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Arb.O.P (Com.Div.) No.173 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

Arb.O.P. (Com.Div.) No.173 of 2025

Asha Anand

.. Petitioner

VS

1. S. Balachander

2. M/s.Royal Shrishtii Infrastructure
rep.by its Partner Soodi Kodutha
Kodhai Andaal
No.69, Nellai Complex, GST road,
Tambaram Sanatorium,
Chennai 600 047.

3. Soodi Kodutha Kodhai Andaal

.. Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to decide the disputes that have arisen between the petitioner and the respondent under the Memorandum of Understanding dated 09.11.2020.



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For Petitioner : M/s.S.P.SNithyan

For Respondents : R1 set exparte
Mr.M.Erajasimhan for R2 to R4

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator by this Court.

2. As directed by this Court on 17.06.2025, the petitioner has effected Substituted Service on the first respondent by effecting paper publication. The affidavit of service enclosing the paper publication has also been filed. The name of the first respondent has also been printed in the cause list today. Despite effecting paper publication, no one has entered appearance on behalf of the first respondent. Hence, the first respondent is set exparte by this Court.

3. Till date counter has not been filed by R2 to R4 who are represented by a learned counsel. The learned counsel for the respondents 2 to 4 on instructions would also submit that the contract which is the subject matter of the dispute between the parties contains an arbitration clause.



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Therefore, this Court has to necessarily appoint an Arbitrator as prayed for in this petition. The petitioner has also complied with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996 by issuing notice on the first respondent on 03.04.2025. The learned counsel appearing for the respondents 2 to 4 also does not dispute the same. Since the first respondent has been set exparte by this Court, it has to be construed that Section 21 of the Arbitration and Conciliation Act, 1996 notice was also served on the first respondent.

4. The Arbitration clause in the revised Memorandum of Understanding dated 09.11.2020 which is the subject matter of the dispute between the parties is reproduced hereunder:-

“Any dispute/s and/or difference/s between the parties with regard to this Agreement and all connected and related matters whatsoever shall be discussed and settled amicably. In the event of failure to resolve the dispute/s or difference/s amicably, all such dispute/s or difference/s whatsoever, shall be referred to Arbitration, subject to mutual agreement between the parties. The Arbitration proceedings shall be conducted in English and in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 or any statutory modification or enactment thereof.”



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5. Since there exists an arbitration clause in the contract which is the subject matter of the dispute between the parties and since the petitioner has complied with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996 and since the learned counsel for the respondents 2 to 4 has also stated no objection for appointment of an arbitrator by this Court and since the first respondent has been set exparte by this Court, this Court has to necessarily appoint an Arbitrator as prayed for in this petition.

6. For the foregoing reasons, this Arbitration Original Petition is allowed by issuing the following directions:

(a) This Court appoints Mr.M.K.Kabir, Senior Advocate, having address at No.GE, Vantage Tower, 34, 5th Avenue, Besant Nagar, Chennai 600 090, Mobile No.98400 44258, email address (kabirmk@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent, arising out of the revised Memorandum of Understanding dated 09.11.2020, on merits and in accordance with law;



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with the 4th Schedule of the Arbitration and Conciliation Act, 1996;

(c)Both the parties shall equally share the Arbitrator's fees;

(d)The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

No costs.

10.07.2025

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ABDUL QUDDHOSE, J.

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