



WEB COPY

Arb.O.P.(Com.Div.)No.70 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2023

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Com.Div.)No.70 of 2023

M/s.Samunnati Financial Intermediation &
Services Pvt. Ltd., having its office at
No.129-B, 8th Floor, Baid Hi-Tech Park, ECR Road,
Thiruvanmiyur,
Chennai – 600 041.

...Petitioner

Versus

1.M/s.Reliable Cashews Company Pvt. Ltd.,
Plot No.429, 10th Road,
Industrial Area, Baikambady Industrial Area,
Mangalore, Karnataka – 575 011.

2.Mr.D.Sivasankaran

3.Mr.Siddarthan Gowthaman

4.Mrs.Vasanthi Gowthaman

...Respondents

Original Petition filed under Section 11(4 & 6) of the Arbitration and Conciliation Act, 1996 for following reliefs:

(a) To appoint an arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of Clause No.14 contained in the Term Loan Agreement dated 09.08.2019 and Clause No.12 contained in



Deed of Hypothecation dated 09.08.2019, for the purpose of adjudicating upon on the disputes and differences between the parties under the said agreements dated 09.08.2019 and

(b) To direct the respondents to pay cost of the above O.P. to the petitioner herein.

For Petitioner : M/s.R.Umasuthan

For Respondents : No Appearance

ORDER

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint an Arbitrator for adjudicating the dispute between the petitioner and the respondent.

2. The learned counsel for the petitioner submitted that the first respondent availed a sum of Rs.10,00,00,000/- (Rupees Ten Crores Only) as loan from the petitioner vide Term Loan Agreement dated 09.08.2019 and towards security for the repayment of the said loan, the first respondent has executed loan documents in favour of the petitioner. The Directors of the



WEB COPY

first respondent company viz., Mr.Ramanathan Gowthaman and Mr.D.Sivasankaran (2nd respondent) had executed a Deed of Personal Guarantee dated 09.08.2019 in favour of the petitioner for guaranteeing the prompt and repayment of the aforesaid loan along with interest accrued thereon by the first respondent to the petitioner and thus rendered themselves jointly and severally liable to pay the said loan to the petitioner. After the demise of said Mr.Ramanathan Gowthaman, his son and wife were arrayed as respondents 3 & 4 herein, in their capacity as the legal heirs of the deceased Ramanathan Gowthaman. As per the terms of aforesaid Loan Agreement, the respondents shall repay the loan amount together with interest at a rate of 16% p.a compounded with monthly rests in 36 quarterly installments. In the event of any default committed by the respondents in repayment of the installment monies and interest, the respondents shall be liable to pay additional interest charges at the rate of 3% per month on the amount over due and remaining unpaid.

2.1. During September 2019, based on the specific request of the respondents, the petitioner sanctioned a Short Term Loan of Rs.5,00,00,000/- (Rupees Five Crores Only) within the already sanctioned



Term Loan Limit of Rs.10,00,00,000/- vide Sanction Letter

No.SAmfin/AE/222/2019-20 dated 03.09.2019. The said sanction letter was duly accepted by the first respondent.

2.2. The first respondent committed default in repayment of the installment monies since January 2022. As on 31.12.2022, a sum of Rs.8,11,45,535/- is outstanding and overdue against the Term Loan/Short Term Loan Limited sanctioned by the petitioner to the respondent. The first respondent is liable to pay the said outstanding due in their capacity as borrower. The second respondent is liable to pay the said outstanding due in their capacity as guarantors. The respondents 3 & 4 are jointly and severally liable to pay the said outstanding due to the petitioner in their capacity as the legal heirs of the deceased guarantor Mr.Ramanathan Gowthaman.

2.3. As Clause 14 of the Term Loan Agreement dated 09.08.2019 and Clause 12 of the Deed of Hypothecation dated 09.08.2019, if any dispute arose between the parties in connection with the said project or its performance, the same shall be settled by a Sole Arbitrator as per the



WEB COPY



Arb.O.P.(Com.Div.)No.70 of 2022

provisions of the Act. For better appreciation, relevant portion of Clause 14 of the Term Loan Agreement and Clause 12 of the Deed of Hypothecation are extracted hereunder:

“All disputes, differences or claims of any kind whatsoever arising between the Parties hereto, out of or in connection with this Agreement, or the validity, interpretation, implementation or alleged breach of terms of this Agreement or omitted to be done pursuant to this Agreement, shall be first attempted to be resolved amicably between the Parties by mutual negotiations within 30 (thirty) days of commencement of negotiations. Failing which, such dispute shall be referred to a sole arbitrator to be appointed by NBFC. The arbitration proceedings shall be in accordance with the Arbitration and Conciliation Act, 1996 and shall be conducted in English. The arbitration shall take place at Chennai and shall be governed by the laws of India.”

Hence, the petitioner vide legal notice dated 31.10.2022, called upon the respondents to accept the nomination of Retired District Judge Mr.Ravindra Bose as an arbitrator for adjudicating the dispute between the parties. Even after the receipt of said notice, the respondents did not sent any reply to the said legal notice. Therefore, left with no other alternative, the petitioner has filed the present petition for the aforesaid relief.



WEB COPY

3. Despite the service of notice and name of the respondents are being printed in today's cause list, none appeared on behalf of the respondents.

4. Heard the learned counsel for the petitioner and perused materials placed before this Court.

5. Upon perusing the materials and hearing the submissions made by the learned counsel for the petitioner, it is crystal clear that the dispute involved herein is arbitrable as per Clause 14 of the Term Loan Agreement dated 09.08.2019. Hence, this Court is inclined to pass the following order:

i) Accordingly, **The Hon'ble Mr.Justice N.Kirubakaran (Retired), Madras High Court, residing at No.36, 2nd Cross Street Rayala Nagar, Ramampuram, Chennai – 600 089. (Contact No.9445025454),** is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably



WEB COPY



within a period of six months from the date of receipt of the Order without influencing any of the observations made by this Court in this order.

iii) Learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

iv) In the event of non-appearance of the respondent herein, the petitioner herein shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent herein.

6. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the 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.

06.04.2023

mrr

Index : Yes/No

Speaking Order (or) Non Speaking Order

KRISHNAN RAMASAMY, J.



WEB COPY



Arb.O.P.(Com.Div.)No.70 of 2023

mrr

Arb.O.P.(Com.Div.)No.70 of 2023

06.04.2023