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Arb.O.P(Com.Div.)No.398 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.398 of 2023

K.Chandrasekhar

... Petitioner

Vs.

1.Ravi Veni Shetty

2.Sheila Veni Shetty

3.KLN Automobiles Private Limited,
No.3, Apex Plaza, 2E 2nd Floor,
Nungambakkam High Road,
Chennai – 600 034

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to go into the dispute between the Petitioner and the Respondents 1 and 2 in respect of Share Purchase Agreement dated 21.09.2017.

For Petitioner : M/s.L.Murali Krishnan

For Respondents : Mr.Srinivasa Mohan for R1 and R2
for M/s.TVJ Associates

: No Appearance for R3



ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator. It is submitted that the dispute between the petitioner and the respondents under Share Purchase Agreement dated 21.09.2017 is arbitrable. Relevant Clause relating to resolution of dispute through arbitration reads as under:-

“9.Governing Law and Dispute Resolution

9.1.This Agreement shall be governed in all respects by the Laws of India.

9.1.1.In the event of any dispute between the parties, the matter shall be referred to arbitration. The arbitration shall be in accordance with the Indian Arbitration and Conciliation Act, 1996, in force at the relevant time. All proceedings of such arbitration shall be in the English language. The venue of the Arbitration shall be at Chennai. The arbitration shall be conducted by a sole arbitrator to be appointed by the parties.”

2. The petition is opposed by the respondents on the ground that there is no arbitrable dispute between the parties herein. It is further submitted that there was also another Share Purchase Agreement dated 18.09.2017 signed between the sister company of the third respondent namely KLN Motor Agencies, the 1st and 2nd respondents and the petitioner herein in respect of which the first and second respondents have approached this Court earlier and the matter was referred to the an Arbitral Tribunal presided over by **Hon'ble Mr.Justice K.Ravichandra Baabu (Former Judge of this Court)**.



3. The learned counsel for the first and second respondents would submit that in the said proceedings, the petitioner herein had attempted to file a counter claim for a relief seeking for appointment of an Auditor to audit the accounts of KLN Motor Agencies and KLN Automobiles Private Limited.

4. It is further submitted that under the Share Purchase Agreement dated 21.09.2017, the petitioner has to purchase the share from the first and second respondents and therefore there is no scope for the claim contained in Share Purchase Agreement relating to KLN Automobiles Private Limited dated 21.09.2017 and the Notice dated 30.09.2022 purportedly issued by the petitioner under Section 21 of the Arbitration and Conciliation Act, 1996. It is therefore submitted that the dispute is not arbitrable and therefore this petition is liable to be dismissed.

5. The learned counsel for the first and second respondents would also draw attention to reply of the first and second respondents on 09.11.2022 to the notice dated 30.09.2022, wherein, the respondents have denied the claims and allegations. That apart, the learned counsel for the first and second respondents would submit that in respect of the claim arisen out of Share Purchase Agreement relating to KLN Motor Agencies dated 18.09.2017, the



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learned Arbitrator has passed an Award during the last week of December and therefore submits that on this count also this Original Petition is liable to be dismissed as there is no cause of action sustaining as on date against the respondents herein.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the first and second respondents.

7. The notice issued by the petitioner under Section 21 on 30.09.2022 indicates that there is arbitrable dispute between the petitioner and the respondents. The dispute between the petitioner and the respondents is also arbitrable in terms of Clause 9 of the Share Purchase Agreement dated 21.09.2017. The respondents have not consented for appointment of an Arbitrator. Therefore, the respondents have forfeited their rights to appoint an Arbitrator.

8. Considering the fact that the learned Arbitrator has already



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passed an Award in respect of Share Purchase Agreement dated 18.09.2017. I see no impediment in allowing this petitioner by appointing the same arbitrator who has passed the award in respect of Share Purchase Agreement dated 18.09.2017.

9. Considering the same, **Hon'ble Mr.K.Ravichandra Baabu, Retired Judge of this Court, (Mobile No.9498033336)** residing at **No.1D, Crescent Castle, 13/6, II Crescent, Park Road, Gandhi Nagar, Adyar, Chennai – 20**, is appointed as an Arbitrator to adjudicate and resolve the *inter se* dispute between the parties.

10. 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.

11. The learned Arbitrator appointed herein shall be paid fees and



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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 respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

12. The Original Petition is allowed with the above observations, leaving the parties to bear their own costs.

13. Since the Court has appointed an Arbitrator, it is open to the petitioner as well as the respondents 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

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C.SARAVANAN, J.

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