

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.8.2020

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.320 of 2020

Sri Kauvery Medical Care (India) Ltd.

Rep. by its Executive Chairman Dr.S.Chandrakumar

New No.17A (Old No.8A), Murray's Gate Road,

Alwarpet, Chennai 600 018.

... Petitioner

Vs.

M/s.CeeDee Yes Health Care Services (P) Ltd.

Rep. by its Chairman and Managing Director

Mr.C.Devadasa Sundaram

No.25, 2nd Avenue, Indira Nagar,

Adyar, Chennai 600 020.

...Respondent

PRAYER : Petition filed under Section 11(5) r/w Section 11 (4) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator under Section 11(5) r/w Section 11 (4) of the Arbitration and Conciliation Act, 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) to resolve the dispute between the petitioner and the respondent arising out of and in connection with the Memorandum of Understanding, dated 19.5.2019.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.P.Amardeep

ORDER

This petition has been filed for appointment of Arbitrator to resolve the dispute between the petitioner and the respondent arising out of and in connection

with the M.O.U., dated 19.5.2019. The petitioner herein had originally entered into a Letter of Intent, dated 8.5.2017 with the respondent for taking on lease the commercial property. Thereafter, a Memorandum of Understanding (MOU), dated 19.5.2019 was also executed for conveying the property in favour of the petitioner herein. As there is dispute arose on the agreement, sale could not be materialised, therefore, the instant petition has been filed for appointment of an Arbitrator.

2 Clause 23 of the M.O.U. is governing the parties. Clause 23 of the M.O.U. reads as follows:

"23. Any dispute or differences arising out of or in connection with this MOU shall be settled through arbitration under the provisions of the Indian Conciliation and Arbitration Act, 1996 (sic). The venue of the arbitration shall be Chennai."

3. The contention of the respondent in the counter affidavit is that the Memorandum of Understanding did not fructify into an agreement and as such Arbitration Clause based on the MOU, dated 19.5.2019 cannot be invoked. It is the contention of the learned counsel appearing for the respondent that the agreement is not valid in view of insufficient stamp and therefore, the same cannot be invoked.

4 On the other hand, the learned counsel appearing for the petitioner submitted that since the respondent failed to perform their obligations in the agreement, the Memorandum of Understanding was terminated by the petitioner and the petitioner made a categorical demand for the refund of Rs.1,96,43,281/- paid by the petitioner as advance. The stand taken by the respondent that the agreement is not valid for insufficient stamp duty is not pleaded in the counter affidavit.

5 Having regard to the rival submissions made by the counsel appearing for either side, the contention of the learned counsel appearing for the respondent that the agreement lacks sufficient stamp duty cannot be countenanced for the simple reason that the reading of the M.O.U. entered into between the parties would reveal that there is an agreement of sale conveying certain properties. Though there are several obligations are set out in the agreement, now, the main dispute pertains to the refund of advance amount. It is also to be noted that though the agreement of sale required to be registered for enforcement of the agreement, there is no bar under Sec.49 of the Indian Registration Act to receive an unregistered document for enforcing the contract. Therefore, once the agreement is having sufficient stamp duty, it cannot be contended that arbitration clause cannot be invoked. When the parties governed by the contract, it is open to the parties to agitate the dispute before the Arbitrator.

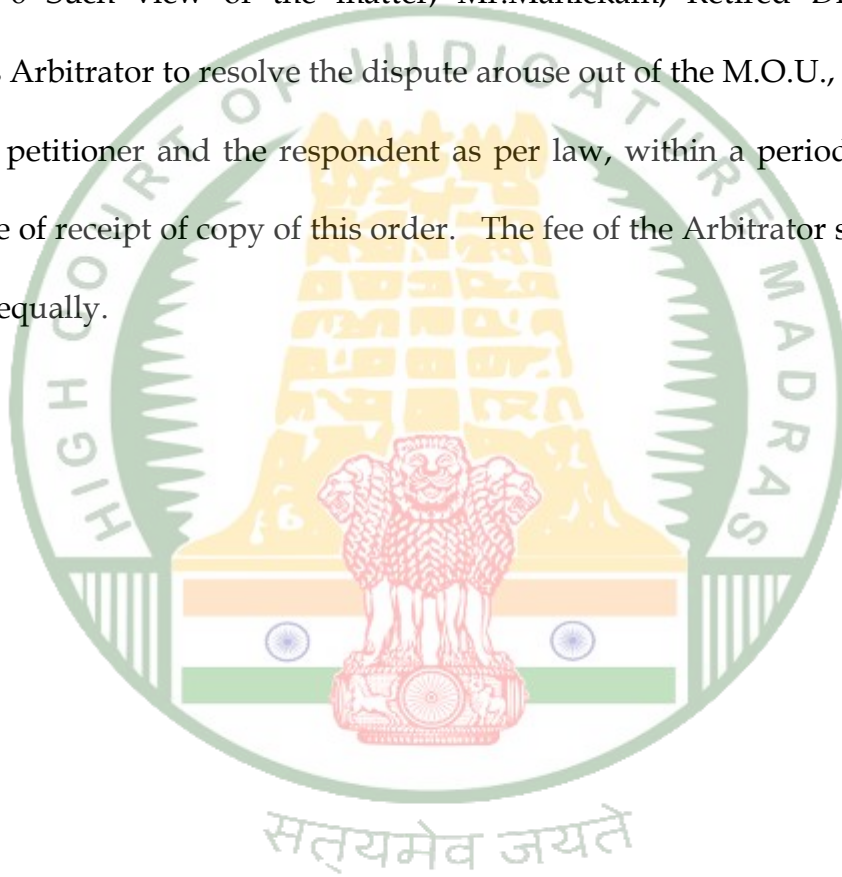
N.SATHISH KUMAR, J.

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6 Such view of the matter, Mr.Manickam, Retired District Judge is appointed as Arbitrator to resolve the dispute arouse out of the M.O.U., dated 19.5.2019 between the petitioner and the respondent as per law, within a period of six months from the date of receipt of copy of this order. The fee of the Arbitrator shall be paid by both parties equally.

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28.8.2020



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