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Arb.O.P. (Com.Div.) No.430 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 20.12.2023

CORAM

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

Arb.O.P.(Com.Div.)No.430 of 2023

V.Bala Subramanian

.. Petitioner

**Vs.**

M/s. Nathan's Foundation Pvt. Ltd.,  
Represented by Mr.K V Shankaralingam,  
No.18, Arulambal Street,  
T.Nagar, Chennai – 600 017.

.. Respondent

**Prayer:** Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with Rule 2 of the Appointment of Arbitration of the Madras High Court Scheme, 1996, to appoint an Arbitrator as per terms set out in Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 to decide the dispute between the petitioner and the respondent arising out of construction Agreement dated 23.08.2013.

For Petitioner : Ms.M.Vindhya

For Respondent : Mr.B.Sudharshan

**ORDER**

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with Rule 2 of the Appointment of



Arbitration of the Madras High Court Scheme, 1996, to appoint an Arbitrator as per terms set out in Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 to decide the dispute between the petitioner and the respondent arising out of construction Agreement dated 23.08.2013.

2.The petitioner appears to have invested in the property being developed by the respondent, which is a promoter of the property in Udhagamandalam. The respondent appears to have sold the Undivided Share (UDS) in the land and was thereafter required to commence the construction. As the respondent has collected a sum of Rs.9,00,000/- from the petitioner, however till date, the construction has not commenced on account of several reasons which are not *prima facie* attributable to the respondent herein.

3.The petitioner herein had earlier filed a consumer complaint before the District Consumer Disputes Redressal Commission, The Nilgiris in C.C.No.14 of 2023, wherein the petitioner has sought for compensation by way of refund of Rs.9,00,000/- together with interest at 24% per annum and for payment of further sum of Rs.5,00,000/- for the unfair trade practice and for deficiency of services.



4.The District Consumer Disputes Redressal Commission, The Nilgiris, by its order dated 22.11.2023 in C.C.No.14 of 2023 has dismissed the claim of the petitioner. After the dismissal of the aforesaid complaint by the District Consumer Disputes Redressal Commission, The Nilgiris in C.C.No.14 of 2023 by its order dated 22.11.2023, the petitioner has approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.

5.During the pendency of the proceedings before the District Consumer Disputes Redressal Commission, The Nilgiris, the petitioner had approached this Court. The respondent has now entered appearance and is represented by the counsel.

6.It is submitted that there is no scope for referring the matter to Arbitration as the petitioner had already approached the District Consumer Disputes Redressal Commission, The Nilgiris in C.C.No.14 of 2023 for identical relief in respect of which the dispute had arisen. Whether there was a dispute of service or not can be decided as this issue stands covered by the order of the District Consumer Disputes Redressal Commission, The Nilgiris.



7. Although the District Consumer Disputes Redressal

Commission, The Nilgiris has declared earlier for grant of refund to the petitioner, Court is of the view that this matter can be adjudicated as the petitioner is seeking for refund of the amount paid to the respondent for putting up construction under the construction agreement dated 23.08.2013. The construction agreement dated 23.08.2013 also contemplates a clause for resolving the dispute through Arbitration and it reads as follows:-

*“29. Disputes, if any, arising out of this agreement will be mutually discussed and amicable settled, failing which, the disputes shall be referred to Arbitration of three Arbitrators, one each to be appointed by the Parties and the third Arbitrator shall be appointed by the two Arbitrators appointed by the Parties, who shall act as 'Presiding Arbitrator' whose conclusion, shall be final binding on both parties. The Arbitration proceedings shall be in accordance with the provisions of Arbitration and Conciliation Act, 1996. The venue of Arbitration shall be at Chennai and all Arbitration proceedings shall be conducted in English language and governed by the above said Act.”*

8. Considering the above, Court is inclined to appoint

**Mr.K.K.Murralitharan, Advocate (Mobile No.: 98840 43499; 75500 43499) residing at B-3, No.3/7, R.K.Castle, A81, Jagadeesan Street,**



**Vetri Nagar Extension, Peravallur, Chennai – 600 082** having office at **No.B, 5<sup>th</sup> Floor, New No.257, Old No.125, Canara Bank Building, Angappa Naicken Street, Chennai – 600 001** is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties in accordance with the respective agreement under which the Arbitration clause has been prescribed for resolving the dispute.

9.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 after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

10.The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of 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 petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

11.All the issues are left open to be canvassed by the respondent before the learned Arbitrator.

12.The Original Petition is allowed with the above observations, leaving the parties to bear their own costs.

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

**20.12.2023**

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**C.SARAVANAN, J.**

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