



Arb.O.P.(Comm.Div.) No.611 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

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M/s.Shriram City Union Finance Limited,
Registered Office at
123, Angappa Naicken Street, Chennai - 600 001.
And one of its 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.M/s.Shreeji Engineering Works
Rep. by its Proprietor Mr.Manish Navnital Zaveri
D/2 Jayanarayana Estate,
Aarey Road, Goregaon East, 400 063.

2.Mrs.Preeti Zaveri

... Respondents



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PRAYER: Arbitration Original Petition filed under Section 11(6), 14(1)(b) and Section 15(2) of the Arbitration and Conciliation Act, 1996, pleaded to appoint / substitute a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 30.07.2018 in respect of contract bearing No.CDBDRTF1808050007.

For Petitioner : Mr.M.Arunachalam

ORDER

Based on a loan agreement dated 30.07.2018, the petitioner seeks the constitution of an arbitral tribunal. The petitioner states that the respondents availed of credit facilities from the petitioner pursuant to loan agreement dated 30.07.2018. By citing clause 18 thereof, it is submitted that the parties agreed to the resolution of disputes through arbitration.

2. Upon default by the respondents in servicing obligations under the loan agreement, the petitioner issued a notice dated 04.07.2022 to the



arbitrator appointed by the petitioner with a copy thereof to the respondents.

The petitioner asserts that the said notice constitutes a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act). Pursuant thereto, the arbitral tribunal was constituted. An application was filed by the respondents under Section 16 of the Arbitration Act. Upon receipt thereof, by communication dated 28.09.2022, the arbitrator appointed by the petitioner recused. Hence this petition.

3. The petitioner has filed an affidavit of service enclosing the acknowledgment card as proof of service on the first respondent. As regards the second respondent, the track consignment report evidencing service of notice on the second respondent is enclosed. 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.

4. The loan agreement provides for arbitration under clause 18 thereof, which is set out below:



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"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 Arbitration shall be as specified in Schedule 1 hereto and the proceedings



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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."

Schedule - 1 thereto provides that the place of arbitration is Chennai.

5. From the above provisions, it is beyond doubt that the contract provides for dispute resolution by arbitration at Chennai. This petition was preceded by a notice dated 21.06.2022, which was received by the respondents. Pursuant thereto, the respondents filed an application under Section 16 of the Arbitration Act, which resulted in the recusal of the arbitrator.



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6. Since the respondents failed to appear in spite of receipt of notice in the facts and circumstances set out above, the petitioner is entitled to succeed.

7. Accordingly, Arb.O.P.(Comm.Div.) No.611 of 2022 is allowed by appointing Mr.Pawan Jhabak, Advocate, 115, Luz Church Road, 1st Floor, Mylapore, Chennai - 600 004, Mobile No.9176663600, as the sole arbitrator. The sole arbitrator is requested to enter upon reference and adjudicate the dispute. The fees and expenses in respect of the arbitral proceedings shall be fixed by the arbitral tribunal in consultation with the parties.

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Index : Yes / No

Internet : Yes / No

SENTHILKUMAR RAMAMOORTHY,J



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