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Arb.O.P(Com.Div.) No.558 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.558 of 2023

S.K.Viswanth

... Petitioner

Vs.

1.SM Shelters Private Ltd
Madhav Keshav Door No.71/29
Burkit Road, T.Nagar, Chennai – 17.

2.Mr.Govindaraju Manishankar

3.Mr.Senapathy Venkata Raman

4.Mr.Suresh Vasan

5.Mr.RadhaKrishnan Madhavan

6.Mr.Madan Raj

7.Mr.Chandrakumar

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation 1996 to appoint an independent sole Arbitrator to adjudicate the disputes between the parties in terms of the Joint Venture Agreement dated 13th December 2012.



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For Petitioner : Mr.M.S.Murali
For Respondents : Mr.V.S.Senthil Kumar for R3.
M/s.Tanya Kapoor for R4.
Mr.P.Vasanth for R6.

ORDER

After notice was ordered by this Court, the respondents have entered appearance. The respondents 5 and 6 are the purchaser of undivided share in the land which was sold by the 1st respondent/Company, pursuant to a Power of Attorney dated 01.12.2013 registered on 16.12.2013 vide Doc.No.12812/13.

2. The petitioner herein is the owner of the land who had earlier signed Joint Venture agreement with a partnership firm named SVM Constructions. After the aforesaid Joint Venture Agreement dated 13.12.2012 was signed between the petitioner and the said partnership firm viz., SVM constructions, the first respondent company was incorporated on 27.05.2013. It appears that the first respondent company has taken over the business of the said partnership firm. As on 23.03.2024, data downloaded from the Ministry of Corporate Affairs, the respondents 2 and 5 are the Directors of the first respondent company.



3. Though there is a request for adjournment on behalf of the 4th respondent who is also said to be Director of the first respondent/company, Court is of the view that it is the partners of the partnership firm named SVM Constructions whose business was taken over by the first respondent company along with the partners of the SVM Constructions who were partners of the said partnership firm on the date of Joint Venture Agreement dated 13.12.2012. It is only they alone who can be held liable for the alleged breach committed by them.

4. Court is therefore inclined to appoint an Arbitrator to resolve the dispute between the petitioner and the first to fifth respondents as the first respondent company has taken over the business of the aforesaid partnership firm named SVM constructions which had signed the Joint Venture Agreement dated 13.12.2012 with the petitioner. Since, respondents 6 & 7 are merely purchaser of the UDS and flat promoted by the 1st respondent, and since they are not partners to the Joint Venture Agreement dated 13.12.2012, they are not required to be arrayed as respondents in the proposed Arbitral proceedings.

5. Therefore, **Mr.Suhrith Parthasarathy, Advocate No.1, Jagathambal Colony, 2nd Street, Royapettah, Chennai – 600 014 Mobile – 8939717592** is



appointed as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the petitioner and the respondents 1 to 5.

6. 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.

7. 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.



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8. 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.

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

25.03.2024

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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