Legal Notice through e-mail on 20.07.2023, which has also not evoked any response from the respondent.

8. It has to be construed that the respondent has forfeited their rights to participate in the nomination/constitution of the Arbitral Tribunal in terms of Clause 12.1 of the Vehicle Lease and Operations Agreement dated 28.05.2022 and Addendum 10.11.2022.

9. Therefore, **Mr.J.Sivanandaraaj, Senior Advocate, having Office at No.6, Indian Chambers, SICCI Annex Building, Ground and Second Floor, Esplanade, Chennai – 600 108, Mobile No.98410 24778,** is appointed as an arbitrator to enter upon reference to adjudicate the *inter se* dispute between the parties.

10. The learned Arbitrator appointed herein, shall after issuing notice



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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 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

11. 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 remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent subject to the Final Award to be passed by the learned Arbitrator.

12. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.



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13. Since this Court has appointed the 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.

07.02.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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