

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2017

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.485 of 2017

M/s.Choice Trading Corporation Ltd.
rep. by Mrs.S.V.Prathima,
Manager – Legal Compliance .. Petitioner

-vs-

1. M/s.S.P.Enterprises
Flat No.B4, Sri Sai Residency,
Gomathy Nagar Mini Bye Pass Road
Nellore - 524 003
Andhra Pradesh.

2. Mr.Sabila Prasad Reddy
Flat No.B4, Sri Sai Residency,
Gomathy Nagar Mini Bye Pass Road
Nellore - 524 003
Andhra Pradesh.

.. Respondents

Prayer: Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate upon the disputes between the petitioner and the respondent arising out of the Joint Farming Agreement dated 03.12.2012.

For Petitioner : Mr.Prashant Rajagopal

For Respondents : No appearance

ORDER

This petition seeks appointment of a Sole Arbitrator to resolve the disputes between the petitioner and respondents arising out of the Joint Farming Agreement dated 03.12.2012.

2. Clause 6.3 of the Joint Farming Agreement provides for arbitration and the relevant clause, reads as follows:

"(a) Subject to Clauses 6.1 and 6.2 above, the Parties shall be entitled to refer the Dispute to binding arbitration under the Arbitration and Conciliation Act, 1996.

(b) The arbitration shall be conducted as follows:

(i) The arbitration tribunal shall consist of a sole arbitrator mutually appointed by the parties to the contract. The Party invoking arbitration shall serve a notice on the other Party, calling upon the other Party for appointment of the arbitrator within thirty (3) days of receipt of such notice. On receipt of the notice, the other Party shall co-operate in appointment of the arbitrator within the said thirty (30) day period.

(ii) All proceedings in any such arbitration shall be conducted in English. The venue of the arbitration proceedings shall be Chennai.

(iii) The Parties shall be at liberty to approach the Courts of competent jurisdiction for interim relief,

if necessary.

(iv) The arbitrators shall be free to award costs as they deem appropriate.

(v) The arbitral award shall be a reasoned award. The arbitrators shall not award punitive damages.

(vi) The arbitral award shall be final and binding on the Parties, and the Parties agree to be bound thereby and to act accordingly."

3. Heard the learned counsel appearing for the petitioner. The respondents are unrepresented, despite service of notice dated 12.07.2017, duly received by them. An affidavit of service to this effect is filed by the petitioner. Hence, service to the respondents is deemed sufficient.

4. The parties have entered into a Joint Farming Agreement, in terms of which, a shrimp farm was to be set up in Nellore, Andhra Pradesh. Disputes appear to have arisen on account of non-performance of the farm and there has been exchange of correspondences between the parties, indicating claims raised by the petitioner as well as counter claims raised by the respondents. In fact, by letter dated 03.09.2016, the respondents have admitted the Joint Farming Agreement dated 03.12.2012 with the terms and

conditions mentioned therein. The clause for arbitration is, thus, not in dispute. However, the respondents would disavow responsibility for the non-performance of the farm and also project a counter claim of damages against the petitioner. It is, thus, clear that there are disputes between the parties.

5. The petitioner has sent a notice dated 09.11.2016 invoking the arbitration clause under cover of Registered Post, duly received and acknowledged by the respondents, to which there has been no reply. Inter alia, the petitioner has nominated an expert in the field of Aquaculture, Dr.R.Thirunavukarasu, an independent retired senior scientist from the Central Institute of Brackishwater Aquaculture, presently based in Chennai, as the sole Arbitrator.

6. In view of the suggestion made, I appoint Dr.R.Thirunavukarasu, Retired Senior Scientist from the Central Institute of Brackishwater Aquaculture, 94/3, Second Main Road, Gandhi Nagar, Adyar, Chennai - 600 020 (09444945590) as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. He may, 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 his remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

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

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Dr.ANITA SUMANTH,J.

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