

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.199 of 2019

Natesan Synchrocones Private Ltd.
54/4, Paulwels Road,
Sripuram Colony,
St. Thomas Mount,
Chennai-600 016.

.. Petitioner

Vs.

1. V.S.Sridhar

2. Sesha Tools Private Ltd.
54/4, Paulwels Road,
Sripuram Colony,
St. Thomas Mount,
Chennai-600 016.

.. Respondents

* * *

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator for the first respondent so as to enable the petitioner's nominated Arbitrator to confer with the said Arbitrator and appoint a third Arbitrator who shall be the Presiding Arbitrator.

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For Petitioner : Ms.Anitha Suresh
for M/s.Srinath Sridevan
For Respondents : Mr.Thriyambak T.Kannan

ORDER

This Original Petition is filed seeking for appointment of an Arbitrator to be the nominee for the first respondent enabling the

petitioner's nominated Arbitrator and the Court appointed Arbitrator to appoint a third Arbitrator who shall be the Presiding Arbitrator to resolve the disputes arose pursuant to the Investment Agreement dated 23.03.2015.

2. The case of the petitioner, according to the petition averments, is as follows :

(i) The petitioner, at the instance of the first respondent entered into an "Investment Agreement" dated 23.03.2015 ("Agreement") with him. As per the Agreement, the petitioner acquired 76% of the shares of the second respondent company, while the remaining 24% shares held by the first respondent.

(ii) The petitioner permitted the first respondent to continue to be the Managing Director of the second respondent company reposing confidence in him and nominated three Directors to constitute the Board of Directors. However, the petitioner learnt that the first respondent, though the Managing Director of the second respondent, diverted the business opportunities of the second respondent to other concerns, which his kith and kin are managing.

(iii) A Special Audit Committee was constituted by the second respondent Company, whereupon, the lapses committed by the first respondent came to light. A Show Cause Notice was issued to him on

30.03.2018 to put forth his case. But he gave only rambling reply on 05.04.2018. After providing further opportunity via notice dated 15.04.2018 to the first respondent, he was removed from the Board.

(iv) The petitioner invoked its pledge rights under the Agreement and transferred the shares of the first respondent and hence, the first respondent ceased to have any shares in the second respondent, which became wholly owned subsidiary of the petitioner.

(v) A further notice dated 27.06.2018 was caused on the first respondent, which was replied to only on 06.09.2018. The further efforts of the petitioner and one of the Directors of the second respondent for amicable settlement did not yield any fruit. Hence, the petitioner issued a Letter of Request dated 26.12.2018 in terms of Clause 12.2 of the Agreement nominating an Arbitrator on its side. Despite receiving the said notice, the first respondent did not care to act in terms of the Agreement to nominate an Arbitrator, even after expiry of the thirty days time. Instead he filed a petition before the National Company Law Tribunal, (NCLT), Bangalore, for adjudication in the arbitral proceedings. The petitioner filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (in short, "the Act").

(vi) In such circumstances, the petitioner is before this Court with the aforesaid prayer in this petition.

3. Acceding to the prayer of the petitioner in this petition, the first respondent filed the memo dated 01.07.2019, however, with a rider that the same is without prejudice to his rights in Company Petition No.618/BB/2018 filed by him on the file of the NCLT, Bengaluru, under Sections 241 and 242 of the Companies Act, 2013 alleging oppression and mismanagement of the affairs of the second respondent by the petitioner and others. The first respondent also stated in the memo that he, being the founder of the second respondent company, burnt his midnight oil to blossom the company, which was taken away by the petitioner taking advantage of its shareholding based on baseless allegations. The first respondent stated that he filed an arbitration application No.135 of 2019 on the file of the VI Additional City Civil and Sessions Court, CCH-11, Bengaluru, wherein, an ad-interim injunction was granted in his favour and the said application is pending. It is submitted that the petitioner alone filed arbitration application before the NCLT, which is pending as on date.

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4. Heard learned counsel on either side. Learned counsel for the first respondent contended that the first respondent wanted to pursue the petition filed under the Companies Act before the NCLT, Bengaluru, and without going into the disputes pending before the

NCLT, he is agreeable for appointment of an Arbitrator to resolve the other issues.

5. Considering the consent made by both parties without prejudice to their rights to be adjudicated upon by the NCLT and having regard to the nature of dispute pending between the parties, Mr.Sriram Panchu, learned Senior Advocate, having office at No.4, High Court Chambers, High Court Buildings, Chennai-600 104 (Phone No.25342691), is appointed as the 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. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

6. The Original Petition is ordered accordingly. The parties are directed to bear their own costs.

01.07.2019

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O.P.No.199 of 2019**PUSHPA SATHYANARAYANA, J.**

This petition is listed today under the caption "for being mentioned".

2. Heard the learned counsels on either side. The learned counsel for the first respondent has no objection in modifying the first sentence of paragraph 5 of the dated 01.07.2019.

3. In view of the said submissions, the first sentence of paragraph 5 of the order dated 01.07.2019 shall stand modified as follows :

"5. Considering the consent made by both parties, without prejudice to their rights in the application filed under Section 8 of the Act to be adjudicated upon by the NCLT, Mr.Sriram Panchu, learned Senior Advocate, having office at No.4, High Court Chambers, High Court Buildings, Chennai-600 104 (Phone No.25342691), is appointed as the Sole Arbitrator to enter upon reference and adjudicate the dispute inter se the parties."

4. The order dated 01.07.2019 remains unaltered in all other aspects.

29.07.2019

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