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Arb.O.P.(Com. Div.) No.575 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2025

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.575 of 2024

M/s.Saravana Traders
Rep. by its Proprietor Mr.K. Kalimuthu,
Door No.5/128, Paraivalasu,
Kappalpatti Post,
Dindigul - 624 614.

... Petitioner

Vs.

1. M/s.Redleaf Herbals (P) Ltd.,
Rep. by its Managing Director Mr.Thiyagarajan
Door No.523/3, Bushido Towers,
Udayampalayam Road, Nava India,
Coimbatore - 641 018.

2. M/s. Vinayaga Agro,
Rep. by its Proprietor Ms.Maheswari,
Door No.523/3, Bushido Towers,
Udayampalayam Road, Nava India,
Coimbatore - 641 018.

... Respondents

PRAYER: Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate the dispute between the petitioner and the respondents as vide clause 13 of the Memorandum of Understanding dated 03.03.2017 and to direct the respondents to pay the cost.



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Arb.O.P.(Com. Div.) No.575 of 2017

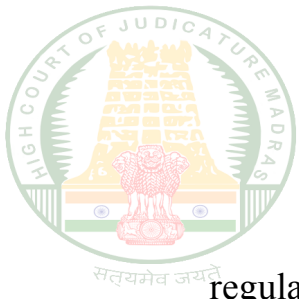
For Petitioner : Mr.N.C. Ramesh, Senior Advocate
for Mr. J. Hariharan

For Respondents : Ms. S. Yogalakshmi

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. The petitioner had supplied materials to the respondents through various purchase orders. The first respondent is a private limited company, represented by its Managing Director, Mr.Thiyagarajan. The second respondent is a proprietrix concern, represented by its proprietrix Ms.Maheswari. It is an admitted fact that the proprietrix of M/s.Vinayaga Agro / the second respondent is the wife of Mr.Thiyagarajan, Managing Director of the first respondent Company. Ms.Maheswari is also one of the Directors of the first respondent Company.



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3. According to the petitioner, both the respondents are having regular transactions with the petitioner and they have been purchasing the materials from the petitioner. There seems to be a dispute between the parties, with regard to non payment of dues in respect of the materials supplied by the petitioner to the respondents. A Memorandum of Understanding dated 03.03.2017 was entered into between the petitioner and the first respondent Company, represented by its Managing Director. Under the said Memorandum of Understanding dated 03.03.2017, certain sums of money have been agreed to be paid to the petitioner by the respondents for the materials supplied by the petitioner. Invoices have also been raised by the petitioner on the respondents for the materials supplied to both the respondents.

4. According to the petitioner, since the second respondent is also carrying on business in the very same premises of the first respondent Company and the materials received by the second respondent from the petitioner are also similar materials, both the respondents are bound by the terms and conditions of the Memorandum of Understanding dated 03.03.2017. According to the petitioner, certain sums of money are due and

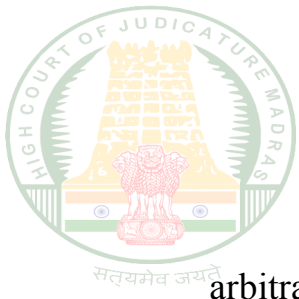


payable by both the respondents to them in respect of the supplies made by them to the respondents.

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5. The Memorandum of Understanding dated 03.03.2017 entered into between the petitioner and the first respondent contains an arbitration clause and the same is extracted hereunder:

" 13. இரு பார்ட்டியாருக்கிடையில் இந்த ஒப்பந்தம் சம்பந்தமாக ஏதேனும் கருத்து வேறுபாடு ஏற்படும் பட்சத்திலோ அல்லது பாரிப்பு ஏற்படும் பட்சத்திலோ கோவை PHP Chamber வணிகம் மற்றும் தொழில் சார்ந்த Arbitrator ஒருவருக்கு சமர்ப்பிக்க வேண்டும். அவ்வாறு நியமிக்கப்படும் Arbitrator அவர்களின் முடிவே இறுதியானது. அவர் ஆர்பிட்ரேசன் மற்றும் கான்சிலியேசன் ஏக்ட் 1996 சட்டத்தின்படி பிரச்சினையை தீர்த்து வைப்பார். ஆர்பிட்ரேசன் கோவையில் நடைபெறும். ஆங்கில மொழியிலேயே நடைபெறும். இந்த ஒப்பந்தம் சம்பந்தமாக ஏற்படும் வழக்குகள் கோவையிலுள்ள நீதிமன்றங்களிலேயே நடைபெறும் "



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6. The petitioner has invoked arbitration in accordance with the arbitration clause by issuing notice to both the respondents on 03.05.2024 to comply with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996. A reply dated 29.05.2024 was received by the petitioner to the said arbitration invocation notice, disputing the existence of arbitration clause in so far as the second respondent is concerned. But, however, admitting that the first respondent had entered into a Memorandum of Understanding dated 03.03.2017, which contains an arbitration clause. Since there was no consensus between the petitioner and the respondents, for appointment of an arbitrator, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator by this Court.

7. A counter has been filed by the respondents. The first respondent admits the existence of an arbitration clause in the Memorandum of Understanding dated 03.03.2017, which is the subject matter of dispute between the parties. However, in so far as the second respondent is concerned, the respondents claim that an arbitral dispute cannot be raised against her.



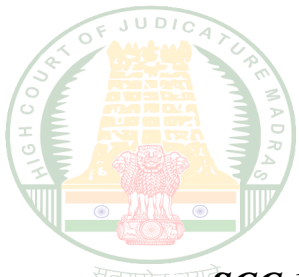
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8. Heard Mr.N.C. Ramesh, Senior Advocate representing Mr. J. Hariharan, learned counsel for the petitioner and Ms. S. Yogalakshmi, learned counsel for the respondents.

9. The learned senior counsel for the petitioner drew the attention of this Court to the following authorities in support of his contention that the second respondent, being wife of the Managing Director of the first respondent Company and also being one of the Directors of the first respondent Company and having received similar materials from the petitioner as that of the first respondent, is bound by the arbitration clause contained in the Memorandum of Understanding dated 03.03.2017 though the second respondent is not a signatory to the Memorandum of Understanding dated 03.03.2017:

***a) ONGC Ltd., Vs. Discovery Enterprises (P) Ltd. reported in 2022
(8) SCC 42;***

***b) Ajay Madhusudan Patel Vs. Jyotrindra S. Patel reported in 2025
(2) SCC 147;***



c) *Cox and Kings Ltd., Vs. SAP India (P) Ltd. reported in 2024 (4)*

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10. On the other hand, the learned counsel appearing for the respondents would submit that the second respondent is not bound by the arbitration clause contained in the Memorandum of Understanding dated 03.03.2017 since the second respondent is only an individual and therefore, according to her, the decisions relied upon by the learned senior counsel appearing for the petitioner, referred to supra, is not applicable since those decisions deal with group of Companies Doctrine. According to her, the transactions between the second respondent and the petitioner is an independent transaction and the terms and conditions contained in the Memorandum of Understanding dated 03.03.2017 entered into between the first respondent and the petitioner cannot be made applicable to the second respondent, who is not a signatory to the said Memorandum of Understanding dated 03.03.2017.

11. This Court, being a referral Court, is only deciding an application under Section 11 of the Arbitration and Conciliation Act, 1996. This Court



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has to only look whether, on a *prima facie* consideration, there exists an arbitration clause or not. In the case on hand, the petitioner has made a categorical assertion that both the respondents are bound by the Memorandum of Understanding dated 03.03.2017.

12. The following facts are also undisputed:

- a) The second respondent is the wife of the Managing Director of the first respondent Company;
- b) The second respondent is also one of the Directors of the first respondent Company;
- c) Both the first and second respondents have purchased similar materials from the petitioner;
- d) The second respondent is also carrying on her business in the very same premises as that of the first respondent Company.

13. The Honourable Supreme Court in the case of ***Ajay Madhusudan Patel Vs. Jyotrindra S. Patel reported in 2025 (2) SCC 147*** has held that the referral Court should not adopt a conservative approach to exclude all persons or entities who intended to be bound by the underlying contract



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containing the arbitration agreement through their conduct and their relationship with the signatory parties. In the instant case, the relationship between the second respondent and the first respondent, as referred to supra, has not been disputed by the respondents. Both the respondents are also carrying on business at the very same premises. A categorical assertion has also been made that the second respondent is well aware of the signing of the Memorandum of Understanding dated 03.03.2017 by the first respondent with the petitioner, which contains an arbitration clause. The second respondent is also the wife of the Managing Director of the first respondent Company. The second respondent is also one of the Directors of the first respondent Company.

14. The Honourable Supreme Court in the aforesaid decision has also held that the requirement of written agreement under Section 7 of the Arbitration and Conciliation Act, 1996 does not exclude the possibility of binding non signatory parties if there is a defined relationship between the signatory and the non signatory parties. In the case on hand, the relationship between the first and the second respondents, as stated supra, has not been disputed by the respondents.



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15. A categorical assertion has also been made by the petitioner that the second respondent was actively involved in the transaction, which resulted in the supply of materials by the petitioner both to the first and second respondents. Therefore, at this stage, while deciding an application under Section 11 of the Arbitration and Conciliation Act, 1996, the referral Court cannot adjudicate conclusively as to whether the second respondent is bound by the Memorandum of Understanding dated 03.03.2017, which contains an arbitration clause, or not as being a referral Court it has got only a limited scrutiny. The second respondent is always having the liberty to raise all objections with regard to the arbitrability of the dispute before the arbitrator, either under Section 16 of the Arbitration and Conciliation Act, 1996 or by filing the statement of defence, disputing the arbitrability of the dispute as against the second respondent before the arbitrator.

16. Though the learned counsel for the respondents would submit that the *Cox and Kings Ltd., Vs. SAP India (P) Ltd. reported in 2024 (4) SCC 1* as well as the *ONGC Ltd., Vs. Discovery Enterprises (P) Ltd. reported in 2022 (8) SCC 42* decisions of the Honourable Supreme Court deals with



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group of companies Doctrine and the same cannot be made applicable to the facts of the instant case, this Court after giving due consideration to the ***Cox and Kings Ltd., Vs. SAP India (P) Ltd. reported in 2024 (4) SCC 1*** decision, wherein it has been made clear that at the referral stage, the referral Court should leave it open for the arbitral Tribunal to decide whether the non signatory is bound by the arbitration agreement or not is allowing this petition. In the decision rendered by the Honourable Supreme Court in ***ONGC Ltd., Vs. Discovery Enterprises (P) Ltd. reported in 2022 (8) SCC 42*** while dealing with group of companies Doctrine, the Honourable Supreme Court held that while deciding whether a Company within a group of companies, which is not a signatory to arbitration agreement would nonetheless be bound by it or not, the law considers the following factors:

- a) The mutual intent of the parties;
- b) The relationship of a non-signatory to a party, which is a signatory to the agreement;
- c) The commonality of the subject-matter;
- d) The composite nature of the transaction; and
- e) The performance of the contract.



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17. In the case on hand, a categorical assertion has been made by the petitioner that the second respondent is bound by the Memorandum of Understanding dated 03.03.2017 entered into between the first respondent and the petitioner and the same is also supported by the following facts:

- a) The second respondent is the wife of the Managing Director of the first respondent Company;
- b) The second respondent is also one of the Directors of the first respondent Company;
- c) The second respondent is also carrying on her business at the same premises of the first respondent Company;
- d) Both the respondents have received materials from the petitioner almost at the same relevant period.

18. Therefore, at this referral stage, the contentions of the second respondent has to be rejected. If at all the second respondent has any grievance with regard to the arbitrability of the dispute as against her, her only remedy is to either file an application under Section 16 of the Arbitration and Conciliation Act, 1996 before the arbitrator appointed by

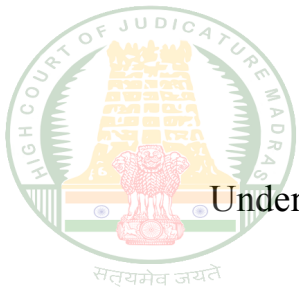


this Court or by filing the statement of defence before the arbitrator disputing the arbitrability of the dispute. Hence, at this stage, this Court should leave it open for the arbitrator to decide whether the second respondent is bound by the arbitration clause or not.

19. For the foregoing reasons, this Court has to necessarily appoint an arbitrator in accordance with Section 11 of the Arbitration and Conciliation Act, 1996 to adjudicate the dispute between the petitioner and the respondents arising out of the Memorandum of Understanding dated 03.03.2017.

20. Accordingly, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

(a) Hon'ble Mrs.Justice R. Banumathi, Former Judge, Supreme Court of India, who is having address at A-417, Second Floor, Arjun Marg, Defence Colony, New Delhi - 110024 (Mobile No.70429 55477 / 73973 29476) is appointed as the sole Arbitrator to decide the dispute between the petitioner and the respondents arising out of the Memorandum of



Understanding dated 03.03.2017;

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(b) The Arbitrator shall be paid her remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996 or as per the mutual consent of both the parties;

(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.

19.03.2025

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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