

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

**Dated : 10.03.2017**

**Coram :**

**The Hon'ble Mr.Huluvadi G.Ramesh, Acting Chief Justice**

**O.P.No.58 of 2017**

M/s.Fibroplast Marine Pvt. Ltd.,  
A duly incorporated Company under  
Companies Act, 1956  
having its registered office at  
S-130, Greater Kailash-1,  
New Delhi-110 048,  
rep. by its Director Mr.Raghav Narula. .. Petitioner

-VS-

M/s.Ashok Leyland Ltd.,  
A duly incorporated Company under  
Companies Act, 1956  
having its registered office at  
No.1, Sardar Patel Road,  
Guindy, Chennai-600 032,  
rep. by its Managing Director. .. Respondent

Petition filed under Section 11 (4) of the Arbitration and Conciliation Act, 1996 read with Clause 2 of the Appointment of Arbitrator's Scheme by the Chief Justice of Madras High Court's Scheme, 1996, to appoint an arbitrator on behalf of the respondent for the constitution of Arbitration Tribunal along with the Arbitrator already appointed from the petitioner's side, to adjudicate upon the disputes between the petitioner and the respondent in terms of the Arbitration Agreement.

For Petitioner : Mr.S.Satish

For Respondent : Mr.V.Kuberan  
for M/s.Rank Associates

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### **ORDER**

This petition has been filed seeking to appoint an Arbitrator on behalf of the respondent for constitution of the Arbitration Tribunal along with the Arbitrator already appointed from the petitioner's side to adjudicate upon the disputes.

2. The case of the petitioner is that the respondent approached the petitioner in the year 2009 with a proposal to design, manufacture and supply fibre-glass boats as per the requirements and specifications and entered into an agreement on 29.6.2010. Thereafter disputes arose between the petitioner and the respondent and a meeting was held for discussions of the disputes/dues, where no settlement was reached. On 24.7.2015, the petitioner issued notice invoking arbitration clause. In another notice, the petitioner appointed Hon'ble Mr.Justice Dilip Rao Saheb Deshmukh (retd), Chhattisgarh High Court as their nominee arbitrator. But the respondent has failed to appoint their nominee Arbitrator for resolution of disputes.

3. Denying the averments in the petition, the respondent has filed the counter. In its counter, the respondent has stated that they reserves right to add other claims, which are found to be proper against the petitioner and the counter filed in the present petition is only to the limited extent of pointing out as to how the petitioner has failed in discharging its obligations under the agreement and as to how the respondent has been put to huge hardship and monetary loss, in addition to the loss of reputation in the market. However, the respondent is entitled to file suitable counter claims as against the petitioner, in the arbitration proceedings and prays for dismissal of the petition.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

5. The communications exchanged *inter se* the parties did not resolve any of the claims of the petitioner. The petitioner, ultimately, invoked the arbitration Clause vide letter dated 24.07.2015. The relevant Clause reads as under:-

**“G) GOVERNING LAW AND ARBITRATION**

This Agreement shall be construed and controlled by the laws in India. The Courts at Chennai, India alone shall have jurisdiction

All disputes, controversies or differences which may arise between the Parties out of or in relation to this Agreement, which cannot be resolved by the Parties after discussion in good faith attempting to reach an amicable solution, shall be finally settled by arbitration in Chennai, India under the Rules of the Arbitration of the Indian Arbitration and Conciliation Act 1996 by 3 arbitrators appointed in accordance with the said Rules then in effect and who shall be experienced in and familiar with the matters that are the subject of the dispute or fundamental to understanding the nature of the dispute. The language of arbitration shall be English. The award of the arbitration shall be final and binding on both Parties.”

6. In the notice dated 02.8.2016, the petitioner nominated Hon'ble Mr.Justice Dilip Rao Saheb Deshmukh (retd), Chhattisgarh High Court as their nominee Arbitrator, but the respondent refused to oblige or appoint their nominee arbitrator. This resulted in filing of the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996.

7. A perusal of the pleadings and the documents which are

unrebutted shows that the agreement *inter se* the parties contains an arbitration Clause, that the disputes have arisen between the parties and that the jurisdiction is that of the Courts in Chennai.

8. During the course of arguments, the learned counsel for the respondent submits that Hon'ble Mr.Justice N.V.Balasubramanian, a retired Judge of this Court may be appointed as the nominee Arbitrator of the respondent.

9. In view of the aforesaid, I appoint Mr.Justice N.V.Balasubramanian, a retired Judge of this Court, as the nominee Arbitrator of the respondent. The two Arbitrators will elect the Presiding Arbitrator and thereafter to enter upon the reference and adjudicate the disputes *inter se* the parties. The arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre. In case of non-availability of the Madras High Court Arbitration Centre, the case may be held at Nani Palkhivala Arbitration Centre at No.22, Karpagambal Nagar, Mylapore, Chennai-600 004. The appearance of parties before the Madras High Court Arbitration Centre is fixed on 03.04.2017 at 10.30 A.M.

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

(H.G.R., ACJ.)  
10.03.2017

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Note: Mark a copy to

- (i) The Addl. Registrar-Vigilance  
Madras High Court Arbitration Centre,  
Madras High Court Campus, Chennai.
- (ii) The Arbitrator, as referred above.

The Hon'ble Acting Chief Justice

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