



Arb.OP.(Com.Div).No.31 of 2024

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Krishnan Ramasamy, J.,

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act 1996, to appoint an Arbitrator to enter upon reference and adjudicate the disputes between petitioner and the third respondent arising under the agreement dated 04.02.2021.

2. The learned counsel for the petitioner submitted that the petitioner is a builder/registered partnership firm engaged in the business of development of properties. After mutual discussions, a Joint Development Agreement (in short “JDA”) was entered on 04.02.2021 by the petitioner with all the three respondents, who are the brothers. Pursuant to which, the petitioner has also paid a sum of Rs.1,20,00,000/- in terms of JDA. Further, the Planning Permission was obtained from CMDA on 20.10.2022, and after obtaining the Planning Permission, the respondents have to come forward to sign the supplementary agreement. Despite the payment of aforesaid amount to the respondents, they have not come forward to sign the supplementary agreement, due to which, the



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petitioner is not in a position to proceed with the project as per JDA.

Further, a meeting was held on 03.11.2022, in which, the third respondent did not participate despite being invited in this regard. Therefore, the petitioner invoked Clause 28 of the Joint Development Agreement and nominated an Arbitrator and communicated the same to the respondents by letter dated 20.01.2023, and Clause 28 of the JDA, dated 04.02.2021 reads as follows:

“Disputes Resolution:

(I) The parties agree to use reasonable efforts to resolve all disputes equitably and in good faith. If any dispute arises between the parties herein on account of breach of the terms of this Agreement, the parties shall in the first instance endeavor to settle the same amicably in spirit of co-operation.”

(II) If the dispute cannot be amicably settled, dispute shall be resolved by Arbitration under the Arbitration and Conciliation Act, 1996, as amended from time to time. In the event of a deadlock, both parties shall nominate an Arbitrator of their choice and the nominated Arbitrators shall appoint a Presiding Arbitrator who shall decide the dispute so referred to them in accordance with the Arbitration and Conciliation Act, 1996, as amended from time to time. The decision of the Arbitrators shall be binding on both the parties.

(III) The venue of the Arbitration shall be at Chennai and the Language shall be English. However, under any circumstances the Landowner shall not take any step to stop the construction work of the proposed Building Complex over the Schedule “A” Land, since it involves huge investment and also interest of third parties.”



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3. The learned counsel for the petitioner would further submit that, by referring to, the above Clause 28 of the JDA, the petitioner has nominated one Mr.P.Ganesan, Retired Judge, as an Arbitrator and requested the respondents to nominate the second Arbitrator. However, the respondents refused to nominate the second Arbitrator. Therefore, finding no other option, the petitioner has approached this Court.

4. On earlier occasion i.e., on 12.02.2024, the first and second respondents as party-in-person, appeared before this Court and stated that they have no objection for appointing an Arbitrator. As far as the third respondent is concerned, despite notice being served on him and his name is printed in the cause list, there is no representation on behalf of the third respondent.

5. Under these circumstances, taking into consideration of the submissions made by the learned counsel for the petitioner and the statements made by the first and second respondents in person, this Court is inclined to appoint a second Arbitrator. It is made clear that, the Arbitrator nominated by the petitioner and Arbitrator being appointed by



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this Court, shall decide and appoint the third Arbitrator and thereafter to proceed with the arbitration in accordance with law.

6. Accordingly, this Arbitration Original Petition is disposed of, with the following directions:-

- (a) **Mr.M.Ilangovan, Former District Judge, Mobile Nos. 8111022221 & 7010319425, No.10, W-Block, 5th Main Road, Anna Nagar, Chennai 600 040,** is appointed as a second Arbitrator to enter upon reference and adjudicate the disputes between the parties, arising out of the above said Joint Development Agreement.
- (b) The first and second arbitrators shall decide and nominate the third arbitrator in terms of JDA.
- (c) The Arbitrators shall initiate arbitration proceedings and after issuing notice to the parties concerned and upon hearing them, pass an award, on merits and in accordance with law and uninfluenced by any of the observations made in this order, within a period of six months from the date of receipt of a copy of this order.



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- (d) The Arbitrators shall be paid fees and other incidental charges, as per the Schedule IV of the Act and the same shall be borne by both the parties equally. In the event of non-appearance of the Respondents, the Petitioner shall bear the entire remuneration and other expenses and thereafter, the Petitioner is at liberty to recover the same directly from the Respondents.

15.04.2024

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Neutral Citation: Yes/No

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Note: Issue order copy on 29.04.2024



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