



WEB COPY



Arb.O.P.(Comm.Div.) No.480 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**Arb.O.P.(Comm.Div.) No.480 of 2022**

M/s.Shriram City Union Finance Limited,  
Registered Office at No.123, Angappa Naicken  
Street, Chennai and Branch Office  
At No.13, 3<sup>rd</sup> 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. Shree Aditya Sales  
H-604-A, Road No.6, Vishwkarma  
Industrial Area, Jaipur,  
Rajasthan, 302 013.
2. Dikesh Kanungo  
764, Khunteton Ka Rasta,  
Kishan Pole Bazar, Jaipur,  
Rajasthan 302 003.
3. Om Prakash Kanungo  
764, Khunteton Ka Rasta, Kishan  
Pole Bazar, Jaipur,



Arb.O.P.(Comm.Div.) No.480 of 2022

Rajasthan 302 003.

4. Varsha Kanungo

764, Khunteton Ka Rasta, Kishan Pole,  
Bazar, Jaipur, Rajasthan, 302 003.

... Respondents

**PRAYER:** Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint / substitute a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 03.12.2018 in respect of contract bearing No.JAPR1TF1812030004.

For Petitioner : Mr.M.Arunachalam

\*\*\*\*\*

### **ORDER**

By citing clause 18 of the loan agreement dated 03.12.2018 between the petitioner and the respondents herein, the petitioner seeks constitution of an arbitral tribunal.

2. At the hearing on 26.10.2022, it was recorded that notice had been served on all the respondents. The matter was adjourned so as 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 their absence.

3. 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.”*

4. The petitioner issued a notice dated 22.01.2022, which was copied



to the respondents herein, and invoked the arbitration clause by the said notice. After the arbitral tribunal was constituted, the respondents objected to the exercise of jurisdiction by the tribunal. The arbitrator recused under communication dated 06.05.2022. The present petition was filed in these facts and circumstances.

5. The loan agreement clearly provides for resolution of disputes by arbitration. The schedule thereto indicates that the place of arbitration is Chennai and that parties agree courts in Chennai shall exercise jurisdiction in relation thereto. The earlier efforts of the petitioner to proceed with arbitration were objected to by the respondents on the ground that the appointment was unilateral. In view of the fact that the loan agreement contains an arbitration clause and such agreement was signed by all the respondents, the petitioner was entitled to invoke the arbitration clause in relation to the dispute. In spite of putting the respondents on notice about the invocation of the arbitration clause, the respondents have not co-operated in the constitution of the arbitral tribunal. Therefore, the petitioner is entitled to succeed.



Arb.O.P.(Comm.Div.) No.480 of 2022

WEB COPY

6. Accordingly, Arb.O.P.(Com. Div.) No.480 of 2022 is allowed by appointing Mr.Keerthikiran Murali, Advocate, No.22, M.G.Ramachandran Road, Kalakshetra Colony, Besant Nagar, Chennai-600 090 (Mobile No.9655446098) 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.

**03.11.2022**

Index : Yes / No

Internet : Yes / No

kal



WEB COPY



Arb.O.P.(Comm.Div.) No.480 of 2022

**SENTHILKUMAR RAMAMOORTHY,J**

kal

**Arb.O.P.(Comm.Div.) No.480 of 2022**



WEB COPY



Arb.O.P.(Comm.Div.) No.480 of 2022

**03.11.2022**