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Arb O.P(Com.Div.)No.289 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.07.2022

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

Arb O.P(Com.Div.)No.289 of 2022

Arihand Foundations and Housing Limited
Represented by its Authorized Signatory
Having its registered office at
No.3, (Old No.25), Ganapathy Colony
3rd Lane, Off Cenotaph Road, Teynampet,
Chennai-600 018.

... Petitioner

vs.

M/s.Sumanth & Co.,
Rep. by its Managing Partner
Mr.Sumanth Subramanian
No.8 (57), Luz Avenue
Mylapore, Chennai-600 004.

... Respondent

Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate the differences and disputes between the parties in terms of the Agreement to Assign dated 29th June 2015.

For Petitioner	:	Mr.M.S.Murali along with Ms.Gurmeet Kour of M/s.R & P Partners (Law Firm)
For Respondent	:	Mr.K.Arun Pradeesh of M/s.AAV Partners (Law Firm)



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ORDER

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 30.06.2022 with a prayer for appointment of a sole Arbitrator, obviously captioned Arb OP has been presented 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].

2. Mr.M.S.Murali, learned counsel along with Ms.Gurmeet Kour both of M/s.R & P Partners (Law Firm) on behalf of petitioner are before this Court.

3. Mr.K.Arun Pradeesh, learned counsel of M/s.AAV Partners (Law Firm) who is present in Court accepts notice on behalf of lone respondent. Learned counsel submits that Vakalatnama will be filed on behalf of lone respondent in the course of the day today before close of working hours.



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4. Therefore, with the consent of learned counsel on both sides the captioned Arb OP was taken up.

5. As regards the captioned Arb OP, the same being a legal drill under Section 11 of A and C Act, scope is largely confined to Statutory perimeter sketched by sub-section (6A) thereat. As there are no deadwood i.e., *ex facie* limitation issues here and as both learned counsel submit that there is no dispute about the existence of arbitration clause between the parties, the task of disposal of the captioned Arb OP has become fairly simple.

6. It is submitted by both sides that the captioned Arb OP is predicated on clause 7 of an 'agreement dated 29.06.2015' [hereinafter 'primary contract' for the sake of convenience and clarity]. This Court is informed that primary contract is *inter alia* for an assignment of what is known as 'Transferable Development Rights' [hereinafter 'TDR' for the sake of convenience and clarity] said to have been assigned to the petitioner by 'Chennai Metropolitan Development Authority' ['CMDA'] in lieu of certain lands acquired from project/s qua petitioner, respondent assignee has exploited the assigned TDR but has not made good agreed consideration for the assignment is the



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complaint of the petitioner. Learned counsel for respondent submits that there is serious dispute on this and the respondent is in denial mode. Broadly stated, these are the arbitrable disputes that have arisen between the parties qua primary contract. It is not necessary to dilate further qua arbitrable disputes owing to scope of a legal drill under Section 11 which has already been alluded to supra. Though obvious, it is made clear that this Court is not expressing any view or opinion on the arbitrable disputes that have arisen between the parties as all questions including arbitrability are left open, to be raised before Hon'ble Arbitrator (to be appointed infra in this order).

7. Before proceeding further, this Court reminds itself of oft-quoted ***Mayavati Trading*** case law [***Mayavati Trading Pvt. Ltd vs Pradyut Deb Burman*** reported in (2019) 8 SCC 714]. To be noted 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



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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 S.A.'

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

8. Aforementioned paragraph No.10 of **Mayavati Trading** case law takes this Court to **Duro Felguera** principle i.e., **Duro Felguera S.A. Vs Gangavaram Port Limited** reported in **2017 (9) SCC 729**, relevant paragraphs in **Duro Felguera** case law are paragraph Nos.47, 59 and the same read as follows:

'47. What is the effect 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.

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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.



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and Boghara Polyfab. 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 Courts intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected.'

9. The aforementioned relevant paragraphs articulate the principle that a Section 11 legal drill should perambulate within the Statutory perimeter sketched by sub-section (6A) thereat. As already alluded to supra, there is no deadwood i.e, *ex facie* limitation argument in the case on hand. This Court therefore, now proceeds to appoint sole Arbitrator.

10. In the light of the narrative thus far, Hon'ble Mr. Justice V.Bharathidasan (Retd.), Former Judge of this Court, residing at No.42 (NB) Greenways Road, Chennai - 600 028, Mob: 94443 83139 and 94455 00224, E-mail: dasanvb@gmail.com is appointed as sole Arbitrator. Hon'ble sole Arbitrator is requested to enter upon reference, qua primary contract i.e., Agreement dated 29.06.2015, adjudicate upon arbitrable disputes that have arisen between the parties and render an Arbitral Award by holding sittings in



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

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

04.07.2022

Speaking/Non-speaking order
Index : Yes / No

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Note: Registry is directed to communicate a copy of this order forthwith to

1. Hon'ble Justice V.Bharathidasan (Retd.,)
High Court, Madras.
No.42 (NB) Greenways Road
Chennai - 600 028
Mob: 94443 83139 and 94455 00224
E-mail: dasanvb@gmail.com
2. The Director
Tamil Nadu Mediation and Conciliation
Centre-cum-Ex-Officio Member
Madras High Court Arbitration Centre
Chennai - 104.



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M.SUNDAR. J.,

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