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Arb.O.P (Com.Div.) No.199 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM
THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No.199 of 2022

1. Mr.Balamurali
2. Mrs. Kurinjimalar
3. Mrs.Anushya Devi

... Petitioners

Vs.

Mr. Koventhan

... Respondent

Arbitration Original Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to appoint an sole arbitrator to adjudicate on the disputes between the petitioner and the respondent as per the provisions of the Arbitration and Conciliation Act, 1996 and to award costs of the petition.

For Petitioners

: Mrs.U.Gayathri
for M/s.Nathan and Associates

For Respondent

: Mr.T.M.Mano



ORDER

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This order will now dispose of captioned 'Arbitration Original Petition' ['Arb.OP' for the sake of brevity].

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing before this Court on 22.04.2022, which reads as follows:

'Captioned 'Arbitration Original Petition' ['Arb.OP'] has been presented in this Court on 25.03.2022 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] with a prayer for appointment of a sole Arbitrator.

2. Ms.U.Gayathri, learned counsel of M/s.Nathan and Associates (Law Firm) for the petitioners who is before this Court submits that the captioned Arb.OP is predicated on Clause 13 (captioned 'Arbitration') in a partnership deed dated 29.05.2019.

3. Issue notice to the respondent returnable by 10.06.2022. Private notice permitted.

4. List on 10.06.2022.'

3. To be noted, thereafter there were three listings on 13.06.2022, 21.06.2022 and 28.06.2022. It is not necessary to extract and reproduce



those proceedings as they capture the procedural details. Suffice to say that both sides are represented by their respective counsel today.

4. Ms.U.Gayathri, learned counsel for three petitioners and Mr.T.M.Mano, learned counsel for lone respondent are before this Court.

5. Adverting to aforementioned proceedings on 22.04.2022, learned counsel on both sides submit that the 'Partnership Deed dated 29.05.2019' (hereinafter 'primary contract' for the sake of convenience and clarity) was made for the purpose of creating a partnership firm in the name and style of M/s.Sri Jaya Sai *inter alia* for the purpose of setting up a Petrol Bunk Station and hotels. Suffice to say that when the partners started work together, partnership arrangement ran into rough weather resulting in exchange of notices, more particularly notice dated 02.03.2022 from the three petitioners to the lone respondent. In and by this notice, aforementioned clause 13 of the primary contract has been invoked. In other words, the arbitration agreement between the parties i.e., 'arbitration agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act has been invoked. To this, the lone respondent sent a reply dated 18.03.2022 through counsel wherein the existence of arbitration was not



disputed but another name was suggested to act as Arbitrator. We are unable to agree on a common Arbitrator, there was no consensus and that has necessitated the presentation of captioned Arb.OP is learned counsel's say.

6. To be noted, learned counsel for lone respondent submits that he has filed a counter affidavit in the Registry yesterday (04.07.2022) vide Diary No.17446 of 2022 but there is no serious disputation about the existence of the arbitration agreement. There is no *ex facie* barred by limitation i.e., *Nortel* principle i.e., [*Bharat Sanchar Nigam Limited and another Vs. Nortel Networks India Private Limited* reported in (2021) 5 SCC 738] issue either in the case on hand is his further say. Therefore, this makes the task of disposal of captioned Arb.OP fairly simple.

7. Before writing the operative portion of this order, this Court reminds itself of oft-quoted *Mayavati Trading* case law i.e., *Mayavati Trading Private Limited Vs. Pradyuat Deb Burman* reported in (2019) 8 SCC 714], relevant paragraph in *Mayavati Trading* case law is paragraph No.10 and the same reads as follows:

'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.

(underlining made by this Court to supply emphasis and highlight)

8. Aforementioned paragraph 10 of ***Mayavati Trading*** case law takes this Court to ***Duro Felguera, S.A*** case law i.e., ***Duro Felguera, S.A. Vs. Gangavaram Port Limited*** reported in ***(2017) 9 SCC 729***], relevant paragraphs in ***Duro Felguera*** case law are paragraphs 47, 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. A careful reading of the aforementioned legal principles laid down by Hon'ble Supreme Court brings to light that a legal drill under Section 11 should perambulate within the statutory perimeter sketched by sub-section (6A) thereof. As there is no disputation about the existence of the arbitration agreement in the case on hand, this Court proceeds to appoint Hon'ble Mr.Justice N.Kirubakaran (Retd.), a former Judge of this Court, residing at No.36, 2nd Cross Street, Rayala Nagar, Ramapuram, Chennai – 600 089, Mob: 94450 25454, E-mail: justice.n.kirubakaran@gmail.com as sole Arbitrator. Hon'ble sole Arbitrator is requested to enter upon reference qua primary contract i.e., partnership Deed dated 29.05.2019, adjudicate the



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arbitrable disputes that have arisen between the parties and render an award by holding sittings in the 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) in accordance with the Madras High Court Arbitration Proceedings Rules 2017 and fee of the Hon'ble Arbitrator shall be governed by the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

10. Captioned Arb.OP disposed of in the aforesaid manner. There shall be no order as to costs.

05.07.2022

Speaking/Non-speaking order

Index : Yes / No

gpa

Note: The Registry is directed to communicate this order forthwith to

1. Hon'ble Mr.Justice N.Kirubakaran (Retd.,)
Former Judge of Madras High Court
No.36, 2nd Cross Street,
Rayala Nagar, Ramapuram,
Chennai – 600 089,
Mob: 94450 25454,
E-mail: justice.n.kirubakaran@gmail.com

2.The Director
Tamil Nadu Mediation and conciliation Centre
-cum-



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Ex Officio Member,
Madras High Court Arbitration Centre
Madras High Court, Chennai – 600 104.

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M.SUNDAR.J.,

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