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Arb.O.P (Com.Div.) No.51 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No.51 of 2022

M/s.Shriram City Union Finance Limited
in Company having its branch office at
No.12, Ramaswamy Street, T.Nagar
Chennai – 600 017, rep. by its Authorised Signatory
Mr.P.Siva Kumar

... Petitioner

Vs.

1) Mr.R.Rama Saravanan
2) Mrs. Vasantha Kumari S

... Respondents

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint any fit and competent person as an Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996, so as to adjudicate the claim and the dispute between the petitioner and the respondent under the Loan Agreement daed 13.03.2017 and to pay the cost of the petition.

For Petitioner : Mr.R.Uma Shankar
for M/s.Sri and Shankar Associates (Law Firm)



ORDER

WEB COPY This order will dispose of captioned 'Arbitration Original Petition' (hereinafter 'Arb.OP' for the sake of brevity).

2. Read this in conjunction with and in continuation of earlier proceedings made in the listings on 10.02.2022 and 03.03.2022, which read as follows:

' Proceedings dated 10.02.2022

In the captioned Arbitration Original Petition, Mr.R.Uma Shankar, learned counsel of M/s.Sri and Shankar Associates (Law Firm) on behalf of the lone petitioner is before this Virtual Court.

2.Captioned matter has been presented before this Court on 06.01.2022 and it is a petition under Section 11(6) 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 convenience and clarity.

3.Learned counsel submits that the arbitration agreement between the parties i.e., Arbitration Agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is in the form of a Clause in a 'agreement dated 13.03.2017' ['said agreement']. Clause 17 of the said Agreement reads as follows:



'17.Arbitration and Dispute Settlement

a) All disputes, differences and/or claims, arising out of the Agreement, whether during its subsistence or thereafter, shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactment for the time being in force and shall be conducted by a sole arbitrator to be appointed by the Lender. The applicable law shall be Indian Laws. In the event of incapacity or resignation or death of the sole arbitrator so appointed, the lender shall be entitled to appoint another arbitrator in place of the earlier arbitration, and the proceedings shall continue from the stage at which the predecessor had left.

b) The award given by the arbitrator shall be final and binding on the parties to this Agreement. The cost of the Arbitration shall be borne with by the party/ies, in accordance with the Award passed by the Arbitrator.

c) The venue of Arbitration shall be as specified in Schedule 1 hereto and the proceedings shall be conducted in English Language.'

4. Clause 17 takes us to Schedule 1 of the loan agreement:



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Schedule 1

Loan Agreement No.	AD401TF170930007		Date	17	09	2022
Address of Lender	Sriram City Union Finance Limited					
Name and address of the Borrower (In case of the Company / Association / Society)	Rama Sankaranarayanan 1, Arunachal Hill Street Mutha Nagar, Anna Nagar, Chennai - 600 099					
Nature of Business	Travels		Purpose of Loan	Business Development		
Name and address of the Guarantor(s)	1. S. Vasantha Kumaran 1, Arunachal Hill Street, Mutha Nagar, Anna Nagar, Chennai - 600 099. 2. _____ 3. _____ 4. _____					
Loan Amount	Rs. 75,00,000/- / Rupees Seventy Five Lakhs only					
Rate of Interest	14.50%	% Flat	Tenure	60	Months	EMI frequency
Effective Rate of Interest	53.34%	% p.a.				Monthly / Quarterly
Repayment terms						
EMI - Advance / Arrears	Advance EMI (Nos.)		Advance EMI Amount Rs.			
EMI Start Date	17	09	2022	EMI End Date	10	09
MI from	1	to	60	EMI Amount Rs.	2,56,250/-	0201
MI from	-	to	-	EMI Amount Rs.	-	0201
MI from	-	to	-	EMI Amount Rs.	-	0201
MI from	-	to	-	EMI Amount Rs.	-	0201
MI from	-	to	-	EMI Amount Rs.	-	0201
Schedule 2 Schedule of Fees						
Processing Charges	Rs. 150,000/-					
Stamp Duty	Rs. 200/-					
Pre EMI Interest	Rs. -					
Credit shield / Insurance for one year (optional)	Rs. 12,000/-					
Others (please specify)	Rs. -					
Place of Arbitration	Chennai		Jurisdiction of Court			
Sriram City Union Finance Ltd.						
Authorized Signatory			Authorized Signatory		Authorized Signatory	

5. A perusal of the arbitration agreement between the parties makes it clear that the venue is Chennai.



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6. Learned counsel submits that this is a case where the parties have agreed on the procedure for appointment of Arbitrator and therefore, as per the agreed procedure, a notice dated 13.02.2020 nominating the Arbitrator was issued is learned counsel's further say. It is also submitted that the nominated Arbitrator entered upon reference but he recused himself from the matter in and by proceedings dated 05.10.2021 which reads as follows:

K.S. GOWTHAMAN, B.Com., B.L.,
ADJUDICATE / ARBITRATOR

Gingathir Krupa,
New No. 49, Old No. 224/1,
4th Cross Street, Nandigarai Nagar,
Vengalambalam, Chennai - 600 692.
Ph: 091 95643 72394

M/s. Shriam City Union Finance Ltd.,
Managing Office 21,
No. 12, Ramaswamy Street, T. Nagar,
Chennai - 600 002.

TO: 10.2502

Claimant

1) Mr. R. Rama Sanyaman,
S/o. Mr. Ramamurthy,
No. 1, Aruman Kal Street, Metta Nagar,
Near, Shreechakra Statue, Chokkikulam,
Ambikapuram, Chennai - 600 029.

Also at: Mr. Rama Sanyaman,
M/s. Om Sakshi Travels Pvt Ltd,
Flat No 15, Railway Colony, S - 1, Kurian Complex,
2nd Floor, 17 Street, Nelson Manikam High Road,
Ambikapuram, Chennai - 600 029.

2) Mrs. Vasanthi Sumanth,
Wife: Mr. Ramasanyaman,
No. 1, Aruman Kal Street, Metta Nagar,
Near, Shreechakra Statue, Chokkikulam,
Ambikapuram, Chennai - 600 029.

Also at: Mrs. Vasanthi Sumanth,
M/s. Om Sakshi Travels Pvt Ltd,
Flat No 15, Railway Colony, S - 1, Kurian Complex,
2nd Floor, 17 Street, Nelson Manikam High Road,
Ambikapuram, Chennai - 600 029.

Respondents

Claim Petition No: KSG/SCIF/18/2020

In the above matter, this Tribunal sent a mail dated 29.02.2021, to both the parties in relation to the notice for first respondent whereby the first respondent was directed to send their counter by post on or before 13.03.2021. In the meantime due to a personal inconvenience, I am not in a position to continue as an arbitrator in this matter. Hence I recuse from this matter and it is open to the parties to proceed further with the matter legally.

K.S. Gowthaman
(The Arbitrator)

[SEE CONTINUED TO THE RESIDENCE ADDRESS ONLY]



7. *In the light of the narrative thus far, the question as to whether the petitioner should have come before this Court by invoking Sections 15 and 14 of the A and C Act arises. To be noted, as already alluded supra, the captioned Arbitration O.P is under Section 11(6).*

8. *Be that as it may, learned counsel submits that the captioned matter has been filed pursuant to the **Perkins principle** being ratio laid down by Hon'ble Supreme Court in the case of **Perkins Eastman Architects DPC and Another v. HSCC (India) Ltd** reported in 2016 SCC OnLine SC 1517.*

8. *Subject to the aforementioned point regarding the provision of law which ought to have been invoked, issue notice to the respondents returnable in three weeks i.e., returnable by 03.03.2022. Private notice permitted. Notice through other electronic modes of communication also permitted subject to proof of being demonstrated.*

9. *List on 03.03.2022.'*

' Proceedings dated 03.03.2022

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 10.02.2022.

2. *Mr.R.Umashankar of M/s.Sri and Shankar Associates (Law Firm) who is before this Court submits that steps have been*



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taken to effect service on the two respondents but the fate of the notices sent is awaited.

*3. List this matter before learned Master on 08.03.2022.
Let learned counsel for petitioner take steps before learned
Master for effecting service on both respondents and let the
process be completed within three weeks i.e., on or before
29.03.2022.*

List this matter before this Court on 31.03.2022.'

3. Pursuant to aforementioned earlier proceedings captioned Arb.OP was listed before learned Master and learned Master has made proceedings, a scanned reproduction of which is as follows:

1> 08/03/22 Re Pet - FN to Deobts by 23/03/21
Pet is also furnished. No 23/03/22 or after

1/22 2> 23/03/22 Re M. R. & R2. Sumit. Sumit.
Compensat. Pet before Hon. Mr.
Justice's Court. Re 23/03



4. Mr.R.Umashankar of M/s.Sri and Shankar Associates (Law Firm)

on behalf of the petitioner submits that service has been duly effected on both respondents, name of both respondents together with full/complete address as in the cause title of the captioned Arb.OP is shown in the cause list but there is no representation. This Court is informed that respondent has not chosen to enter appearance through any counsel.

5. This takes this Court back to aforementioned earlier proceedings dated 10.02.2022.

6. The aforementioned 10.02.2022 proceedings shall be read as an integral part and parcel of this order. Short forms, abbreviations and short references used in earlier proceedings shall continue to be used in the instant order also.

7. The narrative thus far will make it clear that the respondents have not chosen to come before this Court to oppose the prayer in the aforementioned Arb.OP. To be noted, sequitur is, there is no dispute or contestation regarding existence of arbitration agreement between the parties which is in the form of a clause i.e., Clause 17 in said agreement ('said Agreement' for the sake of convenience) being an agreement dated



13.03.2017 and captioned 'LOAN AGREEMENT'. Though the captioned Arb.OP has been presented under Section 11(6) of A and C Act, learned counsel for petitioner made a fervent plea to treat the same as one under Section 15(1)(a) and 15(2) of A and C Act i.e., substitution owing to the Arbitrator withdrawing from Office. In the case on hand, the aforementioned earlier proceedings will make it clear that the sole Arbitrator who was appointed by the petitioner had recused himself.

8. In the light of the narrative thus far, Mr.D.Arulraj, Retired District Judge, residing at No.27, 1st Main Road, Sairam Nagar, Medavakkam, Chennai – 600 100, Mob: 9444145289 and 9884845289, E-mail: arulrajvanaja@gmail.com, arulrajvanaja@yahoo.com is appointed as sole Arbitrator. Learned Arbitrator is requested to enter upon reference, adjudicate the arbitrable disputes that have arisen between the parties qua said agreement. Learned Arbitrator is requested to hold sittings in 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and learned Arbitrator's fee shall be as per Madras



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High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

9. Captioned Arb.OP is disposed of in the aforesaid manner. There shall be no order as to costs.

31.03.2022

gpa

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

1. Mr.D.Arulraj,
Retired District Judge,
27, 1st Main Road,
Sairam Nagar,
Medavakkam,
Chennai – 600 100,
Mob: 9444145289 and 9884845289
E-mail: arulrajvanaja@gmail.com, arulrajvanaja@yahoo.com
2. The Director
Tamil Nadu Mediation Conciliation Centre
-cum- Ex-Officio Member
Madras High Court, Arbitration Centre
Chennai - 104



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M.SUNDAR.J.,
gpa

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