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Arb.O.P.(Com.Div.) No.608 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.608 of 2022

1.Shaik Zamruth Begum @ Shaik Begum Zamruth

2.Shaik Rahamathunnisa Begum

3.Shaik Salma

4.D.Anitha

All the petitioners are represented by their

Power of Attorney agent

Bijivemula Ravindranadha Reddy

... Petitioners

Vs.

1.M/s.Jubilee Plot and Housing Private Limited,

Represented by its Managing Director R.P.Darmalingam

2.R.Kalai Selvi

3.R.P.Darmalingam

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to resolve the dispute between the parties that has arisen under the Compromise Memorandum of Understanding dated 02.12.2019.



Arb.O.P.(Com.Div.) No.608 of 2022

For Petitioners : Mr.E.Hariharan

For Respondents : Mr.D.Sai Kumaran

ORDER

This petition has been filed by the petitioners under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointing an arbitrator in respect of a dispute between the petitioners and the respondents under the Compromise Memorandum of Understanding dated 02.12.2019.

2. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

3. The dispute between the petitioners and the respondents is under the Compromise Memorandum of Understanding dated 02.12.2019. Clause 17 of the aforesaid Compromise Memorandum of Understanding reads as under:-

"17. In the event of any difference or dispute between the parties hereto on the construction of this agreement or any clause herewith or the rights, duties and obligation, either party hereunder the dispute shall be referred to Arbitration. The venue of arbitration shall be at Chennai. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof. Each party to the dispute shall appoint one



WEB COPY

Arbitrator each and the two Arbitrators shall appoint the third or the Presiding Arbitrator (Umpire). The arbitration proceedings shall be conducted in English language. The arbitral award shall be final and binding upon the parties and judgment may be entered thereon, upon the application of either party to a court having jurisdiction. Each party shall bear the cost of preparing and presenting its own case, and the cost of arbitration, including fees and expenses of the arbitrators, shall be shared equally by the parties unless the award otherwise provides."

4. The learned Counsel for the respondents submits that there is no arbitrable dispute between the petitioners and the respondents and therefore, this petition for appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 is misconceived.

5. I have considered the arguments advanced by the learned Counsel for the petitioners and the learned Counsel for the respondents.

6. There is no scope for entering into the merits of the case.

7. After the amendment to the Arbitration and Conciliation Act, 1996, the Court is merely required to look at the Agreement/Compromise Memorandum of Understanding between the parties and whether an arbitration clause exists for resolution of dispute between the parties.



WEB COPY

8. In this case, there is a clause and therefore there cannot be any impediment for appointing an Arbitrator in terms of the aforesaid Arbitration Clause.

9. The learned Counsel for the petitioners and the respondents were asked to nominate the names of their arbitrators as per clause 17 of the aforesaid Compromise Memorandum of Understanding for the Court to appoint Presiding Arbitrator.

10. The learned Counsel for the petitioners and the respondents have consented for appointment of a learned Senior Advocate as a sole arbitrator though clause 17 contemplates arbitration by a panel of three arbitrators appointed.

11. Considering the above, Court is inclined to appoint **Mrs.Chitra Narayan, Advocate, Enrollment No.531(b)/1994, (Cell No.9094031934) residing at 3E, Kgeyes Eternity, Parvathy Street, Kalakshetra Colony, Besant Nagar, Chennai - 600 090** as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* disputes between the parties.



WEB COPY

12. 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 from the date of receipt of a copy of this order, without getting influenced by any of the observations made in this order.

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

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



WEB COPY



Arb.O.P.(Com.Div.) No.608 of 2022

C.SARAVANAN, J.

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

11.10.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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Arb.O.P.(Com.Div.) No.608 of 2022