

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P. No.1071 of 2018

1. Mr.K.Punniyamoorthy.K.
2. Mr.D.K.Divyakannan ... Petitioner

-VS-

1. M/s.Photon Kathaas Production
Private Limited
represented by its Director
Mr.S.Venkataramanan
having office at
No.19, Avenue Road, Nungambakkam,
Chennai 600 034.
2. Mr.Gautham Vasudev Menon ... Respondents

Prayer: Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 read with Rule 2 of the appointment of arbitrators of Madras High Court Scheme 1996 praying to appoint an arbitrator to resolve the disputes between the petitioner and respondents in terms of the Production Investment Agreement dated 31.10.2015.

For Petitioner : Mr.K. Moorthy

For Respondent: No appearance

ORDER

This petition seeks appointment of a Sole Arbitrator to resolve the disputes between the petitioner and respondent in respect of

Production Investment Agreement dated 31.10.2015.

2. Heard Mr.K.Moorthy, learned counsel appearing for the petitioner and Mr.Abdul Hameed, learned counsel appearing for the respondent.

3. The petitioner entered into a Production Investment Agreement dated 31.10.2015 with the respondents 1 and 2.

4. Dispute arose between both the parties pursuant to violation of terms and conditions of the agreement dated 31.10.2015 by the respondents.

5. The Agreement dated 31.10.2015 contains arbitration clause to resolve the disputes inter se the parties. Clause 9 of the Agreement interpreting Dispute Resolution Clause reads thus;

'DISPUTE RESOLUTION;

If any dispute arises between the Parties, they shall initially endeavor to settle such dispute by way of conciliation and mediation. If they fail to succeed in such conciliation and mediation, both the parties shall nominate a mutually agreed Sole named Arbitrator. On such reference, the said named Arbitrator shall encourage both the parties to settle the dispute and with the agreement of the Parties by way of mediation and conciliation. On such

reference, the sole arbitrator shall resolve the dispute in accordance with the provision of Arbitration and Conciliation Act, 1996 and the seat of the Arbitration shall be at Chennai alone.'

6 Today when the matter is taken up for hearing learned counsel for the respondent would submit that the arbitration clause contained with regard to the dispute resolution cannot be construed as an arbitration clause, hence he objected for appointment of Arbitrator.

7. Though the learned counsel for the respondent raised the above said objection, both the learned counsel would fairly concede that in another connected matter involving the same parties, Mr. Yashodhvardhan, Senior Advocate was appointed as the sole arbitrator, therefore both of them prayed that the same arbitrator be appointed in this case also as sole arbitrator to resolve the dispute.

8. Considering the submissions made on both sides, this Court is inclined to appoint Mr. Yashodhvardhan, Senior Advocate as sole arbitrator.

9 .I, thus, appoint Mr. Yashodhvardhan, Senior Advocate 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.

10. It is open to the respondent to raise the above said objection before the arbitrator.

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

09.01.2019

msr

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M. GOVINDARAJ, J.

msr



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