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Arbitration Application No.157 of 2022

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M.Sundar.J.,

Captioned application has been presented in this Court on 26.07.2022 *inter alia* under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience, clarity and brevity]

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 01.08.2022 which reads as follows:

'Mr.K.Doraisami, learned Senior counsel instructed by Mr.N.Mathivanan, counsel on record for applicant is before this Court.

2. Learned Senior counsel, adverting to case file submits that a trigger notice dated 01.07.2022 has been issued invoking the arbitration clause i.e., clause 17 of Concession Agreement dated 22.01.2021.

3. A perusal of typed set of papers reveals that this trigger notice has been received by Chennai Corporation on 05.07.2022.

4. Ms.P.T.Ramadevi, learned standing counsel for Chennai Corporation who is present in Court to get instructions regarding aforementioned trigger notice.



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5. Registry to show the name of learned standing counsel for Chennai Corporation in the next listing.

6. It is made clear that this Court at this stage is not expressing any opinion not even prima facie opinion about Section 9 application or prayer thereat.

7. List one week hence in the Admission Board i.e., Motion List. List on 08.08.2022.'

3. Mr.K.Doraisami, learned Senior counsel instructed by counsel on record for applicant company submits that the nucleus of the matter is an agreement captioned 'CONCESSION AGREEMENT' dated 22.01.2021. To be noted, this agreement dated 22.01.2021 shall hereinafter be referred to as 'primary contract' for the sake of convenience, clarity and brevity. It is submitted that primary contract is *inter alia* for collection, secondary transportation of construction and demolition waste from zones 1 to 8 of Chennai Corporation which is referred to as 'Kodungaiyur Site'. It is submitted that Article 17 of primary contract (captioned 'Dispute Resolution') provides for dispute resolution mechanism and Article 17.2 thereat (captioned 'Arbitration') is of relevance and the same reads as follows:

'17.2 Arbitration

a) Procedure : Subject to the provisions of sub Article 17.1,



any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The party requiring arbitration shall appoint an arbitrator in writing inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration and Conciliation Act 1996 and its amendments thereof.

b) Place of Arbitration : The place of arbitration shall be Chennai.

c) English Language : The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

d) Enforcement of Award : The parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provision of the Arbitration and Conciliation Act, 1996 and its amendments thereof.

e) Performance during Arbitration : Pending the submission of and / or decision on a Dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.



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f) Payment to the Arbitrator : Parties shall bear the respective cost of Arbitration, however the payment to the third independent arbitrator shall be borne equally by the parties.'

4. Aforementioned clause serves as arbitration agreement between the parties i.e., 'arbitration agreement' between the 'applicant company' [hereinafter 'contractor' for the sake of convenience, clarity and brevity] and 'respondents' [hereinafter collectively 'Chennai Corporation' for the sake of convenience, brevity and clarity] within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is learned Senior counsel's say. To be noted, primary contract is between the contractor and Chennai Corporation. Be that as it may, it is submitted that primary contract was operated, arbitrable disputes erupted between parties as according to the contractor invoices raised for months of February 2022 to May 2022 remain unpaid and only four out of eight zones were handed over. This is disputed by Chennai Corporation.

5. Owing to eruption of arbitrable disputes in the aforesaid manner, the aforementioned arbitration agreement between the parties was triggered by contractor by issue of notice dated 01.07.2022 invoking the arbitration



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clause. This trigger notice was received by Chennai Corporation on 05.07.2022.

6. Arbitral proceedings commenced (within the meaning of Section 21 of A and C Act) on 05.07.2022. Manifest intention to arbitrate has been demonstrated by contractor / applicant. To be noted, captioned application is a pre-arbitration Section 9 application. However, Chennai Corporation after receipt of trigger notice sent a communication dated 20.07.2022 which is a pre-termination notice and contractor sent a rejoinder dated 25.07.2022. To be noted, this is not a exhaustive adumbration of arbitrable disputes but this is only a thumbnail sketch of arbitrable disputes that have arisen between the parties.

7. Reverting to earlier proceedings made in the previous listing on 01.08.2022 (extracted and reproduced supra), today Ms.P.T.Ramadevi, learned standing counsel for Chennai Corporation who is present before this Court submits that she has since obtained instructions from Chennai Corporation and Chennai Corporation consents for appointment of a sole Arbitrator. Learned standing counsel has made an endorsement to this effect



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in the case file and a scanned reproduction of the same is as follows:

I have no objection to
Appointment of Arbitrator
I have received proper
instructions from Legal
Cell, Corporation of Chennai.
Sole Arbitrator
Counsel for Respondent
P. S. Ramendran
8/8/2022

8. To be noted, though the captioned application is under Section 9 of A and C Act, learned Senior counsel for contractor (applicant) also on instructions, consents for appointment of a sole Arbitrator. 'Arbitral Tribunal' ['AT'] is a creature of a contract and therefore, consent of parties and party autonomy is of utmost significance. In this view of the matter, in the light of consensus qua constitution of AT, this Court deems it appropriate to accede to common request for appointment of sole Arbitrator. It is also to be noted that the aforementioned arbitration agreement provides for arbitration by a three member AT but both sides i.e., contractor and Chennai Corporation by consent agree for downsizing the AT and both sides agree for appointment of



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sole Arbitrator. It is also agreed by both sides that copy of the captioned application can now be presented before sole Arbitrator (to be appointed infra in this order) with a request to treat the same as an application under Section 17 of A and C Act. This request is also acceded to. Though obvious, if this course is adopted by contractor, Hon'ble sole Arbitrator (to be appointed infra in this order) will deal with the application on its own merits and in accordance with law.

9. In the light of the narrative thus far, Hon'ble Mr.Justice K.Venkatraman (Retd.) Former Judge of Madras High Court, residing at L-Block, 125, 17th Street, East Anna Nagar, Chennai-600 102, Mobile No.7708895435, Email-ID : justice.kvj@gmail.com is appointed as sole Arbitrator. Hon'ble sole Arbitrator is requested to enter upon reference, qua primary contract i.e., Concession Agreement dated 22.01.2021, adjudicate upon arbitrable disputes that have arisen between the parties and render an Arbitral Award by holding sittings in 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)



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(Administrative Cost and Arbitrator's Fees) Rules 2017.

10. Though obvious, for the purpose of specificity, it is made clear that this Court has not expressed any opinion or view on the merits of the matter or interim prayer and all questions are left open for learned Arbitrator to adjudicate and decide on merits and in accordance with law.

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

08.08.2022

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

1. Hon'ble Mr.Justice K.Venkatraman (Retd.)
Former Judge of Madras High Court,
residing at L-Block, 125, 17th Street,
East Anna Nagar, Chennai-600 102,
Mobile No.7708895435,
Email-ID : justice.kvj@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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