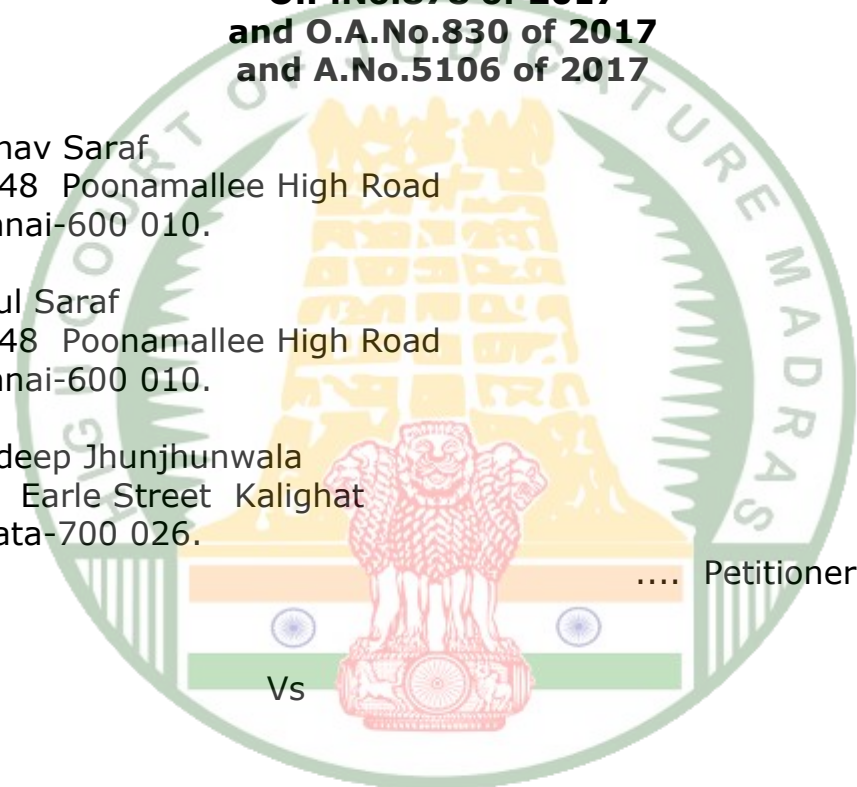


IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 04.12.2017****CORAM****THE HONOURABLE DR.JUSTICE ANITA SUMANTH****O.P.No.878 of 2017
and O.A.No.830 of 2017
and A.No.5106 of 2017**

- 
- 1 Raghav Saraf
No.148 Poonamallee High Road
Chennai-600 010.
- 2 Rahul Saraf
No.148 Poonamallee High Road
Chennai-600 010.
- 3 Anudeep Jhunjhunwala
No.9 Earle Street Kalighat
Kolkata-700 026.

.... Petitioners

Vs

- 1 M/s.Elysium Constructions
Private Limited No.699 Avinashi Road
Coimbatore-641037.

.... Respondent

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PETITION under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator on behalf of the respondent in terms of Section 11(6) of the Arbitration and Conciliation Act 1996 in accordance with the terms of the Joint Development Agreement dated 09.08.2013 between the Parties and direct the petitioner's Arbitrator

and Respondent's Arbitrator to appoint the third Arbitrator and thereby constitute the Arbitral Tribunal to adjudicate the disputes that have arisen between the petitioner and the respondent under the Joint Development Agreement dated 09.08.2013.

For Petitioners : Mr. Srinath Sridevan
For Respondents: Mr.S.V.Pravin Rathinam

ORDER

Original Petition No.878 of 2017 is filed seeking the appointment of an Arbitrator in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, 'Act') to adjudicate upon disputes inter se the parties arising out of Joint Development Agreement dated 09.08.2013. The parties are agreeable for the reference of the disputes to arbitration.

2. Article 24 of the agreement between the parties provides for an Arbitral Tribunal of only two members which is contrary to the provisions of Section 10 of the Act in so far as section 10 grants liberty to the parties to determine the number of arbitrators providing that the number shall not be even.

3. Learned counsel for the petitioner suggests the name of

Mrs.Justice Chitra Venkataraman, former Judge of this Court as his nominated Arbitrator. Learned counsel for the respondent suggests the name of Ms.Justice K.B.K.Vasuki, former Judge of this Court as his nominated Arbitrator.

4. Learned counsels concur and agree that the two Arbitrators appointed by them shall appoint a Presiding Arbitrator and the Tribunal so constituted shall hear the disputes inter se the parties. I record their concurrence and order accordingly.

5. I thus, appoint Mrs.Justice Chitra Venkataraman and Ms.Justice K.B.K.Vasuki, former Judges of this Court as Arbitrators upon suggestion of the parties. Both learned Arbitrators shall appoint a Presiding Arbitrator and the Arbitral Tribunal shall thereupon enter reference and adjudicate the disputes inter se the parties. The Tribunal is requested to, 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 this order. The learned Arbitrators are at liberty to fix their remuneration and other incidental expenses. The Original Petition is disposed of in the above terms.

6. As far as O.A.No.830 of 2017 and A.No.5106 of 2017 are concerned, the relief sought for in the Original Application is the grant of an ad interim injunction restraining the respondents from alienating or encumbering the schedule property and that sought for in the Application is a direction to the respondents to furnish security to the extent of Rs.2.50 Crores to protect the interests of the applicant. The provisions of Section 9(3) of the Act make it abundantly clear that upon constitution of the Arbitral Tribunal an application under sub-section (1) of Section 9 shall not be entertained further by the Court, except if the Court is of the view that there are circumstances which would render the relief provided under Section 17 of the Act ineffectual.

7. I find no such circumstance in the present case. This Court had granted an order of status quo on 30.08.2017 in O.A.No.830 of 2017 in view of the apprehension expressed by the applicant that the schedule property may be dealt with, to its detriment, pending arbitration. In view of the constitution of the Arbitral Tribunal by concurrence of the parties, any interim prayers may well be considered by the Arbitral Tribunal in terms of Section 17 of the Act. The order of status quo shall continue for a period of four weeks from the date of receipt of this order to protect the balance of convenience in the

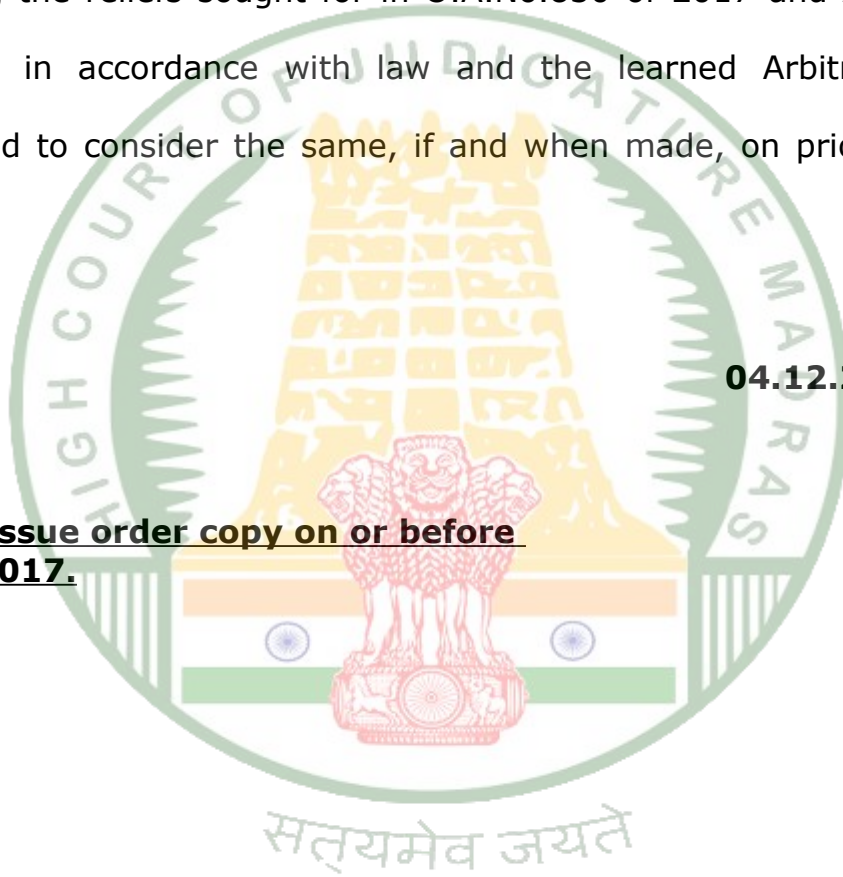
interim.

8. O.A.No.830 of 2017 and A.No.5106 of 2017 are closed. The parties are at liberty to move the Tribunal for such interim measures including the reliefs sought for in O.A.No.830 of 2017 and A.No.5106 of 2017 in accordance with law and the learned Arbitrators are requested to consider the same, if and when made, on priority. No costs.

04.12.2017

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Note: Issue order copy on or before 08.12.2017.



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Dr.ANITA SUMANTH,J.

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O.P.No.878 of 2017
and O.A.No.830 of 2017
and A.No.5106 of 2017

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