



Arb.OP.(comdiv) No.131 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.131 of 2023

M/s.Cholamandalam Investments and
Finance Company Limited,
(formerly known as Cholamandalam DBS
Finance Ltd.),
Rep. By Mr.R.Sivakumar Manager Legal,
Dare House, No.2, NSC Bose Road,
Chennai – 1.

.. Petitioner

-VS-

1.Mrs.Veeramma
2.Mr.Venkatappa Muniyappan
3.Mr.Nagan

.. Respondents

Petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed seeking to appoint a sole arbitrator to adjudicate the dispute between the petitioner and the respondents.

For Petitioner : Mr.Ranjith
for Mr.S.Namasivayam

For Respondents : Ex-parte



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ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator.

2. The petitioner is a non-banking finance institution. The respondents had availed a loan from the petitioner under the loan agreement dated 31.03.2021. According to the petitioner, the respondents had committed default in the repayment of the loan. A demand legal notice was also sent by the petitioner to the respondents on 15.07.2022 calling upon the respondents to pay the outstanding dues. Thereafter, the petitioner initiated arbitration in accordance with the arbitration clause contained in the loan agreement dated 31.03.2021 by appointing a sole arbitrator.

3. In the arbitration, the respondents had filed an application under Section 12 of the Arbitration and Conciliation Act, 1996, challenging the appointment of the sole arbitrator. Thereafter, the sole arbitrator has recused himself from the arbitration on 09.02.2023. Only under those circumstances, the petitioner has now filed this petition under Section 11 of



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the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator.

4. As directed by this Court on 06.07.2023, the petitioner has effected the paper publication in one issue of “Malai Murasu” for today's hearing. Despite the paper publication, no one has entered appearance on behalf of the respondents. The names of the respondents are also printed in the cause list today. Therefore, they are set ex-parte in this petition.

5. The arbitration clause available in the loan agreement dated 31.03.2021, which is the subject matter of dispute, is extracted hereunder:-

“26. Arbitration:

All disputes, differences and/or claims arising out of this agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and or any statutory amendments thereof and shall be referred to the sole arbitration of an arbitrator nominated by the Company. The award given by such



arbitrator shall be final and binding on all parties to this agreement. In the event of an appointed arbitrator dying or being unable unwilling to act as arbitrator for any reason, the Company, on such death of the arbitrator or his inability or unwillingness to act as arbitrator, shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with the reference from the stage it is left by his predecessor. The venue of arbitration proceedings shall be at Chennai at the Registered office of the company which is presently at 'DARE HOUSE', No.2 (old No.234), NSC Bose Road, Parrys, Chennai – 1.”

6. Since there is a valid arbitration clause and in view of the fact that the arbitration clause enables the petitioner to appoint an arbitrator unilaterally, which is not legally permissible, this Court will have to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. Accordingly, this petition is allowed with the following directions:-

(a) This Court hereby appoints Dr.V.Suresh, Advocate, having Office at Hussaina Manzil, 3rd floor, No.255, (Old No.123), Angappan Naicker



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Street, Chennai 600 001 (Mobile No.9444231497) as the sole arbitrator to adjudicate the dispute between the petitioner and the respondents arising out the loan agreement dated 31.03.2021.

(b) The Sole Arbitrator appointed by this Court shall be paid remuneration as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

(e) Both the parties shall share equally the fees payable to the sole arbitrator.

03.08.2023

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ABDUL QUDDHOSE, J.

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