



Arb.O.P (Com.Div.) No.50 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No.50 of 2022

M/s.Shriram City Union Finance Limited
a Company having its Branch Office at
No.12, Ramaswamy Street, T.Nagar,
Chennai-600 017.
Rep. by its authorised Signator
Mr.P.Sivakumar

... Petitioner

Vs.

1. Mr.M.Kommula Srinivas
2. Mrs.Kommula Lalitha Priyateja
3. Mr.Pydiparthi Suresh Babu
4. Mr.Kommula Madhava Rao
5. Mrs.R.Kommula Suryavenkata Pushparatnam
6. Mr.Alladasarat Babu
7. Mrs.Allada Sri Sargni

... Respondents



Arb.O.P (Com.Div.) No.50 of 2022

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

(a) 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 respondents under the Loan agreement dated 10.05.2019;

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

For Petitioner : Mr.R.Umashankar of
M/s.Sri and Shankar Associates
For Respondents : Mr.A.Balamurugan
representing Mr.K.Kannan

ORDER

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 10.02.2022 which reads as follows:

'In the captioned 'original petition' ['OP'], Mr.R.Umashankar, learned counsel of M/s.Sri and Shankar Associates (Law Firm) on behalf of lone petitioner is before this Court.

2. Learned counsel submits that an arbitration clause between the parties being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 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 and convenience is in the form of a clause in an 'agreement dated 10.05.2019 [caption Loan Agreement]' which shall hereinafter be referred to as 'said agreement'.

3. Clause 18 of said agreement reads as follows:

'18. Arbitration and Dispute Settlement

a) Without prejudice to the Lender's right available to it under the SARFAESI Act, 2002, all disputes, differences and/or claims, arising out of this 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 arbitrator, 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



WEB COPY



Arb.O.P (Com.Div.) No.50 of 2022

English language.

d) The Borrower and Guarantor hereby agree and confirm that the Lender shall be permitted to invoke the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and any amendments thereto in order to recover its dues under this Agreement from the Borrower/Guarantor.'

4. Aforementioned clause 18 of said agreement takes us to Schedule 1 of said agreement and a scanned reproduction of Schedule 1 is as follows:



Schedule 1 (Arbitration)		Arbitration Date	
Particulars of the Arbitration		7	8
1. Name of the Arbitrator	2. Name of the Arbitrator	3. Name of the Arbitrator	4. Name of the Arbitrator
5. Name of the Arbitrator	6. Name of the Arbitrator	7. Name of the Arbitrator	8. Name of the Arbitrator
9. Name of the Arbitrator	10. Name of the Arbitrator	11. Name of the Arbitrator	12. Name of the Arbitrator
13. Name of the Arbitrator	14. Name of the Arbitrator	15. Name of the Arbitrator	16. Name of the Arbitrator
17. Name of the Arbitrator	18. Name of the Arbitrator	19. Name of the Arbitrator	20. Name of the Arbitrator
21. Name of the Arbitrator	22. Name of the Arbitrator	23. Name of the Arbitrator	24. Name of the Arbitrator
25. Name of the Arbitrator	26. Name of the Arbitrator	27. Name of the Arbitrator	28. Name of the Arbitrator
29. Name of the Arbitrator	30. Name of the Arbitrator	31. Name of the Arbitrator	32. Name of the Arbitrator
33. Name of the Arbitrator	34. Name of the Arbitrator	35. Name of the Arbitrator	36. Name of the Arbitrator
37. Name of the Arbitrator	38. Name of the Arbitrator	39. Name of the Arbitrator	40. Name of the Arbitrator
41. Name of the Arbitrator	42. Name of the Arbitrator	43. Name of the Arbitrator	44. Name of the Arbitrator
45. Name of the Arbitrator	46. Name of the Arbitrator	47. Name of the Arbitrator	48. Name of the Arbitrator
49. Name of the Arbitrator	50. Name of the Arbitrator	51. Name of the Arbitrator	52. Name of the Arbitrator
53. Name of the Arbitrator	54. Name of the Arbitrator	55. Name of the Arbitrator	56. Name of the Arbitrator
57. Name of the Arbitrator	58. Name of the Arbitrator	59. Name of the Arbitrator	60. Name of the Arbitrator
61. Name of the Arbitrator	62. Name of the Arbitrator	63. Name of the Arbitrator	64. Name of the Arbitrator
65. Name of the Arbitrator	66. Name of the Arbitrator	67. Name of the Arbitrator	68. Name of the Arbitrator
69. Name of the Arbitrator	70. Name of the Arbitrator	71. Name of the Arbitrator	72. Name of the Arbitrator
73. Name of the Arbitrator	74. Name of the Arbitrator	75. Name of the Arbitrator	76. Name of the Arbitrator
77. Name of the Arbitrator	78. Name of the Arbitrator	79. Name of the Arbitrator	80. Name of the Arbitrator
81. Name of the Arbitrator	82. Name of the Arbitrator	83. Name of the Arbitrator	84. Name of the Arbitrator
85. Name of the Arbitrator	86. Name of the Arbitrator	87. Name of the Arbitrator	88. Name of the Arbitrator
89. Name of the Arbitrator	90. Name of the Arbitrator	91. Name of the Arbitrator	92. Name of the Arbitrator
93. Name of the Arbitrator	94. Name of the Arbitrator	95. Name of the Arbitrator	96. Name of the Arbitrator
97. Name of the Arbitrator	98. Name of the Arbitrator	99. Name of the Arbitrator	100. Name of the Arbitrator

5. A perusal of Schedule 1 makes it clear that the place of arbitration i.e., venue/seat is Chennai and Courts in Chennai are jurisdictional Courts. As there is an agreed procedure for appointment of an arbitrator, petitioner issued notice dated 30.09.2021 nominating an arbitrator is learned counsel's say.

6. Nominated arbitrator entered upon reference but thereafter recused himself from the matter in and by proceedings



WEB COPY



Arb.O.P (Com.Div.) No.50 of 2022

dated 16.11.2021 which reads as follows:

S. GOWDHAMAN, MEMBER, S.D.
JUDICIAL OFFICE

Gowtham Raja,
New No. 40, Old No. 224 B,
6th Cross Street, Nallur Nagar,
Vengal Rao Nagar, Chennai - 600 002.
Ph : 9 - 4094173/94

NOT A COURT ORDER

Date: 16.11.2021

To,

M/s. Krishna City Union Finance Limited,
No. 12, Ramaswamy Street,
T. Nagar, Chennai - 600 017.

Sr,

Ref : Loan Agreement No. FA01771825100002, Dated 10.05.2019 - is the matter of
adjudication of claim between - Krishna City Union Finance Ltd and Mr. M. K. K. K. K.
Srinivas & Others - Non acceptance by arbitrator as arbitrator to adjudicate the
dispute/disputes under the agreement. Ref.

I have read from your letter dated 10.03.2021. You have been appointed as an arbitrator to
resolve / adjudicate the dispute arising out of the Agreement. Due to some personal
inconveniences, I am not in a position to accept the said nomination and you are requested to
proceed further as per the terms of the agreement.

(Signature)
S. Gowthaman

Copy to:

1) Mr. M. K. K. K. Srinivas,
S/o. Mr. Madhavan Rao K. K. K. K.
Door No. 1-225 Padayathur, Link Road Road,
Mandirbakkam, Post Office,
Andhra Pradesh - 500 000.

2) Mr. M. K. K. K. Srinivas,
S/o. Mr. Madhavan Rao,
Door No. 1-225 Padayathur, Link Road Road,
Mandirbakkam, Post Office,
Andhra Pradesh - 500 000.

Also to: Mr. M. K. K. K. Srinivas,
S/o. Mr. Madhavan Rao,
Door No. 1-225 Padayathur, Link Road Road,
Mandirbakkam, Post Office,
Andhra Pradesh - 500 000.

Also to: Mr. M. K. K. K. Srinivas,
S/o. Mr. Madhavan Rao,
Door No. 1-225 Padayathur, Link Road Road,
Mandirbakkam, Post Office,
Andhra Pradesh - 500 000.

94



WEB COPY



Arb.O.P (Com.Div.) No.50 of 2022

3

Also at: (1) M. Mr. Kammula Srinivas,
S/o. Mr. Madhava Rao,
9th Floor, 39-21-401/252,
Flat No 410 & 900, Laxman Green Apartments,
Madhavachara, Visakhapatnam,
Andhra Pradesh - 530 007.

2) Mrs. Kammula Lalitha Priyadevi
W/o. Mr. M. Kammula Srinivas,
Door No.12-2-7, Sachinada Venkateswara Nagar,
Amalapuram, Near Black Bridge, East Godavari,
Andhra Pradesh - 531 201.

Also at: (2) Mrs. Kammula Lalitha Priyadevi
W/o. Mr. M. Kammula Srinivas,
Door No 37-12-42/4, 1st Floor, N.G.S.O.S Colony,
Vaddey Venkateswara Temple,
Muralanagar, Visakhapatnam,
Andhra Pradesh - 530 007.

3) Mr. Pydi Parthi Suresh Babu,
S/o. Mr. Bhaskara Rao Pydi Parthi,
Door No.2-121, Main Road, Ramalayam Opposite,
Katreavupadu, East Godavari, Bazole,
Andhra Pradesh - 533 248.

4) Mr. Kammula Madhava Rao,
S/o. Mr. Srinivasamurthy,
Door No.3-229 Peddapattanam Lanka Main Road,
Mamidikuduru, East Godavari,
Andhra Pradesh - 533 247.

5) Mrs. R. Kammada Suryasankata Pushpawathi,
W/o. Mr. Madhava Rao,
Door No.3-229 Peddapattanam Lanka Main Road,
Mamidikuduru, East Godavari,
Andhra Pradesh - 533 247.

6) Mr. Allada Sarat Babu,
S/o. Mr. Bhaskarlu,
Door No 10-1-79,
Moludi Peta, Amalapuram,
Dr. Bhanu Rao Street, East Godavari,
Andhra Pradesh - 533 201.

7) Mrs. Allada Sri Sangeeta,
W/o. Mr. Sarat Babu,
Door No 10-1-79,
Moludi Peta, Amalapuram,
Dr. Bhanu Rao Street, East Godavari,
Andhra Pradesh - 533 201.

95

7. As the nominated arbitrator has recused himself, the question as to whether the petitioner should seek substitution by taking recourse to Sections 15 and 14 of A and C Act arises. To



*be noted, the captioned OP has been presented in this Court under Section 11(6) of A and C Act. Learned counsel submits that the petitioner has come before this Court owing to **Perkins** principle being ratio laid down by Hon'ble Supreme Court in **Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd.**, reported in 2019 SCC Online SC 1517.*

8. Subject to the aforementioned point regarding the provision of law under A and C Act to which recourse should be taken, issue notice to all seven respondents returnable in three weeks i.e., returnable by 03.03.2022. Private notice permitted. Notice through all available electronic modes of services also permitted subject of course to proof being demonstrated.

9. List on 03.03.2022.'

2. Thereafter, the captioned matter was listed on 03.03.2022, 21.03.2022, 23.03.2022, 07.04.2022, 18.04.2022 and 21.04.2022. The proceedings made in these listings are procedural and it is not necessary to reproduce the same.

3. Aforementioned 10.02.2022 proceedings shall be read as an integral part and parcel of this order. The short forms, abbreviations and



short references used in 10.02.2022 proceedings shall continue to be used in the instant order also for the sake of convenience and clarity.

4. Today, Mr.A.Balamurugan, learned counsel representing Mr.K.Kannan, counsel on record for all the seven respondents is before this Court. Learned counsel submits that the claim of a little over Rs.3.98 Crores (Rs.3,98,38,334/-) by the petitioner is clearly excessive. This turns on the merits of the matter and is therefore outside the statutory perimeter of a legal drill under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity]. To be noted, statutory perimeter of a legal drill qua Section 11 is sketched by sub-section (6A) thereat which reads as follows:

'(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.'



5. Aforementioned sub-section (6A) came up for consideration before Hon'ble Supreme Court in oft-quoted judgment in **Mayavati Trading** case law [**Mayavati Trading Private Limited Vs. Pradyut Deb Burman** reported in (2019) 8 SCC 714]. Relevant paragraph in **Mayavati Trading** case law is paragraph 10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.'

(underlining made by this Court to supply emphasis and highlight)

6. Aforementioned Paragraph 10 of **Mayavati Trading** case law takes this Court to **Duro Felguera** case law [**Duro Felguera, S.A. versus Gangavaram Port Limited** reported in (2017) 9 SCC 729]. Relevant



paragraph in ***Duro Felguera*** case law are paragraphs 47 and 59 and the same read as follows:

'47. What is the effects of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the 2015 Amendment') with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.'

*'59. The scope of the power under [Section 11](#) (6) of the 1996 Act was considerably wide in view of the decisions in *SBP and Co. (supra)* and *Boghara Polyfab (supra)*. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in [Section 11](#) (6A) ought to be respected.*

7. The narrative thus far will make it clear that the contestation of the



learned counsel for respondents is qua merits of *lis* i.e., merits of arbitrable disputes. This means that there is no dispute or disagreement about the existence of Arbitration Agreement i.e., clause 18 of said agreement (loan agreement dated 10.05.2019). As there is no dispute or disagreement regarding the existence of Arbitration Agreement, this Court proceeds to appoint a sole Arbitrator.

8. Hon'ble Mr. Justice V.Bharathidasan (Retd.), Former Judge of this Court, residing at No.42 (NB) Greenways Road, Chennai - 600 028, Mob: 94443 83139 and 94455 00224, E-mail: dasanvb@gmail.com is appointed as sole Arbitrator. Hon'ble sole Arbitrator is requested to enter upon reference, adjudicate the arbitrable disputes that have arisen between the petitioner and respondents qua loan agreement dated 10.05.2019. Hon'ble Arbitrator is requested to hold sittings in the 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC), render an award as per Madras High Court Arbitration Proceedings Rules 2017 and fee of the Hon'ble Arbitrator shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.



WEB COPY



Arb.O.P (Com.Div.) No.50 of 2022

M.SUNDAR.J.,

mk

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

09.06.2022

mk

Index: Yes/no

Internet: Yes

Speaking/non-speaking

Note: Registry to communicate this order forthwith to:

1. Hon'ble Justice V.Bharathidasan (Retd.,)
High Court, Madras.
No.42 (NB) Greenways Road
Chennai - 600 028
Mob: 94443 83139 and 94455 00224
E-mail: dasanvb@gmail.com
2. The Director
Tamil Nadu Mediation and Conciliation Centre
-cum-
Ex Officio Member,
Madras High Court Arbitration Centre
Madras High Court, Chennai – 600 104.



WEB COPY



Arb.O.P (Com.Div.) No.50 of 2022

Arb.O.P (Com.Div.) No.50 of 2022