

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM

THE HONOURABLE MR JUSTICE GOVINDARAJ

O.P.NO.421 OF 2018
AND A.NOS.2414 AND 2449 OF 2018

Jose Thomas

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Petitioner

-vs-

1.Glenco Distilleries Pvt. Ltd.,
 Represented by its Chairman and
 Managing Director P.Sathishkumar
 Having its registered office at
 No.10, II Floor, "Krishan Arcade"
 Rajabather Street, T.Nagar,
 Chennai - 600 017.

2.P.Sathish Kumar
 Chairman & Managing Director
 Glenco Distilleries Pvt. Ltd.

3.S.Sugeetha
 Director
 Glenco Distilleries Pvt. Ltd.,
 both 2 and 3 residing at
 No.236/37, II Street, Venkateswara Nagar,
 Kottivakkam, Chennai - 600 041.

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Respondents

PRAYER: Original Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996, to appoint a Sole Arbitrator to adjudicate the dispute that has arisen between the petitioner and respondents 1 to 3 under the Memorandum of Understanding dated 25.03.2015 and to pass an award in accordance with law.

For Petitioner : Mr.C.S.K.Sathish
For Respondents : No appearance

ORDER

This Original Petition is filed by the petitioner seeking appointment of a Sole Arbitrator to adjudicate the dispute that has arisen between the petitioner and the respondents under the Memorandum of Understanding dated 25.03.2015.

2. The petitioner entered into a Memorandum of Agreement with the first respondent at Chennai on 25.03.2015. The second respondent had signed the Memorandum of Understanding on behalf of other respondents. The MOU was agreed to come into force from 01.05.2015. The MOU was agreed to be valid for a period of three years, which can be renewed mutually by adding or altering the terms and conditions. On account of the dispute that arose between the parties, the applicant issued a legal notice dated 20.11.2017 to the respondents to name an Arbitrator of their choice for his consideration to adjudicate the dispute.

3. Clause 34 of the Memorandum of Agreement reads as follows:

parties hereto concerning anything contained in or arising out of this agreement or as to the rights, duties or liabilities hereunder of the parties hereto shall be referred to the arbitration of two arbitrators one to be appointed by each party in accordance with and subject to the provisions of Indian Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force and such arbitration proceedings shall take place in Chennai."

4. It is seen from the records that there exist a Memorandum of Understanding dated 25.03.2015 between the parties, which indicates resolution of dispute through arbitration. The applicant has also issued a notice, to which, the respondents issued a reply. They issued a legal notice nominating an Arbitrator. The applicant by his rejoinder dated 11.01.2017, rejected the Arbitrator nominated by the respondents and approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.

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5. This Court admitted this matter on 28.04.2018. Despite service of notice on the respondents, none appears on behalf of the respondents.

6. From the exchange of notices, it is very clear that the

<http://www.judis.nic.in> parties are willing to resolve their dispute through arbitration but not

agreeable to the Arbitrator chosen by either of them. In such circumstances, this Court is of the considered opinion that the matter has to be resolved by appointing an Arbitrator.

7. I thus appoint the *Hon'ble Mr. Justice D. Murugesan (Retired Chief Justice) residing at "Akshaya Homes" "Adair", No.11-A, M.D.Sitaraman Avenue, 7th Cross Street, V.G.P. Layout, Injambakkam, Chennai - 600 115, Phone: 044-27471268* as the Sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. He 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.

8. The Original Petition is accordingly, ordered, leaving the parties to bear their own costs.

9. In so far as Application No.2414 of 2018 is concerned, as per the terms of the Memorandum of Understanding, the fourth respondent / Garnishee is liable to deposit a sum of Rs.12,05,000/- (Rupees Twelve Lakhs Five Thousand Only). Accordingly, a direction is issued to the fourth respondent / Garnishee to deposit the said sum before the Arbitral Tribunal, within a period of four weeks from the date of receipt of a copy of this order.

10. Hence the above Application No.2449 of 2018 is made over to the Arbitrator. It is open to the parties to approach the arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996, for further orders.

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M.GOVINDARAJ, J.

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