

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2020

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.168 of 2020

M/s.Kora Pack Private Limited,
Rep. by its Authorised Signatory
Mr.K.V.Prasad

... petitioner

Vs.

M/s.Motivating Graphics,
Limited Liability Company (LLC)
Rep. by its Authorised Signatories
(1)Ray G.Clark
(2)R.Christopher Clark, and
(3)Timothy G.Clark

... respondent

Prayer: Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint the arbitrator on the side of the respondent.

For Petitioner : Mr.K.V.Babu

For Respondent : No Appearance

ORDER

The petitioner has invoked Section 11 (6) of the Arbitration and Conciliation Act, 1996, to nominate an arbitrator to resolve the dispute between the petitioner and the respondent.

2. The petitioner would contend that they and the respondent had entered into a memorandum of understanding on 28.11.2018. The petitioner who owned a vast parcel of land in Chittoor District, Andhra Pradesh measuring 7 acres or there abouts was approached with an offer by the respondent for putting up a plant for manufacturing accessories for one Apple Inc., namely, “Rigid Phone Box”. In pursuance of this agreement, the petitioner had put up a super structure measuring 30,000 sq.ft in the said land and machineries were also imported by the petitioner and incurred huge expenditure towards construction and setting up of the plant.

3. The parties had also agreed that they would enter into an agreement, however on account of the inter se faith, the petitioner has proceeded to carry out all the aforesaid activities on the oral instructions of the respondent. However, on account of the difference of opinion between the parties, the joint venture agreement was not finalised and reduced into writing. On the intervention of well wishers the parties had agreed to resolve the dispute amicably and the memorandum of understanding which is the subject matter of this petition came to be executed. Under this MOU the respondent had agreed to reimburse / settle the sum of Rs.13,81,29,837/- and a schedule of repayment was given besides other terms. The parties have agreed that in the event of any dispute arising between the parties in respect of the MOU, the arbitrator would be appointed by each of the parties and they in turn were to appoint a third arbitrator.

4. The petitioner would submit that the respondent had committed a breach of the terms of the memorandum of understanding and in respect of the mail sent by the petitioner seeking repayment, the respondent has sent

a reply refuting the claim.

5. The petitioner had thereafter issued a legal notice dated 02.12.2019 appointing their arbitrator and calling the respondent to nominate their arbitrator. However, there was no response to the said notice. Therefore, the petitioner is before this Court.

6. Despite notice to the respondent being served to the e-mail address from which they had issued a reply, the respondent had not chosen to appear before this Court. The respondent is therefore set ex parte.

7. Mr.K.V.Babu, learned counsel would draw the attention of the Court to the Arbitral clause in the Memorandum of Understanding dated 28.11.2018 which reads as follows:

"(9) In the event of any dispute arising between the parties in respect of this Memorandum of Understanding, the same shall be referred to an Arbitrator appointed each by the parties herein and such appointed Arbitrator, in consultation with other, shall appoint a Presiding

Arbitrator to resolve the dispute in terms of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be at Chennai and the language shall be in English and Court at Chennai shall have the exclusive jurisdiction."

8. He would submit that they have appointed Mr.R.Sankaranarayan, Senior Advocate as their Arbitrator and considering the fact that the respondent has failed to nominate their Arbitrator the petitioner has come forward with this petition.

9. In the light of the submissions made before this Court and taking into account the fact that the parties had agreed to resolve their disputes through Arbitrator as per the procedure contemplated in clause 9 and the respondent having failing to come forward to nominate their Arbitrator, this Court passes the following order:

i) Mr.Prasad Vijaya Kumar, Advocate, Flat 2C, Dharaniya Apartments, 25, 1st Seaward Road, Valmiki Nagar, Thiruvannamipur, Chennai – 600 041, Mob: 99406 73979 is appointed to act as an Arbitrator

of the respondent.

ii) The two Arbitrators shall in turn nominate the third Arbitrator.

iii) The arbitral Tribunal 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. It is open to the respondent to raise all legal objections as to the validity of contract.

iv) The arbitral Tribunal is at liberty to fix the remuneration and other incidental expenses as per law.

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

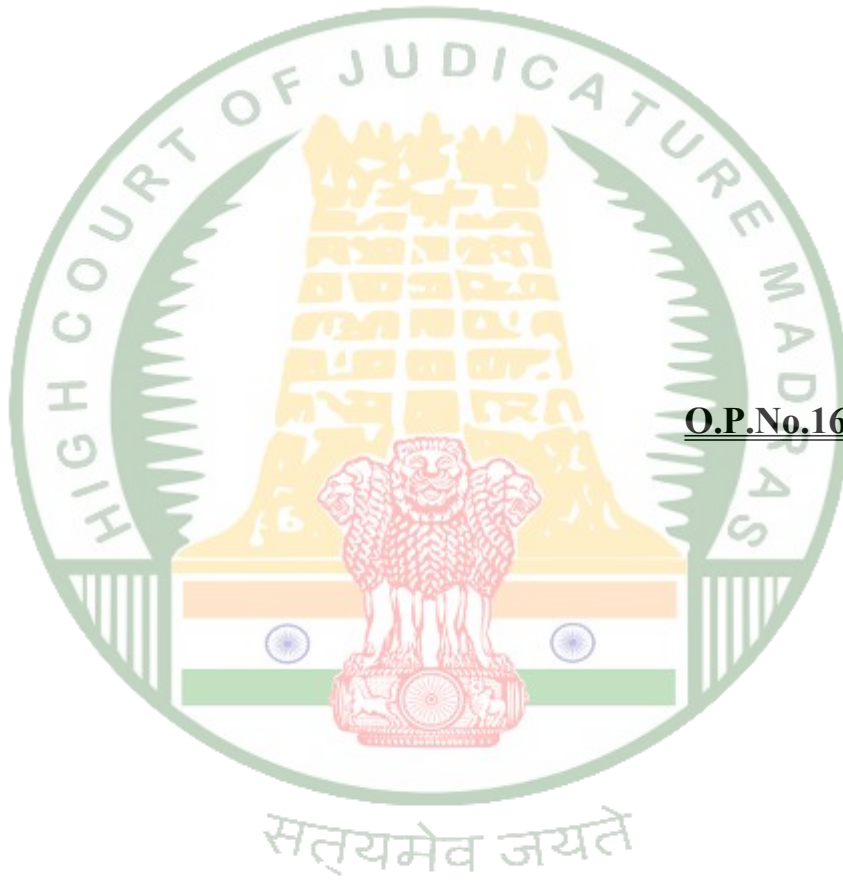
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