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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div).No.73 of 2021

1.M/s.Rajasthani Marble
Rep by its Partner
A.K.A.Jayanthi Wife of AR.K.Arunachalam
Having its office at
No.40A, Bharathiyar Road
Kottucherry, Karaikal – 609 609.

2.Ms.A.K.A.Jayanthi
Wife of AR.K.Arunachalam
Partner
M/s.Rajasthani Marble
Having its office at
No.40A, Bharathiyar Road
Kottucherry, Karaikal – 609 609. ... Petitioners

vs.

1.Na.K.Kumar Son of N.Kuppurathinam
Managing Partner
M/s.Rajasthani Marble
Residing at
No.5, Kamarajar Salai Extension
Karaikal – 2.

2.Na.K.Kumar Son of N.Kuppurathinam
Proprietor

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M/s.New Rajasthani Marbles
No.40A, Bharathiyar Road
Kottucherry, Karaikal – 609 609. ... Respondents

Prayer:

Arbitration Original Petition filed under Section 11(6) of Arbitration and Conciliation Act, 1996 to appoint an independent qualified sole Arbitrator to hear and decide the claims of the Petitioner, arising of the Partnership Agreement dated 07.03.2018 and direct the respondent to pay the cost of this petition.

For Petitioners : Mr.AR.M.Arunachalam

For Respondents : Mr.S.Rajendrakumar

O R D E R

Captioned Arb OP has been presented in this Court on 26.07.2021 *inter alia* under Section 11(6) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' (hereinafter 'A and C Act' for the sake of convenience and clarity) with a prayer for appointment of a sole Arbitrator.

2.In the hearing today, Mr.AR.M.Arunachalam, learned counsel for

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the two petitioners and Mr.S.Rajendrakumar, learned counsel for the two respondents are before this Court. Though there are two respondents, there is no disputation that it is effectively only one person and that is Na.K.Kumar (son of N.Kuppurathinam) and therefore, this Court will refer to both the respondents in singular i.e., as 'respondent' in this order.

3.Before proceeding further, it is necessary to set out the trajectory which the captioned Arb.O.P has taken in this Court and for this purpose, this Court deems it appropriate to extract and reproduce proceedings made by Hon'ble predecessor judges and myself in the previous listings from 11.08.2021 to 22.03.2022.

Order dated 11.08.2021

NSKJ

Notice to the respondent(s) returnable by 06.09.2021. Private notice is also permitted.

2.Post the matter on 06.09.2021.

Order dated 06.09.2021

NSKJ

At the request of learned counsel appearing for respondent, post the matter on 24.09.2021 for filing counter.

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Order dated 24.09.2021

NSKJ

At request, post the matter on 21.10.2021.

Order dated 21.10.2021

NSKJ

Post on 01.11.2021.

Order dated 01.11.2021

NSKJ

Heard both sides.

2.Having regard to the nature of the dispute, particularly, Supplementary agreement has been executed in the name of some other person, this Court is inclined to refer the parties to the Mediator to mediate the issue. Accordingly, this Court request Mr.M.K.Kabir, Senior Counsel to act as a Mediator in this matter.

3.The parties are directed to appear before the Mediator after seeking convenience of the Mediator about the date and time. The Mediator is at liberty to fix his fees and the same shall be borne by the parties equally.

4.Post the matter on 30.11.2021.

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Order dated 30.11.2021

SKRJ

It is submitted on behalf of the applicant that the Mediation proceedings are underway. Therefore, adjournment is requested. Let the matter appear on 21.12.2021.

Order dated 08.02.2022

MSJ

Mr.M.Arunachalam and Mr.S.Rajendrakumar learned counsel on both sides who are before this Court submit that Mediation is underway and they are hopeful of an amicable settlement. Rescheduling of the matter by four weeks is sought.

2.List under the caption 'FOR REPORTING SETTLEMENT' on 08.03.2022.

Order dated 08.03.2022

MSJ

Mr.M.Arunachalam, learned counsel for two petitioners and Mr.S.Rajendrakumar, learned counsel for two respondents (though respondents are two in number, the person is only one, namely, Na.K.Kumar (Son of N.Kuppurathinam) are before this Court.

2.Both learned counsel submit that the efforts to come to an amicable settlement did not fructify. Both learned counsel

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submit that captioned Arb.OP has to be now heard out on merits. This Court is informed that the captioned Arb.OP is predicated on Clause 15 of a Partnership Deed dated 07.03.2018.

3.Learned counsel for respondent submits that he disputes the existence of an arbitration agreement between the parties.

4.Learned counsel for respondent requests for some time for examining some aspects of the matter before advancing final hearing arguments. Request acceded to.

List a fortnight hence. List on 22.03.2022.

Order dated 22.03.2022

MSJ

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 08.03.2022.

2.Mr.M.Arunachalam, learned counsel for two petitioners is before this Court and learned counsel is ready but Mr.S.Rajendrakumar, learned counsel for two respondents (effectively one individual) requests for a short accommodation citing difficulty. Request acceded to.

3.List on Monday i.e., on 28.03.2022.

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4.It is in the aforesaid backdrop that there is contest in the captioned Arb.OP.

5.Learned counsel for petitioners submits that there was a partnership deed dated 01.04.1997 wherein four individuals joined together for carrying on business in the name and style of 'M/s.RAJASTHANI MARBLE'. Thereafter, there was an amendment i.e., reconstitution of the partnership deed wherein and whereby two of the partners exited and the remaining two continued the partnership firm. This is vide a deed captioned 'Amended Partnership Deed' dated 07.03.2018 (hereinafter 'Primary Contract' for the sake of convenience and clarity). Clause 15 of the Primary Contract reads as follows:

> *'15.In case of dispute between any of the parties hereto the provisions of Arbitration Act, 1940 shall apply. In all other matters not specifically provided for above, the provisions'*

6.The aforementioned clause 15 of the Primary Contract is the arbitration agreement between the petitioners and the respondent is learned petitioner counsel's say. In other words, it is the 'Arbitration

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Agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. It is submitted that the captioned Arb.OP is predicated on the aforementioned arbitration agreement.

7.Learned counsel for the respondent, notwithstanding very many averments in the counter affidavit and notwithstanding verbose pleadings in the counter affidavit made pointed submissions on three aspects of the matter and they are as follows:

(a) The primary contract got effaced owing to 'Sammatha Pathiram' dated 24.12.2018 between the parties.

(b) The claim of the petitioners is assertion of a right in rem i.e., right to title qua properties and therefore is not arbitrable.

(c) The aforementioned arbitration clause is no arbitration clause as it talks about Arbitration Act, 1940 which was not in vogue on the date of primary contract i.e., on 07.03.2018.

8.In response to the aforementioned three points, learned counsel

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for petitioners submitted that the respondent has started doing business in the name of style of 'NEW RAJASTHANI MARBLE' as a sole proprietor without settling the dues of the petitioners qua primary contract and the dues are captured in a hand written document captioned 'balance sheet as on 31.12.2017'. Learned counsel for petitioners submit that the properties purchased from and out of the income generated by the firm are those which the petitioners are entitled to lay a claim and therefore, it cannot be gainsaid that it is a title suit.

9.This Court now proceeds to examine the three points that have been raised by the learned counsel for the respondent.

10.The first point is, Primary Contract getting effaced owing to 'Sammatha Pathiram' dated 24.12.2018. The law is well settled that when a arbitration agreement between contracting parties is in the form of a clause/covenant in a contract, the termination or effacing of the Contract does not terminate or efface the arbitration agreement. This principle was laid down by Hon'ble Supreme Court in the oft quoted ***Reva Electric Car Company Private Limited v. Green Mobil*** case reported in ***(2012) 2 SCC***

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93 and relevant paragraphs are paragraph nos.51 to 54 which read as follows:

> '***51.*** *Section 16(1)(a) of the Arbitration and Conciliation Act, 1996 provides that an arbitration clause which forms part of the contract shall be treated as an agreement independent of the other terms of the contract. The plain meaning of the aforesaid clause would tend to show that even on the termination of the agreement/contract, the arbitration agreement would still survive. It also seems to be the view taken by this Court in Everest Holding Ltd. [(2008) 16 SCC 774] Accepting the submission of Ms Ahmadi that the arbitration clause came to an end as the MoU came to an end by efflux of time on 31-12-2007 would lead to a very uncertain state of affairs, destroying the very efficacy of Section 16(1).*
>
> ***52.*** *The aforesaid Section 16(1) provides as under:*
>
> *"**16.Competence of Arbitral Tribunal to rule on its jurisdiction**.—(1) The Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose—*

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(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause."

53. *The aforesaid provision has been enacted by the legislature keeping in mind the provisions contained in Article 16 of the* UNCITRAL *Model Law. The aforesaid article reads as under:*

*"**16.Competence of Arbitral Tribunal to rule on its jurisdiction**.—(1) The Arbitral Tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause."*

54. *Under Section 16(1), the legislature makes it clear that while considering any objection with respect to the existence or validity of the arbitration agreement, the*

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arbitration clause which formed part of the contract, has to be treated as an agreement independent of the other terms of the contract. To ensure that there is no misunderstanding, Section 16(1)(b) further provides that even if the Arbitral Tribunal concludes that the contract is null and void, it should not result, as a matter of law, in an automatic invalidation of the arbitration clause. Section 16(1)(a) presumes the existence of a valid arbitration clause and mandates the same to be treated as an agreement independent of the other terms of the contract. By virtue of Section 16(1)(b), it continues to be enforceable notwithstanding a declaration of the contract being null and void. In view of the provisions contained in Section 16(1) of the Arbitration and Conciliation Act, 1996, it would not be possible to accept the submission of Ms Ahmadi that with the termination of the MoU on 31-12-2007, the arbitration clause would also cease to exist.'

11.The ***Reva Electric Car Company*** principle which is also the obtaining legal position i.e., legal position that when arbitration agreement is in the form of a clause/covenant in another contract, it will still be an independent contract, it will outlive the termination of the main contract and this by itself douses the first argument of the learned counsel for the

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respondent, as in the case on hand it is not a case of substituting one contract with another but the argument is Primary Contract got effaced by Sammatha Pathiram.

12.The second argument is that the claims of the respondent are not arbitrable. The answer to this is two fold. One is, it is not a right in rem but action in personam. It is a question of whether the petitioners have any rights to be enforced qua primary contract. The second limb of the answer to this is, such a plea i.e., some of the disputes are not arbitrable disputes can always be raised before the Arbitral Tribunal *inter alia* under Section 16 after the pleadings with specificity are made. To be noted, this being a Section 11 legal drill, elaborate pleadings on the claim of the petitioners with exactitude and specificity is not before this Court. This draws the curtains on the second point.

13.This takes this Court to the third point i.e., that clause 15 cannot be construed as an arbitration agreement as it refers to the Arbitration Act, 1940. Whenever a question as to whether a particular clause will qualify as an arbitration agreement arises, the lead case law which serves as touch

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stone is ***K.K.Modi v. K.N.Modi and Others*** reported in **(1998) 3 SCC 573**.

In ***K.K.Modi case law***, Hon'ble Supreme Court culled out from the A and C Act and laid down three determinants to decide whether an agreement would qualify as an arbitration agreement. These three determinants are

(i).Existence of disputes as against intention to avoid future disputes;

(ii).The tribunal or forum so chosen is intended to act judicially after taking into account relevant evidence before it and the submissions made by the parties before it;

(iii).The decision is intended to bind the parties.

14.The relevant paragraph in ***K.K.Modi case law*** is paragraph 21 and the same reads as follows:

> *'**21.** Therefore our courts have laid emphasis on (1) existence of disputes as against intention to avoid future disputes; (2) the tribunal or forum so chosen is intended to act judicially after taking into account relevant evidence before it and the submissions made by the parties before it; and (3) the decision is intended to bind the parties. Nomenclature used by the parties may not be conclusive. One*

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must examine the true intent and purport of the agreement. There are, of course, the statutory requirements of a written agreement, existing or future disputes and an intention to refer them to arbitration. (Vide Section 2 Arbitration Act, 1940 and Section 7 Arbitration and Conciliation Act, 1996.)'

15.A careful perusal of ***K.K.Modi*** principle makes it clear that the nomenclature or language takes a tertiary position qua determinant, the primary determinant is the intention of the parties to resort to ADR and another primary/secondary determinant is parties intention to judicially resolve the matter in and by a private Tribunal namely Arbitral Tribunal. In the case on hand, this Court is unable to persuade itself to believe that the aforementioned clause 15 does not qualify as an arbitration agreement as it is clear that the intention of the parties was to settle the disputes, if any by resorting to arbitration.

16.To be noted K.K.Modi was reiterated by Hon'ble Supreme Court in ***Jagdish Chander case*** reported in ***(2007) 5 SCC 719.***

17.This Court equally has no doubt that clause 15 is not happily

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worded. That it is not happily worded is attributable to the draftsman (with due respects) but that by itself does not rob it of the determinants which go to constitute a arbitration agreement in the light of *K.K.Modi principle*. In other words, to put it differently, if *K.K.Modi principle* is applied, this Court has no difficulty in coming to the conclusion that the intention of the parties was to resolve the disputes by resorting to arbitration and that is what has been set out in clause 15, though not nicely articulated. As alluded to supra, it is not happily worded but it is an arbitration agreement nonetheless. This puts to rest the third point that has been raised by the learned counsel for the respondent.

18.The learned counsel for the respondent made an attempt to press into service the ***Vidya Drolia case law*** being ***Vidya Drolia and Others v. Durga Trading Corporation and Others***. Learned counsel placed before this Court the manupatra version namely, ***MANU/SC/0939/2020*** and drew the attention of this Court to paragraph 158 thereat. There are two aspects of the matter. One is the observation there pertains to a Section 8 legal drill and not a Section 11 legal drill. The essential distinction is section 8 talks about testing the existence of a valid arbitration agreement whereas

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Section 11 talks only about the existence of an arbitration agreement. This is clearly set out in sub section 6A of Section 11. That sub section 6A draws the perimeter of a legal drill for Section 11 is well settled. This was well settled by the Hon'ble Supreme Court in ***Mayavati Trading case law*** in ***Mayavati Trading Pvt. Ltd vs Pradyuat Deb Burman*** reported in ***2019 (8) SCC 714***. The relevant paragraph is paragraph No.10 and the same reads as follows:

> *'**10**. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgement, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgement in Duro Felguera'*

19.Aforementioned excerpted portion of Mayavati Trading case law refers to Duro Felguera. To be noted, prior to ***Mayavati Trading case law*** in ***M/s.Duro Felguera S.A. Vs M/s. Gangavaram Port Limited*** reported

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in ***2017 (9) SCC 729***, the same principle was reiterated and the relevant paragraphs in ***Duro Felguera case*** are paragraph Nos.47, 59 and the same reads as follows:

> *'**47**. What is the effect of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as "the 2015 Amendment") with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.*
>
> .....
>
> ***59**. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. and Boghara Polyfab. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists – nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Courts intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected."*

20.To put it differently, the legal drill qua Section 8 of A and C Act

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is to find out prima facie whether a valid arbitration agreement exists. The expression used is *'unless it finds that prima facie no valid arbitration agreement exist'* (underlining made by this Court to supply emphasis). This is in contra distinction to the language in which sub section 6A of Section 11 is couched i.e., *'The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.'* (underlining made by this Court to supply emphasis). Therefore, the expression used in Section 8 is *'unless it finds that prima facie no valid arbitration agreement exist'* is in contra distinction to examination of existence of an arbitration agreement. In other words, sub section 6A does not talk about 'valid' arbitration agreement and it talks only about 'arbitration agreement'.

21.It is in the above said context that the ***Mayavati Trading principle*** which reiterated ***Duro Felguera*** came to be rendered by Hon'ble Supreme Court on 05.09.2019. This Court deems it appropriate to mention the date 05.09.2019 as an amending Act to the A and C Act, namely Act 33

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of 2019 seeks to delete sub section 6A in and by Section 3, more particularly 3(v), but all the provisions of this amending Act i.e., Act 33 of 2019 did not kick in on 30.08.2019. To be noted, this amending Act is dated 09.08.2019 and 10 out of the 16 provisions kicked in on 30.08.2019 vide notification by Government of India namely, S.O.3154(E). A careful perusal of S.O.3154(E) will reveal that Section 3 of the amending Act did not kick in. This means that sub section 6A of section 11 did not get omitted and it continues to be in the statute book. This is the reason why ***Mayavati Trading*** was rendered by Hon'ble Supreme Court on 05.09.2019 (post 30.08.2019).

22.To top it all, as rightly pointed out by learned counsel for petitioners, in ***Vidya Drolia case law*** itself Hon'ble Supreme Court has said that arbitrability cannot be decided at the stage of section 8 or section 11 unless it is a clear case of deadwood. Relevant paragraph is paragraph 173 and the same reads as follows:

> *'**173**. Before we part, the conclusions reached, with respect to question No. 1, are:*
>
> *a. Sections 8 and 11 of the Act have the same ambit with*

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respect to judicial interference.

b. Usually, subject matter arbitrability cannot be decided at the stage of Sections 8 or 11 of the Act, unless it's a clear case of deadwood.

c. The Court, Under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non-existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.

d. The Court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above, i.e., 'when in doubt, do refer'.

e. The scope of the Court to examine the prima facie validity of an arbitration agreement includes only:

a. Whether the arbitration agreement was in writing?

or

b. Whether the arbitration agreement was contained in exchange of letters, telecommunication etc?

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c. Whether the core contractual ingredients qua the arbitration agreement were fulfilled?

d. On rare occasions, whether the subject-matter of dispute is arbitrable?'

23.A careful perusal of aforementioned paragraph 173 of ***Vidya Drolia case,*** more particularly sub paragraph (d) of paragraph 173 makes it clear that a section 11 Court would make a reference and appoint an arbitrator when in doubt. The expression used by Hon'ble Supreme Court is '**when in doubt**, **do refer**'. I respectfully follow Vidhya drolia case law.

24.It would also be relevant to extract paragraphs 123, 124 also of ***Vidya Drolia*** case law, set out the same and a scanned reproduction of the same is as follows:

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123. Section 34 of the Act is as under:

Section 34 prior to Act 3 of 2016	Section 34 after Act 3 of 2016	Section 34 after Act 33 of 2019
Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with Sub-section (2) and Sub-section (3). (2) An arbitral award may be set aside by the Court only if - (a) the party making the application furnishes proof that-(i) a party was under some incapacity, or (ii) the arbitration agreement is not valid under the law t o which the parties have subjected it or,	Application for setting aside arbitral award. --(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with Sub-section (2) and Sub-section (3). (2) An arbitral award may be set aside by the Court only if-- (a) the party making the application furnishes proof that-- (i) a party was under some incapacity, or (ii) the arbitration agreement is not valid under the law to which the	Application for setting aside arbitral award. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with Sub-section (2) and Sub-section (3). (2) An arbitral award may be set aside by the Court only if-- (a) the party making the application establishes on the basis of the record of the arbitral tribunal that-- (i) a party was under some incapacity, or (ii) the arbitration

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failing any indication thereon, under the law for the time being in force; or (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitration award which contains decisions on matters not submitted to arbitration may be set aside; or (v) the composition of the arbitral tribunal or the arbitral	parties have subjected it or, failing any indication thereon, under the law for the time being in force; or (iii) the party making the application not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be as set aside; or (v) the composition of the	agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

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procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or (ii) the arbitral award is in conflict with the public policy of India. Explanation.- Without prejudice to the generality of Sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.	arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that-- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or (ii) the arbitral award is in conflict with the public policy India. Explanation 1.--For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-- (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or	(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that-- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or (ii) the arbitral award is in conflict with the public policy of India. Explanation 1: For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-- (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or

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(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made Under Section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. (4) On receipt of an application under Sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the	(ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice. Explanation 2.--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental of policy of Indian law shall not entail a review on the merits of the dispute. (2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence. (3) An application for setting aside may not be made	Section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice. Explanation 2: For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute. (2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence. (3) An application for setting aside

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opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.	after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made Under Section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. (4) On receipt of an application under Sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the	may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made Under Section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. (4) On receipt of an application under Sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will

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	grounds for setting aside the arbitral award. (5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement. (6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in Sub-section (5) is served upon the other party.	eliminate the grounds for setting aside the arbitral award. (5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement. (6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in Sub-section (5) is served upon the other party.

The intention of the legislators to provide for Section 34 in its present form, is to have a limited review of the award instead of a full-fledged appeal process. A party intending to object to an award, is first required to file an application Under Section 34(1) indicating the objections along with the copy of an award and other necessary documents, which are required as proof to satisfy grounds provided Under Section 34(2)(a) and (b) of the Act. Such complete petition is required to be filed within the time period prescribed Under Section 34(3) of the Act, failing which the appeal is rendered nugatory. The limitation prescribed Under Section 34(3) is bound with the right to file objections itself. The objections filed Under Section 34 must be relatable to the limited grounds provided Under Section 34(2) of the Act. It is the legislative intention to provide for numerous limitations Under Section 34 of the Act, which are required to be strictly adhered to so as to make Indian arbitration time-bound and commercially prudent to opt for the same. Section 37 of the Act, provides for limited appeal against the Section 34 order, as well as against certain other specified orders.

124. It is important to observe Section 45 of the Act, which provides a judicial authority with the power to refer parties to arbitration when Part II of the Act applies, in the following manner:

Section 45 prior to	Section 45 after	Section 45 after

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Section 45 prior to Act 3 of 2016	Section 45 after Act 3 of 2016	Section 45 after Act 33 of 2019
Power of judicial authority to refer parties to arbitration.	Power of judicial authority to refer parties to arbitration.	Power of judicial authority to refer parties to arbitration.
Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in Section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.	Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in Section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.	Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in Section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it prima facie finds that the said agreement is null and void, inoperative or incapable of being performed.

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25.In the light of the narrative thus far, considering the limited legal landscape or in other words, the limited legal perimeter of a section 11 exercise, as limited by sub section 6A of section 11 of A and C Act and as elucidated by the ***Mayavati Trading principle*** this Court deems it appropriate to appoint *Mr.Suhrith Parthasarathy, Advocate* having office at *161/1, VM Street, Royapettah, Chennai – 600 014 [Mobile: 8939717592]* as a sole arbitrator.

26.Learned sole arbitrator is requested to enter upon reference, adjudicate the arbitrable disputes that have arisen between the petitioners and the respondent by holding sittings at Madras High Court Arbitration Centre [MHCAC] under the aegis of this Court in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and Hon'ble Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017. It is also made clear that if the arbitrability issue is raised before the learned Arbitrator, the same shall be decided under Section 16 or under any other appropriate provisions as already alluded to supra.

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27.Captioned Arbitration O.P is disposed of in the aforesaid manner.

There shall be no order as to costs.

28.03.2022

Speaking/Non-speaking order
Index : Yes / No
Internet : Yes / No
pgp

Note: Registry is directed to communicate a copy of this order forthwith to

1.Mr.Suhrith Parthasarathy, Advocate
161/1, VM Street, Royapettah,
Chennai – 600 014
[Mobile: 8939717592]

2.The Director
Tamil Nadu Mediation and conciliation Centre
-cum-
Ex Officio Member,
Madras High Court Arbitration Centre
Madras High Court, Chennai – 600 104.

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M.SUNDAR, J.,

pgp

Arb.O.P (Com.Div).No.73 of 2021

Dated : 28.03.2022

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