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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **06.04.2022**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

Arb. O.P. (Com.Div.) No.99 of 2022

K.Rubina
rep. by her Power of Attorney N.Sudha

... Petitioner

Vs.

1.Mr.S.Hari Baskaran
2.B.Sangeetha
3.K.Balachandar
4.M/s.Flying Horse Pictures
rep. by its Partner S.Haribhaskaran,
Flat No.403, Metrozone,
No.44, Pillaiyar Koil Street,
Anna Nagar, Chennai - 40.

... Respondents

Petition filed under Section 11 (5) of The Arbitration and Conciliation Act, 1996 praying to appoint an arbitrator to decide the dispute between the petitioner and the respondents, in respect of rendering proper accounts and profit arising out of the partnership deed dated 03.11.2019 and the reconstruction deed dated 04.02.2020.

For Petitioner : Mr.A.K.Jayaraj
for M/s.K.Venkatesan

For Respondents : Mr.A.Manoj Kumar
for Ms.J.Veena



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ORDER

This order will now dispose of captioned Arb OP.

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 09.03.2022, which reads as follows:

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented on 10.02.2022 in this Court.

2. Mr.A.K.Jayaraj, learned counsel for sole petitioner submits that the captioned Arb OP is predicated on clause 22 of a document captioned 'RECONSTITUTION OF PARTNERSHIP DEED' dated 04.02.2020. To be noted, this document dated 04.02.2020 shall hereinafter be referred to as 'primary contract' for the sake of convenience and clarity. This Clause 22 is at page No.15 of the typed set of papers and the same reads as follows:

'(22) That all disputes and questions in connection with the partnership or this deed arising between the partners or between any one of them or their legal representatives and whether during or after the partnership, shall be referred to the arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 then in force.'



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3. *Learned counsel submits that a trigger notice dated 15.04.2021 (page No.16 of the typed set of papers) was issued inter alia to four respondents as arbitrable disputes erupted qua the aforementioned primary contract. The trigger notice met with a reply dated 27.04.2021 (page No.31 of the typed set of papers) sent by seven of the noticees. Adverting to the reply notice, learned counsel submits that the existence of the aforementioned arbitration clause is not disputed. Learned counsel also submits that the aforementioned clause 22 in primary contract serves as an arbitration agreement between the parties in the captioned Arb OP i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity].*

4. *Prima facie case made out for issue of notice.*

5. *Issue notice to respondents returnable in four weeks i.e., returnable by 06.04.2022. Private notice permitted. Notice through all available electronic modes of communications (subject of course to proof being demonstrated) also permitted.*

6. *List on 06.04.2022.*

3. The above proceedings shall be read as an integral part and parcel of this order.



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4. The short forms and abbreviations used in the earlier proceedings shall continue to be used in this order also for the sake of convenience and clarity.

5. In the hearing today, Mr.A.K.Jayaraj, learned counsel for lone petitioner and Mr.A.Manoj Kumar, learned counsel for all the four respondents are before this Court.

6. From the submissions made by both sides, it comes to light that there is no disputation, disagreement or contestation about the existence of arbitration agreement which is Clause 22 of primary contract.

7. The scope of a legal drill under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] is very limited and it is largely confined to examination of existence of arbitration agreement owing to sub section (6A) of Section 11. This principle has been laid down by Hon'ble Supreme Court in the oft-quoted **Mayavati Trading case law i.e., Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman** reported in **(2019) 8 SCC 7961**. Relevant paragraph in **Mayavati Trading** case law is Paragraph 10



and the same reads as follows:

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'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.'

8. Aforementioned paragraph 10 of **Mayavati Trading** case law takes us to **Duro Felguera** case law i.e., **Duro Felguera Vs. Gangavaram Port Ltd.**, reported in **(2017) 9 SCC 729**, relevant paragraphs in **Duro Felguera** are paragraphs 47 and 59 and the same read as follows:

'47. What is the effects of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the 2015 Amendment') with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the 1996 Act") is



the crucial question arising for consideration in this case.'

*'59. The scope of the power under [Section 11](#) (6) of the 1996 Act was considerably wide in view of the decisions in *SBP and Co. (supra)* and *Boghara Polyfab (supra)*. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in [Section 11](#) (6A) ought to be respected. '*

9. Though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the *lis* and all questions are left open for the learned arbitrator (to be appointed *infra*) to adjudicate upon the disputes.

10. As there is no dispute about the existence of arbitration agreement, Mr.A.J.Jawad, Advocate, No.5/1, Jagajeevan Ram Avenue, East Coast Road, Injambakkam, Chennai - 600 115 (Mobile No.9840087114) is appointed as sole arbitrator. Learned sole arbitrator is requested to enter upon reference, adjudicate the disputes that have arisen *qua* primary contract and render an award. The arbitration shall be conducted in the Arbitration and Conciliation



Centre under the aegis of this Court (MHCAC) in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and Hon'ble Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

11. Captioned Arb OP is ordered accordingly. There shall be no order as to costs.

06.04.2022

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P.S.: Registry to communicate a copy of this order to

1. Mr.A.J.Jawad,
Advocate,
No.5/1, Jagajeevan Ram Avenue,
East Coast Road, Injambakkam,
Chennai - 600 115.
2. The Director,
Tamil Nadu Mediation and Conciliation Centre,
cum-Ex Officio Member
Madras High Court Arbitration Centre,
Madras High Court, Chennai-600 104.

M.SUNDAR,J.,



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2022**

06.04.2022