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Arb.O.P (Com.Div.) No.111 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

CORAM

**THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY**

**Arb.O.P (Com.Div.) No.111 of 2022**

M/s.Autosys Control Systems India Ltd.,  
Represented by Mr.Anupraj Gauni  
Full of No.45/47, 2<sup>nd</sup> Floor,  
Gandhi Nagar, 1<sup>st</sup> Main Road,  
Odyssey Building,  
Chennai 600 020

... Petitioner

**Vs.**

1.Oxford Banque OPC Private Limited (India),  
Represented by its Director,  
Mr.Syed Mohammed,  
Office No.8/7, Ground Floor,  
Kannammal Street, Barani Colony,  
Saligramam, Chennai 600 093.

2.Oxford Credit Banque Limited,  
71-75, Sheldon Street,  
Convert Garden,  
London-WC2H9JQ, UK.

... Respondent



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Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate the disputes arising between the petitioner and the respondents and to direct the respondents to pay the cost of this petition.

For Petitioners : Ms.Prapti Mehta,  
for M/s.Surana & Surana.

For Respondent : Mr.J.Pravin for R1  
No appearance for R2

### **ORDER**

This Arbitration Original Petition was filed for appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as "the Act").

2. The learned counsel appearing for the petitioner would submit that there is a dispute, which would fall within the scope of the agreement and therefore, she contended that the matter can be referred to arbitration in terms of Clause 23 of the said agreement, which reads as follows:



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### **“23 GOVERNING LAW AND JURISDICTION**

*23.1 This Deed and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with the Indian arbitration is governed and regulated by the Arbitration and Conciliation Act, 1996, and place of Arbitrator is appointment in Chennai by the banker/lender.*

*23.2 The Banker/Lender shall appoint the Arbitrator hereby suggested Mr.J.Abdul Rahim, Advocate having office at No.1043, 2nd Main Rd, 16<sup>th</sup> Central Cross St, MKB Nager, Chennai 600 039 as the Sole Arbitrator who shall chair the Arbitrator proceedings and order of such Arbitral Tribunal shall be final and binding on both parties.*

*23.3 The Parties irrevocably agree that the Arbitrator shall have exclusive jurisdiction to settle any dispute or claims arising out of or in connection with this Deed, its subject matter or formation provided that nothing contained in this Deed shall be taken to limit the right of the Lender to bring proceedings in any other jurisdiction or jurisdictions whether concurrently or not. The Guarantor further agrees not to initiate any proceedings against the OXFORDBANQUE OPC PVT LTD, INDIA in any jurisdiction in the Courts of law.”*



3. According to the learned counsel for the petitioner, the first respondent had issued a notice dated 23.11.2021 to the petitioner for the appointment of Arbitrator by referring the present dispute and a reply was also sent by the petitioner through lawyer on 03.12.2021 stating that they are not agreeable for the unilateral appointment of the Arbitrator by referring the law laid down by the Hon'ble Apex Court in ***Perkins Eastman Architects DPC and others vs. HSCC (India) Ltd*** reported in ***AIR 2020 SC 59***. Hence, the present Arbitration Original Petition is filed.

4. Heard the learned counsel for the petitioner as well as respondents and perused the materials available on records.

5. The respondent herein had already referred the present dispute to the arbitration by nominating a sole Arbitrator unilaterally. As per the law laid down by the Hon'ble Apex Court in ***Perkins*** case, the unilateral appointment of the Arbitrator is non-est in law. Since the respondent had already sent notice for invoking Arbitration, he will not have any objection to the neutral appointment of the Arbitrator by this Court.



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6. The learned counsel appearing for the respondent would submit that the present dispute cannot be referred to arbitration, since the same has been settled. However, the learned counsel appearing for the petitioner would submit that the present dispute is not settled and they have referred to invoke the provision of Arbitration only for the present dispute.

7. However, it is made clear that this Court cannot decide or give any final verdict about the dispute between the parties. Since the disputes are appears to be within the scope of agreement, the same can only be decided by the Arbitrator. Hence, this Court is inclined to appoint an Arbitrator.

8. Accordingly, this Court feels it appropriate to pass the following order:

i) Mr.V.Nallasenapathy, Advocate, residing at No.61, TTK Road, Chennai 600 018, Phone No: 9841527190, is appointed as sole 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 within a period of six months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the applicant can recover the same directly from the respondent.

9. This Arbitration 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.

**14.02.2023**

Speaking/Non-speaking order



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Index : Yes / No

Neutral Citation: Yes / No

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**KRISHNAN RAMASAMY.J.,**  
nsa

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