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Arb.O.P (Com.Div.) Nos.491 and 492 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) Nos.491 and 492 of 2023
and
Appln.Nos.4966 and 4968 of 2023

M/s.Kanchanjanga Securities Company Pvt. Ltd.
Rep. by its Director Mr.Sushil Kumar Ranka
New No.182, Old No.144, N.S.C.Bose Road,
Davey Complex, 3rd Floor, Sowcarpet,
Chennai 600079. ...

Petitioner in
O.P.No.491
of 2024

M/s.Sree Sankeshwara Foundations & Investments
Rep. by its Partner Mr.J.Dilip Kumar Mehta
No.115, N.S.C.Bose Road, Chennai 600079. ...

Petitioner in
O.P.No.492
of 2024

..Vs..

M/s.Dugar Housing Limited
Rep. by its Managing Director Mr.Padam Dugar
No.123, Marshalls Road, Egmore,
Chennai 600008. ...

Respondent
in both
O.P.'s



Arb.O.P (Com.Div.) Nos.491 and 492 of 2023

Arbitration Original Petitions filed under Sections 14 (1) & (2) and 15(i) of the Arbitration and Conciliation Act, 1996 to terminate the mandate issued to Mr.R.Sankaranarayanan, learned Senior Advocate, as sole arbitrator in the above Arbitral proceedings by substituting a new Arbitration Tribunal.

For Petitioner
in both OPs : Mr.L.G.Sagadevan
for M/s.C.M.Mohanasundaram

For Respondent : Mr.K.V.Bhashyam Chari
in both OPs

COMMON ORDER

Since the issue involved in these petitions is one and the same, they are heard together and disposed of vide this common order.

2. The learned counsel for the Petitioners submitted that the Petitioner in both O.P.s and the Respondent entered into Joint Development Agreements dated 16.03.2012 and Supplementary Agreements dated 17.03.2012 respectively and since there is a dispute with regard to the same, the Petitioners filed O.P.Nos.305 and 168 of 2019 respectively before this Court seeking appointment of Arbitrator and this Court, *vide* order dated



Arb.O.P (Com.Div.) Nos.491 and 492 of 2023

21.11.2019 and 04.07.2019, appointed Mr.R.Sankara Narayanan, learned Senior Counsel, as a sole arbitrator in both these matters to resolve the dispute between the Petitioner and the Respondent and pending Arbitration Proceedings, the Petitioners have filed these O.P.s, seeking to terminate the mandate issued to the learned Arbitrator by substituting a new Arbitrator for the reason that Arbitration Proceedings are getting delayed and could not be completed. He further submitted that the Respondent has filed Applications in A. Nos.4966 and 4968 of 2023, which are listed along with these O.P.s, seeking extension of time for completion of Arbitration Proceedings and this Court, vide order dated 10.06.2024, has *suo motu* impleaded the learned Arbitrator as a party to these Applications, viz., Application Nos.4966 and 4968 of 2023 and ordered notice to him.

4. Today, a Memo dated 04.07.2024 filed by the learned Arbitrator has been produced before this Court denying the averments made in these Arbitration O.P.s and also stating that he has no objection in substituting him with some other Arbitrator. For the sake of ready reference, the said Memo is extracted hereunder:



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Arb.O.P (Com.Div.) Nos.491 and 492 of 2023

MEMO

The Arbitral Tribunal hereby denies all allegations against the Arbitral Tribunal by the Respondent. However, the Arbitral Tribunal is not interested in continuing the arbitration due to non-cooperation of the parties. The Tribunal has no objection in substituting this Arbitral Tribunal with a new Arbitral Tribunal.

5. The learned counsel appearing for the Respondent also has no objection for the present Arbitrator being substituted by some other Arbitrator.

6. Since the dispute arises out of the Joint Development Agreements and Supplementary Agreements and as the learned counsel for the Respondent has reported 'No Objection' for substituting the present Arbitrator, viz., Mr. R. Sankaranarayanan by some other Arbitrator, this Court is inclined to substitute the learned Arbitrator.



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

i) ***Dr.B.Ramaswamy, Advocate, Madras High Court, having office at No.B3/43, Jeevan Bhima Nagar, Anna Nagar West, Chennai- 600 101 (Mobile No.99996 05344),*** 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 petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.



Arb.O.P (Com.Div.) Nos.491 and 492 of 2023

8. With the above directions, these Arbitration Original Petitions stand allowed. In view of allowing of Arbitration Original Petition Nos.491 and 492 of 2024, nothing survives for adjudication in Application Nos.4966 and 4968 of 2023 and accordingly, the said applications stand closed.

09.07.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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Note: Issue order copy on 15.07.2024



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Arb.O.P (Com.Div.) Nos.491 and 492 of 2023

KRISHNAN RAMASAMY.J.,

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Arb.O.P (Com.Div.) Nos. 491 and 492 of 2023

09.07.2024