



Arb.Appln.No.244 of 2023

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C.SARAVANAN, J.

This Arbitration Application has been filed under Order XIV Rule 8 of the Original Side Rules read with Section 9(ii)(b)(e) of the Arbitration and Conciliation Act, 1996, praying to direct the respondents to furnish security in the form of Bank Guarantee within a time fixed by this Court for the amount of Rs.54,66,908/- admittedly due to the applicant from the respondents.

2. Although this application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, it appears that the parties are willing to resolve the dispute through Arbitration.

3. The Franchise Agreement dated 30.08.2021 between the applicant and the first respondent contemplates resolution of dispute by way of Arbitration and Jurisdiction. Arbitration Clause XIII deals with the same and it reads as under:-

"XIII. Legal

2. Arbitration: In the event of disputes that both parties are unable to solve through mutual discussion and compromise, the same shall be referred to a sole arbitrator, to be appointed



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by the Company, as per the provisions of the Indian Arbitration and Conciliation Act, 1996. The outcome of Arbitration shall be final and binding on both parties. The seat of arbitration shall be Chennai and the language of Arbitration shall be English.

3. Jurisdiction: The Parties hereby agree and shall submit to the exclusive jurisdiction of the Courts at Chennai, Tamil Nadu."

4. The applicant has also issued a notice to the respondents under Section 21 of the Arbitration and Conciliation Act, 1996 on 13.01.2023.

5. Today when this case is taken up for hearing, the learned counsel for the first respondent has also agreed for consenting to appoint an Arbitrator by this Court as the respondents cannot appoint an Arbitrator in the light of the amendment to the Arbitration and Conciliation Act, 2015 and in the light of the decision of the Hon'ble Supreme Court in **Perkins Eastman Architects DPC & Another Vs. HSCC (India) Limited**, 2019 SCC Online SC 1516.

6. Considering the above, Court is inclined to appoint **The Hon'ble Mr.Justice S.Manikumar (Retd.,) Former Chief Justice of Kerala High Court residing at New No.8, Old No.42, Kandhasami Street, Pallipattu,**



Tharamani, Chennai - 600 113 (Mobile No.9444390963), as an arbitrator to enter upon reference and resolve the *inter se* disputes between the parties.

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7. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months from the date of receipt of a copy of this order, without getting influenced by any of the observations made in this order.

8. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of the parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the applicant shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.



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9. This Arbitration Application is disposed accordingly, leaving the parties to bear their own costs.

10. Since this Court has appointed the Arbitrator, it is open to the applicant as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

30.10.2023

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