



**CMP No. 52 of 2021**

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 30<sup>TH</sup> DAY OF JUNE, 2022**

**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**CIVIL MISC. PETITION NO.52 OF 2021**

**BETWEEN:**

M/S GEOSMIN STUDIO SUSTAINABLE SOLUTIONS LLP  
HAVING ITS PRINCIPLE PLACE OF BUSINESS AT  
NO.19/332A, KALLUMKAL, EDAKKAD  
KENICHIRA P.O, WAYANAD  
KERALA-673596

AND ALSO HAVING ITS BRANCH OFFICE AT  
F-01, MOSAIC, GOODEARTH MALHAR  
BEING RAJARAJESHWARI MEDICAL COLLEGE  
OFF MYSORE ROAD, KAMBIPURA  
KENGERRI HOBLI, BANGALORE-560060

REP BY ITS DIRECTORS,  
1. M.S. SNEHAL G. PAWAR  
AGED ABOUT 32 YEARS  
W/O ARUN JOHN KALLUMKAL

2. SRI. ARUN JOHN KALLUMKAL  
AGED ABOUT 35 YEARS  
S/O JOHN JOSEPH

...PETITIONERS

(BY SRI. RAJASHEKAR.B.G, ADVOCATE)

**AND:**

M/S ETHNUS CONSULTANCY SERVICES PVT LTD  
OFFICE AT NO.36<sup>TH</sup> CROSS ROAD  
4<sup>TH</sup> BLOCK- 5<sup>TH</sup> BLOCK, JAYANAGAR  
BENGALURU-560009  
REP BY ITS DIRECTORS

1. SRI. BADRINATH LINGARAJU  
AGED ABOUT 50 YEARS  
S/O NOT KNOWN TO PETITIONER



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2. SRI. MUKUND  
AGED ABOUT 40 YEARS  
S/O NOT KNOWN TO PETITIONER

...RESPONDENTS

(BY SRI. PARIKSHITH WARRIER, ADVOCATE FOR  
SRI. S. SUSHANT & VENKATESH RAI, ADVOCATES)

THIS CMP IS FILED UNDER SECTION 11(5) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO APPOINT ANY RETIRED DISTRICT JUDGE/ARCHITECTS AS THE SOLE ARBITRATOR TO ADJUDICATE THE CLAIM MADE BY THE PETITIONER BEFORE THE ARBITRATION CENTRE, BENGALURU AS PER THE TERMS AND CONDITIONS OF THE AGREEMENT DATED 26/03/2018 PRODUCED VIDE ANNEXURE-B TO THIS PETITION CONSIDERING THE FACTS AND CIRCUMSTANCES OF THE CASE TO MEET THE ENDS OF JUSTICE.

THIS CMP COMING ON FOR ADMISSION, THIS DAY THE COURT MADE THE FOLLOWING:

**ORDER**

1. The petitioner is before this Court seeking for the following reliefs:

- i. TO appoint any Retired District Judge/Architects as the Sole Arbitrator to adjudicate the claim made by the petitioner before the Arbitration Centre, Bengaluru as per the terms and conditions of the agreement dated 26/03/2018 produced vide Annexure-B to this petition considering the facts and circumstances of the case to meet the ends of justice.*
- ii. Pass any appropriate order or orders as this Hon'ble Court deems fit in the facts and circumstances of the case.*

2. The petitioner and the respondent had entered into an agreement for 'Interior Architectural Services and



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Construction/Execution' on 26.03.2018, which is governed by an arbitration clause, which is reproduced hereunder for easy reference:

*"All disputes or differences which may arise between the Client and the Architect under "Conditions of Engagement and Scale of Charges" with regard to the meaning or interpretation or mater or things done or to be done in pursuance hereof, such disputes and differences shall be referred for arbitration to the Council of Architecture. The arbitrator shall be appointed by the President, Council of Architecture. The arbitration shall be conducted as per the provisions of the Arbitration and Conciliation Act, 1996. The decision and award of the arbitrator shall be final and binding on the Architect and the Client.*

3. The contention of the learned counsel for the petitioner is that though the petitioner had approached the Council of Architecture, the said Council had rejected the claim of the petitioner to appoint an arbitrator on account of the petitioner being a Limited Liability Partnership and that one of the partners M/s.Arun John Kallumkal is not an architect.
4. Sri.Rajashekar B.G., learned counsel for the petitioner would however submit that the other partner



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Sri.M.S.Snehal G.Pawar is an architect registered on the rolls of Council of Architecture. If that be so, it was for the petitioner to reply to the letter dated 15.09.2020 and appraise the Council of Architecture on the said matter.

5. Sri.Parikshith Warriar, learned counsel for the respondent would however submit that since the Council of Architecture has stated that LLP cannot be a member of the Council and one of the partners of LLP is not an architect, the arbitration clause itself is non-est and void and cannot be relied upon. Apart there from, learned counsel for the respondent submits that in the notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 dated 5.4.2019 produced at Annexure-C, the petitioner has not specifically invoked the arbitration clause but has only stated that the matter would be referred to the Council of Architecture. Therefore, he submits that the arbitration clause is *void ab initio*.



6. Heard Sri.Rajashekar B.G., learned counsel for the petitioner and Sri.Parikshith Warriar, learned counsel for the respondent and perused the papers.
  
7. As regards the first issue of the Council of Architecture having refused appointment of arbitrator, it is seen from the letter dated 15.09.2020 that the refusal is on account of the petitioner being registered as LLP and one of the partners not being an architect. In such a situation, it is for the petitioner to approach the Council of Architecture placing the facts on record that one other partners Sri.M.S.Snehal G.Pawar is an architect. I am of the considered opinion that even if one of the partners is an architect registered with the Council of Architecture, the said Council would have jurisdiction to appoint an arbitrator. The Council for Architecture is directed to consider the request of the petitioner in the light of the above observations.



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8. As regards the contention of the respondent that the refusal by the Council of Architecture goes to the root of the matter rendering the clause itself invalid and non-est. I am of the considered opinion that the same is a completely malafide argument addressed by the respondent deserving it to be deprecated in strongest terms. A party to an arbitration is entitled to take the contentions which are legally permissible but not malafide arguments. The parties having agreed to refer the dispute to an arbitration and the agreement itself being one for 'Interior Architectural Services and Constructing/Execution', the respondent was always aware that the petitioner is an architectural firm of which one of the partners was an architect. Now after dispute having arisen, the respondent has indulged itself in such a malafide contentions which is already deprecated above.
  
9. As regards the further contention that in the notice dated 05.04.2019 only a statement is made that the



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matter would be referred to the Council of Architecture, I am of the considered opinion that the same is sufficient for the purpose of invocation, since the Council of Architecture is an arbitral institution within the meaning of Section 11 of the Arbitration and Conciliation Act, 1996 and what a party is required to do is only to refer the matter to the said institution and for the institution to appoint an arbitrator. There is no specific requirement for a party to name an arbitrator. It is sufficient if there is a mention made that the matter would be referred to the institution for arbitration. Hence, both the submissions of the respondent are rejected. Though it is a case for imposition of costs on the respondent for delaying the arbitration, this Court refrains from doing so. In view of the above, I pass the following:

**ORDER**

- i. The petition is disposed with liberty to the petitioner to approach the Council of Architecture placing on record that one of the partners of the petitioner is an



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architect and request the Council to appoint an arbitrator, which shall be considered by the said Council in terms of the observations made hereinabove.

**Sd/-  
JUDGE**

Prs\*