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Arb.O.P. (Com.Div.) No.502 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.502 of 2023

R.Subashini

.. Petitioner

Vs.

M/s. ABIRAAJ CONSTRUCTIONS,
Rep. By its Proprietor Mrs.H.Abirami &
Managing Proprietor Mr.M.Hariraj,
No.3, 80 Feet Road, Sathya Gardens,
Saligramam, Chennai – 600 093.

.. Respondent

Prayer: Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to decide the disputes and dispute between the Petitioner and Respondent in terms of the Memorandum of Joint Venture Agreement dated 17.03.2021 and for a direction to the respondent to pay the costs.

For Petitioner : Ms.Swaraj Associates

For Respondent : Ms.Suganya Maya

ORDER

This petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to decide the



disputes and dispute between the Petitioner and Respondent in terms of the Memorandum of Joint Venture Agreement dated 17.03.2021 and for a direction to the respondent to pay the costs.

2.Despite notice being served on the respondent and counsel entering appearance, no counter has been filed on behalf of the respondent so far.

3.There is a dispute between the petitioner and the respondent under Memorandum of Joint Venture Agreement dated 17.03.2021 between the petitioner and the respondent. Clause No.33 of Joint Venture Agreement dated 17.03.2021 between the petitioner and the respondent reads as under:-

“33.Any dispute, among the parties shall be resolved through mutual discussion. In the event of a deadlock, the BUILDER shall nominate an Arbitrator, who shall decide the dispute so referred in accordance with the Arbitration and Conciliation Act, 1996 then in force. The award passed by the arbitrator shall be final and binding on the parties. The seat of Arbitration shall be at Chennai and shall be in English Language. The parties agree to have the entire arbitration disposed of within 90 days of date of reference. Subject to Arbitration, the Civil Courts of Chennai and the Hon'ble High Court of Madras alone shall have the jurisdiction in all



matters arising out of / touching and / or concerning the application and / or this Agreement. The Courts at Chennai shall have the exclusive jurisdiction to try the proceedings with regard to this Agreement."

4.As per the Joint Venture Agreement dated 17.03.2021, the respondent has to nominate an Arbitrator who has to decide the dispute between the petitioner and the respondent in accordance with the Arbitration and Conciliation Act, 1996. The petitioner has issued notice under Section 21 of the Arbitration and Conciliation Act, 1996 as early as on 26.08.2022 which has been replied by the respondent on 03.10.2022. The respondent has failed to nominate an Arbitrator.

5.Thus, the respondent has forfeited his right under the aforesaid clause for nominating the Arbitrator. In any event, such clause cannot be countenanced with in view of the decision of the Hon'ble Supreme Court in Perkins Eastman case and Section 12(5) of the Arbitration and Conciliation Act, 1996 and contrary to the seventh Schedule to the Act.

6.Considering the fact that the dispute is almost one and half year old and the respondent has not come forward to either file a counter to assist the Court for appointment of an Arbitrator, the Court is inclined



appoint **Mr.M.V.Swaroop, Advocate, (Mobile No: 9003263741)**

residing at **No.17/5, Krishna Street, T.Nagar, Chennai – 600 017** 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.

7.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.

8.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.

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

10.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.

13.12.2023

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Index : Yes / No
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Neutral Citation : Yes / No



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C.SARAVANAN, J.

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