

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF APRIL, 2018

BEFORE

HON'BLE MR.JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE

CIVIL MISCELLANEOUS PETITION NO.288 OF 2016

BETWEEN:

ADECCO INDIA PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
"SAI DEEP SHRI NIDHI", NO.2
NAL WIND TUNNEL ROAD
MURUGESHPALYA, BENGALURU-560017
REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
MR.SUBRAMANYA H S

... PETITIONER

(BY SRI VINAY N, ADVOCATE FOR
SRI MANMOHAN P N, ADVOCATE)

AND:

ZOOMCAR INDIA PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956/
PARTNERSHIP ACT-1932
AT NO. 308, FIRST TO THIRD FLOOR
100 FT. ROAD, INDIRANAGAR 1ST STAGE
BENGALURU - 560038
PRESENTLY HAVING ITS
REGISTERED OFFICE AT NO.701 TO 707
7TH FLOOR, TOWER-B, DIAMOND DISTRICT
NO.150, AIRPORT ROAD
KODIHALLI, BANGALORE-560008
REPRESENTED BY MANAGING DIRECTOR

... RESPONDENT

(BY MS.SPANDANA ASHWATH, ADVOCATE FOR
SRI SHREYAS JAYASIMHA, ADVOCATE)

THIS CIVIL MISCELLANEOUS PETITION IS FILED UNDER SECTION 11(5) OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING THIS COURT TO APPOINT AN ARBITRATOR FOR AND ON BEHALF OF THE RESPONDENT AS PER CLAUSE 13 OF THE MASTER SERVICE AGREEMENT DATED 16.03.2015 (PRODUCED AS ANNEXURE-A).

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Learned counsel for the respondent has argued at the outset that this application, made purportedly under subsection (5) of Section 11 of the Arbitration and Conciliation Act, 1996 ('the Act of 1996'), is not maintainable.

Suffice it to say in this regard that mere wrong mentioning of the particular provision of law is not decisive of the matter. This petition, essentially for the relief under subsection (6) of Section 11 of the Act of 1996, has been considered, and is being disposed of, accordingly.

By way of this application, the petitioner-company has made the request for appointment of Arbitrator to adjudicate upon and decide all its disputes with the respondent, arising out of, and relating to, the Service Agreement dated 16.03.2015, concerning providing of manpower to the

respondent as per its requirements, for which the respondent had agreed to pay the petitioner. The petitioner has averred that the respondent committed breach of contract and even failed to make payments as required under the said agreement and then, issued notice terminating the agreement. The petitioner has pointed out that thereafter a reply was sent, calling upon the respondent to pay a sum of ₹88,09,299/-, but the respondent denied the claim. It is further submitted that in the given circumstances, the petitioner issued notice dated 10.08.2016 suggesting the name of an Arbitrator while calling upon the respondent to suggest the name of another Arbitrator, but the respondent did not respond to the said notice. It is submitted that in view of the respondent having failed to nominate the Arbitrator as per the agreement, this Court may appoint an Arbitrator to adjudicate upon the dispute between the parties.

The respondent, in its reply, would, *inter alia*, submit that the petitioner's notice dated 10.08.2016 was rather premature and against the procedure agreed to by the parties. It is also submitted that the petitioner has failed to take steps

to resolve the dispute amicably and hence, the arbitration procedure could not have been invoked. It is also submitted that there is no such dispute between the parties which would entitle the petitioner to seek a reference to the arbitration.

Heard learned counsel for the parties and examined the record.

The limited aspect required to be considered in this application is as to whether there exists an arbitration agreement between the parties?

In fact, the existence of arbitration agreement in this matter is apparent on the face of the record. The arbitration clause, being Clause 13 in the Service Agreement, reads as under:

“Any difference or dispute between the parties arising under this Agreement shall be resolved amicably. In case the Parties fail to resolve their disputes amicably, the same shall be referred to arbitration. Each party shall nominate one arbitrator and the arbitrators so appointed shall appoint the third arbitrator. The arbitration proceedings shall be in accordance with Arbitration and Conciliation Act, 1996. The seat of arbitration shall be at Bangalore and the proceedings shall be held in English.”

From the material placed on record, it is evident that the respondent issued notice terminating the agreement and the petitioner sent a reply while making a claim of its alleged dues and thereafter, issued notice dated 10.08.2016 with a request to the respondent to proceed for arbitration but, the respondent did not take steps for appointment of arbitrator/s as required by the aforesaid arbitration agreement between parties. True it is that under the said Clause 13, the parties were expected to resolve the dispute amicably, but then, amicable resolution of dispute cannot be a matter to be thrust upon any party. When the parties stand at conflict and the dispute does exist, which has not been resolved; and for the reason of failure of the procedure for appointment of arbitrator, it is just and proper that an independent arbitrator be appointed to adjudicate upon and decide the dispute between the parties, including their claims, counter claims and objections.

Now, learned counsel for the parties have fairly agreed to the appointment of a Former Judge of this Court, namely, Hon'ble Dr.Justice N.Kumar to act as an Arbitrator to resolve

the dispute between the parties under the provisions of the Act, as per the Rules governing the Arbitration Centre at Bengaluru.

Accordingly, this petition under Section 11 of the Act of 1996, is disposed of by appointing Hon'ble Dr.Justice N.Kumar, a Former Judge of this Court, to enter into the said reference and to act as an Arbitrator in the present case in the Arbitration Centre, Bengaluru, as per the Rules governing the said Arbitration Centre.

In the interest of justice, it is made clear that the Arbitrator shall adjudicate upon and decide all the disputes between the parties including their claims, counter claims and objections relating to the agreement in question. The requirements of the Arbitration and Conciliation Act, 1996, [as amended by the Arbitration and Conciliation (Amendment) Act, 2015], shall be complied with by all the concerned.

Needless to observe that all the questions arising between the parties in this matter shall remain open for determination in the arbitration proceedings.

A copy of this order be sent to the Arbitration Centre, Khanija Bhavan, Bengaluru, for proceeding further in the matter on administrative side and also to Hon'ble Dr.Justice N.Kumar, on the address available with the said Arbitration Centre, Bengaluru.

**Sd/-
CHIEF JUSTICE**

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