

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.01.2018

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.899 of 2017

- 1 R.Abbas
No.D-436, Akbar Street, Anna Nagar,
Tennur, Trichy – 620 017
- 2 A.Geetha Rani
70- B Gandhi Street Keezha Ambikapuram
Ariyamangalam Trichy 620004
- 3 P.Govinda prasad
No.B-349/C Anna Nagar 1st Street
Trichy- 620 021.
- 4 R.Kodi
No.8 Natarajan Street K.K.Nagar
Trichy- 620 021.
- 5 K.Syed Sulthan
No.D-407 Bharathiyar Street Anna Nagar
Tennur Trichy-620 017.
- 6 D.Zahir Hussain
No.23/101D Ganthipuram Pettavaithalai
Trichy-639 112.
- 7 A.M.Zainulabdeen
No.5-4/1 Raja Rajan Street Tennur Anna
Nagar Trichy-620 017.
- 8 V.Girija
No.44A/1 Pattabiraman Street Tennur
Trichy-17.

- 9 R.Balasubramanian
No.39 Devanga Nesavalur Colony Nawab
Thottam Woraiyur Trichy-3.
- 10 A.S.R.Vijayaragunathan
No.68 15A/1 Pakkupettai Woraiyur
Trichy- 3.
- 11 R.Jayaraman
No.39 Devanga Nesavalur Colony Nawab
Thottam Woraiyur Trichy-3.
- 12 A.S.R.Ramanathan
No.68 15A/1 Pakkupettai Woraiyur Trichy- 3.
- 13 V.Murugesan
1/139 Agraharam Thiruparaithurai
Trichy- 639 115.
- 14 B.Muruganathanm
No.67 Sivan Kovil Street 4th Street
Vayalur Road Trichy-17.
- 15 G.Senthilkumar
No.38 Elango Street Sangiliandapuram
Trichy-1.

Petitioners 1 to 7 and 9 to 15 represented
through their power of attorney Holder Ms.V.
Girija the 8th Petitioner herein.

... Petitioners

Vs.

- 1 M/s.Bharath Digital Vision
Limited Liability Partner(LLP) Having
Office at D-62 11th B Cross West Extension
AN.M.Building Thillainagar Trichy-18.
- 2 S.Raja
No.145 II Cross Behind VVV theatre
Ponnagar Trichy-620 001.

3 G.Murali
No.9 John Thoppu Bharathiyar Street Town
Station Road Trichy-620 002.

4 A Solomon Arockiadoss
No.4 LIC Nagar Employees Nagar 2nd Street
Vignesh Nagar Extension Ellakudy
Pappakurichi Kattur Trichy
Tamil Nadu-620 019.

... Respondents

Prayer: Petition filed under Section 11 read with Sections 14 and 15 of the Arbitration & Conciliation Act, 1996 to appoint an Arbitrator in furtherance of Clause 32 of the Agreement of Limited Liability Partnership dated 27.11.2014 to adjudicate upon the disputes/differences between the Petitioners and the Respondent and direct the Respondents to pay the costs of this proceeding.

For Petitioners : Mr.Arun Karthik Mohan

For Respondents :1. Mr.R.Thiyagarajan for
R1,R3 and R4.
2. No appearance for R2.

ORDER

This petition is filed seeking appointment of an Arbitrator, in furtherance of Clause 32 of Limited Liability Partnership Agreement dated 27.11.2014.

2.Heard Mr. Arun Karthik Mohan, learned counsel for the petitioner and Mr.R.Thiyagarajan, learned counsel for R1,R3 and R4, R2 being unrepresented.

3. A perusal of the correspondence between the parties reveals that one Mr.R.Rajkumar, identified and named as the Arbitrator under Clause 32 of the Agreement, was appointed by the eighth petitioner on behalf of all petitioners on 03.08.2016. Pursuant thereto, the Arbitrator vide letter dated 29.12.2016 called upon the parties to appear before him on 08.01.2017 to take the matter up for hearing. The respondents appear to have expressed their objections to the appointment of Mr.Rajkumar as Arbitrator. The appointment was stated to be invalid, Mr.Rajkumar was removed from the position of Legal Adviser of R1 company with effect from 16.12.2016 a substitute appointed in his place. Strong exception was taken by Mr.RajKumar to the objections put forth by the respondents and leading to his recusal from the proceedings. The present petition is thus filed by the 15 petitioners seeking the appointment of an arbitrator by this Court.

4.Both learned counsel agree on the factum of disputes as between the parties. The parties also agree that an Arbitrator is liable to be appointed for resolution of the same in terms of clause 32 reading thus:

'32.Arbitration-

(1) All the matters not expressly provided in this agreement shall be decided by the consent of all the Partners

in writing. Failing that all disputes and questions about and in connection with the LLP under this Agreement arising between the Partners or between any one of them and the legal representative of the Partners or with the LLP at any time and from time to time, shall be settled by conciliation or by arbitration as provided under the Arbitration and Conciliation Act, 1996 as if the parties to the dispute have consented in writing for determination of the same as aforesaid and the provisions of the said Act apply accordingly. In this regard, the partners of this MSO agree to refer their disputes to Mr.R.Rajkumar Advocate, Saroja Building, Colony main road, Thillainagar, Trichy – 18 for conciliation or arbitration.

(2) If any question arises whether the dispute relates to formation, management or business of the LLP, the question shall be referred to the arbitrator, whose decision thereon shall be final.'

5. In the above circumstances, I am inclined to accept the prayer and appoint Mr.K.Nazir Ahamed, Retired District Judge, Trichy to act as sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator 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.

Dr.Anita Sumanth,J.

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

24.01.2018

msv

To
Mr.K.Nazir Ahamed,
Retired District Judge,
No.7, 4th Cross, Banker's Colony,
Kumaran Nagar, Tiruchirappalli.



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