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Arb. O.P. (Com. Div.) No. 578 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P. (Com. Div.) No. 578 of 2022

S.Baskaran

... Petitioner

Vs.

1. M.Balaji

2. Maria Parthiban

... Respondents

PRAYER: This Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to go into the dispute between the petitioner and the respondent in respect of partnership deed dated 20.01.2016.

For Petitioner : M/s. M.A.Aruneshe

For Respondents : Mr. Ramesh Ganapathy
for Mission Legal

ORDER

The present petition has been filed for appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.



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2. Learned counsel for the petitioner submits that the petitioner and the respondents have entered into partnership agreement dated 20.01.2016 and the present dispute arose among the petitioner and the respondents due an alleged misappropriation of funds by the respondents, since they have been maintaining separate accounts without disclosing the same to the petitioner, who is also a partner. According to the petitioner, the present dispute is arbitrable in terms of clause 15 of the partnership agreement dated 20.01.2016, which reads as follows:-

“15. Arbitration:

In the event of dispute among the partners or their legal representatives, either in conduct of business or as regards terms of partnership or on dissolution, such dispute will be referred to an arbitrator as agreed between partners or in the event of there being no agreement on appointment of such arbitrator, by as many arbitrators, one appointed by each of the partners and decision of such arbitrator/arbitrators will be binding on the parties. In case of more than one arbitrator and in absence of consensus between them, the different will be referred to an umpire as agreed between them and such decision will be binding



on both the parties.”

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3. Learned counsel has also entered appearance for the respondents and submits that the present dispute is arbitrable. He further submits that the petitioner has raised IP dispute also and that dispute may not be considered by the Arbitrator. However, learned counsel for the petitioner submits that the respondents cannot decide as to whether the Arbitrator has jurisdiction or not and he may decide the dispute based on the facts and circumstances of the case.

4. This Court is of the view that the Arbitrator cannot be directed not to decide a particular dispute. It is open to the parties to raise disputes before the Arbitrator and it is open to the Arbitrator to decide the dispute in accordance with law. Since learned counsel for the respondents also have no objection for appointment of Arbitrator, this Court feels it appropriate to pass the following order:

i) Mr. R.Balachandran, Chartered Accountant, residing at Flat 3B, 3rd Floor, III Block, Bajaj Apartments, 4, Nandanam Extn. 1st Main Road, Nandanam, Chennai – 600 035, Contact Nos. 98843 50000 and 94442 58090 is appointed as Sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.



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ii) That the learned Sole 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) That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

iv) That the learned Sole Arbitrator appointed herein shall decide the matter on merits without being influenced or inhibited by any of the observations made in the order of this Court.”

5. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act, 1996, before the learned Sole Arbitrator.

02.01.2023

vjt

Note: Issue order copy on 06.01.2023.

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order

Copy to

Mr. R.Balachandran,
Chartered Accountant,



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Flat 3B, 3rd Floor, III Block,
Bajaj Apartments,
4, Nandanam Extn. 1st Main Road,
Nandanam,
Chennai – 600 035.



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KRISHNAN RAMASAMY, J.

vjt

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