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Arb.O.P. (Com.Div.) No.532 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.532 of 2023

1.Mr.Rangan Krishna Kumar
2.Mrs Sonali Bhargava
Both residing at
No.4, Rathna Gounder Street,
Virupakshipuram,
Vellore – 632 002.

.. Petitioners

Vs.

M/s.Nathan's Foundation Private Limited
Represented by Mr.K.V.Shankaralingam,
No.18, Arulambal Street,
T.Nagar, Chennai – 600 017.

.. Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with Rule 2 of the Appointment of Arbitration of the Madras High Court Scheme, 1996, to appoint an arbitrator as per terms set out in Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 to decide the dispute between the petitioners and the respondent arising out of Construction Agreement dated 08.07.2013.



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For Petitioners : Ms.D.Yuva Jaishree for
Mr.B.Manikandan

For Respondent : No Appearance

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with Rule 2 of the Appointment of Arbitration of the Madras High Court Scheme, 1996, to appoint an arbitrator as per terms set out in Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 to decide the dispute between the petitioners and the respondent arising out of Construction Agreement dated 08.07.2013.

2. Despite service of notice through paper publication, the respondent has not come forward to enter appearance in this proceedings. The petitioners have invoked the Arbitration Clause under Section 21 of the Arbitration and Conciliation Act, 1996 as early as 20.12.2022. The respondent did not respond to the same and therefore this Original Petition has been filed.



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3. It appears that the petitioner had earlier approached the Madras High Court Arbitration Centre. The respondent had appeared before the Arbitration Centre and opposed for appointment of an arbitrator for the Madras High Court Arbitration Centre and therefore Madras High Court Arbitration Centre declined to appoint an Arbitrator. The respondent has forfeited the rights to appoint an Arbitrator. As the dispute between the petitioners and respondent is clearly arbitrable in terms of Clause 29 of the Construction Agreement dated 08.07.2013. Clause 29 of the Construction Agreement dated 08.07.2013 which reads as under:-

“29. Disputes, if any, arising out of this agreement will be mutually discussed and amicably settled, failing which, the disputes shall be referred to Arbitration of three Arbitrators, one each to be appointed by the Parties and the third Arbitrator shall be appointed by the two Arbitrators appointed by the parties, who shall act as 'Presiding Arbitrator' whose conclusion, shall be final binding on both parties. The Arbitration proceedings shall be in accordance with the provisions of Arbitration and Conciliation Act, 1996. The venue of Arbitration shall be at Chennai and all Arbitration proceedings shall be conducted in English language and governed by the above said Act.”



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4. Incidentally, in respect of the similar dispute by the first petitioner's brother Mr.V.Bala Subramanian in Arb.O.P.(Com.Div)No.430 of 2023. Considering the fact that the dispute is similar in respect of same layout, Court is inclined to appoint **Mr.K.K.Murralitharan**, Advocate as an Arbitrator to resolve the dispute between the parties.

5. The parties are at liberty to workout the venue for Arbitration at Chennai.

6. Considering the above, Court is inclined to pass the following order:-

(i) **Mr.K.K.Murralitharan, Advocate, (Mobile No.:98840 43499) residing at Old No.125, New No.257, Canara Bank Building, 5th Floor, Room No.B, Angappa Naicken Street, Chennai – 600 001**, is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties.



(ii) 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 after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

(iii) The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of 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 respondent remain *ex parte*, the petitioners shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

7. The Original Petition is allowed with the above observations,



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leaving the parties to bear their own costs.

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

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

C.SARAVANAN, J.



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