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ARB.O.P.(Com.Div) No.185 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.185 of 2023

Mr.R. Bojan

... Petitioner

Vs.

Mr.N. Ramaswamy,
Managing Partner,
M/s.RBS Groups,
Having registered office at
31/32, 2nd Floor, Classic Homes,
Seetharam Nagar, 2nd Street,
Velachery, Chennai – 600 042
Also having office at,
M/s.RBS Groups,
#4A, First Floor, Plot No.12,
14th Cross St., Mahalakshmi Nagar,
Adambakkam, Chennai – 600 088.

... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator and direct the arbitration proceedings in the matter of Reconstituted Partnership Deed dated 01.04.2016.

For petitioner : Mr.Kaushik N. Sharma

For respondent : Mr.G. Peramaiyan



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ORDER

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This Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator.

2. By virtue of two Reconstituted Partnership Deeds dated 01.04.2016 and 01.07.2021, the petitioner has been removed from the partnership business running in the name and style of M/s.RBS Groups at Chennai. Under the aforementioned Deeds, the respondent seems to have agreed to pay a sum of Rs.10,00,000/- in respect to the balance amount payable to the petitioner. Both the Reconstituted Partnership Deeds dated 01.04.2016 and 01.07.2021 respectively, contains an arbitration clause, which the petitioner rely upon to initiate arbitration.

3. In the Reconstituted Partnership Deed dated 01.04.2016, the arbitration clause is found in Clause 21, which is extracted hereunder:-

“[21] Dispute between the partners in respect of the partners or its business shall be decided by one or more arbitrators nominated by the partners to the dispute. The decision of the arbitrator/arbitrators shall be final and binding on all the partners in respect of all matters



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referred to them. The proceedings of the arbitrator/arbitrators in the arbitration shall be governed by the Indian Arbitration Act.”

4. In the Reconstituted Partnership Deed dated 01.07.2021, the arbitration clause is found in clause 21 and the same is once again extracted hereunder:-

“[21] Dispute between the partners in respect of the partners or its business shall be decided by one or more arbitrators nominated by the partners to the dispute. The decision of the arbitrator/arbitrators shall be final and binding on all the partners in respect of all matters referred to them. The proceedings of the arbitrator/arbitrators in the arbitration shall be governed by the Indian Arbitration Act.”

5. The petitioner had invoked arbitration as per the Arbitration Agreement, by issuing a notice to the respondent on 17.02.2023. Despite the said notice, the respondent had not agreed for the appointment of an Arbitrator. In such circumstances, this application has been filed seeking for appointment of an Arbitrator.



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6. A counter-affidavit has also been filed by the respondent, stating that since the petitioner has retired from the partnership business, the terms and conditions of the Reconstituted Partnership Deeds dated 01.04.2016 and 01.07.2021 respectively, which includes arbitration clause, cannot be applied to him. The respondent has also stated in their counter-affidavit that for the alleged misdeeds of the petitioner, the respondent is proposing to launch a criminal proceeding against the petitioner.

7. Admittedly, both the agreements namely the Reconstituted Partnership Deeds dated 01.04.2016 and 01.07.2021 respectively, have been signed by both the parties. The respondent also does not dispute the fact that he had signed both the Reconstituted Partnership Deeds, knowing fully well the contents of the same.

8. As seen from the Reconstituted Partnership Deed dated 01.07.2021, the respondent seems to have agreed to pay a balance sum of Rs.10,00,000/- to the petitioner towards his final settlement for retiring



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from the partnership business. The petitioner has made a claim against the respondent for the said amount together with interest and cost. He has also invoked arbitration by issuing a notice on 17.02.2023 in compliance of Section 21 of the Arbitration and Conciliation Act, which has also been duly acknowledged by the respondent and a reply has also been sent by the respondent. The arbitration clause available in both the contracts namely the Reconstituted Partnership Deeds dated 01.04.2016 and 01.07.2021, has already been extracted (*supra*) by this Court.

9. Any objections with regard to the claim of the petitioner, can be raised by the respondent only before the Arbitral Tribunal and not in an application filed under Section 11 of the Arbitration and Conciliation Act, that too, when there is a valid Arbitration Agreement between the parties to the dispute. Since there is a valid Arbitration Agreement between the parties to the dispute, necessarily the objections raised by the respondent in the counter-affidavit filed in this petition, has to be rejected.



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10. For the foregoing reasons, this Court will have to appoint an Arbitrator in this Arbitration Petition filed under Section 11 of the Arbitration and Conciliation Act and accordingly, this Court appoints Mr.P.Giridharan, Advocate, as a Sole Arbitrator, to adjudicate the dispute between the petitioner and the respondent. Hence, this Arbitration Original Petition is allowed, as prayed for by issuing the following directions:

(a) This Court appoints Mr.P.Giridharan, Advocate, who is having office at Vanguard House, 3rd Floor, No.48, Second Line Beach, Parrys, Chennai – 600 001, Mobile No.:9884672733) as a Sole Arbitrator, to adjudicate the dispute between the petitioner and the respondent, arising out of the Reconstituted Partnership Deeds dated 01.04.2016 and 01.07.2021, in accordance with law.

(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 order / Non speaking order
Neutral citation : Yes / No

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ABDUL QUDDHOSE, J.

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