



WEB COPY



Arb.Appln.Nos.315 & 264 of 2023

Arb.Appln.Nos.315 & 264 of 2023
& O.A.Nos.423 & 424 of 2023

KRISHNAN RAMASAMY, J.,

The application in Arb.Appln.No.315 of 2023 has been filed to direct the respondents to furnish security either as an immovable property or in the form of Bank Guarantee towards the satisfaction of the amount of claims that may be awarded by the Arbitral Tribunal.

2. The application in Arb.Appln.No.264 of 2023 has been filed to direct the respondents to disclose their personal assets, tangible and intangible assets, movable and immovable assets.

3. The application in O.A.No.423 of 2023 has been filed to grant an order of interim injunction restraining the respondent from alienating their personal assets.



Arb.Appln.Nos.315 & 264 of 2023

WEB COPY

4. The application in O.A.No.424 of 2023 has been filed to grant an order of interim injunction restraining the respondent from travelling outside the country pending disposal of the present proceedings.

5. When this matter was taken up for hearing, after some arguments, both the learned Senior counsel would submit that the present applications have been filed in the year 2023 for interim reliefs. However, now, the parties are intend to go for Arbitration to adjudicate the disputes between them.

6. Further, they would submit that the parties had entered into Trust Deed dated 26.05.2017 and the present dispute between the parties, which is arising out of the Trust Deed, is arbitrable as per the terms of Clause 66 of the said Trust Deed. Hence, they request this Court to appoint an Arbitrator to adjudicate the dispute between the parties. Both the learned Senior counsel had also requested this Court to grant liberty to the parties to raise all their



Arb. Appln. Nos. 315 & 264 of 2023

contentions before the learned Arbitrator.

WEB COPY

7. Heard the learned Senior counsel for the applicant and the respondent and also perused the materials available on record.

8. In the present case, it appears that the dispute between the parties is arising out of the Trust Deed dated 26.05.2017. Upon perusal of the said Trust Deed, it is clear that the dispute among the parties shall be resolved by virtue of Arbitration as per the Clause 66 of the said Agreement, which reads as follows:

“66. GOVERNING LAW

66.2 Notwithstanding anything stated elsewhere in this Trust Deed, other than Clause 66.1, all disputes and differences, including on differences of opinion on matters of interpretation, that may arise shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 to a sole arbitrator, to be appointed jointly by the Issuer and the Debenture Trustee / Debenture Holders within 7 (seven) Business Days from the date any dispute or difference has been notified in writing between them, and in case of there being no mutual agreement between the Issuer and the Debenture



Arb.Appln.Nos.315 & 264 of 2023

WEB COPY

Trustee / Debenture Holders the Issuer and the Debenture Trustee / Debenture Holders shall approach the court of competent jurisdiction within 14 (fourteen) Business Days from the date of such dispute or difference being notified in writing seeking appointment of the sole arbitrator. The place of arbitration shall be Mumbai or Chennai, as may be decided by the Debenture Trustee/Debenture Holders, and the language shall be English.”

9. Considering the submissions made by both the learned Senior counsel and also in view of the fact that the dispute between the applicant and the respondent squarely falls within the purview of clause 66 of the Trust Deed dated 26.05.2017, though the present original applications were filed under Section 9, considering the request made by the learned Senior 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.



Arb.Appln.Nos.315 & 264 of 2023

WEB COPY
order:

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

i) **The Hon'ble Mr.Justice Sanjay V.Gangapurwala, Former Chief Justice, Madras High Court, residing at Durga Mata Mandira Samor, House No.2-2-278, Govardhanagiri, Kharakuwa, Aurangabad – 431 001, Phone No.95451 11995,** 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.



WEB COPY



Arb.Appln.Nos.315 & 264 of 2023

iv) The learned Arbitrator shall consider the present applications as Section 17 applications and accordingly, decide the same in accordance with law. The parties shall address their grievances before the learned Arbitrator for granting of interim orders.

v) The parties are granted liberty to raise all their contentions before the learned Arbitrator.

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

vii) 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, these applications are disposed of. No cost.

20.06.2024

nsa

Note: Issue order copy on 24.06.2024

6/7



WEB COPY



Arb.Appln.Nos.315 & 264 of 2023

KRISHNAN RAMASAMY, J.,

nsa

Arb.Appln.Nos.315 & 264 of 2023
& O.A.Nos.423 & 424 of 2024

20.06.2024