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Arb.O.P (Com.Div).Nos.43, 44, 45, 46, 47 & 48 of 2022
Arb.Appln.Nos.301, 302, 303, 304, 305 & 306 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div).Nos.43, 44, 45, 46, 47 & 48 of 2022
and
Arb.Appln.Nos.301, 302, 303, 304, 305 & 306 of 2021

Arb.O.P.(Com.Div).No.43 of 2022

M/s.Cholamandalam Investment and Finance Company Limited,
No.45, Justice Basheer Ahmed Sayeed Building,
IInd Floor, 2nd Line Beach, Moore Street,
Parrys, Chennai-600 001.

Represented by its Authorised Signatory

... Petitioner

vs.

1.M/s.Natraj Construction Co.

Rep by its Partner

88, Nalanda Complex, Judges Bungalow Road

Vastraput, Ahmedabad

Gujarat - 380015

2.Mr.Nirmalkumar Narottamdas Patel

S/o.Narottamdas

14, Manisagar SOC, Aditya Bungalows

Opp T.V.Tower, Thaltej, Nr. Utsav Row House

Ahmedabad, Gujarat - 3890054



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3.Mr.Ashwinkumar Narottamdas Patel
S/o.Narottamdas
01, New Nikita Park SOC, Opp. Gurukul
Nr. Uganda SOC, Sola Road
Ahmedabad, Gujarat – 380054.

... Respondents

Prayer:

Arbitration Original Petition filed under Section 11(6) of Arbitration and Conciliation Act, 1996 to

(a) appoint a sole arbitrator to adjudicate the dispute between the petitioner and the respondents as per the loan agreement No.X0CEABD00002234937 dated 04.01.2018;

(b) direct the respondents to pay the cost of this petition;

(c) pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.D.Pradeep Kumar

For Respondents : Mr.Niranjan Rajagopalan,
for M/s.G.R.Associates.

COMMON ORDER

This Common order will govern the captioned 6 Arb O.Ps and captioned 6 Arb Applications.



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2.To be noted, captioned 6 Arb O.Ps are petitions *inter alia* under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, convenience and clarity, with prayers for appointment of a sole arbitrator and captioned 6 Arb Applications have been presented under various sub-sections of section 9 of A and C Act with different interim prayers.

3.This Court is informed that petitioner/applicant company in captioned six Arb O.Ps and Arb Applications is a Non-Banking Financial Company (NBFC) and therefore it shall hereinafter be referred to as 'said NBFC' for the sake of convenience and clarity.

4.Likewise, this Court is informed that the first respondent in the captioned Arb O.Ps is a partnership firm and therefore it shall hereinafter be referred to as 'borrower firm' solely for the sake of convenience. This Court is informed that respondents 2 and 3 are partners in the first respondent firm and they are also guarantors.



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5.Mr.D.Pradeep Kumar, learned counsel for the petitioner and Mr.Niranjan Rajagopalan of M/s.G.R.Associates (Law Firm) on behalf of the borrower firm and the two partners are before this Court in this physical hearing.

6.Mr.Niranjan Rajagopalan of M/s.G.R.Associates shall file vakaltnama for the third respondent in the Arb O.Ps also within two days and Registry shall accept the same before uploading/releasing the copies of this order notwithstanding the fact that all the matters are disposed of today vide this common order.

7.Owing to the fair stand that is being taken by learned counsel on both sides, it is not necessary to dilate on facts and it will suffice to say that captioned matters are predicated on six separate agreements, all captioned 'LOAN AGREEMENT – CONSTRUCTION EQUIPMENT'. There is also no dispute or disagreement about the existence of arbitration agreements between the parties. As there is no dispute or



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disagreement about the existence of arbitration agreements, leaving all other questions open, a sole arbitrator can be appointed to enter upon reference and adjudicate qua the disputes i.e., arbitrable disputes that have arisen between the parties from and out of the six loan agreements.

8.To be noted, a sole arbitrator was appointed earlier and he is unable to continue. It is not necessary to dilate much on this aspect of the matter also.

9.If a sole arbitrator is appointed now, it is well open to 'said NBFC' to make same/similar prayer qua aforementioned 6 Arb Applications either under Section 17 or under any other appropriate provision/s before the Arbitral Tribunal. In this view of the matter, learned counsel for 'said NBFC' submits that this Court may please refer the prayer qua 6 captioned Arb Applications to the Arbitral Tribunal which is to be constituted.

10.If there is such a reference, 'said NBFC' will be entitled to refund of Court fees under The Tamil Nadu Court-Fees and Suits



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Valuation Act, 1955, which shall hereinafter referred to as 'Tamil Nadu Court Fees Act' for the sake of convenience and clarity, is learned counsel's say.

11.Considering the narrative thus far, this Court appoints Hon'ble Mr. Justice N.Authinathan (Retd.), No.37, A-Block, Lakshmi Nivas, Marshalls Road, Egmore, Chennai – 8 [Mobile : 9445508822], as sole arbitrator to enter upon reference, adjudicate the arbitrable disputes that have arisen between the petitioner and the respondents in all the six captioned Arb O.Ps. Hon'ble Sole Arbitrator is requested to conduct the arbitration in 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.

12.This takes this order back to the plea of the learned counsel for said NBFC for refund of Court fee in captioned Arb O.Ps and Arb



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Applications. Section 69-A of the Tamil Nadu Court Fees Act reads as follows:

'69-A. Refund on settlement of disputes under Section 89 of Code of Civil Procedure:

Where the Court refers the parties to the suit to any of the modes of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the fee paid shall be refunded upon such reference. Such refund need not await for settlement of the dispute.'

13. Section 69-A of the Tamil Nadu Court Fees Act takes this order to Section 89 of the Code of Civil Procedure, 1908 (CPC) which reads as follows:

'89. Settlement of disputes outside the Court.--(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:--

- (a) arbitration;*
- (b) conciliation;*
- (c) judicial settlement including settlement through Lok*



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Adalat: or

(d) mediation.

(2) Where a dispute has been referred--

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.'

14. Now that the six Arb Applications are referred to Arbitration, plain language of Section 69-A of the Tamil Nadu Court Fees Act makes it clear that one need not wait for settlement of the dispute. It is also clear



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that Arbitration is one of the modes of settlement adumbrated under Section 89. Therefore, said NBFC will be entitled to refund of Court fee paid in the six Arb Applications. To be noted, not in the six Arb O.Ps. The reason is six Arb O.Ps are being ordered and not referred to arbitration.

15. There shall be a refund of Court fee to the said NBFC by way of a instrument drawn in favour of the said NBFC in Arb Application Nos.301, 302, 303, 304, 305 & 306 of 2021 [not in Arb O.P's 43, 44, 45, 46, 47 & 48 of 2022].

16. If the captioned Arb Applications are presented before the Hon'ble Arbitral Tribunal with a prayer to treat them as applications under Section 17 of A and C Act or if a similar/same prayers are made before Hon'ble Arbitral Tribunal by way of separate applications, though obvious, it is made clear that the Hon'ble Arbitral Tribunal shall consider the same on its own merits and in accordance with law, untrammelled by any observation made in this order, which is for the limited purpose of disposal of captioned 6 Arb O.Ps and captioned 6 Arb Applications.



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17.Captioned matters disposed of in the aforesaid manner with the aforesaid directives. There shall be no order as to costs.

22.02.2022

Speaking/Non-speaking order

Index : Yes / No

Internet : Yes / No

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

1.Hon'ble Mr. Justice N.Authinathan (Retd.),
No.37, A-Block, Lakshmi Nivas
Marshalls Road, Egmore
Chennai – 8
[Mobile : 9445508822]

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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