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Arb.O.P.(Comm.Div.) No.479 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.479 of 2022

M/s.Shriram City Union Finance Limited,
Registered Office at No.123, Angappa Naicken
Street, Chennai and Branch Office
At No.13, 3rd Floor Meenakshi Towers,
Opposite Ramakrishnan School Ground
G.N.Shetty Road, Rajamannar Street,
T.Nagr, Chennai-600 017.
Land Mark-(Ramakrishna School Ground)
Represented by its Senior Manager
Mr.Mathew Arun

... Petitioner

vs.

1. M/s.Style Touch Pvt. Ltd.
Rep. By its Director Kalpesh Rajput
Plot No.46/8, 4th Floor, Lalji
Chmiba House, JP Suzali 3rd Street,
Dbhi Talao, KalvaMumbai-400 002.
2. Kalpesh Rajput,
No.46/48, K/8/9, 4th Floor,
3rd Marine Street, GOL Masjid Metro,
Dobhi, Talao, Mumbai-400 002.
3. Kalpanaa Kalpesh Rajput
No.46/48, K/8/9, 4th Floor,



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3rd Marine Street, GOC Masjid
Metro, Dobhi, Talao, Mumbai-400 002.

... Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 27.02.2018 in respect of contract bearing NO.CDBDRTF1802270017.

For Petitioner : Mr.M.Arunachalam

ORDER

By relying upon clause 18 of the loan agreement dated 27.02.2018 between the petitioner and the respondents herein, the petitioner seeks constitution of an arbitral tribunal.

2. Clause 18 of the loan agreement, which contains the arbitration clause, is set out below:

“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 the Arbitration shall be as specified in Schedule I 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 amendment thereto in order to recover its due under the Agreement from the Borrower/Guarantor.”

Clause 18 refers to Schedule 1 and Schedule 1 specifies the place of arbitration as Chennai and that disputes are subject to the jurisdiction of courts at Chennai.

3. By order dated 26.10.2022, it was recorded that notice had been served on all the respondents. The matter was adjourned in order to provide a final opportunity to the respondents. In spite of service of notice and the names of the respondents being printed in the cause list, there is no representation for the respondents. Therefore, the matter is proceeded with in the absence of the respondents.

4. Learned counsel for the petitioner invited by attention to the communication dated 21.10.2019, which was copied to the respondents, and by which the petitioner invoked the arbitration clause. Pursuant thereto, he



states that the respondents entered appearance before the arbitral tribunal and challenged the Arbitrator under Section 12 of the Arbitration and Conciliation Act 1996. In view of such challenge, the arbitral tribunal, by order dated 26.02.2021, requested the parties to seek appropriate orders from the High Court. After issuing a further notice dated 09.11.2021 requesting the respondents to accept one of the three persons suggested for appointment as arbitrator, the present petition is filed.

5. After entering appearance before the arbitral tribunal and challenging the authority of the arbitrator, the respondents have failed to enter appearance in these proceedings. Clause 18 of the loan agreement clearly provides for the resolution of disputes by arbitration. The said agreement has been signed by all the respondents. The present petition was preceded by a notice dated 09.11.2021 by which the petitioner endeavoured to constitute the arbitral tribunal with the consent of the respondents. There is no response to the said notice. In these circumstances, the petitioner is entitled to succeed.



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6. Accordingly, Arb.O.P.(Com. Div.) No.479 of 2022 is allowed by

appointing Mr.Shubhang Nair, Advocate, No.8, 8th Street,
Dr.Radhakrishnan Salai, Mylapore, Chennai-4 (Mobile
Number:9597356421) as the sole arbitrator. The sole arbitrator is called
upon to enter upon reference and adjudicate the dispute. It is open to the
sole arbitrator to fix the fees and expenses for the arbitral proceedings in
consultation with the parties.

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Index : Yes / No

Internet : Yes / No

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