

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.07.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Arb.O.P.No.4 of 2021

1. P.Dinesh Kumar, S/o Periyasamy
2. C.Periyasamy, S/o Chinnanna Gounder .. Petitioners

Vs.

1. M/s.Sri Lakshmi Feeds,
Represented by its Managing Partner Mrs.S.Savitha
Door No.777/B/4, Kaveri Plaza,
Pon Nagar, Salem Road,
Namakkal-637 001.
2. Mrs.S.Savitha, W/o Mr.M.Chethankumar
3. Mr.M.Chettankumar, S/o Manjunath
Partner of M/s.Sri Lakshmi Feeds .. Respondents

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to adjudicate upon the disputes arising between the petitioners and the respondents under the Partnership Deed, dated 12.03.2017.

For petitioners : Mr.S.Senthil

For respondents: No appearance

ORDER

This Arbitration Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of sole Arbitrator to adjudicate upon the disputes arising between the petitioners and the respondents under the Partnership Deed, dated 12.03.2017.

2. Notice was ordered on 05.07.2021 and despite notice having been served and the names of the respondents are printed in the cause list, there is no appearance on behalf of the respondents.

3. The first respondent is a partnership firm under the Indian Partnership Act dealing in poultry business and it was created on 05.11.2014 consisting of partners including the first petitioner. Thereafter, the father of the first petitioner being the second petitioner, joined the firm

on 31.08.2015. After some time, the other partners resigned on 01.09.2015 and the petitioners alone had remained as partners. The second and third respondents also joined as partners of the firm on 12.03.2017 leading to execution of Partnership Deed on the same day. Thereafter, the petitioners retired themselves as partners with effect from 15.03.2017, with the consent of the second and third respondents, after having received their share of money from the firm and in this regard, a deed of retirement was also executed on 15.03.2017. Following the same, second and third respondents entered into a fresh partnership agreement on 16.03.2017. It is further stated by the petitioners herein that heavy amounts were due and liable to be paid by the poultry farms to the first respondent-firm and also to the various entities.

4. It is the further averment of the petitioners that at the time of entering into the retirement deed, when the petitioners herein asked the second and third respondents to return to them the various blank but signed cheques in relation to the current account and also in relation to the cash credit account, with the Bank of India and various blank but signed cheques

relating to firm's current account with the Indian Bank, Namakkal Branch, with which also the Partnership Firm had accounts to facilitate easy operation of accounts in the absence of the Managing Partner, the second and third respondents replied stating that the said cheques got mixed with the other files and all the said blank cheques signed by the first petitioner would be returned the moment they are traced out. Believing this, the petitioners retired from the firm. Shockingly, it was noticed by the petitioners that the second and third respondents jointly fraudulently misused the blank but signed cheques in respect of various amounts. Hence, the petitioners herein released an advertisement in the Daily Thanthi newspaper dated 24.03.2017 making it clear that they have no connection whatsoever with the first respondent-firm.

5. It is the grievance of the petitioners that, based on the wordings of the second and third respondents, 39 entities told the petitioners on 25.03.2017 both in person and over cell phone that the amounts payable to them by the partnership firm, ought to be paid by the petitioners in their personal capacity, resulting in filing of a suit by the petitioners over the

issue in O.S.No.93 of 2017 on the file of the Sub-Court, Namakkal to declare that the petitioners are no longer the partners of the first respondent-firm after execution of the retirement deed, dated 15.03.2017 and consequently to restrain the said 39 creditors (entities) from initiating any legal action against the petitioners for recovery of dues payable by the first respondent-firm to them. The second and third respondents filed I.A.No.509 of 2018 in O.S.No.93 of 2017 to refer the suit for arbitration instead of being heard and disposed of by the Court.

6. It is to be noted that as per Clause 17 of the partnership agreement, dated 05.11.2014, any disputes between the partners shall be settled by arbitration and no one partner shall rush to the Court. Since the said I.A.No.509 of 2018 stood dismissed, the second and third respondents filed C.R.P.No.29 of 2021 before this Court, and by order dated 28.04.2021, this Court referred the issue for arbitration.

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7. The petitioners had nominated one Mr.S.Nagarajan, Retired District Judge as sole arbitrator to adjudicate upon the issue and intimated

the same to the respondents by notice dated 17.05.2021. The said notice sent to the first respondent-firm, returned with postal endorsement "no such person in this address. Return to sender" and the notice sent to the second and third respondents returned with the postal endorsement "refused".

8. Even though the respondents 2 and 3 filed the said I.A. before the Court to refer the matter for arbitration, they have chosen to refuse to receive the arbitration notice sent to them in that regard. Hence, the petitioners have filed the present petition under Section 11 of the Act of 1996 after fulfilling the mandatory notice as contemplated under Section 21 of the Act of 1996 in respect of intimation of invoking arbitration and the commencement of arbitral proceedings.

9. Heard the learned counsel for the petitioners 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 petitioners and the dispute between the parties could be resolved only on appointment of an "Arbitrator". Accordingly:

(a) This Original Petition is allowed.

(b) Mr.D.Selvaraju, Advocate, (Mobile Number 94440 88288), having office at No.903, New Law Chambers, Chennai-600 104, 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

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V. PARTHIBAN, J

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