

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.677 of 2019

1. S.Gowrishankar
Director, M/s.Sky Medi Equipment Private Limited,
No.19/12, Kumars Akshaya Apartments,
Flat No.11, Nehru Nagar 1st Street,
Adyar, Chennai-600 020.
 2. L.Govindasamy,
Director, M/s.Sky Medi Equipment Private Limited,
No.434, M.Palanisamy Nagar,
Vellakovil,
Tirupur District-638 111.
- .. Petitioners

Vs.

V.P.Periasamy .. Respondent

* * *

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to arbitrate all the claims and disputes between the petitioners and the respondent arising out of the Share Purchase Agreement dated 30.03.2018.

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For Petitioners : Mr.P.Chandrasekaran
For Respondent : Served - no appearance

ORDER

This Original Petition is filed seeking for appointment of an Arbitrator to arbitrate all the claims and disputes between the

petitioners and the respondent arising out of the Share Purchase Agreement dated 30.03.2018.

2. The petitioners and the respondent had established M/s.Sky Medi Equipments India Private Limited, which was in operation from the year 2013 to April 2016. It went into bad weathers thereafter and became defunct. Subsequently, in the Board of Directors Meeting held on 11.03.2018, a Memorandum of Understanding (MoU) was entered into between them, as per which, the respondent agreed to purchase the entire shares of the petitioners as full and final settlement, which was pegged at Rs.2 Crores. It was agreed to be paid in three installments in certain terms, the last of which was on 30.04.2019. The parties also entered into a Share Purchase Agreement, pursuant to the MoU, on 30.03.2018. Clause 11 of the Share Purchase Agreement entitles the petitioners to claim 24% interest for the belated payment, while Clause 15 of the same so also Clause 16 of the MoU provide for resolution of dispute by means of arbitration. As the respondent breached his promise, the petitioners invoked the said clauses and issued notice on 24.06.2019 to the respondent calling upon his consent for the nomination of Hon'ble Mr.Justice C.T.Selvam, a former Judge of this Court, as the Sole Arbitrator. But the respondent refused to receive the said notice. Hence, through the

counsel, the petitioners sent the notice by e-mail on 01.07.2019. In such circumstances, this petition is laid by the petitioners seeking the relief stated supra.

3. This Court ordered notice through Court as well as privately on the respondent as on 27.08.2019. The respondent refused to receive the private notice sent by the learned counsel for the petitioners and hence, it is suffice to state that the service deemed to have been effected on the respondent. Accordingly, his name was printed in the cause list dated 03.10.2019. But he neither chose to appear before this Court in person nor through any Advocate.

4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. Admittedly, the MoU as well as the Share Purchase Agreement contain arbitration clause. The petitioners in their letter dated 18.06.2019 named Hon'ble Mr.Justice C.T.Selvam, a retired Judge of this Court, as their Arbitrator and obtained consent from the learned Arbitrator. As stated above, the petitioners through their counsel sent the letter dated 24.06.2019 to the respondent in this regard, which the respondent refused to receive.

6. Having considered the submissions of the learned counsel for the petitioners and the conduct of the respondent, this Court appoints Hon'ble Mr.Justice C.T.Selvam, a retired Judge of this Court, having office at Flat No.A-3, First Floor, No.18/48, Dr.B.Narasimha Road, T.Nagar, Chennai-600 017, (Phone No.94980 21122), 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. The disclosure and declaration may be made by the learned Arbitrator in the form specified in the Sixth Schedule to the Arbitration and Conciliation Act, 1996. सत्यमेव जयते

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

14.10.2019

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PUSHPA SATHYANARAYANA, J.

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