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Arb.O.P.(Comm.Div.) No.487 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.487 of 2022

M/s.Shriram City Union Finance Limited,
A Company having its Branch Office at:
No.12, Ramaswamy Street, T.Nagar,
Chennai - 600 017, rep. by its
Authorized Signatory, Ms.Navinaa P.N

... Petitioner

VS.

1.Lomesh Pal
2.Karan Singh
3.Maya Devi

... Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, pleased to appoint any fit and competent person as an Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996, so as to adjudicate the claim and the dispute between the petitioner and the respondents under the Loan Agreement dated 14.06.2018.



Arb.O.P.(Comm.Div.) No.487 of 2022

For Petitioner : Ms.N.Swathi
for M/s.Sri & Shankar Associates

ORDER

The petitioner is a lender. The petitioner states that credit facilities were extended to the respondents and that the respondents failed to discharge their obligations thereunder. By citing clause 18 of the loan agreement, the petitioner seeks the resolution of disputes through arbitration. Before filing this petition, the petitioner had issued a notice dated 11.04.2022 proposing the names of three persons and calling upon the respondents to choose one of them as the sole arbitrator. On receipt of the said notice, by reply dated 13.05.2022, the first respondent did not accept the names proposed by the petitioner. Instead, the first respondent proposed three other names. This petition is filed in the said facts and circumstances.



2. The petitioner filed an affidavit of service enclosing the track consignment status. At the hearing on 27.10.2022, after examining the affidavit of service, it was recorded that service was completed on the respondents. Therefore, the Registry was directed to print the names of the respondents in the cause list for today's hearing. In spite of service of notice and the names of the respondents being printed in the cause list, there is no representation for any of the respondents. Therefore, the matter is proceeded with in their absence.

3. Clause 18 of the loan agreement between the parties is as under:

"18. Arbitration and Dispute Settlement

a) Without prejudice to the Lender's right available to it under the SARFAESI Act, 2002, all disputes, difference 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 1 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 amendments thereto in order to recover its dues under the Agreement from the Borrower / Guarantor."



Arb.O.P.(Comm.Div.) No.487 of 2022

4. If clause 18 is read with Schedule-I thereto, it is evident that the agreement provides for the resolution of disputes by arbitration, and that such arbitration shall take place at Chennai. The Section 21 notice and the reply thereto are on record. These documents disclose that parties could not agree upon the sole arbitrator. In these circumstances, the petitioner is entitled to succeed.

5. Accordingly, Arb.O.P.(Comm.Div.) No.487 of 2022 is allowed by appointing Mr.Keerthi Keeran Murali, Advocate, No.22, M.G.Ramachandran Road, Kalakshetra Colony, Besant Nagar, Chennai – 90 (Mobile No.9655446098), as the sole arbitrator. The sole arbitrator is called upon to enter upon reference and adjudicate the dispute. The fees and expenses in relation to the arbitral proceedings may be fixed by the arbitral tribunal in consultation with the parties.

10.11.2022

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Internet : Yes / No



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Arb.O.P.(Comm.Div.) No.487 of 2022

SENTHILKUMAR RAMAMOORTHY,J

rna

Arb.O.P.(Comm.Div.) No.487 of 2022

10.11.2022