

In the High Court of Judicature at Madras

Dated : 03.07.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.395 of 2011

M/s.National Company,
No.9, Kandasamy street,
Mylapore, Chennai-600 004,
rep. by its Managing Partner
Dr.Arjun A.Raja .. Petitioner

-vs-

Suvidha Parklift Limited,
No.206, South Ex, Plaza-I,
389, Masjid Moth,
N.D.S.E.-II,
New Delhi-110 049. .. Respondent

Petition filed under Section 11 (6) of the
Arbitration and Conciliation Act, 1996, to appoint a
Sole Arbitrator to adjudicate on the disputes between
the petitioner and the respondent.

For Petitioner : Mr.Harishankar Mani

For Respondent : Ms.Vijayalakshmi Rajaratnam
for
M/s.Abudukumar Rajaratnam

* * * * *

O R D E R

The petitioner has filed the petition under

Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking resolution of the disputes which have arisen inter se the parties out of the agreement dated 03.10.2007 containing the arbitration Clause.

2. The petitioner promoted and constructed a Shopping Mall with a multiplex theatre at Chandra Metro Mall, 262, Arcot Road, Virugambakkam, Chennai-92 and claims that the respondent had approached the petitioner for supplying and installing of a puzzle parking systems for motor vehicles, making an offer vide proposal letter dated 03.10.2007. This resulted in the agreement inter se the parties on the same date. The allegation is that there was failure to fulfill the obligations by the respondent, which has resulted in termination of the agreement dated 03.10.2007 by the petitioner vide letter dated 28.01.2011. This position was contested by the respondent vide letter dated 02.02.2011. The petitioner has issued a legal notice dated 21.02.2011 claiming a sum of Rs.1,62,84,604/-.

3. It appears that thereafter, endeavours were made to resolve the disputes, but the matter was not finally settled. There were some correspondences inter se the parties, which culminated in the letter dated 27.05.2011 of the respondent, invoking

arbitration Clause proposing the Sole Arbitrator. The petitioner, however, did not agree to the Arbitrator nominated the respondent and thereafter, the present proceedings have been initiated.

4. The matter is pending for the last four years and it appears that once again, settlement discussions are on. The other development is that a suit has been filed by M/s.Kocon India Private Limited jointly against the two parties before this Court.

5. The submission of the learned counsel for the respondent is that it is necessary to implead M/s.Kocon India Private Limited as party to the arbitration, even though that entity is not a party to the agreement in question. It is, thus, his submission that a tripartite agreement between the two parties and that entity was executed on 13.09.2010, which was a sequitur to the agreement dated 03.10.2007, though it is conceded that the tripartite agreement does not have any arbitration clause either specifically or by incorporation, in pursuance to the agreement dated 03.10.2007.

6. The third party is not before this Court in these proceedings or otherwise to claim impleadment in the proceedings and the learned counsel for the petitioner has a serious objection to implead the

third party in the present proceedings as according to him, an endeavour is being made to give a multiple-party colour to the dispute while it is a dispute between the parties to the present petition, in pursuance to the agreement dated 03.10.2007, which contains the arbitration clause.

7. I am in agreement with the submission of the learned counsel for the petitioner as the question of resolution of disputes sought for by the petitioner has only arisen from the agreement dated 03.10.2007 - a bilateral document, a third party cannot compel to be added as party to the present proceedings, merely because there is a separate tripartite agreement with that third party, when that tripartite agreement does not contain the arbitration clause specifically or by incorporation.

8. It is, thus, clear that the disputes have arisen inter se the parties out of the agreement dated 03.10.2007, which contains the arbitration Clause and the jurisdiction is of this Court. The arbitration Clause in the agreement dated 03.10.2007 reads as under:-

'Arbitration
:

Suvidha Parklift Limited and National Company Limited, shall make every effort to resolve amicably/by conciliation, by direct interference, negotiations any disputes arising under or in connection with this agreement. All disputes, which cannot be settled, shall be referred for Arbitration in terms of the Indian Arbitration and Conciliation Act, 1996.

Jurisdiction
:

The jurisdiction of the Courts of Chennai only shall apply.'

9. I, thus, by consent appoint **Mrs. Justice Chitra Venkataraman**, a retired Judge of this Court as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. The arbitration proceedings will be conducted under the aegis of Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Madras

High Court Arbitration Centre (MHCAC) (Arbitration Proceedings) & (Administrative Cost and Arbitrators' Fees) Rules, 2014.

10. The Original Petition is accordingly allowed, leaving the parties to bear their own costs.

Sd/. (S.K.K., CJ.)
03.07.2015

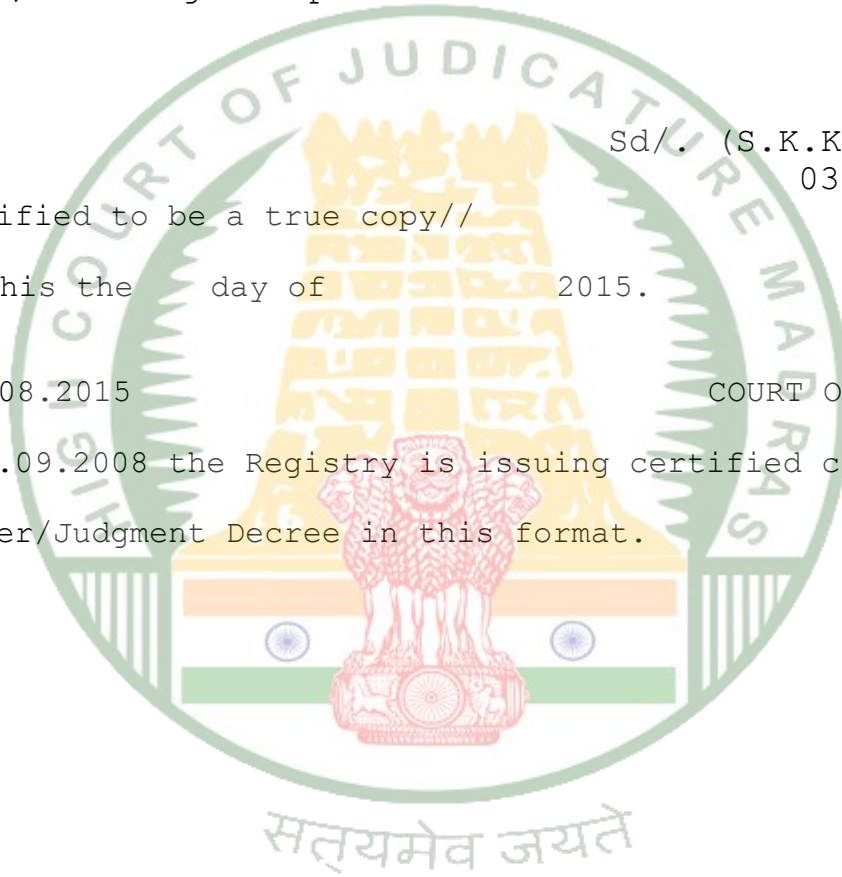
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Dated this the day of 2015.

R.s/25.08.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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