

In the High Court of Judicature at Madras

Dated : 10.02.2017

Coram :

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

O.P.No.927 of 2016

M/s.Ishta Capital Private Limited,
Having Admin Office at
40, Eldams Road, Teynampet,
Chennai-600 018
rep. by its Director Mr.Arun Jayatharan ... Petitioner

-vs-

M/s.Aravandrud Capital,
Raheja Towers, Level-9, East Wing,
M.G.Road, Bangalore,
Karnataka-560 001
rep. by its Chief Executive Office
Mr.Arvind Raghunathan ... Respondent

Petition filed under Section 11 (5) of the
Arbitration and Conciliation Act, 1996, to appoint a Sole
Arbitrator to adjudicate upon the disputes between the
petitioner and respondent in connection with the
Arbitration Clause in Clause 5 of the Mandate for Arranging
Loan against MTN/BG/SBLC dated 27.6.2015.

For Petitioner : Mr.R.Palaniandavan

For Respondent : Mr.Anirudh Krishnan

* * * * *

O R D E R

The only question arising for consideration in this petition is whether the agreement inter se the parties dated 27.6.2015 contains an arbitration clause. The arbitration clause is as under:-

"5. ARBITRATION

If any dispute arises between Signatories as the interpretation, application or Impelementation of this agreement, the Signatories will consult with each other in order to reach an amicable solution."

2. The learned counsel for the petitioner seeks to contend that the clause itself is titled as "Arbitration" and thus, the wordings of the clause would take the colour from the heading.

3. On the other hand, the learned counsel for the respondent contends that the heading itself cannot make it an arbitration clause and the clause by itself cannot be classified as an arbitration clause by any stretch of imagination. The plea is that in fact, the heading is incorrect and instead of arbitration, it should have been specified as an Alternative Dispute Resolution, which

requires the parties to make an endeavour for mutual settlement before indulging in *inter se* litigation.

4. In support of his plea, the learned counsel for the respondent has referred to the following three judgments -

(a) 2014 SCC OnLine Del 3219 = (2014) 210

DLT 714 (Avant Garde Clean Room & Engg Solutions Pvt. Ltd. v. Ind Swift Ltd.)

(b) MANU/AP/0480/2001 (Bernhard

Consultancy Private Limited v. Ind Agro Synergy Limited, Nagpur)

(c) ILR 2008 KAR 549 (Y.L. Eservices

Private Limited v. Silverline Business and Tech Park Private Limited and Another)

5. The aforesaid judgments are on the issue that the mere use of the word "Arbitration" or "Arbitrator" in the clause would not make it an arbitration clause, unless if it requires or contemplates consent of the parties for reference to arbitration. Since the main body of the agreement did not envisage arbitration, it was held that there was no arbitration clause. It may be noticed that simultaneously, it was observed that if the agreement was in substance an arbitration clause, mere absence of the use

of the word Arbitrator of Arbitration would not make the clause as one lacking the ingredients for arbitration.

6. I am in complete agreement with the plea of the learned counsel for the respondent. A bare perusal of the wordings of the agreement would show what is contemplated is "consult with each other in order to reach an amicable solution". The clause is widely worded. But the mode of resolution is only by an amicable solution and thus, mere use of the word arbitration in the heading in the clause will not make it an arbitration clause. If one may say, this is akin to saying that if the heading of the section states something and the substance does not contain it, the power would flow from the heading of the section. The result of the aforesaid is that the petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 cannot be maintained in view of the absence of the arbitration clause and the petitioner has to be relegated to civil remedy.

7. The original petition is dismissed with the aforesaid observation, leaving the parties to bear their own costs.

8. At this stage, it is suggested by the learned counsel for the petitioner that since the clause is held to be an implied mutual dispute resolution clause, such an endeavour be made before

through mediation, to which there is no objection.
The parties to appear before the Tamil Nadu Mediation and
Conciliation Centre, Madras High Court Campus on 27.02.2017
at 2.15 P.M.

Sd/ (S.K.K., CJ.)
10.02.2017

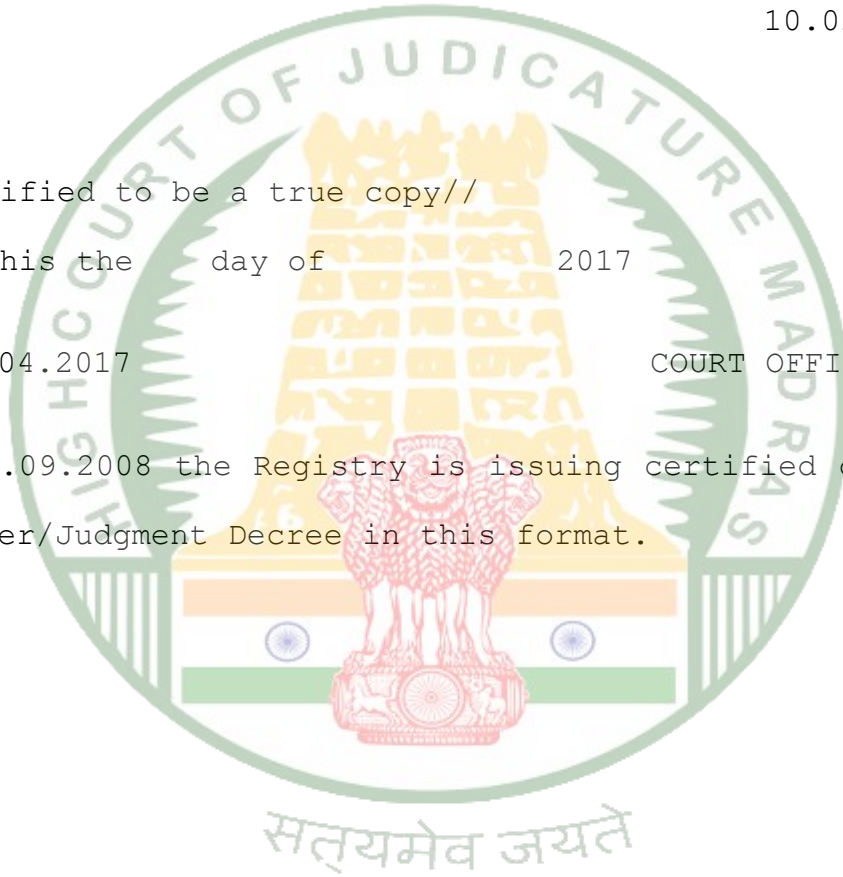
//Certified to be a true copy//

Dated this the day of 2017

R.s/21.04.2017

COURT OFFICER

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