

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN**

**ARBITRATION APPLICATION No.88 OF 2011**

**ORDER:**

This is an Application for a measure under Section 11(5) of the Arbitration and Conciliation Act, 1996; “for short, the A&C Act”.

2. Heard learned counsel for the applicant and the respondent.
3. The applicant and the respondent entered into a partnership evidenced by the Deed of Partnership, dated 09.04.1985. In terms of that contract, there is an arbitration agreement contained in Clause 16 of that document. The said provision reads as follows.

“All disputes and questions relating to interpretation of any of the provisions contained herein shall be decided by arbitration. Any party desirous of setting any dispute shall inform the other partner and also appoint an arbitrator and the other partner shall on receipt of such dispute or claim shall within 15 days thereof appoint an arbitrator or his/her own choice and the two arbitrators so appointed shall nominate an Umpire. The arbitrators in accordance with the provisions of the Arbitration Act. It is agreed that in case of any difference of opinion arising between arbitrators the same shall be decided by the said Umpire. The decision in the arbitration shall be final and binding on both the partners.”

4. Asserting that there are disputes existing between the parties as delineated in the application and sought to be corroborated by the notice and reply notice, dated 21.04.2011 and 18.05.2011, the applicant has pleaded that a former Judge of this Court was appointed by the applicant. However, no nomination has been made by the respondent. The existence of the arbitration agreement in the Partnership Deed is not disputed by the respondent though all claims of the applicant are refuted on facts, as well as by contending that the disputes sought to be raised are not those arising from the partnership.

5. The questions whether certain disputes are arbitrable or not and whether the disputes raised are in relation to the partnership business between the applicant and the respondent would give rise to issues which are arbitrable. The question whether the applicant or the respondent is entitled to any particular relief on the basis of the agreement between the parties, which is in the nature of partnership, is itself a matter for arbitration. The question whether any claim sought to be raised by the applicant is barred by limitation is also one that would be open for consideration in the arbitral proceedings on the basis of the pleadings and materials, they are essentially mixed questions of fact and law for consideration by the Arbitrator. It is not in dispute that due procedure in terms of clause 16 of the Arbitration Agreement has not been successfully resorted to by the parties acting on consent. Therefore, this Application is eligible to be allowed by taking the requisite measure under Section 11(5) of the A&C Act.

6. In the result, this Arbitration Application is allowed appointing an Arbitrator.

7. Accordingly, Sri R.Damodar, Retired District and Sessions Judge, is appointed as Arbitrator to arbitrate on the disputes between the applicant and the respondent, including the claims and counter claims of both sides. The said Arbitrator shall enter on reference and proceed with, as enjoined by the A&C Act. No order as to costs.

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**THOTTATHIL B. RADHAKRISHNAN, CJ**

14.09.2018  
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