



Arb.O.P.(Com.Div.) No.545 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.545 of 2023

Saurab Jain

... Petitioner

Vs.

1.M/s.Remedi Speciality Medicines LLP

2.Shanta

3.Babitha Jain

4.P.Ashish Kumar

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying for appointment of a Sole Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondents under the LLP Agreement dated 02.03.2016 and inspect, scrutinize and verify the books of accounts of the LLP and determine the amounts payable to the petitioner upon retirement as per the terms of the LLP and to direct the respondents to pay cost of the petition.

For Petitioner : Mr.U.Vijay Metha

For Respondents : Mr.V.Kuberan
for M/s.Rank Associates

ORDER

This Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of a Sole Arbitrator.



2. The petitioner is a confounding partner of the first respondent M/s.Remedi Speciality Medicines Limited Liability Partnership (LLP), which was registered as a Limited Liability Partnership Firm vide LLP Agreement dated 02.03.2016 under the provisions of the Limited Liability Partnership Act, 2008.

3. The other partner who had joined with the petitioner in forming the first respondent Partnership Firm exited and the second, third and fourth respondents have stepped in as the new partners. It appears that after the second, third and fourth respondents become the partners, the petitioner has not received the books of accounts, remuneration under the aforesaid LLP Agreement dated 02.03.2016.

4. The dispute between the petitioner and the respondents is arbitrable in terms of Clause 40 of the said LLP Agreement, which reads as under:-

"40. All disputes between the partners or between the Partner and the LLP arising out of the limited liability partnership agreement which cannot be resolved in terms of this agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996)."

5. The petitioner has issued two notices to the respondents. The first notice was issued on 04.08.2023 whereby, the petitioner has called upon the



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respondents to furnish the books of accounts. The second notice was issued on 12.09.2023.

6. According to the learned counsel for the respondents, the details have been furnished.

7. The petitioner has thereafter invoked Section 21 of the Arbitration and Conciliation Act, 1996 and has called upon the respondents to consent for appointment of Arbitrator to which, there is no reply.

8. The learned counsel for the respondents would submit that this Original Petition is premature inasmuch as the LLP Agreement dated 02.03.2016 and the Supplemental Agreement dated 01.04.2021 contemplate a prior notice of thirty days before the partner ceased/exited from the first respondent Partnership Firm.

9. It is submitted that till date, no notice has been issued as is contemplated under Clause 32 of the LLP Agreement dated 02.03.2016.



10. That apart, the learned counsel for the respondents has relied on Section 24 of the Limited Liability Partnership Act, 2008 to state that the present Original Petition is premature.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

12. Even though the petitioner has not issued thirty days prior to the notice as is contemplated under Clause 32 of the LLP Agreement dated 02.03.2016, it cannot be said that there is no dispute between the petitioner and the respondents. It is not mandatory for the petitioner to exit from the Partnership Firm for raising a dispute with the respondents.

13. The e-mail sent by the petitioner to the Chartered Accountant of the first respondent Partnership Firm to furnish the books of account has also been responded by the Chartered Accountant in the negation by stating that as per the protocol, sharing of financial details of clients will be done only to designated person in the concern and therefore the information called for cannot be furnished.



14. It is clear that there is an arbitrable dispute between the petitioner and the respondents herein as the respondents are not furnishing details and/or paying any dividends.

15. Considering the same, Court is inclined to appoint **Mr.A.Palaniappan, Advocate, Enrollment No.1198/1990, Mobile No.98410 33319, having Office at Shri Venkatesh Bhavan, Old No.35, New No.71, Armenian Street, Chennai - 600 001**, as an arbitrator to enter upon reference to adjudicate the *inter se* dispute between the parties.

16. 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 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.



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17. 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 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 subject to the Final Award to be passed by the learned Arbitrator.

18. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

19. Since this Court has appointed the 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

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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