

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.12.2017

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.111 of 2017

M/s.Navaneeth Hotels Private Limited,
Rep.by its R.Paramasivam
No.54 Mettupalayam Road,
G.N.Mills Post, Coimbatore – 641 029

..... Petitioner

Vs.

1M/s.Sivasakthi, a partnership firm
60/4, Narayanasami Road
Saibaba Mission P.O.,
Coimbatore – 641 011.

2. M/s.P.S.Srijan Projects,
represented by Partners
36/1A, Elgin Road
Kolkatta – 700 020

Also at

M/s.P.S.srijan Projects,
represeted by Partners,
Suite No.10, Block A, 4th Floor,
New No.56, Old No.44
Tirumalai Street, T.Nagar, Chennai -17.

3.M/s.V.R.Nachimuthu, a partnership firm
Sakthi Enclave
60/5 Narayanasami Road
Saibaba Mission PO
Coimbatore – 641 011

4.Mr.K.N.V.Ramani
Senior Advocate
152 Kailas Road
Ram Nagar
Coimbatore – 641 009

..... Respondents

Conciliation Act, 1996 praying for appointment of two independent Arbitrator who shall appoint a third Presiding Arbitrator and constitute an Arbitral Tribunal for resolving the various disputes and differences that have arisen between the petitioner and the respondent from and out of the operation of Agreements dated 08.07.2006 and 06.12.2006 and Article 16 and Article 19 of the said Agreements.

For Petitioner : Mr.N.Alagu Narayanan

For Respondents : 1 Mr.Kuberan for M/s.Rank Assoc.
for R2

2.Mr.OLV Ganesan for M/s.Ganesh
& Ganesh for R1 and R3.

3. None appeared for R4.

ORDER

This petition is filed by M/s.Navaneeth Hotels Private Limited seeking appointment of an Arbitrator to settle disputes that have arisen between itself and the respondents arising out two agreements dated 08.07.2006 and 06.12.2006.

2. Respondents 1,2 and 3 are stated to be in the business of Real Estate and Construction. A Joint Venture Agreement was entered into on 08.07.2006 between the petitioner and the first respondent for development of 1.1 acres of land owned by the petitioner for the construction of a commercial block. The development was to be completed within two years of securing necessary approvals and the built up property was to be shared in the ratio of 69.40% and 30.60% respectively.

3.The development was sub-contracted by the first respondent to the second respondent, who entered into a fresh Joint Venture Tripartite Agreement with the petitioner on 06.12.2006 for the development of the property. The title documents of the property were handed over to the fourth respondent to be kept in escrow. Both agreement dated 08.07.2006 and 06.12.2006 have not been acted upon and the project stood, for all intents and purposes, abandoned.

4. There is yet another twist to the tale in so far as the developmental rights appear to have been assigned by the first and second respondents to the third respondent V.R.Nachimuthu, a partnership firm, without the knowledge of the petitioner. R1 and R2 also place on record agreement dated 24.01.2011 entered into with other owners of adjoining properties for cancellation of the joint development, wherein admittedly the petitioner is not a party. As a logical conclusion, the agreements entered into by the petitioner with R1 and R2 would survive.

5.To resolve this dispute, notice for arbitration was issued by the petitioner on 10.02.2016 that did not find favour of response from the first respondent. The second respondent however categorically rejected the request for arbitration. The rejection was on the basis that it was unclear under which agreement the reference had been made,

the second respondent being a party only under agreement dated 06.12.2006.

6. The present petition is filed in the background of the aforesaid facts seeking the appointment of an Arbitrator.

7. Heard Mr.N.Alagu Narayanan, learned counsel for the petitioner, Mr.Kuberan for M/s.Rank Associates for R2 and Mr.OLV Ganesan for M/s.Ganesh & Ganesh for R1 and R3.

8. The common defence of the first as well as second respondents is to the effect that the proceedings in respect of which an Arbitrator is sought to be appointed are barred by limitation. Both would also contend that references have been made to two different agreements entered into with different parties and such there was no clarity as to which agreement was being invoked for the appointment of arbitrator.

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9. As far as the third respondent is concerned, it would contend that it is not a necessary party at all in so far as there is no privity of contract between the petitioner and itself. Agreements dated 08.07.2006 and 06.12.2006 have been entered into only between the petitioner and the first and second respondents and as such the very arraying of the third respondent is neither proper nor necessary.

10. The petitioner has filed the Section 11 petition on the strength of both agreements dated 08.07.2006 as well as 06.12.2006. Admittedly, both the agreements contain clauses for resolution of disputes by arbitration. It is also not disputed by parties that the transaction in whole relates to the development of the property of the petitioner. I am thus of the view that in the light of the admitted clauses for arbitration in both agreements and the commonality of parties to the transaction, the disputes are liable to be referred to arbitration. The petition is ordered as against the petitioner and the first and second respondents only.

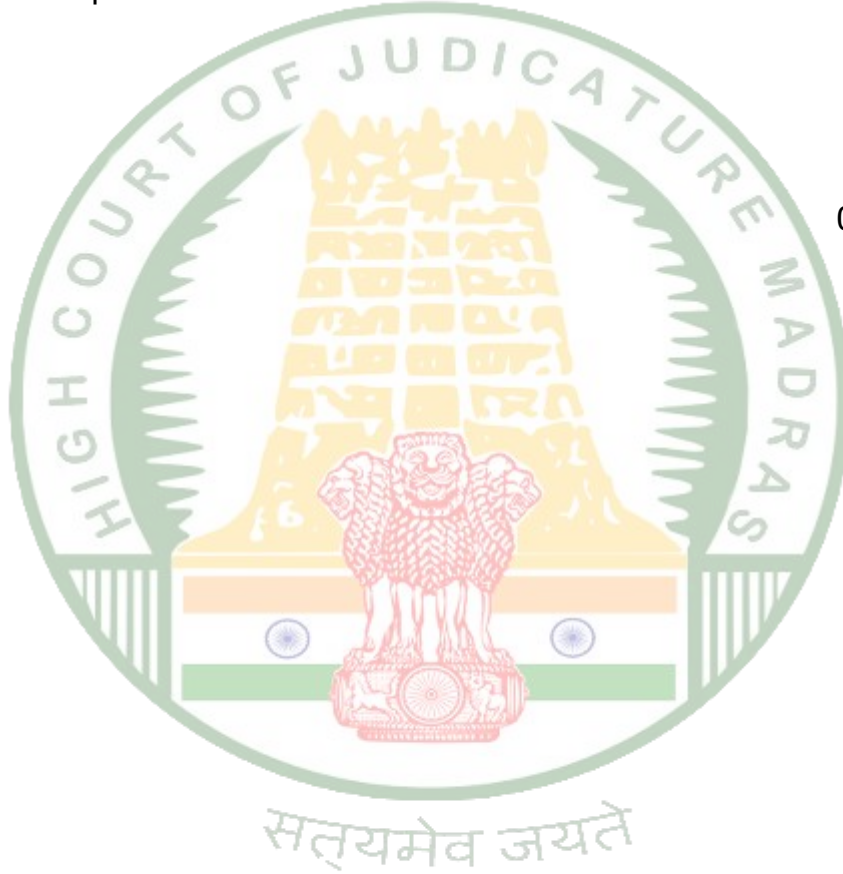
11. The Arbitrator is requested to consider the question of impleadment of R3 and R4 as parties to the proceedings for arbitration as a preliminary issue.

12. Upon consent of parties, I appoint Mr. Justice Akbar Ali to arbitrate upon the disputes inter se the parties arising out of agreements dated 08.06.2006 and 06.12.2006. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, endeavour to pass an award as expeditiously as possible, preferably within a period of six months from the date of the first sitting. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. A request is made for fixation of the venue of the Arbitration as Chennai, Tamilnadu. Since Article 29 of the agreements

provides for the venue of Arbitration as Coimbatore, I leave open the question of venue to be decided by the Arbitrator subject to his convenience and in consultation with the parties.

13. The petition is ordered in the above terms. No costs.

msv



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Dr.Anita Sumanth,J.

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