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Arb.O.P(Com.Div.) No.585 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

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M/s.IT Expressway Limited,
Represented by its Managing Director,
No.171, 2nd Floor, TNMB Building,
South Kesavaperumalpuram,
Greenways Road,
Raja Annamalaipuram,
Chennai – 600 028.

... Petitioner

Vs.

M/s.Prakash Arts Private Limited,
Represented by its Managing Director,
Real Towers, No.2, 2nd Floor,
No.51/52, R.H.Road,
Mylapore, Chennai – 600 044.

... Respondent

Prayer: Original Petition is filed under Section 11(4)(a) of the Arbitration and Conciliation Act, 1996, praying to exercise the jurisdiction conferred under Section 11 of the Arbitration and Conciliation Act, 1996, read with Article 19.2 of the Concession Agreement dated 27.06.2013 and appoint an arbitrator on behalf of the respondent preferably among the panel of arbitrators suggested by the petitioner in their notice dated 13.03.2023 to



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decide the disputes that have arisen between the petitioner and the respondent out of the Concession Agreement dated 27.06.2023 and to direct the respondent to pay the cost of the petition.

For Petitioner : Mr.M.Sivavarthanan
For Respondent : No appearance

ORDER

The learned counsel for the petitioner is present.

2. There is no representation on behalf of the respondent.

3. The petitioner has filed Affidavit of Service enclosing the notice sent to the respondent on 01.02.2024 along with the extract from the Tracking Consignment Note downloaded from the Postal Department indicating service of notice on the respondent on 05.02.2024.

4. The dispute between the petitioner and the respondent is *prima facie* arbitrable in terms of the Concession Agreement dated 27.06.2013 which contains a clause for resolving the dispute through arbitration.

Relevant Clause reads as under:-



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“19.2 Arbitration:

a) Arbitrators:

Any Dispute which is not resolved amicably as provided in Clause 19.1(a) shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a committee of three arbitrators chosen from a panel of five arbitrators on the list of arbitrators available with ITEL. One arbitrator is to be chosen by each Party and the third to be appointed by the two arbitrators chosen by the Parties. If either Party fails to choose its arbitrator, the other Party shall take steps in accordance with Arbitration and Conciliation Act, 1996.

b) Place of Arbitration:

The place of arbitration shall be Chennai, Tamil Nadu.”

5. The petitioner has issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 26.11.2022, which has also been responded by the respondent through a Counsel on 02.01.2023.

6. In reply dated 02.01.2023, it has been stated that the issue involved is a pure question of law and therefore there is no scope for any resolution of dispute through arbitration proceedings and therefore, the respondent has declined to consent for appointment of the Arbitrator.

7. The petitioner has thereafter issued another Notice on 13.03.2023



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indicating the panel consisting of five arbitrators, two arbitrators to be chosen by either of the parties who in turn, appoint a Presiding Arbitrator in terms of the above Clause. The respondent has not responded to the same, despite service of notice on the respondent.

8. The respondent has also not responded to the notice that was ordered by this Court on 19.12.2023 and 23.01.2024.

9. Considering the same, it has to be construed that the respondent has forfeited the rights to participate in the nomination of the Arbitrator.

10. Therefore, Court is inclined to appoint **Hon'ble Mr.Justice K.N.Basha (Retd.), Former Judge of Madras High Court residing at Dr.Ambedkar Road (Old ICF Link Road), North Thirumalai Nagar, Villivakkam, Chennai – 600 049, (Mobile No.94444 54545)**, as the Sole Arbitrator to enter upon reference to adjudicate/resolve the *inter se* dispute between the parties.

11. The learned Arbitrator appointed herein, shall after issuing



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

12. 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.

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



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14. 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.

13.02.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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