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Arb. O.P. No. 395 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.395 of 2022

A.Marimuthu,
S/o.Arumugam,
No.8/1023-4B, Kalaingar Nagar,
Police Palam, Pavali
Virudhunagar-626 103

,... Petitioner

Vs.

Mr.Praveen,
S/o.Prasad,
No.21/C76, 14th Street,
Periyar Nagar, Jawahar Nagar,
Chennai-600 082

... Respondent

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying

(i)to pass an order of appointing a sole arbitrator to adjudicate the disputes that has arisen between the petitioner and the respondent in terms of the arbitration agreement dated 01.08.2018.



Arb. O.P. No. 395 of 2022

(ii) and to direct the respondent to pay costs of this petition.

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For Petitioner : Mr.V.Senthil Kumar for
M/s.D.Rajesh

For Respondent : No appearance

ORDER

This Original Petition has been filed seeking for appointment of Sole Arbitrator to adjudicate the disputes that has arisen between the petitioner and the respondent in terms of the arbitration agreement dated 01.08.2018.

2.The petitioner and the respondents are partners of the Company namely, M/s.Gopuram Roofing. They have entered into a Deed of Partnership on 01.08.2018 and pursuant to the terms and conditions of said Partnership Deed, both the petitioner and the respondent have invested a sum of Rs.25 lakhs each and towards the contribution of the petitioner, he has invested a sum of Rs.25 lakhs. That apart, a sum of Rs.80 lakhs was borrowed from the Bank of Baroda for the purpose of the said business as a security. According to the petitioner, the respondent has not contributed his share of Rs.25 lakhs and he is also not cooperating to carry on business in a



smooth manner. Therefore, finding no option, the petitioner has sent a notice to the respondent to resolve the dispute by way of arbitration and requested to suggest the name of a person for appointment as a sole arbitrator. However, the respondent has not come forward to nominate any person as arbitrator, which prompted the petitioner, to approach this Court by way of the present petition.

3. Though this Court ordered notice to the respondent, but he refused to receive the same as could be seen from the postal acknowledgment which endorsed "unclaimed". Hence, the name of the respondent was printed in cause list and today when the matter is taken up, none appeared on behalf of the respondent either in person or through a counsel, which shows that the respondent is not interested to prosecute the case.

4. Heard the learned counsel appearing for the petitioner and perused the records.

5. It is seen that Clause 16 of the Deed of Agreement provides for arbitration, in the following terms:

"16. In the event of any dispute between the partners, such dispute shall be referred to arbitrator and the arbitration shall be



Arb. O.P. No. 395 of 2022

WEB COPY

conducted in accordance with all the provisions of Arbitration & Conciliation Act, 1996. The arbitral Award shall be binding on all the parties. The venue of arbitration shall be at Madurai".

6. Considering the submissions made by the learned counsel for the petitioner and in view of the fact that the present dispute arises between the partners of the partnership firm, namely M/s.Gopuram Roofing since having entered into Deed of Partnership by the respondent and without making any investment while the petitioner invested Rs.25,00,000/- and also having borrowed loan of Rs.80,00,000/- from the bank, the respondent has not come forward to run the business by investing his share and also not responding in the matter of appointment of Arbitrator, this Court is of the view that the present dispute can be adjudicated in terms of arbitral Clause 16 contained in the Deed of Agreement, dated 01.08.2018. Accordingly, this Court feels it appropriate to pass the following order:

i) Mr.R.Balachandran, Chartered Accountant, residing at Flat No.3B, 3rd Floor, III Block, Bajaj Apartments, No.4, Nandanam Extension, Ist Main Road, Nandanam, Chennai-035, Contact No.9884350000, is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.



Arb. O.P. No. 395 of 2022

WEB COPY

ii) That the learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this Order.

iii) That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

iv) In the event the respondent does not turn up and fails to participate in the arbitral proceedings, the remuneration fee and other incidental charges shall be paid by the petitioner at first and later, recover the same from the respondent.

7. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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22.12.2022



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Arb. O.P. No. 395 of 2022

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Arb. O.P.(Com. Div.)
No. 395 of 2022

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