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Arb.O.P.(Comm.Div.) No.386 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.386 of 2022

T.Suresh Kumar

... Petitioner

VS.

1.K.Ravichandran

2.Valli Priya

... Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, pleased to appoint any fit and competent person as an arbitrator as per the arbitration and conciliation act 1956, so as to adjudicate the claim and the dispute between the petitioner and the respondents under the Retirement-cum-Admission Deed dated 15.07.2021.

For Petitioner : Mr.A.Murali

For Respondents : Mr.D.Jayachandran



ORDER

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2. The petitioner states that a notice under Section 21 of the Arbitration and Conciliation Act was issued by the petitioner on 27.01.2022. By such notice, the petitioner nominated the arbitrator. The said arbitrator entered upon reference and conducted proceedings. Eventually, by order dated 27.05.2022, the arbitrator terminated the proceedings on account of objections raised by the respondents herein with regard to the unilateral constitution of the arbitral tribunal. This petition is filed in these facts and circumstances.

3. On account of the non-cooperation of the respondents in the conduct of arbitral proceedings pursuant to the Section 21 notice, learned counsel for the petitioner states that the Court should exercise its power under Section 11 and constitute the arbitral tribunal.



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4. Learned counsel for the respondents states that the petitioner misappropriated the funds of the partnership and that criminal proceedings are pending.

5. Clause 19 of the Retirement-cum-Admission Deed contains the clause for dispute resolution. The said clause reads as under:

"19. Death, insolvency or retirement of any Partner from the Partnership shall not dissolve the Partnership and surviving partner/s may continue to carry on the Business either as the Sole Proprietor or in Partnership with others / either in Partnership with themselves or with others as may be mutually agreed upon by and between the Surviving Partners. All the disputes and questions whatsoever whether between the parties hereto or between one of them and the legal heir or legal representative of the other or between their respective heirs or legal representative and whether during or after the determination of this Partnership and whether in relation to the interpretation of these presents or



to any act of omission of a party to the dispute or as to any act which ought to be done by the parties in dispute or any of them in relation to any other matter whatsoever touching these presents shall be referred to a single arbitrator, if the parties can agree upon one and in case the parties do not agree, to two arbitrators one to be appointed by each party to the dispute and in case of difference between the arbitrators, to the Umpire to be appointed by the arbitrators before they enter upon the arbitration and the award and the decision of the single arbitrator or of the two arbitrators or of the Umpire as the case may shall be final and binding upon both the parties and the provisions of the Indian Arbitration Act, 1940 or any statutory enactment for the time being in force as to arbitration shall apply so far as may be to such arbitration."

6. Clause 19 provides for the resolution of disputes by a sole arbitrator if the contesting parties agree on the choice of a sole arbitrator. Otherwise, it provides for a panel of three arbitrators. In this case, after invoking the arbitration clause, the petitioner proceeded on the erroneous



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assumption that a sole arbitrator could be appointed without the consent of the other parties. This is clearly not in conformity with the relevant arbitration clause.

7. For reasons set out above, this petition is premature. It is open to the petitioner to nominate the arbitrator on his behalf and call upon the respondents to do likewise in accordance with clause 19. If the respondents do not cooperate in such process, it is open to the petitioner to approach this Court. Arb.O.P.(Comm.Div.) No.386 of 2022 is disposed of on the above terms.

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