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ARB.O.P.(Com.Div) No.142 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.142 of 2023

1.S. Muthusamy

2.Kalaiselvi

... Petitioners

Vs.

1.M/s.Shri Senthil Agencies,
A partnership Firm
Rep. by its Partners,
1.P. Vijayaragavan
2.U. Thiruarutselvi
Having office at
Old No.207, New No.112,
2nd Floor, Second Agraharam,
Salem – 636 001.

2.P. Vijayaragavan

3.U. Thiruarutselvi

... Respondents

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator on behalf of the parties to resolve the dispute in terms of the Retirement Deed dated 31.03.2021 between the petitioner and respondents.



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For petitioners : Mr.P.K. Harinath Babu
For respondents : No appearance

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator by this Court.

2. The petitioners claim that they have retired from the Partnership Firm namely M/s.Shri Senthil Agencies, pursuant to the Retirement Deed dated 31.03.2021. However, according to the petitioners, the dues payable to them as per the Retirement Deed dated 31.03.2021, has not been paid. In the Retirement Deed dated 31.03.2021, there is an Arbitration Agreement which is extracted hereunder:-

“12. That all disputes or differences arising from the partnership deed dated 31.03.2021 or from this deed of dissolution or in connection with any past acts of the firm shall be resolved by arbitration under the Indian Arbitration Act, 1940 or any modification if any, there one.”



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3. In accordance with the Arbitration Agreement, the petitioners had invoked the arbitration by issuing a notice to the respondents on 10.12.2022 and suggested a name of the Arbitrator for getting the consent of the respondents. The invocation notice dated 10.12.2022, has been duly received by the respondents 2 & 3 and the first respondent's notice has been returned with an endorsement 'no such addressee'. Since there has been no consensus with regard to the name of the Arbitrator, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator.

4. The notice in this petition has been duly served on the respondents and the names of the respondents are also printed in the cause list today. Despite having received the notice in this petition, the respondents have chosen not to enter appearance either by themselves or through a counsel.

5. When there is a valid Arbitration Agreement in the Retirement Deed dated 31.03.2021, which is the subject matter of the dispute, this



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Court will have to necessarily appoint an Arbitrator.

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6. For the foregoing reasons, this Court appoints Mr.R. Govinda Rajan, District Judge (Retired), as the Sole Arbitrator, to adjudicate the dispute between the petitioners and the respondents. Accordingly, this Arbitration Original Petition is allowed as prayed for, by issuing the following directions:-

(a) This Court appoints Mr.R. Govinda Rajan, District Judge (Retired), having residence at 9/397, Royal Nagar 3rd Cross Street, Kovur, Chennai – 600 128, Mobile No.:9444809887, as a Sole Arbitrator, to adjudicate the dispute between the petitioners and the respondents arising out of the Retirement Deed dated 31.03.2021.

(b) The Arbitrator shall be paid his remuneration/fees in accordance with the IV Schedule of the Arbitration and Conciliation Act, 1996.



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(c) Both the parties shall equally share the Arbitrator's fees.

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

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Index: Yes/ No
Speaking/Non-speaking order
Internet: Yes/No

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ABDUL QUDDHOSE, J.

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