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Arb.O.P.(Comm.Div.) No.500 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.11.2022**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.500 of 2022

M/s.Sri Chakra Construction,
Rep. by its Proprietor,
N.Bharath Kumar,
New No.3, Old No.16,
Chandrappa Street, Sowcarpet,
Chennai – 600 079.

... Petitioner

VS.

M/s.NA DIVINE HABITAT PVT. LTD.,
Rep. by its Authorised Signatory,
Mr.A.H.Ahamed Shakir,
Chennai Citi Centre 4th Floor,
10 & 11 Dr.Radhakrishnan Salai,
Mylapore, Chennai -600 004.

... Respondent

(2nd respondent deleted from the array
of parties by separate order dated
09.11.2022)

PRAYER: Arbitration Original Petition filed under Section 11(6)(a) r/w
Section 15(2) of the Arbitration and Conciliation Act, 1996, pleased to



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appoint a substitute Presiding Arbitrator to resolve the dispute as per the contract agreement dated 27.06.2011.

For Petitioner : Mr.D.Saikumaran

For Respondent : Mr.Prahabad Bhatt

ORDER

The petitioner seeks the substitution of the presiding arbitrator in relation to a dispute which was referred earlier to an arbitral tribunal. It is stated that a Contract Agreement dated 27.06.2011 was entered into between the petitioner and the respondent herein. By pointing out that learned presiding arbitrator recused by communication dated 22.01.2021, the present petition is filed.

2. Learned counsel for the first respondent has no objection to the substitution of the presiding arbitrator to adjudicate the dispute between the petitioner and the respondents.

3. On examining the petition, the petitioner has made allegations against the former presiding arbitrator without joining the said arbitrator as



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a party. The conduct of the petitioner, in such regard, is to be deprecated. If any allegations are being made against an arbitrator, the said person should be joined as a party and provided an opportunity to meet those allegations.

4. Subject to the above observations, the petitioner is entitled to succeed. Accordingly, Arb.O.P.(Comm.Div.)No.500 of 2022 is allowed by appointing Mr. Justice V.Bharathidasan, retired Judge of this Court, No.22,(L-45), 2nd Main Road, Kamaraj Nagar, Thiruvannamipur, Chennai – 600 041, (Mobile No.94443 83139), as the Presiding Arbitrator. The Presiding Arbitrator is requested to enter upon reference and adjudicate the dispute from the stage at which it was when the former Presiding Arbitrator recused. The fees and expenses of the arbitral tribunal, including that of the Presiding Arbitrator, shall be fixed in consultation with the parties.

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Index : Yes / No

Internet : Yes / No

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Learned counsel for the first respondent raised an objection to the second respondent being joined as a party to this petition for substitution of the presiding arbitrator. He submits that the second respondent is not a party to the Contract Agreement dated 27.06.2011. He further submits that the second respondent is not a party to the arbitral proceedings. Therefore, he submit that the second respondent should be deleted from the array of parties.

2. Learned counsel for the petitioner counters this submission by stating that the second respondent is a developer and that the second respondent played a role in the transaction forming the subject of the arbitral proceedings and is required to be made a party thereto.

3. On perusal of the contract agreement dated 27.06.2011, it is evident that it is between the petitioner and the first respondent. Therefore,



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the second respondent cannot be joined as a party to this petition or to the
arbitral proceedings.

4. The Registry is directed to delete the second respondent from the
array of parties. The deletion of the second respondent shall be reflected in
the separate order disposing of the petition.

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