



WEB COPY



Arb..O.P(Com.Div). No.160 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P(Com.Div).No.160 of 2023

Nabkisan Finance Limited,
Ground Floor,
NABARD Tamil Nadu Regional Office Building,
No.48, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.
Rep by its Sr.Manager (Accounts)D.Dhanasekar.

... Petitioner

Vs.

1.M/s.Kiruba Charitable Trust,
Rep by its Managing Trustee,
Ms.A.Sharmila,
No.14/80, New Street, (Near Govt.Middle School),
Asaripallam – 629 201,
Kanyakumari District.

2.Ms.A.Sharmila,
Managing Trustee,
M/s.Kiruba Charitable Trust,
No.14/80, New Street, (Near Govt.Middle School),
Asaripallam – 629 201,
Kanyakumari District.

3.Mr.P.Rajasingh,
Secretary,
M/s.Kiruba Charitable Trust,
385, Gropundstreet, Vathiyarvilai,
Krishnakovil, Nagarcoil, Kanyakumari District.



Arb..O.P(Com.Div). No.160 of 2023

4.Ms.A.Suma,
Trustee,
M/s.Kiruba Charitable Trust,
No.14/80 A, Near Middle School,
Asaripalayam, Nagarcoil,
Kanyakumari District.

5.Ms.Jenifer,
Trustee,
M/s.Kiruba Charitable Trust,
Channel Karai,
Asaripallam, Nagarcoil,
Kanyakumari District.

6.Ms.T.Vimala,
Trustee,
M/s.Kiruba Charitable Trust,
Kovilpuram, Alankottai,
Kanapathipuram, Nagarcoil,
Kanyakumari District.

7.Mr.T.Rajan,
Guarantor,
M/s.Kiruba Charitable Trust,
No.19, 87D, Pulluvilai,
Erumbukadi PO – 629 004.
Kanyakumari District.

... Respondents

Prayer: Original Petition is filed under Section 11(6) of Arbitration and Conciliation Act read with Sections 10(2) and 2(1)(C)(i) of the Commercial Courts Act, 2015 (Act No.4 of 2016), praying to appoint an Arbitrator to adjudicate the dispute that had arisen between the petitioner and the respondents.



Arb..O.P(Com.Div). No.160 of 2023

For Petitioner : Mr.S.Gopinath
for Mr.M.R.Gokulakrishnan
For Respondents : No Appearance
for R1 to R6
for R7 – Died No Appearance

ORDER

It is informed by the learned counsel for the petitioner that the seventh respondent has deceased. The notice sent on the seventh respondent has been returned with an endorsement “deceased”. Notice on the rest of the respondents have been served. Today, the names of the respondents are also printed in the cause list. The dispute between the petitioner and the respondents is covered by a Arbitration Clause in Hypothecation agreement dated 19.06.2015. The said clause reads as under:

23. That on any default of the Borrower in payment on demand of any money hereby secured or the performance of any obligation to NKFL under this or any other security or the occurrence of any circumstances in the opinion of NKFL prejudicing or endangering this or any other security, NKFL shall be entitled at the Borrower's risk and expenses as Attorney for and in the name of the Borrower or otherwise (the Borrower hereby irrevocably appointing NKFL to be its Attorney) to take possession and/or appoint receivers of the said debts under this security give notices and demands to Borrower and third parties liable that for and to demand, sue for, recover receive and give receipts and discharges for the same and sell or realise by public auction or private contract or otherwise dispose off all or any part of the said debts and enforce, settle, compromise submit to arbitration or deal in any manner with any of the said debts or claims under this security without being bound to exercise any of these powers or



WEB COPY

liable for any loss in the exercise thereof the Borrower undertaking to transfer and deliver to NKFL all relative documents and papers and agreeing to accept NKFL's accounts or receipts from realisation under this security and to pay any shortfall or deficiency thereby shown. The Borrower agree to execute on demand by NKFL such further documents as may be required by NKFL to vest the said debts or any of them in NKFL to render the same readily realisable or transferable by NKFL at any time. The Borrower hereby declare that the said debts shall always be their absolute property at their sole disposal and free from any prior charge or encumbrance and declares that nothing herein shall operate to prejudice NKFL's rights or remedies in respect of any present or future security, guarantee, obligation or decree for any indebtedness or liability of the Borrower to NKFL. The Borrower will not receive, compound or release any of the said debts nor do anything whereby the recovery of the same may be impeded, delayed or prevented without the consent of NKFL and will keep proper books of account of its business and will at any time when required produce such books for the inspection of NKFL and its officers and agents and allow it or them access thereto and to make copies of or extracts from the same.

2. Since the respondents have failed to appear despite service of notice, Court is inclined to appoint Mr.Arun Karthik Mohan, Advocate, No.7, Sri Ram Dham, First Floor, Jagadambal Colony 2nd Street, Royapettah, Chennai – 600 04 as the Arbitrator. The learned counsel Mr.Arun Karthik Mohan, shall entertain claim petition of the petitioner and dispose the same in accordance with the provisions of the Arbitration and Conciliation Act, 1996 after due notice to the respondents. It is open to the petitioner to implead the L.Rs of the seventh respondent as respondent.



Arb..O.P(Com.Div). No.160 of 2023

WEB COPY 3. This Original Petition stands disposed of. No costs.

12.10.2023

jas



WEB COPY



Arb..O.P(Com.Div). No.160 of 2023

C.SARAVANAN, J.

jas

Arb.O.P(Com.Div).No.160 of 2023

12.10.2023