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Arb.OP.(comdiv) No.90 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2025

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.90 of 2025

Kumarbhai Manharlal Desai,
Proprietor of M/s.Omega Elevators,
Ahmedabad.

.. Petitioner

-VS-

Embassy Residents Apartment Owners Association,
Chennai.

.. Respondent

Petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed seeking to appoint an arbitrator to resolve the disputes between the parties as per the Annual Maintenance Contract Agreement dated 01.06.2023.

For Petitioner : Ms.Srividhya Iyer

for Mr.Deepak Narayanan

Respondent is set exparte today



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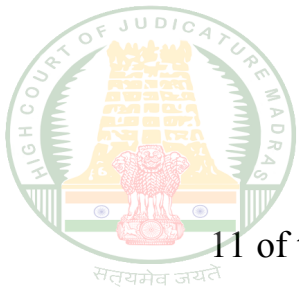
ORDER

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This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) seeking for appointment of an Arbitrator.

2. As seen from the returned cover filed along with the affidavit of service, notice sent to the respondent has been returned with an endorsement “refused”. Since the respondent has refused to receive the notice, it amounts to deemed service. The name of the respondent is also printed in the cause list today. The respondent is, therefore, set exparte by this Court.

3. There seems to be a dispute between the petitioner and the respondent arising out of the Annual Maintenance Contract Agreement dated 01.06.2023. The petitioner has invoked arbitration as per the arbitration clause contained in the Annual Maintenance Contract Agreement dated 01.06.2023 by issuing notice to the respondent on 23.07.2024. A reply has also been received from the respondent to the said notice on 02.09.2024. Since there is no consensus between the parties for arbitration, the petitioner has filed this petition under Section



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11 of the Act, seeking for appointment of an arbitrator by this Court.

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4. The arbitration clause contained in the Annual Maintenance

Contract Agreement dated 01.06.2023 is extracted hereunder:

"IX, ARBITRATION AND JURISDICTION

All questions disputes, differences and claims whatsoever which shall at any time arise between the parties hereto or their respective representatives or any of them touching or concerning this Agreement and all other documents in pursuance hereof the construction, meaning, operation or effect thereof or of any clause herein contained or as to the rights, duties, obligations or of the hereto respectively or their respective representatives or any of them under or by virtue of this Agreement or otherwise or touching the subject matter hereof or arising out of in 'relation thereto shall be referred to three member arbitrate tribunal. Disputes related to non-payment of any fees by the CLIENT to SERVICE PROVIDER once agreed and signed off by both the two parties, will be subject to arbitration. Each party shall appoint one arbitrator and these two arbitrators in turn shall appoint the presiding arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 amended from time to time. Such arbitration proceedings shall be English language



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and shall be held Chennai only. Subject to the preceding paragraph the courts in Chennai shall have exclusive jurisdiction over any dispute, difference or claims arising out of "this Agreement"

5. Since there exists an arbitration clause in the Annual Maintenance Contract Agreement dated 01.06.2023 and since the petitioner has invoked arbitration by issuing notice to the respondent on 23.07.2024 in compliance with Section 21 of the Act and since there is no consensus between the parties with regard to the name of the Arbitrator, this Court will have to appoint an Arbitrator. Accordingly, this petition is allowed with the following directions:-

(a) This Court hereby appoints Mr.Avinash Wadhwani, Advocate, having office at Plot No.1958-B, II Avenue, Anna Nagar West, Chennai (Mobile No.9003051205), as the sole arbitrator to adjudicate the dispute between the petitioner and the respondent arising out the Annual Maintenance Contract Agreement dated 01.06.2023.

(b) The Sole Arbitrator appointed by this Court shall be paid remuneration/fees as per the schedule



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agreed upon by the parties to the dispute.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

13.03.2025

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ABDUL QUDDHOSE, J.



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