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*Arb O.P.(Com. Div.) No.193 of 2022*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2022

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

**Arb O.P.(Com. Div.) No.193 of 2022**

Mr.Amarthya Hedge

... Petitioner

Vs.

M/s.Anam Fine Chemicals Private Limited

A company incorporated under

Companies Act, 2013

Registered office at 11<sup>th</sup> Floor Bascon Futura,

New No.10/2, Old No.56L

Venkatanarayana Road, T.Nagar, Chennai – 600 017.

Represented by its Managing Director.

... Respondent

Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, praying to appoint a Sole Arbitrator to resolve the dispute between the petitioner and the respondent under Clause 28 of the agreement dated June 01, 2022, as per the petitioner's letter dated December 30, 2021 and pass such further or other order as this Court deem fit under the facts and circumstances of the case.



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For Petitioner : Mr.R.S.Diwaagar  
For Respondent : Mr.Kumarpal R.Chopra

### **ORDER**

This order will now dispose of the captioned Arb.OP.

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 21.04.2022 and 09.06.2022, which read as follows :

#### **'Proceedings dated 21.04.2022 :**

*Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' has been presented in this Court 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] with a prayer for appointment of a sole Arbitrator.*

*2. Mr.R.S.Diwaagar, counsel on record for sole petitioner who is before this Court submits that the captioned Arb OP is predicated on an agreement between the petitioner and respondent captioned 'LOAN AGREEMENT' dated 01.06.2021. To be noted, the above agreement dated 01.06.2021 shall be referred to as 'primary contract' for the sake of convenience and clarity, clauses 27 and 28 thereat read as follows:*



## 27. GOVERNING LAW

*This Facility Agreement is governed by the laws of India.*

## 28. JURISDICTION

*Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of the Facility Agreement or the validity or the breach thereof shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 provided that such dispute does not fall within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of debts Due to Lenders and Financial Institutions Act, 1993. The place of arbitration shall be Chennai. The language of arbitration shall be English. This provision will not affect the rights of the Lender to submit a dispute to the Debts Recovery Tribunal established under the Recovery of debts Due to Lenders and Financial Institutions Act, 1993, or any other legislation available if such dispute falls within the jurisdiction of that tribunal. The Parties agree to submit themselves to the jurisdiction of the Courts at Chennai.'*

*3. Adverting to the aforementioned clauses 27 and 28 of primary contract, learned counsel submits that the above clauses serve as an Arbitration Agreement between the petitioner and respondent i.e.,*



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*'Arbitration Agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.*

*4. Learned counsel submits that arbitrable disputes arose between the petitioner and respondent qua primary contract and arbitrable disputes inter alia relate to alleged improper invoking of pledged shares and issues regarding repayment (to be noted, these are arbitrable disputes broadly stated but not limited to this). Learned counsel submits that the aforementioned Arbitration Agreement was invoked by the petitioner by issue of a communication dated 30.12.2021 suggesting a name of one Hon'ble individual as sole Arbitrator but the respondent responded vide communication dated 05.01.2022 suggesting the name of another Hon'ble individual which is not acceptable to the petitioner. This deadlock has necessitated the presentation of the captioned Arb OP in this Court on 12.01.2022 is learned counsel's say.*

*5. Prima facie case made out for issue of notice.*

*6. Issue notice to respondent returnable by 09.06.2022. Private notice permitted.*

*7. List on 09.06.2022.*

**Proceedings dated 09.06.2022 :**

*Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 21.04.2022.*

*2. Today Mr.R.S.Diwaagar, learned counsel on record for sole petitioner is before this Court.*

*3. Notice has since been served on the respondent.*



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4. *Ms.Akshaya Giridharan with address for service at No.1, Thirumoorthy Street, T.Nagar, Chennai-600 017, who is before this Court submits that she has instructions to enter appearance by filing Vakalatnama along with her co-counsel for the lone respondent. Learned counsel submits that the Vakalatnama will be filed by Tuesday i.e., 14.06.2022.*

5. *Let the Registry list this matter after 10 days. List on 21.06.2022.'*

3. Mr.R.S.Diwaagar, learned counsel for sole petitioner and Mr.Kumarpal R.Chopra, learned counsel for lone respondent are before this Court. Both learned counsel submitted in one voice that there is no disputation about existence of arbitration agreement between the parties and that they have also arrived at a consensus qua the sole Arbitrator. Both learned counsel submit that they consent for appointment of Hon'ble Mr.Justice N.Paul Vasanthakumar (Retd.), Former Chief Justice of Jammu & Kashmir High Court, as Sole Arbitrator.

4. In the light of the consent/consensus, Hon'ble Mr.Justice N.Paul Vasanthakumar (Retd.), Former Chief Justice of Jammu & Kashmir High



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Court, residing at 'ASHIRVADH', No.24-A, II Street, Kamaraj Avenue, Adyar, Chennai - 600 020, [Ph.No.:(044) 24452817] is appointed as Sole Arbitrator. Hon'ble Arbitrator is requested to enter upon reference qua primary contract / Loan Agreement dated 01.06.2021, adjudicate the arbitral disputes that have arisen between the parties in accordance with arbitration agreement i.e., Clauses 27 and 28 of Loan Agreement which serve as 'arbitration agreement' between the petitioner and respondent i.e., 'arbitration agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. Hon'ble Arbitrator is requested to hold sittings in 'Madras High Court Arbitration 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 High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

5. Though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the *lis* between the parties qua primary contract as that will be the domain of Hon'ble Arbitrator.



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

21.06.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking orders

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

1.Hon'ble Mr. Justice N.Paul Vasanthakumar (Retd.),  
Former Chief Justice of Jammu & Kashmir,  
'ASHIRVADH', No.24-A, II Street,  
Kamaraj Avenue  
Adyar,  
Chennai – 600 020.

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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M.SUNDAR. J.,

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