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Arb.O.P.(Comm.Div.) No.116 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Arb.O.P.(Comm.Div.) No.116 of 2022
and O.A.No.107 of 2022

Samunnati Financial Intermediation & Services Pvt. Ltd.,
Represented by its Head of Stressed
Accounts Sankaranarayana Sarma,
Having Office at Baid Hi Tech Park,
8th Floor, No.129 B East Coast Road,
Thiruvanmiyur, Chennai - 600 041.

... Petitioner

vs.

1.Margadarshak Financial Services Limited,
having registered office at 118, Dayal Farm,
Ganeshpur - Rahmanpur, Dewa Road,
Lucknow, Uttar Pradesh - 226 019.

2.Rahul J Mittra,
B-303, Amrapali Awadh Apartment, Near HAL,
Farizabad Road, Lucknow,
Uttar Pradesh - 226 016.

... Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the
Arbitration and Conciliation Act, 1996, pleased to appoint an arbitrator to
adjudicate the dispute between the petitioner and the respondent in terms
loan agreement dated 18.09.2020.



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For Petitioner : Mr.Nithyaesh & Vaibhav

ORDER

The petitioner seeks constitution of an arbitral tribunal to resolve the dispute between the petitioner and the respondents herein.

2. The petitioner states that credit facilities were extended by the petitioner to the respondents herein. In relation thereto, a term loan agreement dated 18.09.2020 was executed. The petitioner cites clause 14 of the said agreement, which deals with dispute resolution, and is as under:

"14. Governing Law and Jurisdiction: This agreement shall be governed by, and construed and interpreted in accordance with, the laws of the Republic of India. Any dispute, controversy or claim arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, shall be subject to the jurisdiction of the courts of the place of execution stated in Schedule A.



All dispute, differences or claims of any kind whatsoever arising between the Parties hereto, out of or in connection with this Agreement, or the validity, interpretation, implementation or alleged breach of terms of this Agreement or omitted to be done pursuant to this Agreement, shall be first attempted to be resolved amicably between the Parties by mutual negotiations within 30 (thirty) days of commencement of negotiations. Failing which, such dispute shall be referred to a sole arbitrator to be appointed by NBFC. The arbitration proceedings shall be in accordance with the Arbitration and Conciliation Act, 1996 and shall be conducted in English. The arbitration shall take place at Chennai and shall be governed by the laws of India."

3. Upon disputes arising between the parties, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) on 04.02.2022 and also nominated an arbitrator. The respondents did not reply to the said notice. The petition under Section 11 of the Arbitration Act and an application under Section 9 thereof were filed in the said facts and circumstances. Notice was issued to the respondents on 15.03.2022. The said notices were returned unserved. The Court took into



account the fact that the Section 21 notice was served at the same address and therefore permitted the petitioner to effect service by substituted service. Substituted service was effected on the respondents by publication in one issue of the Indian Express and one issue of Loksatta. In spite of effecting service by publication, the respondents did not enter appearance. In these circumstances, these matters are proceeded with in the absence of the respondents.

4. The dispute resolution clause, which is reproduced *supra*, clearly provides for resolution of disputes by arbitration. It further provides that such arbitration proceedings shall take place at Chennai. The petitioner has also placed on record the Section 21 notice dated 04.02.2022 and proof of service thereof on the respondents. In these circumstances, the petitioner is entitled to succeed.

5. Consequently, Arb.O.P.(Comm.Div.) No.116 of 2022 is allowed by appointing Mr.Justice K.Ravichandrabaabu, 1D, Crescent Castle, 13/6, II Crescent, Park Road, Gandhi Nagar, Adyar, Chennai - 20 (Mobile



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No.9498033336) a retired judge of this Court, as the sole arbitrator. The sole arbitrator is requested to enter upon reference and adjudicate the dispute. The fees and expenses in relation to the arbitral proceedings may be decided in consultation with the parties.

6. In O.A.No.107 of 2022, an order of interim injunction with regard to the immovable properties described in Schedule-I of the Judge's Summons and movable properties described in Schedule-II (a) and II(c) was granted on 15.03.2022. The said interim order was extended periodically thereafter. In view of the constitution of the arbitral tribunal, the order of interim injunction is extended and will continue to operate until **three weeks** after the arbitral tribunal enters upon reference. Within the said time, it is open to the applicant to present a petition under Section 17 of the Arbitration Act for the same relief before the arbitral tribunal. O.A.No.107 of 2022 is disposed of on the above terms.

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