HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

ARBITRATION APPLICATION NO.89 OF 2016

ORDER:

As none appeared on behalf of the respondents on 20.01.2017, this application was directed to be listed under the caption 'for orders' on 27.01.2017. Thereafter, at the request of the Counsel for the respondent, the matter was adjourned by two weeks. While a counter-affidavit has been filed on behalf of the respondents, neither is Sri C. Srinivasa Reddy, Learned Counsel appearing on their behalf, present in Court today nor is there any representation on his behalf.

This application is filed under Section 11(5) and (6) of the Arbitration and Conciliation Act by M/s. Ruediger Stern represented by its GPA holder Sri Ravi Subramanyam and two others seeking appointment of an arbitrator to resolve their disputes with M/s. Advent Global Solutions Limited in terms of the share purchase agreement dated 12.05.2011. Section 11(6A) of the Arbitration and Conciliation Act, 1996, as inserted with effect from 23.10.2015, requires the High Court, while considering any application under Section 11(5) and (6), to confine its examination to the existence of an arbitration agreement. A copy of the mobile One Stock Purchase agreement dated 12.05.2011 has been filed along with the application which, in clause 7.7, provides for arbitration. Clause 7.7 reads thus:

> Choice of Law; Venue and Jurisdiction: This Agreement shall be governed and construed in accordance with laws of Republic of India. If any dispute arises between any of the parties hereto during the subsistence or thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this Agreement or regarding any question, the parties hereto shall endeavour to settle such dispute amicably. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the parties hereto, after reasonable attempts which attempt shall continue for not less than sixty days, given fifteen days notice thereof to the other party in writing. In case of such failure the dispute shall be referred to a sole arbitrator. The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 and/or any statutory re-enactment or modifications thereof for the time being in force. The arbitration proceedings shall be held at Hyderabad, India. The arbitration proceedings shall be in English language. The award shall be substantiated in writing. The court of arbitration shall also decide on the costs of the arbitration proceedings. The prevailing party shall have the right to recover, from the non-prevailing party, the expenses and reasonable legal fees and costs incurred by it including the costs

of the arbitrator(s). The award shall be binding on the disputing parties subject to applicable laws and the award shall be enforceable in any competent court of law. The provisions of this Section shall survive the termination of this Agreement for any reason whatsoever. Each of the parties agree and acknowledge that damages would be inade4quate to compensate for the breach of this Agreement by either party, and each party shall be entitled to equitable relief by way of interim injunction or specific performance by recourse to courts/judicial forum with appropriate jurisdiction.

It is the applicants case that they sent an e-mail to the respondents on 26.10.2015 informing them that their efforts to arrive at an amicable settlement had irretrievably failed, and they would be pursuing their option for redressal before the appropriate forum. Thereafter a legal notice dated 16.03.2016 was issued to the respondent informing them that the applicants had nominated Sri Justice B. Prakash Rao, a retired judge of this Court, as the sole arbitrator for adjudicating the disputes between the parties. In reply thereto, a legal notice dated 22.03.2016 was issued by the respondents informing the applicants that respondents 1 and 2 were not agreeable for appointment of Sri Justice B. Prakash Rao as the arbitrator.

The fact that an arbitration agreement is in existence is admitted by respondents 1 and 2 in paragraph 16 of their counter-affidavit wherein it is stated that it was true that there existed a stock purchase agreement dated 12.05.2011 between respondents 1 and 2 and others. In paragraph 21 of their counter-affidavit, respondents 1 and 2 contend that clause 7.7 of the share purchase agreement would not come to the rescue of the applicants as they had involved themselves in criminal activity; they had acted against the true spirit of the share purchase agreement; and, therefore, they could not invoke clause 7.7 and seek the relief as prayed for.

It is not in dispute that there exists an arbitration agreement (clause 7.7 of the share purchase agreement dated 12.05.2011). As the applicants have filed this application seeking to have the disputes resolved through arbitration, and as the arbitrator nominated by them was rejected by the respondents, I consider it appropriate to appoint Sri Justice M.

Venkateswara Reddy, Retired Judge of this High Court, R/o.Villa No.1, Maple Town-1, Sun City, Bandlaguda Jagir, Donbosco Post, Hyderabad – 500 086, as the sole arbitrator. The Learned Arbitrator shall fix his remuneration, and incidental charges for the arbitration proceedings, in consultation with the parties. He shall complete arbitration proceedings, and pass an award at the earliest, preferably within a period of six months from the date of commencement of arbitral proceedings. He is also requested to hold sittings, as far as possible, in the mediation centre of the High Court. Needless to state that it is always open to respondents 1 and 2, if they so choose to raise a counter claim before the arbitrator.

The Arbitration Application is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Date: 02.06.2017
MRKR