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Arb.O.P.(Com.Div.) No.83 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

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THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.83 of 2023

M/s.Deccan Finance Ltd.
Rep. by its Managing Director

... Petitioner

Versus

1.Karthikeya Ragupathi

2.Thangaloganathan

3.Parthiba Balakumar

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to resolve the disputes between the petitioner and the respondents in terms of Article 20 of the Hypothecation Agreement HC-19-024 dated 16.02.2019.

For Petitioner : Mr.K.Moorthy

For Respondents : Mr.P.Ayyaswamy



Arb.O.P.(Com.Div.) No.83 of 2023

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator.

2.The respondents have availed a loan from the petitioner under a Loan Contract dated 16.02.2019. According to the petitioner, certain amounts are due and payable by the respondents under the aforementioned Loan Contract. Since the amounts have not been paid, the petitioner has invoked the Arbitration Clause contained in the Loan cum Hypothecation Agreement dated 16.02.2019 by sending a notice to the respondents on 03.09.2020. In the Invocation Notice dated 03.09.2020, the petitioner had named an Arbitrator, who had earlier acted upon the reference. However, he has recused himself from the Arbitration stating personal reasons. The letter of the earlier Arbitrator is dated 27.01.2022 and is filed along with the typed set of papers filed by the petitioner.

3.Mr.P.Ayyaswamy, learned counsel for the respondents is present.

4.Admittedly, there is an Arbitration Agreement in the Loan cum



Hypothecation Agreement dated 16.02.2019, which is extracted hereunder:

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'Article 20 – Law, Jurisdiction, Arbitration

20.1 All disputes, differences and/or claim 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 statutory amendments thereof and shall be referred to the Sole Arbitration of an Arbitrator nominated by the Lender. The award given by such an Arbitrator shall be final and binding on the Borrower to this agreement.

It is a term of this agreement that in the events of such an Arbitrator to whom the matter has been originally referred dying or being unable to act for any reason, the Lender at the time of such death of the Arbitrator or of his inability to act as Arbitrator, shall appoint another person to act as Arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

20.2. The venue of arbitration proceedings shall be at

20.3. The Arbitrator so appointed herein above, shall also be entitled to pass an Award on the hypothecated assets and also on any other securities furnished by or on behalf of the Borrower.'

5. Admittedly, the respondents have not nominated their Arbitrator



despite having received the Arbitration Invocation Notice dated 03.09.2020 from the petitioner, wherein the petitioner had suggested a name of an Arbitrator. Admittedly, there has been no consensus between the petitioner and the respondents with regard to the name of the Arbitrator. Only under those circumstances, this petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator by this Court.

6. Admittedly, there is a valid Arbitration Agreement between the parties as extracted supra. Admittedly, there has been no consensus between the parties for naming the Arbitrator. The Arbitration Clause contained in the Loan cum Hypothecation Agreement dated 16.02.2019 enables the petitioner to unilaterally appoint an Arbitrator, which is not permissible under law as per the recent decision of the Hon'ble Supreme Court in the case of **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited** reported in (2020) 20 SCC 760.

7. In view of there being an Arbitration Agreement in the Loan cum



Arb.O.P.(Com.Div.) No.83 of 2023

Hypothecation Agreement dated 16.02.2019, which is the subject matter of dispute between the petitioner and the respondents, necessarily this Court will have to appoint an Arbitrator in this petition.

8.For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

(a)This Court appoints Mr.Mohammed Fayaz Ali, No.17, GA "Landmark", Sait Colony, 1st Street, Egmore, Chennai – 600 008, 9003237483, Advocate as the Sole Arbitrator to decide the dispute between the petitioner and the respondents arising out of the Loan cum Hypothecation Agreement dated 16.02.2019, on merits and in accordance with law.

(b)The Arbitrator shall be paid his remuneration / fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996.



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Arb.O.P.(Com.Div.) No.83 of 2023

ABDUL QUDDHOSE, J.

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(c)Both the parties shall equally share the Arbitrator's fees.

(d)The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

20.07.2023

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Index:Yes/No

Speaking/Non-speaking orders

Arb.O.P (Com.Div.) No.83 of 2023