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Arb.O.P.No.32 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Arb.O.P.No.32 of 2023

1.C.Kathirvel

Flat No.21, 4th Floor,
Arunodhaya Apartments,
204/175, Choolaimedu,
Chennai 600 094.

2.K.Anusuya Rayvathi,

Flat No.21, 4th Floor,
Arunodhaya Apartments,
204/175, Choolaimedu,
Chennai 600 094.

..... Petitioners

-Versus-

1.N.V.K.Velan,

Flat No.48, Arunodhaya Apartments,
204/175, Choolaimedu High Road,
Chennai 600 094.

2.Bagavathy Velan,

Flat No.48, Arunodhaya Apartments,
204/175, Choolaimedu High Road,
Chennai 600 094.

..... Respondents

Petition filed under Section 11(6) of The Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator in furtherance of Clause 12 of the 'Agreement' dated 30.01.2018 to adjudicate upon the disputes / differences between the petitioners and the respondents and to award costs.



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*For Petitioners : Mr.A.K.Mylsamy for
M/s.A.K.Mylsamy & Associates*
For Respondent (s) : Mr.A.V.Arun for RR1 & 2

ORDER

This Original Petition has been filed seeking appointment of a Sole Arbitrator in furtherance of Clause 12 of the 'Agreement' dated 30.01.2018 to adjudicate upon the disputes / differences between the petitioners and the respondents.

2. The petitioners are the shareholders of Shree Builders (P) Limited. They collectively hold 70379 shares constituting 50% of the total paid up share capital of the company. They were the promoters and first directors of the company. Under the Share Purchase Agreement dated 30.01.2018, the petitioners have agreed to sell hold 70379 Equity Share of Rs.100/- each in the company at a price of Rs.650/- per share of Rs.100/- each. The petitioners resigned from the directorship of the company w.e.f. 30.01.2018. The resignation of the petitioners was approved by the company by letter dated 31.01.2018.

3. It is the grievance of the petitioners that after the share purchase agreement (SPA), they were not part of the management and the entire



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management of the company is under the respondents. However, they have not been paid the amount quantified in the share purchase agreement. Hence, as per the agreement, the dispute has to be referred to arbitration.

4. It is the contention of the respondents that the petitioners had already approached the National Company Law Tribunal (NCLT) to enforce the contract. That apart, as per Clause 10 of the agreement, if any of the conditions or obligations specified are not fulfilled, the other party shall be entitled to terminate the agreement by giving to the other side a notice in writing of their intention to do so. Therefore, the agreement itself was terminated and the dispute is not arbitrable.

5. This court has gone through the entire materials carefully.

6. A careful perusal of the share purchase agreement, in particular, clause concerning arbitration which reads as follows:-

“12. Any controversy or claim arising out of or relating to this Agreement, which is not settled through negotiation among the parties, shall be resolved exclusively by arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996, then in effect. Such controversy or claim



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shall be referred to a mutually acceptance single Arbitrator or, upon the failure of the parties to agree upon a single arbitrator, to three arbitrators, appointed in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. Any Arbitration shall be conducted in the English language and any arbitration proceedings shall be held in Chennai, India. The order of Arbitrator/s shall be final and binding on the parties, and shall not be subject to any appeal”

7. In view of the above, the validity of the agreement cannot be gone into by this court at this stage and whatever the objections, it is for the respondents to raise the same before the arbitrator.

8. As far as Clause 10 of the Agreement is concerned, termination of agreement would take effect only if a notice has been given in writing of their intention to terminate the agreement by any of the parties. Such an option was not exercised by any of the parties. Merely because the petitioners have approached the NCLT as against the rights issue and obtained interim orders restraining the respondents from allotting the shares to anybody else it would not take away the jurisdiction of the arbitrator to adjudicate upon the disputes /



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differences between the petitioners and the respondents with regard to amount payable to the petitioners.

9. Considering the above facts and circumstances, it is ordered as follows:

i) Mrs.Justice Chitra Venkataraman, Judge [Retd.], High Court, Madras, residing at Old No.17-B, New No.31, IV Main Road, Raja Annamalaipuram, Chennai 600028 [Contact Telephone/Mobile No.044-24355679/98409 90000] is appointed as a Sole Arbitrator to enter upon reference and adjudicate the dispute.

ii] The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order.

iii] The learned Sole Arbitrator appointed herein shall be paid fees as per the schedule and the same shall be borne by the parties equally.

This Original Petition is ordered accordingly, leaving the parties to bear their own costs.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

WEB COMM

1. Mrs.Justice Chitra Venkataraman,
Former Judge of High Court of Madras,
Old No.17-B, New No.31, IV Main Road,
Raja Annamalaipuram, Chennai 600028.



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N.SATHISH KUMAR.J.,
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