



Arb.O.P (Com.Div.) No. 85 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No. 85 of 2022

M/s. Shriram City Union Finance Limited,
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.A.Kamal Hassan Ali,
Son of Mr.Abdul Ghafoor,
Correspondent,
The Harvard Nursery and Primary School,
West Street, Therizhanur, Kuthalam Taluk,
Mayiladuthurai District – 609 808.

2) K.Najma

... 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 respondents under the Loan agreement dated



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10.09.2018 and to pay the cost of the petition.

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

For Respondents : Mr.C.B.Muralikrishnan
for Mr.S.Varanesh

ORDER

This order will now dispose of captioned 'Arbitration Original Petition' ['Arb.OP' for the sake of brevity], which is under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity].

2. This order has to be read in conjunction with and in continuation of earlier proceedings made by this Court on 15.03.2022, which reads as follows:

'Captioned 'Arbitration Original Petition' ('Arb.OP' for the sake of brevity) has been presented in this Court on 17.02.2022 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 brevity, with a prayer for appointment of an



Arbitrator.

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2. *Mr.R.Uma Shankar, learned counsel of M/s.Sri and Shankar Associates (Law Firm) for the petitioner who is before this Court submits that captioned Arb.OP is predicated on Clause 18 of an agreement dated 10.09.2018 captioned 'LOAN AGREEMENT' between the petitioner and the respondents (hereinafter 'primary agreement' for the sake of convenience and clarity).*

3. *Clause 18 of primary 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 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. According to learned counsel Schedule 1 in Clause 18(c) supra talks about Chennai as seat/venue.

5. Adverting to earlier proceeding made in the previous listing on 07.03.2022, learned counsel submitted that a procedure for appointment of Arbitrator has been agreed as between the petitioner and respondents vide aforementioned Clause 18, letter dated 11.01.2022 is pursuant to such procedure, copy has been marked to both the respondents and the first respondent has replied through counsel by notice dated 22.01.2022 calling upon the petitioner to withdraw the 11.01.2022 communication, revoke the nomination of arbitration and provide Statement of Accounts in accordance with what according to first respondent is 'Reserve Bank of India' ('RBI' for the sake of brevity) norms.

6. Learned counsel submits that 11.01.2022 notice and the



reply from first respondent dated 22.01.2022 means that the first respondent has failed to act in accordance with the agreed procedure.

7. Issue notice to respondents returnable in four weeks i.e., returnable by 12.04.2022. Private notice permitted. Private notice through electronic modes of communications (subject to proof being demonstrated) also permitted.

List on 12.04.2022.'

3. Notice has since been served on both the respondents. Mr.R.Umashankar of M/s.Sri and Shankar Associates (Law Firm) on behalf of the petitioner is before this Court.

4. Adverting to earlier proceedings made in the previous listing on 15.03.2022 both learned counsel submit that there is no dispute or disagreement about existence of arbitration agreement which is now in the form a clause in the primary agreement which has been extracted and reproduced in the earlier proceedings dated 15.03.2022. However, there are serious disputes regarding the loan agreement which is the primary agreement and payment, more particularly interest thereunder. This Court does not express any opinion on the same and all questions are left open for



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the Arbitrator to adjudicate and decide the same as this is a Section 11 legal drill which has to perambulate within the statutory perimeter sketched by sub-section (6A) of Section 11 of A and C Act.

5. Ms.Hema Srinivasan, Advocate, having address for service at No.7, 1st Floor, Nehru Nagar, 2nd Main Road, Adyar, Chennai - 600 020 [Mob: 9444408600] is appointed as the sole Arbitrator. Learned Arbitrator is requested to enter upon reference, adjudicate upon the arbitrable disputes that have arisen between the parties qua primary agreement, namely Loan Agreement dated 10.09.2018 and render an award by holding sittings in the '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 fee of the learned Arbitrator shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.



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

07.06.2022

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Index: Yes/no

Internet: Yes

Note: Registry to communicate this order forthwith to:

1. Ms.Hema Srinivasan, Advocate,
No.7, 1st Floor, Nehru Nagar,
2nd Main Road, Adyar, Chennai - 600 020
Mob: 9444408600
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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