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Arb.O.P (Com.Div.) No.18 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.18 of 2025

KNK Construction Pvt. Ltd.,
rep. by its Director Darshan Pushparaj

... Petitioner

Versus

PSA AVTEC Powertrain Pvt. Ltd.

... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitral Tribunal in accordance with the provisions of the Arbitration and Conciliation Act, 1996 to adjudicate upon the disputes/differences between the petitioner and the respondent under the Contract and to direct the respondent to pay the costs of the proceeding.

For Petitioner : Ms.Ashwini Vaidialingam

For Respondent : Mr.Abdul Hameed,
Senior Counsel for
M/s.AAV Partners

ORDER



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This petition has been filed under Section 11 of the Arbitration and Conciliation Act, seeking for the appointment of an Arbitrator by this Court.

2. There seems to be a dispute arising out of a Letter of Intent dated 30.11.2017 issued by the respondent in favour of the petitioner. According to the petitioner, certain sums of monies are still due and payable by the respondent to the petitioner, which arises out of the Letter of Intent dated 30.11.2017.

3. The petitioner has also invoked arbitration in accordance with the arbitration clause contained in the Letter of Intent dated 30.11.2017 by issuing a notice to the respondent on 25.07.2023 in compliance with Section 21 of the Arbitration and Conciliation Act, 1996. A reply has also been received from the respondent dated 17.08.2023 by the petitioner to the said notice disputing the contentions of the petitioner. Since there is no consensus between the parties with regard to the arbitration, the petitioner has approached this Court by filing this petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator by this Court.



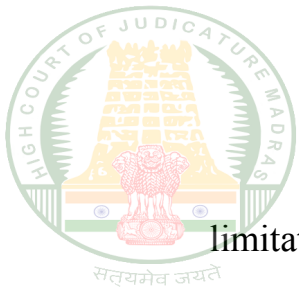
WEB COPY 4.A counter has been filed by the respondent in this petition.

According to them, the claim of the petitioner is barred by limitation and therefore, this Court cannot appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

5.The petitioner claims that their claim is well within the period of limitation since the period i.e. from 15.03.2020 to 28.02.2022 stands excluded for the purpose of saving limitation on account of Covid-19 pursuant to orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020.

6.In the counter filed by the respondent before this Court, the aforesaid period, which saves limitation for the petitioner, has not been taken account of.

7.Learned counsel for the petitioner would submit that the final bill was submitted by the petitioner on 05.08.2019 and if the aforesaid covid period is excluded, the claim of the petitioner is well within the period of

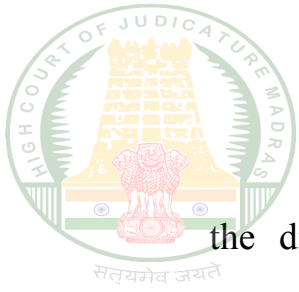


limitation.

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8.Limitation is a mixed question of fact and law. While deciding a petition under Section 11 of the Arbitration and Conciliation Act, 1996, this Court will have to only look into the prima facie existence of an arbitration clause and whether the petitioner has complied with the requirement of Section 21 of the Arbitration and Conciliation Act or not. If the period, referred to supra, is excluded, the claim of the petitioner may be well within the period of limitation. Unless the claim is hopelessly barred by law of limitation, the question of not appointing an Arbitrator under Section 11 of the Arbitration and Conciliation Act does not arise. The case on hand is not one such case it can be conclusively determined that the claim of the petitioner is barred by limitation.

9.Limitation being a mixed question of fact and law, it is only the Arbitral Tribunal to decide as to whether the claim is barred by limitation or not. Since it is not disputed by the respondent that there exists an arbitration clause in the Letter of Intent dated 30.11.2017, which is the subject matter of



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the dispute between the parties and since the petitioner has invoked arbitration in accordance with the arbitration clause contained therein by issuing notice to the respondent on 25.07.2023 in compliance with Section 21 of the Arbitration and Conciliation Act, 1996, this Court will have to necessarily appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 by granting liberty to the respondent to raise all objections, including raising objections of limitation either by filing an application under Section 16 of the Arbitration and Conciliation Act, 1996 or by filing a detailed statement of defence in the main arbitral claim to be made by the petitioner.

10.For the foregoing reasons, this Arbitration Original Petition is allowed by issuing the following directions:



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ABDUL QUDDHOSE, J.
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(a) This Court appoints Hon'ble Mr. Justice S. Vaidyanathan, Former Chief Justice of Meghalaya High Court, having address at Door No.2A, 2nd Floor, River dale apartments, 14/27, 2nd Avenue, Harrington Road, Chetpet, Chennai - 600 032, Mobile No:98405 17862 as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent, arising out of the Letter of Intent dated 30.11.2017, on merits and in accordance with law;

(b) The Arbitrator shall be paid his remuneration/fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996;

(c) Both the parties shall equally share the Arbitrator's fees;

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

No costs.

11.03.2025

vga

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