

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.07.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Arb.O.P.No.3 of 2021

M/s.RVKS and Associates
(formerly known as R.Venkatakrishnan
and Associates),
represented by its Partner and Authorised
Representative Mr.L.K.Sivaramakrishnan,
having its Registered Office
at "Rajparis Trimeni Towers", First Floor,
147, G.N.Chetty Road,
T.Nagar, Chennai-600 017.

.. Petitioner

Vs.

Mr.N.S.Ganesh Babu,
son of Mr.K.N.Subramanan

.. Respondent

Arbitration Original Petition filed under Section 11(6) of the
Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator on
behalf of the respondent to adjudicate the dispute between the petitioner and
the respondent, arising out of the Deed of Admission and Reconstitution,
dated 01.06.2013.

For petitioner : Mr.Chetan Sagar

For respondent: No appearance

ORDER

This Arbitration Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator on behalf of the respondent, to adjudicate the dispute between the petitioner and the respondent arising out of the Deed of Admission and Reconstitution, dated 01.06.2013.

2. Notice was ordered on 05.07.2021 and an Affidavit of Service has also been filed. Despite notice having been served and the name of the respondent is printed in the cause list, there is no appearance on behalf of the respondent.

3. The case of the petitioner is that the petitioner is a partnership firm engaged in the profession of Chartered Accountancy and registered with the Institute of Chartered Accountants of India. The deed of partnership firm was reconstituted, vide a Deed of Admission and Reconstitution, dated 01.06.2013 with 7 partners and the respondent has become the eighth

partner. The respondent being eighth partner was in-charge of the day-to-day affairs of the petitioner-partnership firm's branch officer. The said agreement, dated 01.06.2013 also contains arbitration clause which states that all disputes and questions any way relating to the partnership business, shall be referred to a team of Arbitrators in accordance with and subject to the provisions of the Arbitration Act, 1940, or any statutory notifications thereof for the time being in force. The team of Arbitrators shall comprise of three members, one member may be appointed by each party to the difference and the two members so appointed shall appoint a third member of the arbitration team.

4. The respondent resigned from the aforesaid partnership firm on 16.05.2017, vide Deed of Retirement and Re-constitution of Partnership, and the respondent was to comply with several obligations/procedures for smooth exit/transition, to the satisfaction of the other partners. The respondent failed to pay the partnership firm's receivables in the matter stipulated in the agreement, dated 01.06.2013 and also failed to provide proper account statements, pursuant to which the petitioner was unable to

determine and claim the same in view of the respondent's failure to disclose the material information.

5. Hence, the petitioner issued a notice to the respondent on 28.01.2020 and the respondent was called upon to pay the partnership firm's receivables to the tune of Rs.9,59,969/- as on 31.12.2019 (inclusive of interest) and to return the partnership firm's assets and make available for inspection the true and accurate records, files and accounts containing all data necessary for determination of receivables payable under the agreement, dated 01.06.2013. The respondent, vide reply notice dated 25.02.2020, denied his liability to make the payment and also denied having any obligation to furnish any details to the petitioner or make available any data as sought for in the petitioner's notice. Thereafter, re-joinder notice dated 12.04.2020 was also issued by the petitioner reminding the respondent of the earlier notice and to comply with same. The respondent did not come forward to comply with the petitioner's notice.

6. In view of the default committed by the respondent, the petitioner

issued an Advocate's notice dated 18.11.2020 to the respondent, stating that a dispute has been deemed to have arisen attracting the dispute resolution mechanism contained in the aforesaid agreement, dated 01.06.2013. As such, the petitioner also named three persons, namely (i) Ms.Chitra Narayanan - Advocate, (ii) Mr.A.K.Sriram - Advocate and (iii) Mr.C.Seethapathy - Advocate and called upon the respondent to select any one of the proposed persons to act as sole arbitrator to adjudicate the disputes between the parties in terms of the arbitration clause under the agreement, instead of Arbitral Tribunal of three arbitrators, with a view to minimising the costs.

7. However, the respondent, vide reply notice, dated 28.11.2020, refused to nominate the sole arbitrator. Hence, the petitioner issued another notice, dated 15.12.2020, by which the petitioner sought to appoint Mr.C.Seethapathy - Advocate as its nominee arbitrator and also requested the respondent to nominate his nominee arbitrator, failing which the petitioner would be constrained to approach this Court to appoint an arbitrator as per the said Act of 1996. The respondent also failed to reply to

this notice.

8. It is the stand of the petitioner that they have duly complied with the Dispute Resolution Clause and as no response was received by the petitioner from the respondent within 30 days of the notice, dated 15.12.2020, which expired on 16.01.2021 and further despite lapse of a reasonable length of time, and since the respondent had failed to respond to the notices of the petitioner, the petitioner has approached this Court for appointment of an Arbitrator by filing the present petition.

9. Heard the learned counsel for the petitioner and perused the materials available on record.

10. In view of the fact that there exists an arbitration clause in the agreement, and since the disputes have arisen inter-se the parties and the jurisdiction of this Court having not been disputed, there had arisen a necessity to appoint an Arbitrator. There is also exchange of notices

between the parties under Section 21 of the Arbitration and Conciliation Act, 1996.

11. Be that as it may. This Court is in agreement with the submissions made on behalf of the petitioner and the dispute between the parties could be resolved only on appointment of an "Arbitrator". Accordingly:

(a) This Original Petition is allowed.

(b) Mr.Karthik Rajan, Advocate (Mobile No.94440 73830), having office at having office at Haji Madhar Sha & Sons Building, 2nd Floor, No.148, Moore Street, Chennai – 600 001. (Landline No.044-2535 4955), is hereby appointed as Sole Arbitrator to enter upon the reference and adjudicate upon the dispute inter-se - parties.

(c) The above-said learned Arbitrator, shall, after issuing notice to the parties and upon hearing them, pass an order as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

(d) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, as per the provisions of the Arbitration and

Conciliation Act, 1996.

(e) The expenses incurred for arbitration shall be borne by the respective parties.

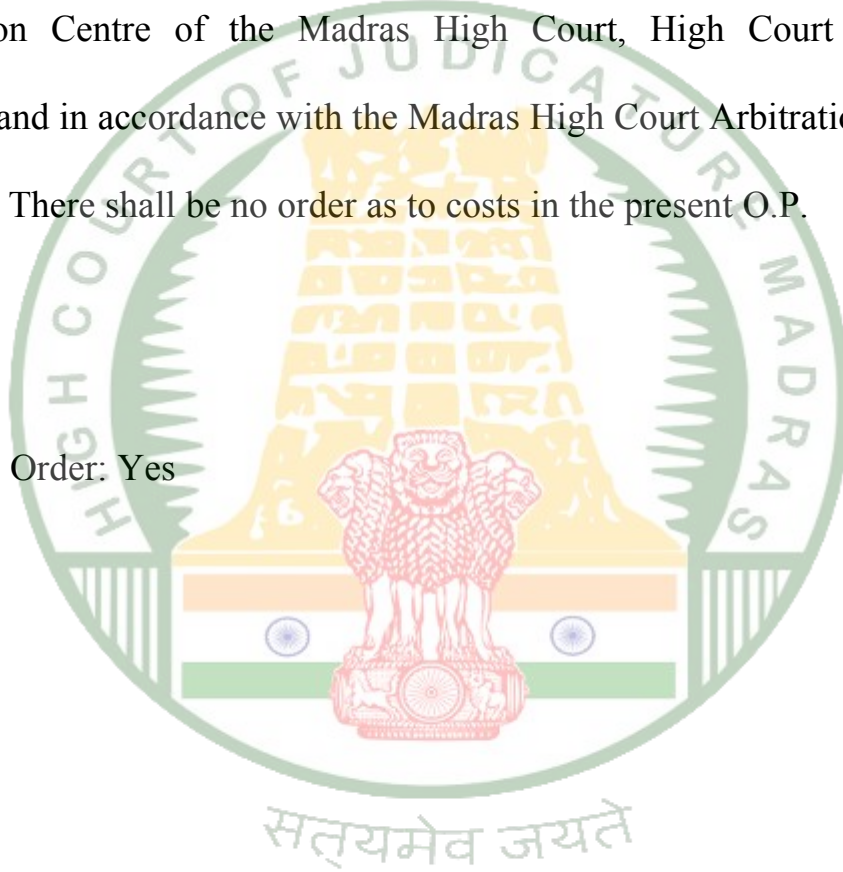
(f) The arbitral proceedings shall be conducted under the aegis of the Arbitration Centre of the Madras High Court, High Court Buildings, Chennai and in accordance with the Madras High Court Arbitration Rules.

(g) There shall be no order as to costs in the present O.P.

26.07.2021

Speaking Order: Yes

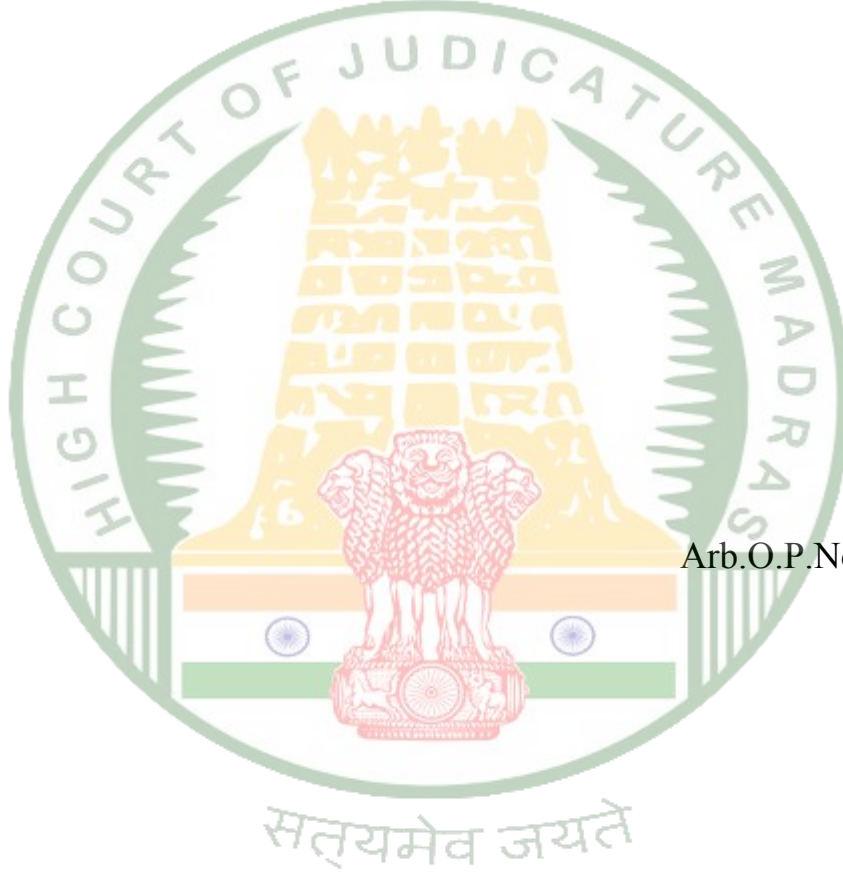
cs



WEB COPY

V. PARTHIBAN, J

CS



Arb.O.P.No.3 of 2021

WEB COPY

26.07.2021