R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CIVIL MISC. PETITION NO. 303 OF 2023

BETWEEN:

1 . SRI. S. SHIVAKUMAR
PARTNER
M/S SGH RURAL GODOWN
AGED 53 YEARS

2 . SMT. H. GIRIJA
PARTNER
M/S SGH RURAL GODOWN
AGED 46 YEARS

BOTH ARE RESIDING AT NO.193/4
HARSHA HOSPITAL CAMPUS
NELAMANGALA BYPASS, NH-4
NELAMANGALA
BANGALORE RURAL-562 123.

...PETITIONERS

(BY SRI. UDAYA HOLLA, SENIOR ADVOCATE FOR
SRI. KRISHNA .T, ADVOCATE)

AND:

1 . M/S SGH RURAL GODOWN
A REGISTERED PARTNERSHIP FIRM
HAVING ITS REGISTERED OFFICE AT
NO.20/1, GOVENAHALLI, THYMAGONDLU HOBLI
NELAMANGALA TALUK

BANGALORE
REPRESENTED BY ITS PARTNER
SRI. G.H. KRISHNAMURTHY

2 . SMT SUNANDA
W/O LATE H. SHIVAKUMAR
PARTNER
M/S SGH RURAL GODOWN
R/AT NO.5743
MAHIMARANGASWAY NILAYA
GOVINDAPPA LAYOUT
SUBHASHNAGAR, NELAMANGALA
BANGALORE-562 123.

3 . SRI G.H. KRISHNAMURTHY
S/O SRI HANUMAIAH
PARTNER
M/S SGH RURAL GODOWN
R/AT NO.83, GOVENAHALLI
KULUVANAHALLI, NELAMANGALA
BANGALORE-562 111.

ALSO RESIDING AT 3RD CROSS
CHANNAPPA EXTENTION
NEAR NELAMANGALA MES PUBLIC SCHOOL
NELAMANGALA TOWN
BANGALORE RURAL-562 123.

…RESPONDENTS

(BY SRI. TEJASVI .K.V, ADVOCATE FOR R1 TO R3)

THIS CIVIL MISC. PETITION IS FILED UNDER SEC.11(5) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO APPOINT A SOLE ARBITRATOR NOMINATED BY THE PETITIONERS, TO ADJUDICATE THE DISPUTES BETWEEN THE PARTIES, WHICH HAVE ARISEN UNDER THE DEED OF PARTNERSHIP DATED 10/03/2008, VIDE ANNEXURE-A AND THE RECONSTITUTION DEED VIDE ANNEXURE-B AS THE PETITIONERS ARE WILLING TO SUBMIT THEMSELVES FOR

ARBITRATION. IF THIS HONBLE COURT WERE TO APPOINT ANY OTHER ARBITRATOR, OTHER THAN ONE NOMINATED BY THE PETITIONERS, THE PETITIONERS ARE AGREEABLE FOR THE SAME.

THIS CIVIL MISC. PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.02.2025, THIS DAY ORDER WAS PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

C.A.V. ORDER

This Civil Miscellaneous Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1966 (for short 'the Act') seeking appointment of sole arbitrator to resolve the dispute and difference between the parties under the deed of partnership dated 10.03.2008 evidenced at Annexure-A and the reconstitution deed evidenced at Annexure-B.

2. Respondents on receipt of notice have tendered appearance and have engaged their lawyer and their statement of objection is filed.

3. Petitioners in the present petition have alleged that respondents 2 and 3 have been mismanaging the firm and they have failed to maintain the accounts of the firm as required under the partnership deed. Petitioners therefore issued a notice on 28.4.2023 seeking to render the accounts and for dissolving the partnership forthwith. Respondents failed to reply. Therefore, petitioners claim that they were compelled to issue notice under Section 21 of the Act invoking arbitration clause and suggested the name of the arbitrator.

4. Respondents have filed objections regarding maintainability of the present petition on the ground that present petition under Section 11(5) of the Act is filed before expiry of statutory period of 30 days as provided under Section 21 read with 11(5) of Act. It is contended that the petition under Section 11(5) of the Act is filed without waiting for mandatory period of 30 days to elapse.

Therefore, respondents contend that the petition is premature and is liable to be dismissed.

5. Heard the learned Senior Counsel appearing for the petitioners and the learned counsel for respondents.

6. Before addressing the maintainability of the petition, it is pertinent to examine the significance of 30 days period mentioned in Section 11(5) of the Act.

7. Section 11(5) of the Act provides that where parties have agreed to appoint a sole arbitrator and one party fails to nominate an arbitrator within 30 days from the receipt of request to do so, the other party may approach the Court for appointment of an arbitrator under Section 11(6) of the Act. The statutory period of 30 days is provided as an opportunity to the respondents to act upon the notice and nominate an arbitrator thereby avoiding judicial intervention.

8. The object of this provision is to afford reasonable time to the respondents to comply with the request for appointment of an arbitrator. However, the premature filing of the petition under Section 11(6) of the Act does not result in an absolute bar to its consideration, as long as the defect is curable and the statutory period has since expired. In the present case on hand, legal notice issued by the petitioners invoking Section 21 of the Act is served on respondent on 4.7.2023. This petition is filed on 31.7.2023. Therefore, the defect that existed on the date of filing has stood cured since the statutory period of 30 days has since expired. The Supreme Court in catena of judgments has held that technical objections regarding premature filing should not be allowed to frustruate the arbitral process if the substantial requirement of law is ultimately met.

9. In the present case, though the petition was filed before completion of 30 days, the defect was obviously

curable and at this stage, the said defect and the objections raised by the respondents do not survive for consideration. Since the petition has remained pending before this Court since *2023, the 30 days period has elapsed long back and no appointment is made by respondents. Therefore, the purpose provided under Section 11(5) of the Act is fully satisfied and the objections are not tenable.

10. The respondents have acknowledged the existence of arbitration clause. After thorough review of the petition, annexures and supporting documents, this Court is satisfied that the petitioner has met the procedural requirements outlined under Section 11(4) of the Act.

11. In the light of the aforesaid clause of arbitration and the contentions advanced by the petitioners and respondents, this Court proceeds to pass the following:

ORDER

(i) This civil miscellaneous petition is allowed appointing Shri Justice Subhash B. Adi,

* Corrected vide court order dated 11.06.2025

Former Judge, High Court of Karnataka, as the sole Arbitrator to enter reference of the disputes between the petitioners and the respondents and conduct proceeding at the Arbitration and Conciliation Centre (Domestic and International), Bengaluru, according to the Rules governing the said Arbitration Centre;

(ii) All contentions inter se parties are left open for adjudication in the arbitration proceedings;

(iii) Office is directed to communicate this order to the Arbitration and Conciliation Centre and to Sri. Justice Subhash B. Adi, Former Judge, High Court of Karnataka, as required under the Arbitration and Conciliation Centre Rules, 2012;

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

*alb/-