

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 30TH DAY OF JUNE 2021 / 9TH ASHADHA, 1943

AR NO. 14 OF 2021

PETITIONER:

THE GENDER PARK

DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF KERALA, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, I, P T MOHAMMED SUNISH, AGED 45 YEARS, S/O P T ABDURAHIMAN, A-17, BRAHMINS CLOONEY LANE, KAWADIYAR, TRIVANDRUM.

BY ADV M.R. SUDHEENDRAN

RESPONDENTS:

- 1 RAIN CONCERT TECHNOLOGIES PVT LTD.
410, 4TH FLOOR, THEJASWINI, TECHNOPARK, TRIVANDRUM REPRESENTED BY ITS MANAGING DIRECTOR AND / OR CHIEF EXECUTIVE OFFICER.
- 2 MS VIDYA SAJITH KUMAR
MANAGING DIRECTOR, M/S FAIN CONCERT TECHNOLOGIES PVT LTD,
MYKOTTIL HOUSE, THIRUVANGOOR P O, KOYILANDY (VIA), KOZHIKODE-673318.
- 3 MR. SAJITH KUMAR K V
DIRECTOR, M/S RAINCONCERT TECHNOLOGIES PVT LTD, MYKOTTIL HOUSE,
THIRUVANGOOR P O, KOYILANDY (VIA), KOZHIKODE-673318.
- 4 THE CHIEF EXECUTIVE OFFICER
RAIN CONCERT TECHNOLOGIES PVT LTD,
410, 4TH FLOOR, THEJASWINI, TECHNOPARK, TRIVANDRUM

BY ADVS.

SRI.K.M.SATHYANATHA MENON

SRI.A.SANTHOSHKUMAR

SMT.KAVERY S THAMPI

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON 30.06.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court seeking a direction to the 1st respondent - to nominate an Arbitrator.

2. The petitioner edifies their prayer as above on Clause 15(2) of Annexure A-1 agreement, stated to have been entered into by them with the 1st respondent and argues that since disputes have arisen between the parties, the 1st respondent is obligated, through the said Clause, to nominate an Arbitrator from their side, along with an Arbitrator to be nominated by themselves. The petitioner points out that, as per the Arbitration Clause, the two Arbitrators so named are to choose a 3rd one and that the Arbitration panel so formed will have to consider and adjudicate the disputes between two sides.

3. I have heard Sri.M.R.Sudheendran, learned counsel for the petitioner and Sri.Sathyanatha Menon, learned counsel appearing for respondents 1 to 3.

4. Sri.Sathyanatha Menon, learned counsel submitted that this Arbitration request is not maintainable because though the Chief Executive Officer of the 1st respondent has been impleaded

as 4th respondent, there is no such person or designation in its service.

5. After saying so, he expressly admitted that Annexure A-1 agreement had been entered into and that it contains Clause 15(2), which is the Arbitration Clause; but added that his client had replied to the petitioner, when they made the request for Arbitration, that this Clause does not constitute an Arbitration agreement and that the agreement itself does not now survive on account of the laws of Limitation. He however, then added that if this Court is so inclined to appoint an Arbitrator, his clients would not stand in its way; but prayed that afore issues may be left open to be considered appropriately by the said Authority.

6. Sri.M.R.Sudheendran, learned counsel for the petitioner, submitted that since the respondents are now agreeable to subject themselves to arbitration to resolve their internecine disputes under the aegis of a sole Arbitrator, this Court may mould the relief prayed for since, as has been said above, what has been sought is a direction to the 1st respondent to nominate an Arbitrator; and thus prayed that this Court may appoint a sole Arbitrator, since the respondent is also agreeable to

the same.

7. When I evaluate the afore submissions, it is without any doubt that this Court cannot, while acting under Section 11 of the Arbitration and Conciliation Act 1996, direct the 1st respondent to nominate an Arbitrator though Clause 15(2) of the agreement mandates them to do so.

8. Hence, all that this Court can do is to appoint either an Arbitrator or panel of Arbitrators as per the agreement or consent of the parties; and since it is now unequivocally agreed by the learned counsel for the rival parties that this Court may appoint a sole Arbitrator, I deem it appropriate to allow this Arbitration request on such terms.

9. Needless to say, all disputes between the parties, including as to whether Clause 15(2) of Annexure A-1 agreement is a valid Arbitration Clause and whether the agreement itself survives on account of the laws of Limitation, are issues that the learned Arbitrator will consider in terms of law after hearing the rival sides. Since the Annexure - 1 agreement specifies that the seat of Arbitration shall be in Thiruvananthapuram and since the parties are also *ad idem* about this, I deem it appropriate to

nominate an Arbitrator, who is available in Thiruvananthapuram.

In summation:

- (a) I nominate Smt.Leelamani N, District Judge (Retd.), Uthradam, PRA 8A, TC 6.986, Padayani Road, Vattiyoorkavu P.O., Thiruvananthapuram - 695 013", as the sole Arbitrator to adjudicate and resolve the disputes and differences between the parties to this case arising from Annexure A-1 agreement.
- (b) The Registry is directed to communicate a copy of this order to the learned Arbitrator within a period of one week from today and to obtain a Statement of Disclosure from her under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996.
- (c) Once the Disclosure Statement is obtained from the learned Arbitrator, the Registry shall release the certified copy of this order, with a copy of the said statement appended to it, retaining the original of the same on the files of this case.
- (d) The fees of the Arbitrator shall be governed by the Fourth Schedule.

(e) The parties to this case are *ad idem* that they will share the arbitration costs and fees equally and it is so recorded.

(f) In order to enable the Arbitrator to commence the proceedings without delay, I direct the parties to mark appearance before her at 11.00 AM on 30.07.2021.

This Arbitration Request is thus allowed.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

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APPENDIX OF AR 14/2021

PETITIONER ANNEXURE

ANNEXURE-A1 A TRUE COPY OF THE AGREEMENT DATED 23/07/2014 EXECUTED BETWEEN THE PETITIONER AND THE RESPONDENT.

ANNEXURE-A2 A TRUE COPY OF THE LETTER DATED 10.07.2017 ISSUED BY THE PETITIONER.

ANNEXURE-A3 A TRUE COPY OF THE MINUTES OF THE PROCEEDINGS DATED 26/10/2018.

ANNEXURE-A4 A TRUE COPY OF THE NOTICE DATED 22/7/2019 SENT BY THE PETITIONER.

ANNEXURE-A5 A TRUE COPY OF THE NOTICE DATED 9/12/2020 BY THE PETITIONER.

ANNEXURE-A6 A TRUE COPY OF THE REPLY DATED 29/12/2020 SENT BY THE RESPONDENT.