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Arb.O.P.No.33 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.No.33 of 2022

M/s.Jain Housing and Constructions Limited,
represented by its Vice President Mr.R.Vasudevan,
No.98/99, Habibullah Road, T.Nagar,
Chennai - 600 017.

... Petitioner

VS.

1.M/s.Vikranthi Foundations Firm,
a partnership Firm,
represented by its Partners
(1) Mr.J.N.Ajeeth, Son of J.Nirmal Kumar,
(2) Mrs.A.Seems, Wife of J.N.Ajeeth

2.Mr.J.N.Ajeeth, son of J.Nirmal Kumar,
Partner M/s.Vikranthi Foundations Firm

3.Mrs.A.Seema, wife of J.N.Ajeeth,
Partner M/s.Vikranthi Foundations Firm

all are having office at No.36 Verappan Street,
Sowcarpet, Chennai - 600 079.

... Respondents



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PRAYER: Arbitration Original Petition filed under Section 15(2) of the Arbitration and Conciliation Act, 1996 as amended, pleased to appoint an Arbitrator that is Mr.S.Parthasarathy, Senior Advocate or any other Arbitrator as per Section 15(2) of Arbitration and Conciliation Act, 1996 for the reference of the dispute arisen between the petitioner and the respondents regarding enforcing the terms of the MOU as per Arbitration clause in the Memorandum of Understanding dated 25.02.2019.

For Petitioner : Mr.S.Balasubramaniam

ORDER

The petitioner seeks substitution of the arbitrator under Section 15(2) of the Arbitration and Conciliation Act, 1996 (the Arbitration Act). At the last hearing, it was recorded that Court Notice was served on all the three respondents on 19.10.2022 and that there was no representation for any of the respondents. At the hearing today, in spite of the names of the



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respondents being printed in the cause list, there is no representation for any of the respondents.

2. By order dated 08.02.2021, the arbitral tribunal was constituted. Thereafter, by an order dated 15.10.2021, the arbitral tribunal terminated proceedings under Section 32(2)(c) of the Arbitration Act. A request was made to learned arbitrator by communication dated 18.10.2021 to resume proceedings. In response, by communication dated 21.10.2021, learned arbitrator pointed out that the mandate of the tribunal stands terminated under Section 32(3) of the Arbitration Act upon termination of proceedings under Section 32(2)(c) thereof. Hence this petition.

3. Learned counsel for the petitioner has placed before me the judgment of the Hon'ble Supreme Court in *Sai Babu -vs- M/s.Clariya Steels Private Limited, Civil Appeal No.4956 of 2019*, Judgment dated 01.05.2019. In the said judgment, the Supreme Court dealt with a case wherein arbitral proceedings were terminated by an order passed under Section 32(2)(c) of the Arbitration Act. In that context, the Supreme Court substituted the



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arbitrator by relying upon Section 15(2) of the Arbitration Act. The petitioner is entitled to the benefit of the above judgment because the fact situation herein, is substantially similar.

4. Accordingly, Arb.O.P.No.33 of 2022 is allowed by substituting Mr.M.K.Kabir, Senior Advocate, Mobile No.9840044258, in place of the former arbitrator. The parties are permitted to request the former arbitrator to hand over the relevant records to the arbitrator appointed under this order.

13.12.2022

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Index : Yes / No

Internet : Yes / No



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SENTHILKUMAR RAMAMOORTHY,J

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