

**In the High Court of Judicature at Madras**

**Dated : 06.03.2015**

**Coram :**

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

**O.P.No.696 of 2012**

M/s.Indira Dairy Pvt. Ltd.  
Rep. by its Managing Director,  
Mr.Vanteru Vamsi Krishna.

.. Petitioner

-VS-

M/s.Dairy Land Fresh Milk Products  
(Pvt.) Ltd., (DLF Milk Products (P) Ltd.,)  
Rep. by its Managing Director,  
Mr.Eswara Babu.

.. Respondent

Petition filed under Order XLII Rule 1 of O.S. Rules read with Sections 11 (5) and (6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator for deciding the disputes between the petitioner and the respondent under the Agreement dated 1.9.2010.

For Petitioner : Mr.P.Thiagarajan

For Respondent : No appearance

\* \* \* \* \*

**O R D E R**

The petitioner claims to have entered into an agreement dated 01.08.2009 with the respondent company for supply of milk for one year subject to the terms and conditions stipulated in the said

agreement, effective from 01.09.2009. The rates on which milk had to be supplied and the mode of payment are stipulated in the agreement.

2.It is the case of the petitioner that it had supplied the milk uninterrupted as per the agreement, but the payment has not been made as per the agreement, leaving different balances at different time. The petitioner claims that the balance outstanding is Rs.44,08,196/-. The agreement inter se the parties contain the following arbitration clause:

"9.1. In case of any dispute arising in respect of this agreement, DAIRY LAND FRESH MILK PRODUCTS PRIVATE LIMITED will appoint an arbitrator and the arbitration shall be governed by the Arbitration Act, 1940 and the rules framed thereunder."

3.It is pointed out that since the agreement is entered into in the year 2009, it will have to be governed by the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act.')

4.The endeavour of the petitioner to serve the respondent for arbitration proved futile, as the respondent could not be served.

5.The petitioner filed the present under Sections 11 (5) and (6) of the said Act and even qua the notice issued, there is a refusal report, which has been treated as service in view of the guidelines laid down by this Court in Application No.633 of 2013 dated 27.09.2013.

6.In view of the aforesaid, I appoint **Ms.Justice K.Suguna, a retired Judge of this Court**, as the Sole Arbitrator to enter upon the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally. In the event of respondent not entering appearance, the same may be borne by the petitioner at the initial stage to form part of the main cause.

7.The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(S.K.K., CJ.)  
06.03.2015

sra

The Hon'ble Chief Justice

(sra)

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