



WEB COPY



Arb.O.P (Com.Div.) No.30 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.30 of 2023

E.Varadhan

... Petitioner

Vs.

M/s.Jansen Infrastructure (P) Ltd,
Rep.by its Director Dr.S.P.Senthilkumar,
S/o.Pandurangan,
No.1, 1st Floor, Gandhi Street,
Kumaran Nagar, Semmanchery, Chennai 600 119.

... Respondents

Arbitration Original Petition filed under Section 11(6)(A) & (C) of the Arbitration and Conciliation Act, 1996 to constitute Arbitral Tribunal in terms of Clause 14 of the Memorandum of Understanding dated 15.01.2015 entered into between the petitioner and the respondent and to adjudicate all the disputes between the petitioner and the respondent arising out of the Memorandum of Understanding dated 01.10.2015 and for the cost of this petition.



WEB COPY



Arb.O.P (Com.Div.) No.30 of 2023

For Petitioner : Mr.S.R.Sundar,
for M/s.A.Kanagasabapathy
For Respondent : Mr.Adinarayana Rao

ORDER

This Arbitration Original Petition has been filed under Section 11(6)(A) & (C) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondent, in terms of the Memorandum of Understanding (MOU) dated 01.10.2015 entered into between them.

2. Mr.S.R.Sundar, learned counsel for the petitioner would submit that the petitioner and the respondent entered into a Memorandum of Understanding on 01.10.2015, for investment purpose. It appears that the respondent had committed breach of trust by not fulfilling the terms of MOU. According to the petitioner, though MOU, dated 01.10.2015, came to be forcibly cancelled on 24.11.2021, unless, the petitioner receives entire invested amount as agreed to, in terms of the said MOU, liability of the respondent still subsists and the arbitration clause in the said MOU also survives. Hence, petitioner sent a notice dated 28.06.2022, to which,



respondent sent a reply on 22.07.2022. Thereafter, though the petitioner sent a notice dated 29.09.2022 under Section 21 of the Act with regard to the appointment of Arbitrator, the respondent had not acceded for the same. Therefore, with no other option, the petitioner had approached this Court for the appointment of Arbitrator. The learned counsel also, in support of his contention that the dispute is arbitral, referred to clause 14 of the said MOU which reads as follows:-

“14. Failure or omission to carry out or observe any of the terms provisions or conditions of this agreement by BUILDER will give rise to claim by the INVESTOR against BUILDER or be deemed to be a breach of this agreement then it shall be referred to the Arbitral Tribunal consisting of three arbitrators each party shall appoint one arbitrator and the two so appointed shall forthwith appoint a third arbitrator as the chairman as per Sec 16(3) of the Arbitration and Conciliation Act, 1996 shall apply to the Arbitration resorted to under the clause. Decisions and the awards shall be made by all or majority of the Arbitrators (including the Chairman).”

3. Mr.Adinarayana Rao, learned counsel appearing for the respondent would submit that they have no objection for appointment of Arbitrator, however, suggested that any other Senior Advocate may be appointed.



WEB COPY

4. Upon hearing the learned counsel on both sides and perusing the materials available on record, this Court is satisfied that the present dispute is arising out of the MOU dated 01.10.2015 and the same is arbitrable in terms of Clause 14 of the said MOU. Hence, this Court is inclined to appoint a sole Arbitrator to adjudicate the disputes between the parties.

5. Accordingly, this Court feels it appropriate to pass the following order:

i) Hon'ble Mr.Justice V.Parthiban (Rtd.), residing at Flat No.5069, Z Block, 12th Street, Anna Nagar West, Chennai-40, Contact No.94440 94401 is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties

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. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.



WEB COPY



Arb.O.P (Com.Div.) No.30 of 2023

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.

6. With the above direction, this Arbitration Original Petition is allowed.

15.06.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation: Yes / No
sd/nsa

Note : Issue on 11.07.2023



WEB COPY



Arb.O.P (Com.Div.) No.30 of 2023

KRISHNAN RAMASAMY.J.,
sd/nsa

Arb.O.P (Com.Div.)No.30 of 2023

15.06.2023