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Arb.O.P (Com.Div.) No.162 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

Arb.O.P (Com.Div.) No.162 of 2024

Messrs. ASV Constructions Pvt., Ltd.,
Rep., by its Managing Director
Mr.Bharat Kumar K.Kamdar,
ASV Bethel Square,
IV Floor, Old No.12, New No.28,
Sivaganga Road, Nungambakkam,
Chennai – 600 034.

...Petitioner

-VS-

1.D.Prakash Devi

2.L.Dharmichand

3.D.Sunil Kumar

4.D.Rishab Singhvi

...Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Joint Development Agreement/Arbitration Agreement dated 09.04.2012; and to direct the respondents to pay costs and grant such further or other reliefs.



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For Petitioner : Mr.C.A.Sundaram Sr., Counsel for
Mr.C.Seethapathy

For Respondents : Mr.Vijay Narayan Sr., Counsel for
Ms.G.Revathy

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes between the parties in terms of the Joint Development Agreement/Arbitration Agreement dated 09.04.2012 and direct the respondents to pay costs.

2. Even though Mr.Vijay Narayan, learned Senior counsel appearing for the respondents had initially objected to appoint an Arbitrator by contending that the issue had been resolved by the order of this Court in Arb.(Com.Div.)O.P.No.228 of 2021, where the learned Judge had held that the parties have to reconcile the accounts between them and arrange their affairs either with execution of Power of Attorney or to execute the documents pursuant to the agreement by themselves. But after hearing the arguments of Mr.C.A.Sundaram, learned Senior counsel appearing for the petitioner particularly with his reliance on the



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judgment of the Hon'ble Apex Court in the case of ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, In Re.***, reported in ***(2024) 6 SCC 1*** and ***SBI General Insurance Co., Ltd., vs. Krish Spinning*** reported in ***2024 SCC Online Sc 1754***, Mr.Vijay Narayan learned Senior counsel had submitted that an Arbitrator could be appointed by this Court to resolve the dispute between the parties, however would seek liberty of this Court to raise the objections by the respondents also before the Arbitrator.

3. Mr.C.A.Sundaram, learned counsel appearing for the petitioner had indicated that Section 21 notice was issued by the applicant on 09.10.2023, as mandate under the provisions of the enactment, a reply has to emanate from the respondents within 30 days period. However, a reply had come beyond the statutory period of 30 days and had also raised the very same stand that the disputes have all been arbitrated between the parties. Therefore, the reference to the nomination of an Arbitrator by the petitioner would have to be held final and requested this Court to appoint the very same Arbitrator as indicated in Section 21 notice.



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4. However, Mr.Vijay Narayan, learned Senior counsel appearing for the respondent would submit that Section 11(5) does not mandate that if no reply is given to a notice under Section 21, then the Arbitrator named in the Section 21 notice alone should be appointed as an Arbitrator. He would submit that if Section 11(5) of the Arbitration and Conciliation Act, would mandate that if there is no response from the recipient for the Section 21 notice, then it is open to the party who had issued the 21 notice to approach this Court for appropriate relief and therefore, he would submit that any other person can be appointed as an Arbitrator and had suggested two names, which was not consented by the petitioner.

5.In such view of the matter, since the parties have consented to appoint an Arbitrator I am inclined to appoint ***Hon'ble Mr.Justice M.Sathyannarayanan*** learned Judge (retired), residing at Old No.9, New No.5/1, 2nd Avenue, 2nd Extension, Indra Nagar, Adyar, Chennai – 600020, as Sole Arbitrator to enter upon the dispute between the petitioner and the respondents.



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6. The learned Sole Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Sole Arbitrator to endeavour to decide the dispute as expeditiously as possible, however, not later than six(6) months from the date of his entering into reference.

7. Further the respondent is at liberty to raise the objections made by them before this Court, before the learned Arbitrator also.

8. Accordingly, this Arbitration Original Petition is ordered.

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Index :Yes/No
Internet:Yes/No
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K.KUMARESH BABU, J.
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