

In the High Court of Judicature at Madras

Dated : 12.02.2016

Coram :

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

O.P.No.976 of 2015

Jaiprakash Krishnaswamy Naidu

.. Petitioner

-VS-

Serling Holiday Resorts India Limited,
A private limited company with its office at
No.7, Citi Tower, 3rd Cross Street,
Kasturba Nagar,
Adyar, Chennai-600 020.

.. Respondent

Petition filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to adjudicate the disputes as the respondent failed to appoint the Arbitrator as mentioned in Exhibit B.

For Petitioner : Mr.K.Arun Prasad

For Respondents : No Appearance

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ORDER

The petitioner has invoked the jurisdiction of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 for reference of the disputes arising *inter se* the parties to arbitration .

2. The petitioner claims that in the year 1996, a Timeshare scheme propounded by the respondent was proposed to the petitioner for the proposed Resort of the respondent at Peermadu. An attractive payment schedule was proposed to the petitioner with the Members obliging to pay the utility charges for the week when the Resort was utilised. The petitioner agreed to the same and documents *inter se* the parties were executed and payments were also made by the petitioner.

3. One of the facilities extended is that pending completion of the Resort, the petitioner was entitled for bonus weeks at another operational Resort of the respondent. Such bonus weeks' utilisation was taken by the petitioner from 1996 to 1999.

4. The Resort at Peermadu was never constructed over a long period of time, nor a tentative date is given for the same. But simultaneously, the respondent sought to revise the utility fee. It is when the demand was raised for maintenance fee for the period 2011-2013 as pre-condition to allot the 2 day holiday at the Resort at Lonavala, the disputes began. Suffice to say, this resulted *inter se* the communications and since the issue could not be resolved amicably, the petitioner invoked the arbitration clause on 25.07.2015, but there was no response.

5. A perusal of the documents shows that the documentation is in the form of an acknowledgement slip with payment details. The terms and conditions have also been specified therein. A separate Certificate of Timeshare has also been issued. The terms and conditions include Clause 5.12, which reads as under:-

“5.12. All disputes, differences or questions arising out of this transaction shall be settled by Arbitration as per the provisions of the Arbitration and Conciliation Ordinance 1996 and venue of such arbitration shall be at Madras only.”

6. Since none has appeared for the respondent despite having entered appearance and the matter having been passed over once and called second time at 3.30 P.M., the allegations in the petition are deemed to be correct.

7. The aforesaid shows that the agreement *inter se* the parties contains the arbitration clause and disputes had arisen, which cannot be resolved and the place of arbitration is Chennai.

8. I, thus, appoint Mr.Suhrith Parthasarathy, Advocate, No.39, Law Chambers, High Court, Chennai-104 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.

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

(S.K.K., C.J.)
12.02.2016

Index : Yes/No
Internet : Yes/No
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The Hon'ble Chief Justice

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