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Arb.O.P (Com.Div.) No.176 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.176 of 2024

1.Dr.Subramanian
2.Dr.S.Meenakshi
3.Dr.S.Meyyappan

... Petitioners

Vs.

M/s.Hire and Build Technology Services Pvt. Ltd.,
Represented by its Director, Mr.Dilipan Bose,
Having Registered Office at:
No.14, 1st Main Road, Porur Gardens Phase-1,
Porur, Chennai 600 095.

... Respondent

Prayer:

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator to adjudicate on the disputes between the petitioner and the respondent having arisen out of agreement dated 23.04.2021 and to direct the respondent to pay the costs of the proceedings.



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For Petitioners : Mr.Yusuf Sq

For Respondent : Mr.K.Balasubramanian

ORDER

This Arbitration Original Petition has been filed to appoint an Arbitrator to adjudicate the dispute between the petitioners and the respondent.

2. The learned counsel for the petitioners would submit that the petitioner and the respondent had entered into Construction Agreement dated 23.04.2021. Subsequent to the said agreement, the dispute arose between the parties with regard to the completion of project and payment of due amount. Therefore, the petitioners sent a notice dated 07.08.2023 invoking Arbitration in terms of the Clause 21 of the Construction Agreement.

3. Further, he would submit that the present dispute, which is arising out of the Construction Agreement dated 23.04.2021, is arbitrable in terms



of Clause 21 of the said Agreement and thus, this petition has been filed for appointment of Arbitrator.

4. In reply, the learned counsel for the respondent had also accepted the submission made by the learned counsel for the petitioners and requests this Court to appoint a sole Arbitrator.

5. Heard the learned counsel for the petitioners and the respondent and also perused the materials available on record.

6. In the present case, it appears that the dispute between the parties is arising out of the Construction Agreement dated 23.04.2021. Upon perusal of the said agreement, it is clear that the dispute among the parties shall be resolved by virtue of Arbitration as per the Clause 21 of the said Agreement, which reads as follows:

"21. ARBITRATION:

Every dispute or question which may, at any time, arise between the parties hereto or any person claiming under them, in respect of any clause of this agreement or in



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respect of work done or quality of materials used or in respect of any delay in completion of works, shall be first referred to the architect who shall state her decision in writing. If any party is not satisfied with the decision of the architect, it may give a notice to the other party that the matter in dispute be referred to the arbitrator agreed upon and appointed by both the parties. If he shall be unable to or unwilling to act, to another to be agreed upon by between the parties or failing agreement, to three arbitrators, one to be appointed by each party to the dispute or difference and the two appointed arbitrators shall appoint the third arbitrator who shall act as a presiding arbitrator and the decision of the arbitrator(or arbitrators) shall be final and binding on the parties subject as aforesaid the arbitration and conciliation act, 1996 and the rules made there under shall apply to the arbitration proceedings under this clause. The decision so given by the Arbitrator(s) shall be final and binding upon the parties".

7. Considering the submissions made by the learned counsel for the petitioners and the respondent and also in view of the fact that the dispute between the petitioners and the respondent squarely falls within the purview



of clause 21 of the Construction Agreement dated 23.04.2021, this Court is inclined to appoint a sole Arbitrator.

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

i) **Ms.G.Thilakavathi, Senior Advocate, No.147, Law Chambers, High Court Buildings, Chennai 600 104, Mobile Nos.90031 34217 & 98401 49860**, 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 petitioner shall bear the entire remuneration and other expenses and



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thereafter, the petitioner can recover the same directly from the respondent and vice versa.

9. This Arbitration 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 Arbitrator.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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Note: Issue order copy on 03.07.2024



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KRISHNAN RAMASAMY.J.,
nsa

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