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Arb.O.P.(Com. Div.) No.86 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2025

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.86 of 2025

M/s.A.S. CARGO MOVERS Pvt. Ltd. ... Petitioner
Vs.

M/s.IBCC Industries (India) Pvt. Ltd.,
Rep. by its Managing Director,
Plot No.B16A and B17,
Gallops Industrial Park Phase - I,
National Highways No.8A,
Rajhoda, Balva Taluk - 382 220. ... Respondent

PRAYER: Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the memorandum of understanding dated 15.03.2021 and to direct the respondent to pay the cost.

For Petitioner : Mr. J. V. Niranjana

For Respondent : Ms. Krithika Jaganathan
for Mr. Lakshmi Kumaran Sridharan

ORDER

Eventhough, the following objections have been raised by the respondent through their counter filed in this petition, filed under Section 11



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of the Arbitration and Conciliation Act, viz.,

- a) The dispute raised by the petitioner is not an arbitrable dispute;
- b) The claim of the petitioner does not arise out of the contract viz., memorandum of understanding dated 15.03.2021;
- c) The claim of the petitioner is barred by the law of limitation;
- d) Before the G.S.T. authority, the petitioner has contended that the transaction does not attract G.S.T. But before this Court, the petitioner has taken a contra stand by claiming G.S.T. and interest from the respondent

the learned counsel for the respondent, on instructions, would submit that in view of the existence of the arbitration clause in the memorandum of understanding dated 15.03.2021, which is the subject matter of dispute between the parties, the respondent is willing to go for arbitration provided the respondent is granted liberty to raise all the aforesaid objections before the arbitrator by either filing an application under Section 16 of the Arbitration and Conciliation Act, or through their statement of defence filed before the arbitrator.



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2. The law is now well settled by the decisions rendered by the Honourable Supreme Court that this Court has only got the power of limited scrutiny while deciding an application under Section 11 of the Arbitration and Conciliation Act. Admittedly, the memorandum of understanding dated 15.03.2021 contains an arbitration clause and the same is extracted hereunder:

"11. DISPUTE RESOLUTION:

In the event of any dispute between the parties in relation to the MOU or the interpretation of this MOU or arising out of this MOU, such dispute shall be resolved by arbitration to be conducted in accordance with the procedure under the Indian Arbitration and Conciliation Act, 1996 or amendments thereto. The arbitration proceedings shall be conducted at Chennai. The arbitration proceedings shall be conducted by a single arbitrator appointed jointly by the parties who shall also be entitled to decide on the costs of the arbitration."

3. When there exists an arbitration clause in the memorandum of understanding dated 15.03.2021, which is the subject matter of dispute between the parties and since the petitioner has complied with the



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requirements of Section 21 of the Arbitration and Conciliation Act, by issuing notice to the respondents on 09.12.2024, and that too when the respondent's counsel, on instructions, has agreed for appointment of an arbitrator by this Court provided the respondent is granted liberty to raise all objections before the arbitral Tribunal, this Court will have to necessarily appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act.

4. Both the counsels have given consent for appointment of Mr. Thriyambak J. Kannan, Advocate as sole arbitrator and they have made a joint endorsement, agreeing for appointment of Mr. Thriyambak J. Kannan, Advocate as the sole arbitrator to adjudicate the dispute between the parties arising out of the memorandum of understanding dated 15.03.2021.

5. Accordingly, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

(a) Mr. Thriyambak J. Kannan, Advocate, who is having office at No.119/65, First floor, Dr. Radhakrishnan Salai, Mylapore, Chennai - 600 004 (Mobile No.98846 24563) is appointed as the sole Arbitrator to decide



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the dispute between the petitioner and the respondent arising out of the memorandum of understanding dated 15.03.2021 and liberty is also granted to the respondent to raise all objections including the objections, which have been referred to supra, before the arbitrator either by filing an application under Section 16 of the Arbitration and Conciliation Act or through the statement of defence filed in the arbitration;

(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996 or as per the mutual consent of both the parties;

(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.

16.04.2025

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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WEB COPY



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ABDUL QUDDHOSE. J.,

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16.04.2025