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Arb. O.P(Com.Div). No.133 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div).No.133 of 2023

1.M/s.Simsan Finance,
Rep.by its Partner,
Mahatma Srinivasan,
Sulochana Srinivasan

2.Mahatma Srinivasan

3.Sulochana Srinivasan

All having office at
Door No.85, Poonamallee High Road,
Koyambedu,
Chennai – 600 107.

... Petitioners

Vs.

M/s.Shan Holiday Inn Private Limited,
Rep. by its Managing Director
Mitra Srikanth
Having Office at
Door No.85, Poonamallee High Road,
Koyambedu,
Chennai – 600 107.

... Respondent

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint Mr.N.Paul Vasanthakumar (Retired), Chief Justice of Jammu and Kashmir to decide and adjudicate the disputes of



the above larger issues along with adjudication of disputes regarding the license fee as per the order in O.A.No.137 of 2021 dated 16.06.2021.

For Petitioners : Mr.R.Balaguruswamy

For Respondent : Mr.Dhanaram Ramachandran
for M/s.D.R.Law Chambers

ORDER

This petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint Mr.N.Paul Vasanthakumar (Retired), Chief Justice of Jammu and Kashmir to decide and adjudicate the disputes of the larger issues along with adjudication of disputes regarding the license fee as per the order in O.A.No.137 of 2021 dated 16.06.2021.

2.Initially, this Court appointed Mr.N.Paul Vasanthakumar (Retired), Chief Justice of Jammu and Kashmir as Sole Arbitrator vide order dated 16.06.2021 in O.A.No.137 of 2021 to adjudicate the disputes between the petitioners and the respondent. Thereafter, before the learned Arbitrator, the respondent filed claim statement and the petitioner herein also filed counter. While so, the present application has been filed seeking to appoint Mr.N.Paul



Vasanthakumar (Retired), Chief Justice of Jammu and Kashmir, once again as

Sole Arbitrator to adjudicate the following issues:

“10. The Petitioners submit that suppressing all the facts even though the Respondent has no locus standi to appear on the capacity of the Managing Director of Shan Royal Inn Private Limited (Strike Off company) misleading the Tribunal in a short sighted view submitted a claim demanding in payment of Rs. 15,00,000/- from the date of entering into Memorandum of Agreement dated 18.01.2019 and the Arbitrator's proceedings, moreover in a direction to decide the same and there are lot of issues arising before the adjudication of the dispute regarding the license fee that has not been taken into account by the Arbitrator and his vision is only focused to adjudicate regarding the license fee and whenever the Petitioner has raised larger issues before going into the merits of fixation of license fee and in case if the Arbitrator without going into the larger issues before deciding the license fee that will dampen the defence of the Petitioners and the issues to be sorted out are as follows:

(a) whether the Respondent has the capacity to claim in the capacity of Managing Director of a strike off company namely Shan Holiday Inn Private Limited?

(b) whether the Memorandum of Agreement violated by the Petitioners as well as Respondent and



acted orally upon the terms and conditions fixed by the Respondent and when the Memorandum of Agreement not enforceable, the Arbitration clause is enforceable?

(c) whether the Respondent as per the Memorandum of Agreement has not obtained and provided the licence of services of rooms, banquet halls, restaurants, spa and bar, whether he is entitled for claiming of license fee and seeking adjudication to decide the dispute by the Arbitration Tribunal?

(d) when there is no Board of Company and the company struck off by the Registrar of Companies, what about the title of the property belonging to the hotel and if other legally entitled owners of the property survives, what is their capacity in adjudicating the Arbitration proceedings?

(e) when the company was struck off by the Registrar of Companies, how the Petitioners remitted the licence fee of Rs.7,50,000/- in the name of the company?

(f) what was the effect of non enforced terms and conditions, what is the remedy available to the Petitioners as well as the Respondent?

(g) Is the Arbitration proceedings is maintainable in law when the Respondent has no locus standi to sue



against the Petitioners on behalf of company and the terms and conditions of Memorandum of Agreement is not enforceable in law?

(h) whether the water tax inclusion of Property Tax borne by the Petitioners or the Respondent which shall be adjudicated as a preliminary issue that in default of payment of same to the Greater Chennai Corporation would amount to lockout of the hotel?"

3.Learned counsel appearing for the respondent would fairly submit that this Court has already in O.A.No.137 of 2021 appointed Mr.N.Paul Vasanthakumar (Retired), Chief Justice of Jammu and Kashmir as Sole Arbitrator vide order dated 16.06.2021 and therefore, the petitioner can raise all these issues before the learned Arbitrator by way of counter, if they advised to do so and the respondent has no objection for the same.

4.In reply, learned counsel appearing for the petitioners would submit that he is ready and willing to raise all the issues narrated at Paragraph No.10, before the learned Arbitrator by way of counter claim. He would further submit that the mandate of the learned Arbitrator initially fixed by this Court has already been come to an end and therefore, he prayed to extent the same.



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5. In view of the above submissions made by the learned counsel appearing for the respective parties, the petitioners are permitted to raise the issues narrated by them at paragraph No.10 of the affidavit, before the learned Arbitrator by way of counter claim in the existing proceeding before the learned Arbitrator. In the event, if any counter is filed by the petitioners, learned Arbitrator shall consider the same after giving sufficient opportunity to the respondent herein to file their reply, if any.

6. Further, this Court extends the mandate of the learned Arbitrator for a further period of nine months from the date of receipt of a copy of this order by the learned Arbitrator.

7. With the above directions, this petition is disposed of.

20.04.2023

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Note: Issue Order Copy on 24.04.2023



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KRISHNAN RAMASAMY. J.,
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