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Arb.O.P.No.31 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.31 of 2023

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

..... Petitioner

-Versus-

1.Shreevelu Builders (P) Ltd.,
Block-2, Alaka Palazzo,
No.4/219, Poonamallee High Road,
Kattupakkam, Chennai 600 056.

2.N.V.K.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 8 of the 'Agreement' dated 30.01.2018 to adjudicate upon the disputes / differences between the petitioners and the respondents and to award costs.

For Petitioner : *Mr.A.K.Mylsamy for*
M/s.A.K.Mylsamy & Associates

For Respondent (s) : *Mr.A.V.Arun*



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ORDER

This Original Petition has been filed seeking appointment of a Sole Arbitrator in furtherance of Clause 8 of the 'Agreement' dated 30.01.2018 to adjudicate upon the disputes / differences between the petitioner 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. In addition to the share purchase agreement executed by the petitioner along with his wife, the petitioner also executed an agreement to Release Personal Guarantee and Collateral dated 30.01.2018. The petitioner and his wife were the promoters and first directors of the company. Under the Share Purchase Agreement dated 30.01.2018, the petitioner and his wife 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 petitioner and his wife had resigned from the directorship of the company w.e.f. 30.01.2018. The resignation of the petitioner and his wife was approved by the company by letter dated 31.01.2018.

3. It is the case of the petitioner that after the share purchase agreement



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(SPA), he and his wife were not part of the management and the company is under the control of the respondents. It is the grievance of the petitioner that as per clause 4, though the company and the 2nd respondent agreed to pay the petitioner a sum of Rs.5,00,000/- per month as interest for the loan availed by the petitioner from Karur Vysya Bank, till the personal guarantee and collaterals given by the petitioner for the load are duly released or discharged, the respondents have failed to honour their commitments. Hence, as per the agreement, the dispute has to be referred to arbitration.

4. It is the contention of the respondents that the petitioner and his wife had already approached the National Company Law Tribunal (NCLT) to enforce the share purchase agreement. Invocation of Clause 8 of the Agreement to Release Personal Guarantee and Collateral would be subject to fulfilment of the other agreement. When the conditions in the other agreement were not fulfilled, the dispute involved 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:-

“8. Any controversy or claim arising out of or relating to this Agreement, which is not settled through negotiation among the parties, shall be resolved



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exclusively by arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996, then in effect. Such controversy or claim 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 be the objections, it is for the respondents to raise the same before the arbitrator. Merely because the petitioner and his wife 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 / differences between the petitioners and the respondents with regard to amount payable to the petitioners.

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



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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

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



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N.SATHISH KUMAR.J.,
kmk

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