



Arb. O.P. No. 488 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 06.12.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.488 of 2022

M/s.Shriram City Union Finance Limited,
Having its Branch office at:
No.12, Ramaswamy Street, T.Nagar,
Chennai, rep. by its Authorised Signatory,
Ms.Navinaa P.N.

... Petitioner

Vs.

1.Mr.Kuldeep Singh
2.Mrs.Jasbir Kaur

... Respondents

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying

(i)to pass an order of appointing a sole arbitrator to adjudicate the claim and disputes that has arisen between the petitioner and the respondents under the loan agreement dated 31.01.2018,

(ii) and to direct the respondents to pay costs of this petition.



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For Petitioner : Mr.R.Uma Shankar for
M/s.Sri & Shankar Associates.

For Respondents : No Appearance

ORDER

This Original Petition has been filed seeking for appointment of Sole Arbitrator to adjudicate the claim and disputes that has arisen between the petitioner and the respondents under the loan agreement dated 31.01.2018,

2.The petitioner is a Non-Banking Finance Company incorporated under the provisions of the Companies Act, 1956 and registered with the Reserve Bank of India and carries on the business of extending various finance facilities including Small-Medium Enterprise Finance. During the course of its business, the first respondent entered into a loan agreement dated 31.01.2018 with the petitioner. The second respondent stood as guarantor. Subsequent to the entering into the loan agreement, the entire loan amount of Rs.8,00,000/- was disbursed to the first respondent after he deposited the title deeds pertaining to his property. The first respondent has



agreed to make the re-payment of the said loan in 60 monthly installments each consisting of Rs.24,907/-. However, the first respondent has committed default in making re-payment of the loan amount.

3. According to the petitioner, the first respondent is liable to pay a sum of Rs.12,60,197/- as on 16.12.2021. Therefore, the petitioner has issued notice dated 24.12.2021, requesting the respondents to remit the entire amount. However, despite receipt of notice, the respondents have not repaid any amount. Therefore, invoking the arbitration clause contained in the loan agreement, the petitioner has nominated an Arbitrator by letter dated 03.02.2022, however, by letter dated 24.02.2022, the Arbitrator has not accepted the nomination and refused to act as an Arbitrator in the matter. Further, the respondents have also made objections as regards the appointment of the sole arbitrator vide letter dated 08.03.2022. Hence, the petitioner has come forward with the present petition.

4. Notice sent to the respondents, was returned with the postal endorsement "refused". Despite the names of the respondents were printed in the cause list, when this petition is taken up, there is no representation on



behalf of the respondents.

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5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. A perusal of the entire record, it appears that the first respondent having availed the loan, failed to repay the same and committed default and there is outstanding due of Rs. Rs.12,60,197/- as on 16.12.2021 and despite notices sent to the respondents, there is no progress. Therefore, the petitioner seeks to get the matter adjudicated by a sole Arbitrator in terms of Arbitration Clause 18 contained in the agreement, which reads as under:

Clause 18:

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-enactments for the time being in force and shall be conducted by a sole arbitrator to be appointed by the



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Lender. The applicable Laws shall be Indian Laws. In the event or 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 proceeding 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 parties 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 this Agreement from the Borrower/Guarantor.”

7. In view of the above and since the respondents have raised objections regarding the Arbitrator proposed by the petitioner, this Court is inclined to pass the following order:



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KRISHNAN RAMASAMY, J.

i) Mrs.Chitra Narayan, Advocate, residing at No.3E, KGEYES ETERNITY, Parvathy Street, Kalakshetra Colony, Besant Nagar, Chennai-600 090, Contact No.9094031934 is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii] That the learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii] That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by her and the same shall be borne by the parties equally.

8.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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