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ARB.O.P.(Com.Div) No.235 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.235 of 2023
and O.A.No.187 of 2023

M/s.Swarna Pragati Housing Microfinance Private Limited,
A company incorporated under the Companies Act, 1956,
Having its Registered Office at
142 Golcha House, New Colony, Byramji Town,
Nagpur – 440 001, Maharashtra,
Rep. by its Authorised Signatory. ... Petitioner

Vs.

Kotalipara Development Society (KDS), a Society,
Registered under the Societies Registration Act, 1961,
Having its office at Arobindapalli Noapara,
Barasat, Kolkata – 700 124,
Rep. by its Authorised Signatory. ... Respondent

Prayer : Arbitration Original Petitions (Commercial Division) filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator for the purpose of adjudicating upon the disputes which has arisen between the petitioner and the respondent and award cost of this petition.

For Petitioner : M/s.N. Vignesh and Samyuktha J.
for M/s.J. Ravichandran

For Respondent : Set *exparte*



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ORDER

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This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act'), seeking for appointment of an Arbitrator by this Court.

2. The respondent has availed financial facility from the petitioner under a Deed of Agreement dated 28.03.2017. The respondent has also deposited title deeds pertaining to the respondent/property with the petitioner as a security for the loan. According to the petitioner, the respondent has committed default in repayment of the loan as per the Deed of Agreement dated 28.03.2017. There is an arbitration clause in the Deed of Agreement dated 28.03.2017, which is the subject matter of dispute and the said arbitration clause is extracted hereunder:-

“7. Governing Laws and Jurisdiction

a) The Courts at Chennai alone under the jurisdiction of the High Court of Judicature, Chennai shall have sole and exclusive jurisdiction to entertain and decide all and any disputes or differences, which may arise between the parties, or any of them, in relation to or arising out of the terms of this Agreement.



b) In case any disputes or differences arise between the parties inter-se or between one or more parties and Self Help Groups / Joint Liability Groups / Credit Groups and others and the same shall be referred for arbitration under the provisions of Arbitration & Conciliation Act 1996. The dispute shall be settled by a panel of 3 (three) arbitrators of which one each shall be appointed by Business Associate and the Company respectively and the third shall be appointed by the two arbitrators so appointed and shall serve as the chairman of the arbitral panel tribunal.”

3. In accordance with the arbitration clause, the petitioner has invoked arbitration by issuing notice to the respondent on 08.06.2022. Despite receipt of the same, the respondent has not chosen to send any reply. Since there was no consensus between the parties with regard to the name of the Arbitrator, this petition has been filed under Section 11 of the Act, seeking for appointment of an Arbitrator by this Court.

4. There is no representation on behalf of the respondent. The name of the respondent is also printed in the cause list today. Since the respondent has chosen not to enter appearance, the respondent is set *exparte* in this petition.



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5. Since there is a valid arbitration clause available in the Deed of Agreement dated 28.03.2017, which is the subject matter of dispute and the petitioner has also invoked arbitration in accordance with the said arbitration clause by sending a notice to the respondent on 08.06.2022 and there is no consensus with regard to the name of the Arbitrator, this Court will have to necessarily appoint an Arbitrator to adjudicate the dispute between the parties arising out of the Deed of Agreement dated 28.03.2017.

6. At this juncture, the learned counsel for the petitioner would submit that since an Arbitrator has been appointed by this Court, liberty may be granted to the petitioner to file an application under Section 17 of the Act, seeking for the same relief as sought for in O.A.No.187 of 2023.

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

- (a) This Court appoints Hon'ble Mr.Justice V. Bharathidasan, Former High Court Judge (Retd.), having Office at No.22, L-45, 2nd Main Road, Kamraj Nagar, Thiruvannamipur, Chennai, as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the



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Deed of Agreement dated 28.03.2017.

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- (b) The Arbitrator shall be paid his remuneration/fees as per the schedule agreed upon by the parties to the dispute;
- (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;
- (e) Accordingly, the connected application namely O.A.No.187 of 2023 is disposed of, by granting liberty to the applicant to file an application under Section 17 of the Arbitration and Conciliation Act, 1996, before the Arbitrator, seeking for the same relief as sought for in this application.

15.09.2023

Index: Yes/ No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No

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ABDUL QUDDHOSE, J.

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