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Arb O.P.(Com. Div.) No.161 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2022

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

Arb O.P.(Com. Div.) No.161 of 2022

M/s.Cholamandalam Investments and
Finance Company Ltd.,
(Formerly known as M/s.Cholamandalam DBS
Finance Limited)
Rep. by its Deputy General Manager – Legal
Dare House, No.2, N.S.C. Bose Road
Chennai – 600 001.

... Petitioner

Vs.

1.M/s.Arihant Retail Private Limited
No.92, G.A.Road, Washermenpet
Chennai – 600 021.

2.Vishal Surana
No.92, G.A. Road, Washermenpet
Chennai – 600 021.

... Respondents

Arbitration Original Petition filed under Section 15(1)(a) and 15(2) of the Arbitration and Conciliation Act, 1996 praying that a substitute arbitrator may be appointed by this Court for resolving the disputes between the parties and pass any other order or orders as this Court may deem fit and proper in the circumstances of the case.



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For Petitioner : Mr.KT.Sankar Subramanian
For Respondents : Mr.Aditya Chandramouli
for M/s.Aiyar & Dolia

ORDER

This order will now dispose of the captioned matter.

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 07.04.2022 and 21.04.2022 which read as follows :

Proceedings dated 07.04.2022 :

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court inter alia under Section 15 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter referred to as 'A and C Act' for the sake of convenience, clarity and brevity] with a prayer for substitution of Arbitrator owing to recusal order dated 31.12.2021.

2. Learned counsel submits that arbitration is predicated on a 'Loan Agreement dated 20.02.2020' [hereinafter 'primary contract' for the sake of convenience and clarity] and more particularly clauses 26 and 27 thereof which read as follows:

'26. ARBITRATION:

All disputes, difference and/or claims arising out of this



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Agreement whether during its subsistence or thereafter shall be settled by Arbitration in accordance with the provisions of the Arbitration Act, 1996 and shall be referred to the Sole Arbitration of an Arbitrator nominated by the Company. The award given by such Arbitrator shall be final and binding on all parties to this Agreement. In the event of an appointed arbitrator dying or being unable or unwilling to act as arbitrator for any reason, the Company, on such death of the arbitrator or his inability or unwillingness to act as arbitrator, shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with the reference from the stage it is left by his predecessor. The venue of arbitration proceedings shall be at Chennai at the Registered Office of the company which is presently at 'DARE HOUSE', No.2 (Old No:234), NSC BOSE ROAD, PARRYS, CHENNAI-600 001. The Borrower agrees to a fast track arbitration to be disposed of within 90 days from the date of reference.

27. JURISDICTION:

This Agreement has been accepted and executed by the Company at Chennai and all covenants, terms and conditions hereof including payments shall be observed and performed at Chennai and the Borrower specifically agree subject to the Arbitration clause contained herein, that Courts in Chennai alone shall have exclusive jurisdiction over any matter arising out of or concerning this Agreement.'

3. It is the specific say of learned counsel for petitioner that the aforementioned clauses 26 and 27 of primary contract serve as



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arbitration agreement between the parties and recusal of sole Arbitrator appointed by the petitioner in and by proceedings dated 31.12.2021 has necessitated the presentation of the captioned Arb OP.

4. Issue notice to respondents returnable in a fortnight i.e., returnable by 21.04.2022. Private notice permitted.

5. List on 21.04.2022.

Proceedings dated 21.04.2022 :

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 07.04.2022.

2. Mr.N.Prakash, learned counsel representing Mr.S.Namasivayam, learned Counsel on Record for the petitioner is before this Court. Mr.Jayesh B.Dolia learned counsel with address for service at No.29, Law Chambers, High Court Buildings, Chennai – 600 104 who is before this Court submits that he has filed vakalatnama for first respondent yesterday (20.04.2022).

3.Registry to verify and do the needful. To be noted, second respondent has been duly served and name of the second respondent is also shown in the cause list.

4.List after summer vacation. List on 13.06.2022.'

3. Aforementioned proceedings shall be read as integral part and parcel of this order. The short forms, abbreviations and short references used in the aforementioned proceedings will continue to be used in the instant order also.



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4. The aforementioned two proceedings capture the crux and gravamen of the matter and it is also tell tale qua trajectory the matter has taken thus far.

5. Today Mr.KT.Sankar Subramanian, learned counsel on record for sole petitioner and Mr.Aditya Chandramouli of M/s.Aiyar and Dolia (Law Firm) for respondents are before this Court. Learned counsel for respondents very fairly submits that the respondents do not have any objection to substitution of Arbitrator i.e., prayer in the captioned Arb.O.P. This makes the task of disposal of the captioned Arb.OP. very simple.

6. Both the learned counsel also make a request that it would be desirable to have a former Judge of this Court appointed as sole Arbitrator considering the nature of the matter though the earlier Arbitrator who recused himself is a learned District Judge. On perusing the nature of the matter and the quantum of the claim, this Court is of the view that this request should be acceded to and it would be appropriate to appoint a former Member of the Bench of this Court as Sole Arbitrator. Therefore, Hon'ble



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Mr.Justice V.Parthiban (Retd.), former Judge of this Court, residing at No.5069, Z Block, 12th Street, Anna Nagar (West), Chennai – 600 040 [Ph: 26280804, 26214850, Mob: 9444094401], is appointed as Sole Arbitrator. Hon'ble Arbitrator is requested to enter upon reference, adjudicate upon the arbitral disputes that have arisen between the parties qua primary contract i.e., Loan Agreement dated 20.02.2020, by holding 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.

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

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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

1. The Hon'ble Mr. Justice V.Parthiban (Retd.)
Former Judge of this Court
No.5069, Z Block, 12th Street
Anna Nagar (West)
Chennai – 600 040.
[Ph: 26280804, 26214850, Mob: 9444094401]
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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