



Arb.Appln.No.167 of 2024

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KRISHNAN RAMASAMY, J.

This application has been filed to direct the respondents to furnish security for a sum of Rs.10,37,00,094/-, failing which to attach the interest of the respondents in the projects referred to the Annexure in the Judges Summons.

2. When this matter was taken up for hearing today, the learned Senior counsel appearing for the applicants would submit that though the present application was filed for interim reliefs, now, the applicants are intend to go for Arbitration to adjudicate the disputes between the parties.

3. Further, he would submit that the parties had entered into Joint Venture Development Agreement (JVA) dated 14.02.2018 and the present dispute between the parties, which is arising out of the JVA, is arbitrable as per the terms of Clause 33 of the said JVA. Hence, he requests this Court to appoint an Arbitrator to adjudicate the dispute between the parties.



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4. In reply, the learned counsel appearing for the respondents had strongly opposed with regard to the arbitrability of the disputes since according to him, the said disputes were not arising out of the JVA dated 14.02.2018. However, he fairly submitted that he has no objection to appoint any Retired High Court Judge as Arbitrator to adjudicate the dispute between the parties, including the arbitrability of the disputes. Further, he has also requested this Court to grant liberty to the respondents to raise all their contentions before the learned Arbitrator to be appointed by this Court.

5. Heard the learned counsel for the applicants and the respondents and also perused the materials available on record.

6. In the present case, this Court has already passed an interim order on 22.03.2024, which reads as follows:

“Notice on the respondents returnable in two weeks.

Private notice is also permitted.

2. Any alienations made after this order will be subject



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to the outcome of the orders to be passed in this Arbitration Application.

3. List this case after two weeks.”

7. Today, though the learned counsel appearing for the respondent had strongly opposed with regard to the arbitrability of the disputes, he accepted for the appointment of Arbitrator to adjudicate the disputes between the parties, including the arbitrability of disputes.

8. According to the applicant the disputes between the parties are arising out of the JVA dated 14.02.2018. Upon perusal of the said JVA, it is clear that the disputes among the parties shall be resolved by virtue of Arbitration as per Clause 33 of the said JVA, if it is arising out of JVA and the said clause reads as follows:

“33. Any dispute between the parties to this agreement in regard to the interpretation of this agreement or any other agreements supplementary to this agreement and of any matter arising out of this agreement or any supplementary agreement shall be referred to arbitration under the



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provisions of the Indian Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996) to two arbitrators, each party nominating one arbitrator, who shall appoint a third arbitrator as prescribed under the Act. Any award given in any such arbitration proceedings shall be followed as per law. The venue of the arbitration proceedings shall be in Chennai only and the proceedings shall be in English only.”

9. Considering the above submissions and also in view of the fact that the disputes between the applicants and the respondents though the present original application was filed under Section 9, considering the request made by the learned counsel for the respective parties and since this Court is also dealing with the Section 11 jurisdiction, this Court is inclined to appoint an Arbitrator to adjudicate the disputes between the parties.

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

i) The Hon'ble Dr.Justice P.Jyothimani, Former High Court Judge, Plot No.C-9, AGS Colony, Beach 1st Cross



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Street, Kottivakkam, Chennai 600 041, Mobile No.94980 20044, 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.

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 applicant shall bear the entire remuneration and other expenses and thereafter, the applicant can recover the same directly from the respondent and vice versa.

iv) The interim order already granted by this Court on 22.03.2024 is extended till the date of first hearing before the Arbitral Tribunal.

v) Thereafter, the learned Arbitrator shall consider the present application as Section 17 application and accordingly,



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the respective parties may make submission for further continuation of the interim injunction granted by this Court, etc.

vi) The parties are granted liberty to raise all their contentions before the learned Arbitrator, including the arbitrability of the present dispute.

vii) If any notice was already issued, the date of commencement of Arbitral proceedings would be the date of issuance of the said notice.

viii) If no notice was issued, since this Court has appointed Arbitrator in Section 9 proceedings, by invoking jurisdiction under Section 11, the commencement of Arbitral proceedings would be the date of passing of the present order.

11. With the above directions, this application is disposed of. No cost.

01.08.2024

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Note: Issue order copy on 09.08.2024.



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