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Arb.O.P.(Comm.Div.) No.482 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.482 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.Nagar, Chennai-600 017
Land Mark-(Ramakrishna School Ground)
Represented by its Senior Manager
Mr.Mathew Arun

.. Petitioner

vs.

1. Andhra Spares Company Represented by its
Proprietor Uttam Swarup Tolasariya
5/5/80/2 Ranigunj Sri Srinivasa Commrl. Complex,
Secunderabad Hyderabad,
Begumpet Policelines, Hyderabad, 500 003.
2. Aakanksha Tolasariya
6-3-596/11/10/3 Flat No.504 Tirumal
Garden Anand, NGR Khairathabad,
Hyderabad, Banjara Hills, Hyderabad,
Telangana 500 034.



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3. Uttam Swarup Tolasariya
6-3-596/11/10/3 Flat No.504 Tirumal
Garden Anand, Nagar Khairathaabad
Hyderabad, Banjara Hills, Hyderabad,
Telangana 500 034.

... Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, prayed to appoint a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 26.07.2018 in respect of contract bearing No.RSHMYTF1807300002.

For Petitioner : Mr.M.Arunachalam

For Respondents : Ms.V.Anusha

ORDER

Ms.V.Anusha, learned counsel enters appearance for the respondents.

On instructions, without prejudice to the contention of the respondents on the merits of the matter, she states that the respondents have no objection to the constitution of an arbitral tribunal. The petitioner cites clause 18 of the loan agreement dated 26.07.2018, which provides for dispute resolution through arbitration. Clause-18 is set out below:

“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 I hereto and the proceedings shall be conducted in English languages.

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.”

2. The said clause read with Schedule I of the Loan Agreement discloses that dispute resolution is through arbitration at Chennai. Before filing the present petition, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act 1996 on 22.10.2021. The said notice was received by the respondents. However, there is no reply thereto. It also appears that the arbitrator appointed by the petitioner previously recused. In these circumstances, the petitioner is entitled to succeed.

3. Accordingly, Arb. O.P.(Com. Div.) No.482 of 2022 is allowed by appointing Mr.K.M.Aasim Shehzad, Advocate, No.47/1, Rams Surabhi Apartments, 1st Main Road, R.A.Puram, Chennai-600 028 (Mobile No.9600000036) as the sole arbitrator. The sole arbitrator is directed to enter upon reference and adjudicate the dispute. It is open to the arbitrator to fix the fees and expenses in consultation with the parties.

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Index : Yes / No



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