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Arb.O.P (Com.Div.) No.178 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.178 of 2024

Kala Raghu

... Petitioner

Vs.

Deejos Engineers and Contractors Private Limited,
Represented by its Director Ms.Helen Dorothy,
No.1, 2nd Floor, CLC Works Road,
Chrompet, Chennai 600 044.

... Respondent

Prayer:

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint Mr.D.R.Sivakumar, M.L.,F-AICADR, Advocate/ADR Neutral, at Old No.28, New No.8, Erabalu Chetty Street, 2nd Floor, Chennai 600 001, to be the sole Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the Clause 21.5 of the Construction Agreement dated 22.08.2022 entered into between the petitioner and the respondent and to direct the respondent to pay the costs.

For Petitioners : Mr.K.Subash Anbarasu



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For Respondent : Mr.AGD.Balakumar

ORDER

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

2. The learned counsel for the petitioner would submit that the petitioner and the respondent had entered into Construction Agreement dated 22.08.2022. Subsequent to the said agreement, the dispute arose between the parties since the respondent had failed to meet the requirements of the petitioner. Therefore, the petitioners sent a notice dated 12.10.2023 invoking Arbitration in terms of the Clause 21.5 of the Construction Agreement.

3. Further, he would submit that the present dispute, which is arising out of the Construction Agreement dated 22.08.2022, is arbitrable in terms of Clause 21.5 of the said Agreement and thus, this petition has been filed for appointment of Arbitrator.



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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 petitioner 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 22.08.2022. 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 21.5 of the said Agreement, which reads as follows:

"21.5 Any dispute(s) or differences noted with this contract that includes any questions regarding its existence, validity, termination, execution of works and payments will be referred back and the proceedings will be conducted under the Arbitration and Conciliation Act 1996 (as amended therein), the place of arbitration will be CHENNAI, the language used in the arbitration will be ENGLISH. The governing law of the



contract will be the Substantive Laws of INDIA."

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7. Considering the submissions made by the learned counsel for the petitioner and the respondent and also in view of the fact that the dispute between the petitioner and the respondent squarely falls within the purview of clause 21.5 of the Construction Agreement dated 22.08.2022, this Court is inclined to appoint a sole Arbitrator.

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

i) **Mr.V.Nallasenapathy, Advocate, residing at No.61, TTK Road, Chennai 600 018, Phone No: 9841527190,** 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.



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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.

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.

27.06.2024

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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