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Arb.O.P (Com.Div.) No.159 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.159 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.Thenpennai Farmer Producer Company Limited,
No.1877, Salem Main Road,
Thanipadi, Thandrapattu Taluk,
Tiruvannamalai 606 708.

2.G.Murugan

3.C.Anthoniammal

4.N.P.Dhandapani

5.P.Chennakrishnan

... Respondents

Arbitration Original Petition filed under Section 11(6) of the
Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to



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adjudicate the disputes that had arisen between the petitioner and the respondent.

For Petitioner : Mr.S.Gopinath
For Respondent : No appearance

ORDER

This Arbitration Original Petition was filed to appoint an Arbitrator to adjudicate the disputes that had arisen between the petitioner and the respondent.

2. The learned counsel for the petitioner would submit that by virtue of the loan agreement dated 07.12.2017. They have borrowed a sum of Rs.10,00,000/-, out of which a sum of Rs.16,64,067/- along with interest is due as on date. With regard to the said due, the petitioner had send a notice. However, in spite of the said notice, the respondent had neither responded nor settled the dues. Thereafter, though the petitioner sent a notice dated 24.05.2022 under Section 21 of the Act, the respondent had not agreed for the appointment of the Arbitrator. Therefore, with no other option, the petitioner had approached this Court for the appointment of Arbitrator.



3. By referring clause 2(j) of the said loan agreement, the learned counsel for the petitioner would submit that the present dispute can be referred to Arbitration. The Clause 2(j) of the said loan agreement reads as follows:

“(j) Dispute Resolution

In the event of a dispute, difference or claim between the parties hereto, arising out of this agreement or in any way relating hereto, or any term, condition or provision herein mentioned or the construction or interpretation thereof or otherwise in relation hereto, the parties shall first endeavor to settle such difference, dispute, claim or question by mutual discussion, failing which the same shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force. NKFL shall appoint a sole Arbitrator to conduct the arbitration proceedings. The place of arbitration shall be Chennai and any award whether interim or final, shall be made, and shall be deemed for all purposes between the parties to be made, in Chennai. The arbitral procedure shall be conducted in English Language and any award or awards shall be rendered in English. The procedural law of the arbitration shall be Indian Law. The award of the arbitrator shall be final and conclusive and binding upon the parties.”

4. After filing of this petition, notice was ordered to the respondent



and the name of the respondent was also printed in the cause list. However, when the matter was taken up for hearing today, none appeared on behalf of the respondent, which shows that the respondent is not interested in contesting this matter. Therefore, this Court proceeds to pass orders.

5. Upon hearing the learned counsel for the petitioner and perusing the materials available on record, this Court is satisfied that the present dispute is arising out of the loan agreement dated 07.12.2017 and the same is arbitrable in terms of Clause 2(j) of the said loan agreement. Hence, this Court is inclined to appoint a sole Arbitrator to adjudicate the disputes between the parties.

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

i) Ms.S.Shanthakumari, Advocate, Women Lawyers' Association, 93, Law Chambers, High Court, Chennai 600 104, Mobile No.09840226626, 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



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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, as per Schedule IV of the Act 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 petitioner can recover the same directly from the respondent and vice versa.

7. With the above direction, this Arbitration Original Petition is allowed.

22.06.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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