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Arb.Original Petition (Com.Div.) No. 73 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.Original Petition (Com.Div.) No.73 of 2023

1. Y.Sudarsana Rao

2. Jayamalathi Sudarsana Rao

... Petitioners

Vs.

Tata Value Home Limied,
Rep. by its Managing Director Mr.Sanjay Dutt,
E Block, Voltas Premises,
T.B.Kadam Marg Chinchpokli,
Mumbai - 400 033.

... Respondent

PRAYER: The Original Petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1996, to appoint an Arbitrator as per the Joint Development Agreement, dated 06.07.2011, wherein the parties had agreed to refer the dispute to Arbitration.

For Petitioner : Mr.S.S.Rajesh

For Respondent : Ms.Deepika Murali



Arb. Original Petition (Com.Div.) No. 73 of 2023

ORDER

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The present Original Petition has been filed under Section 11 (6) of Arbitration and Conciliation Act, 1996, to appoint an Arbitrator as per the Joint Development Agreement, dated 06.07.2011, wherein the parties had agreed to refer the dispute to Arbitration.

2. The learned counsel appearing for the petitioners submits that the petitioner had entered into a Joint Development Agreement ('JDA') with the respondent dated 04.07.2011. Since there are disputes between the petitioner and the respondent, the petitioners have sent a notice to the respondent under Section 21 of Arbitration and Conciliation Act, 1996, dated 06.12.2022, wherein, he has narrated the various disputes between them. All the disputes referred in the said notice can be adjudicated by the Arbitrator in terms of Clause 20 of the Joint Development Agreement. The said Clause 20 is extracted as follows:-

“20. DISPUTE RESOLUTION

If any disputes or differences arise between the parties in connection with the validity, interpretation, implementation and/or alleged breach of any term or provision of this Agreement and/or any document related or incidental hereto, and/or otherwise howsoever arising from or in respect of this Agreement and/or any document related or incidental hereto (hereinafter referred to as



WEB COPY



Arb.Original Petition (Com.Div.) No. 73 of 2023

the "Dispute"), the parties shall endeavor to settle the Dispute amicably within 30 (thirty) days from the date of occurrence thereof, failing which, the Dispute shall be referred to arbitration under the provisions of the Arbitration and Conciliation Act, 1996, or any modification or re-enactment thereof for the time being in force.

20.1. The reference shall be made to one Arbitrator if the parties agree upon such appointment, failing which, each party shall appoint one Arbitrator, and such two Arbitrators shall appoint a Presiding Arbitrator prior to entering upon the reference.

20.2. The venue of the arbitration shall be at Chennai, and the language of the arbitration proceedings shall be English.

20.3. The Arbitral Award shall be reasoned and given in writing and shall be final and binding on the parties. The Arbitrator/s shall also decide on the sharing of costs of the arbitration proceedings, between the parties hereto.

20.4. The Arbitrator/s will also have the summary powers and shall be entitled to give interim directions and awards from time to time. Notwithstanding the pendency of any Dispute or other differences between the parties hereto and/or any arbitration proceedings, the SVHL shall continue to be fully entitled and at liberty to continue and complete the Development of the said Property and exercise all its rights, powers, privileges, discretions and authorities contained in this Agreement and all documents related or incidental hereto.



Arb. Original Petition (Com.Div.) No. 73 of 2023

WEB COPY

3. By referring to the above said Clause, the learned counsel appearing for the petitioners submits that the present dispute can be referred to the Arbitrator. The learned counsel for the petitioners has submitted the names of three Arbitrators and requested to appoint a Sole Arbitrator from the above mentioned names and direct him to adjudicate the dispute under the Joint Development Agreement dated 04.07.2011.

4. The learned counsel appearing for the respondent has filed counter and submitted that instead of issuing a proper notice under Section 21 of Arbitration and Conciliation Act, 1996, the petitioners have chosen to file the present petition. He further submitted that even on merits of the case, the petitioners have not established their case and further, before referring the dispute to the arbitrator, the mandatory requirement of issuing notice under Section 21 of the Act has not been complied with and hence, the question of appointment of arbitrator by this Court does not arise. Hence, he sought for dismissal of the petition.

5. Heard the learned counsel for the parties and perused the entire



Arb. Original Petition (Com.Div.) No. 73 of 2023

materials placed on record.

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6. Admittedly, there is an arbitral clause contained in the Joint Development Agreement, which is already extracted above. The only contention raised on behalf of the respondents is that the petitioners have not issued statutory notice Section 21 of the Act referring the dispute to the arbitrator. It is not in dispute that the petitioners issued notice dated 06.12.2022 to the respondent through their Advocate, specifying their claim with interest for delayed payment of revenue share and damages and if the claimed amounts were not paid by the respondent within 30 days from the date of the receipt of the notice, the petitioners would invoke Clause 20 of the JDA dated 04.07.2011. Further, the petitioners have also proposed three Retired Judges of this Court and requested the respondent to choose one Judge for appointment as Arbitrator to enter into reference and adjudicate the dispute. In response, the respondent also sent a reply dated 02.01.2023, repudiating all the claims made by the petitioners and informed that a detailed reply will be sent on or before 15.01.2023. Thereafter, as there is no progress from the respondent's end, the petitioners have come forward with the present petition.



Arb. Original Petition (Com.Div.) No. 73 of 2023

WEB COPY

7. The arbitration proceeding commences with the notice invoking arbitration as provided under Section 21 of the Arbitration and Conciliation Act, 1996. Section 21 of the Act reads under:

"21. Commencement of arbitral proceedings._ Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

8. A plain reading of the above provision indicates that except where the parties have agreed to the contrary, the date of commencement of the arbitration proceedings would be the date on which the recipient of the notice receives from the Claimant, a request for referring the disputes to arbitration. Hence, for commencement of arbitral proceedings, there must be a request for the dispute to be referred to arbitration.

9. In the present case, the petitioners requested the respondent via notice dated 06.12.2022 to choose a Sole Arbitrator from among the names of three retired Judges mentioned in the notice which is received by the respondent on 09.12.2022. Therefore, in view of the facts and the correspondence between the parties and the notice, dated 06.12.2022 wherein,



Arb.Original Petition (Com.Div.) No. 73 of 2023

the petitioners have clearly raised dispute and expressed their intention to get the dispute resolved through arbitration and also requested to choose one of the retired Judges of this Court to act as Arbitrator, are sufficient enough to fulfill the requirements under Section 21 of the Act. Hence, the notice dated 06.12.2022 sent by the petitioners to the respondent is sufficient and the same shall be deemed to be considered as Section 21 notice. Therefore, this Court is of the view that the petitioners have made out a case for appointment of the Arbitrator.

10. Accordingly, this Court feels it appropriate to pass the following order:

i) Hon'ble Mr.Justice S.Rajeswaran, Former Judge, High Court of Madras, residing at No.AA67, II Street, Anna Nagar, Chennai - 600 040, Mobile No.9444390952 is appointed as sole 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.



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Arb. Original Petition (Com.Div.) No. 73 of 2023

KRISHNAN RAMASAMY, J.

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iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent.

11. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. It is open to the parties to raise all the issues, which have been put forth before this Court and the learned Arbitrator is directed to decide the issue between the parties on his own, without taking any observation made in this order.

16.03.2023

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Arb.O.P.(Com.Div.) No.73 of 2023