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Arb.O.P.(Com.Div.) No.278 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.278 of 2023

M/s.SPR Construction Private Limited,
represented by its Authorised Signatory
Hitesh Kumar P.Kawad

... Petitioner

Versus

M/s.Binny Limited,
represented by its Executive Chairman
M.Nandagopal

... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Sections 11(4) and 11(6) of the Arbitration and Conciliation Act, 1996 to appoint the Presiding/Third Arbitrator to the panel of of Arbitrators consisting of the Hon'ble Mr.Justice N.V.Ramana (Former CJI) nominated by the petitioner and the Hon'ble Mr.Justice Sharad Arvind Bobde (Former CJI) nominated by the respondent to adjudicate the disputes between the petitioner and the respondent arising out of JDA dated 22.02.2018.



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For Petitioner : Mr.P.S.Raman,
Senior Counsel
for M/s.ARK Law Associates

For Respondent : Mr.Satish Parasaran,
Senior Counsel
for Ms.Narmada Sampath

ORDER

This petition has been filed under Sections 11(4) and 11(6) of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator.

2.The petitioner is a Developer and the respondent is the Land Owner. The petitioner and the respondent have entered into an Amended and Restated Joint Development Agreement dated 22.02.2018. There seems to be a dispute arising out of the same. There is an Arbitration Agreement in the Amended and Restated Joint Development Agreement dated 22.02.2018, which is extracted hereunder:

'37.1 In the event of any dispute arising between the parties hereto with regard to this Agreement or the interpretation of the terms hereof the same shall be resolved amicably by the parties hereto failing which such differences or claims arising



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between the parties under or in relation to this Agreement shall be referred to the arbitration panel consisting of 3 (three) arbitrators, each party appointing 1 (one) arbitrator and such 2 (two) arbitrators shall jointly appoint the third arbitrator. The provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force shall apply to the arbitration proceedings under this Clause. The venue of Arbitration shall be Chennai, Tamil Nadu and the Language will be English.'

3.In accordance with the Dispute Resolution Mechanism (Arbitration Clause), the petitioner as well as the respondent have appointed their respective Arbitrators. The petitioner has appointed Hon'ble Mr.Justice N.V.Ramana (retired), Former Chief Justice of India as its Arbitrator. The respondent has appointed Hon'ble Mr.Justice Sharad Arvind Bobde (retired), Former Chief Justice of India as its Arbitrator.

4.The petitioner has claimed in this petition that there has been no consensus for appointment of the Presiding Arbitrator/Third Arbitrator



between the two Arbitrators and under those circumstances, this petition has been filed seeking for appointment of the Presiding Arbitrator/Third Arbitrator by this Court under Sections 11(4) and 11(6) of the Arbitration and Conciliation Act, 1996.

5.Mr.P.S.Raman, learned Senior Counsel for the petitioner and Mr.Satish Parasaran, learned Senior Counsel for the respondent had earlier submitted that this Court may appoint Hon'ble Mr.Justice R.M.Lodha, Former Chief Justice of India as the Presiding Arbitrator/Third Arbitrator since both the parties have appointed their respective Arbitrators, who are Former Chief Justices of India.

6.Accordingly, this Court has obtained consent from Hon'ble Mr.Justice R.M.Lodha, Former Chief Justice of India for being appointed as a Presiding Arbitrator/Third Arbitrator to adjudicate the dispute between the petitioner and the respondent, which has arisen out of the Amended and Restated Joint Development Agreement dated 22.02.2018 along with other two Arbitrators. He had graciously consented to act as a Presiding



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Arbitrator/Third Arbitrator. After obtaining his consent, this Court had also informed both the counsels today and on instructions from their respective clients, they have stated that they have no objection for Hon'ble Mr.Justice R.M.Lodha, Former Chief Justice of India being appointed as a Presiding Arbitrator/Third Arbitrator.

7.For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

(a)This Court appoints Hon'ble Mr.Justice R.M.Lodha, Former Chief Justice of India as the Presiding Arbitrator/Third Arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the Amended and Restated Joint Development Agreement dated 22.02.2018 along with other two Arbitrators, namely, Hon'ble Mr.Justice N.V.Ramana, Former Chief Justice of India and Hon'ble Mr.Justice Sharad Arvind Bobde, Former Chief Justice of India;

(b)Both the parties shall equally share the Arbitrator's fees;



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Index: Yes/No

Speaking/Non-speaking orders



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