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Arb. O.P(Com.Div). No.12 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.12 of 2023

Abraham Samuel,
Partner of M/s.Santhosh Engineering Company,
No.49, Dogwood Drive,
Plainsboro, New Jersey 08536,
USA.

... Petitioner

Vs.

- 1.M/s.Santhosh Engineering Company,
A partnership firm registered under the
Indian Partnership Act, 1932,
No.214, AIEMA Towers,
1st Main Road, SIDCO Industrial Estate,
Ambattur, Chennai – 600 058.
- 2.Beena Thomas,
Partner of M/s.Santosh Engineering Company,
AD-72, Shanthi Colony,
Anna Nagar, Chennai – 600 040.
- 3.Shobana Lazarus,
Partner of M/s.Santosh Engineering Company,
AD-72, Shanthi Colony,
Anna Nagar, Chennai – 600 040.
- 4.Santhosh Samuel,
Partner of M/s.Santosh Engineering Company,
Flat F4, Fastern Court, Apartments,
No.24 Coles Raod, Frazer Town,
Bengaluru 560 005.

... Respondents



PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondents in terms of the Arbitration Agreement contained in Clause 14 of the Deed of Release and Reconstitution dated 01.04.2013.

For Petitioner : Mr.Aswany Ajaykumar

For Respondents : Mr.A.Umapathy

ORDER

This petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondents.

2.Learned counsel appearing for the petitioner would submit that the petitioner and the respondents 2 to 4 are the legal heirs of one Mr.T.Samuel. The petitioner along with his father late T.Samuel and the 4th respondent executed the partnership deed dated 01.01.1983 and started the partnership firm under the name and style of M/s.Santhosh Engineering Company. After the demise of the petitioner's father, the 1st respondent firm was reconstituted vide deed of release and reconstitution dated 01.04.2013, through which the respondents 2



and 3 were admitted as partners. He would further submit that after the reconstitution of the partnership firm, some discrepancies aroused between the parties and the respondents 2 to 4 colluded and restricted the petitioner from participating in the management of the 1st respondent firm.

3.He would further submit that the petitioner took repeated steps to settle the disputes through mutual discussions. But, the respondents have not come forward to settle the disputes. Therefore, the petitioner issued legal notice dated 27.10.2022 invoking the arbitration clause 14 of the deed of Release and Reconstitution and nominated an Arbitrator. However, the said notice was returned. Hence, the present application has been filed.

4.Learned counsel appearing for the respondents would submit that the petitioner is residing outside India and not participating in the meeting and made allegation regarding the siphoning of funds and the same is arbitrable in terms of Clause 14 of the deed of Release and Reconstitution. He would further submit that a sole Arbitrator may be appointed by this Court instead of appointing Arbitrator from the panel of three Arbitrator.

5.For better appreciation Clause 14 of the deed of Release and



Reconstitution is extracted hereunder:

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“Clause 14:

If during the continuance of the partnership or at any time afterwards any dispute, difference or question arises between the said partners or any of their representatives touching the partnership accounts or transactions thereof or the dissolution or winding up thereof, the construction, meaning of liabilities of the partners or their representatives under this deed, then every such disputes, difference or question shall be referred to a panel of three arbitrators under the Arbitration and Conciliation Act, 1996 or any statutory modification thereof for the time being in force.”

6.Heard the learned counsel appearing for the petitioner as well as the respondent and perused materials available on record.

7.Upon hearing and perusal of Clause 14 of the deed of Release and Reconstitution, it is clear that in the event of any dispute, the same shall be referred to a panel of three arbitrators. As per the law laid down in the case of ***Perkins Eastman Architects DPC and Ors. vs. HSCC (India) Ltd.***, reported in ***(2020) 20 SCC 760***, unless and otherwise the parties agreed in written consent for appointment of those persons as Arbitrator, no Arbitrator can be appointed unilaterally. Hence, considering the submissions made by the learned counsel



appearing for either parties, this Court pass the following orders:

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i)Mrs.M.Shirijha Advocate (Enrollment No.1036/92), residing at F3, Aradhana Apartments, Temple Avenue, Srinagar Colony, Saidapet, Chennai-15 (Mob.No.99401 95896), is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) 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 the Order without influencing any of the observations made by this Court in this order.

iii) Learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

iv) In the event of non-appearance of the respondents herein, the petitioner herein shall bear the entire remuneration



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and other expenses and thereafter, the petitioner can recover the same directly from the respondents herein.

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8.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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KRISHNAN RAMASAMY. J.,

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