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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **21.04.2022**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

Arb. O.P. (Com.Div.) No.113 of 2022

M/s.Shriram City Union Finance Limited,
a Company having its Registered Office at
No.123, Angappa Naicken Street,
Chennai - 1.

And Branch Office at:

No.12, Ramaswamy Street,
T.Nagar, Chennai - 17 rep. by its
Authorised Signatory P.Siva Kumar

... Petitioner

Vs.

1.M/s.Saravana Fashion
rep. by its Partner V.Prabhakaran,
No.171, Indhu Nagar, Perundurai Road,
Palayapalayam, Erode - 638 011.

Also at M/s.Saravana Fashion,
No.8/415, AVP Layout,
Angenipalayam Road, Near AVP School,
Tiruppur - 641 603.

2.V.Prabhakaran

3.R.Thirupathi Venkatachalapathi

... Respondents

Petition filed under Section 11 (6) of The Arbitration and Conciliation Act, 1996 praying to appoint Dr.S.S.P.Darwesh, former Vice Chancellor and Principal District and Sessions Judge or 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 cum Hypothecation Agreement dated 31.03.2019 and direct the respondents to pay the cost of the petition.

For Petitioner : Mr.M.Aravind Subramanian

For Respondents : Mr.A.Raghuraman

ORDER

In the captioned Arb OP, Mr.M.Aravind Subramanian, learned counsel for petitioner and Mr.A.Raghuraman, learned counsel for all the three respondents are before this Court.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 18.03.2022, which reads as follows:

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented on 31.01.2022 under Section 11(6) 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.M.Aravind Subramaniam, learned counsel for sole petitioner who is before this Court submits that the captioned Arb OP is predicated on clauses 18 and 19 of a 'loan agreement dated 31.03.2019' [hereinafter 'primary contract' for the sake of convenience and clarity].

3. Learned counsel submits that sole petitioner and three respondents are signatories/parties to primary contract. Clauses 18 and 19 of the primary contract read 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



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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.

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.

19. Jurisdiction and Governing Law

Subject to the Arbitration Clause mentioned above, this Agreement shall be governed and construed in accordance with the substantive laws of India and the parties hereto submit to the exclusive jurisdiction of the Courts, situate at the place as specified in schedule 1 hereto.'



4. *Learned counsel submits that the aforementioned clauses 18 and 19 in primary contract serve as an arbitration agreement between the sole petitioner and three respondents i.e., 'arbitration agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.*

5. *Be that as it may, adverting to the case file, learned counsel submits that 'notice invoking arbitration agreement dated 29.10.2021' [hereinafter 'trigger notice' for the sake of convenience and clarity] was issued. Arbitration was triggered and first respondent sent a reply dated 13.11.2021 objecting to the nomination of sole Arbitrator, necessitating the presentation of captioned Arb OP in this Court is learned counsel's say.*

6. *Be that as it may, prima facie case made out for issue of notice.*

7. *Issue notice to respondents returnable in a fortnight i.e., returnable by 31.03.2022. Private notice permitted.*

8. *List on 31.03.2022.*

3. The short forms and abbreviations used in the earlier proceedings dated 18.03.2022 shall continue to be used in the instant order also for the sake of convenience and clarity. Before proceeding further, it is deemed appropriate to scan and reproduce Schedule 1 of the primary contract as there is a reference to the same in Clause 19.



A scanned reproduction of Schedule 1 of primary contract is as follows:

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SCHEDULE 1: COLLATERAL 1	
Agreement No.	TFH01TF19030001
Agreement Date	3/10/2019
Name and Address of the Lender	Shriram City Union Finance Limited Shriram City Union Finance Limited Chennai
Name and Address of the Borrower	M/S. Saravana Fashion No. 171, Indira Nagar, Perumthurai Road, Palagupalam, Erode - 638011
Business	Textile
Purpose of Loan	Business Development
Name & Address(es) of the Guarantor(s)	1. Mr. Prabhakaran, No. 49, Annamalai Street, Amirtham Illam, Kozhikode, Kerala - 638001 2. Mr. Thiurupathi Venkatachalapathi, No. 2/662, East Thattam, Mainmicheppatti, Coimbatore - 641012
Loan Amount	Rs. 50,00,000 / (Rupees Fifty Lakhs only)
Interest Rate	23.79 % p.a. (Fixed)
Term	60 Months
Repayment Frequency	M
Repayment Terms	
Rs. 83,333.33 of every month	
EMI End Date	
10/04/2024	
Amount Rs. 1,14,384.00 each	
Amount Rs. - each	
Amount Rs. - each	
Amount Rs. - each	
Amount Rs. - each	
Jurisdiction of Court	
Chennai	
Period for Prepayment	
12 Months	
For SARAVANA FASHION	
Partner	
For SARAVANA FASHION	
Borrower	
Guarantor (s)	



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4. As would be evident from the subsequent proceedings made in the listing on 20.04.2022, the factum of a notice from the Lok Adalat *qua* Combined Court Complex, Alandur was brought up and it is today clarified that the notice from the Lok Adalat pertains to proceedings under Section 138 of Negotiable Instruments Act, 1881 and it is not a suit. Be that as it may, there is no dispute or disagreement between the parties about existence of arbitration agreement i.e., Clauses 18 and 19 of the primary contract. However, the claim of the petitioner is being disputed by the respondents on merits. Though there are disputes and contestations regarding the claim, learned counsel on both sides submit that they would explore the possibility of settlement. This will not come in the way of appointment of sole arbitrator as Section 30 of A and C Act provides the requisite legal umbrella in this regard.

5. The legal landscape within which a legal drill under Section 11 of A and C Act has to be performed is *qua* statutory perimeter sketched by sub-section (6A) thereof. This has been elucidatively explained by Hon'ble Supreme Court in the oft-quoted ***Mayavati Trading case law i.e., Mayavati Trading Pvt. Ltd., 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.'

6. Aforementioned paragraph 10 of **Mayavati Trading** case law takes this Court to **Duro Felguera** case law i.e., **Duro Felguera Vs. Gangavaram Port Ltd.**, reported in **(2017) 9 SCC 729**, relevant paragraphs in **Duro Felguera** 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 discussion thus far means that the legal drill on hand is largely confined to examination of existence of arbitration agreement between the parties. In the case on hand, the claim is disputed but existence of arbitration agreement is not in dispute. However, the possibility of settling the disputed claim is also being explored, which can continue before the sole arbitrator owing to Section 30 of A and C Act.

8. As there is no disputation, disagreement or contestation



about the existence of arbitration agreement, Mr.A.J.Jawad, Advocate, No.5/1, Jagajeevan Ram Avenue, East Coast Road, Injambakkam, Chennai - 600 115 (Mobile No.9840087114) is appointed as sole arbitrator. Learned sole arbitrator is requested to enter upon reference, adjudicate the arbitrable disputes that have arisen between petitioner and respondents *qua* primary contract and render an award. The arbitration shall be conducted in the Arbitration and Conciliation Centre under the aegis of this Court (MHCAC) in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and Arbitrator's fee shall be as per Madras 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.

21.04.2022

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P.S.: Registry to communicate a copy of this order to

1. Mr.A.J.Jawad,
Advocate,
No.5/1, Jagajeevan Ram Avenue,
East Coast Road, Injambakkam, Chennai - 600 115.
2. The Director,



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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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of 2022**

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